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Municipal Public-Private Partnership Framework

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1.0

Introduction

This framework is specifically designed for municipal¹ governments and staff seeking to implement public-private partnerships (PPPs) to help meet their infrastructure development needs. It is written with their perspective in mind, with an emphasis on practical guidance that reflects the varied contexts and real-world challenges that city and other local governments face. This framework is modular, comprising a guidance note, 20 topic-specific modules that provide more information and guidance on key issues, and a collection of project summaries that highlight innovative approaches to municipal PPP around the world. This executive summary provides a summary of the guidance note.

¹ As used throughout this framework, the term 'municipal' is intended to cover the many forms and names of subnational government public bodies serving local communities under different administrative, legislative, and constitutional systems around the world.

2.0

Municipal PPP: What & Why

² See Guidance Note Sections 1.1 and 1.2 for more information on defining municipal PPP.

³ See Module 15: Sector Issues for more information on issues related to particular infrastructure sectors.

⁴ See Guidance Note Section 1.2 for more information on types of PPP project structures.

⁵ See Guidance Note Section 1.2 for more information on project risks and risk allocation. Also see Module 3: Project Concept Note for an example of a provisional risk allocation matrix and Module 4: Feasibility Study for information on how risk allocation is developed and evolves during the project development process.

⁶ The cost of capital refers to the amount of return on investment that the private partner will require to make its investment in the project worthwhile, considering, inter alia, the risk of loss and opportunity cost of that investment.

⁷ See Guidance Note Section 1.3, Remark on "Mythbusters" for further explanation.

⁸ As used herein, PPP agreement refers to the contract signed between the municipality and the private partner to implement the PPP project. See Guidance Note Glossary and Section 5.1.

⁹ See Guidance Note Sections 3.1 and 4.2 for more information on determining the optimal project structure.

¹⁰ See Guidance Note Section 1.3 for more information on the benefits of PPPs.

The term public-private partnership (PPP) encompasses a variety of approaches to long-term partnerships between municipalities and private entities to deliver infrastructure services, with the private partner bearing significant project risks. As used herein, a municipal PPP is simply a PPP where *the government entity is a municipal body and where the public asset or service is a municipal asset or service.*²

PPPs are part of a fundamental, global shift in the role of the municipal government – from being the direct provider of public services, to becoming the *planner, facilitator, contract manager and/or regulator* who ensures that local services are available, reliable, meet key quality standards, and are affordable for users and the local economy.³ Within this broad paradigm, the structure of a PPP used for a specific project is flexible, with a wide variety of options available that allocate different rights and responsibilities to the parties to the PPP. The appropriate project structure can only be determined with reference to the unique context of the municipality and a particular project.

There are a few general principles with which the municipality should be familiar. The project structure determines the extent of the private sector's participation in the underlying project, for instance whether the private partner is responsible only for operating and maintaining an existing asset, or whether it is responsible for designing, financing, and building a new asset.⁴ In turn, the extent of the private sector's involvement in the project affects the amount of risk that may be transferred to the private sector. As the private partner's role increases, so too does the amount of risk it may be asked to bear. The reverse is also true, as the private partner assumes more risk, it will require more operational control over the project in order it manage those risks.

An appropriate allocation of risks between the parties is a key determinant of project success.⁵ From the perspective of the municipality, transferring risk to the private partner is a significant benefit of a PPP, for instance the risk that construction is completed on time and according

to specifications. At the same time, the private partner will need to be compensated for risk borne. Thus, the more risk that is transferred to the private partner, the higher the cost of capital.⁶ As a PPP is never "free" from the perspective of the municipality,⁷ the cost of capital is a major factor in evaluating whether a PPP is the most desirable delivery method for a particular project. Transferring too much risk to the private partner can unduly increase the cost of the project and even result in project failure.

A PPP requires careful preparation. This begins at the earliest stage of project identification and continues through final execution of the PPP agreement,⁸ as more project-specific details and data become known.⁹

If well-designed and managed, PPPs can deliver high-quality, cost-efficient infrastructure, while leveraging private capital to increase the amount of infrastructure that can be delivered by the municipality within the same budgetary envelope.¹⁰ PPPs can help municipalities deliver better and more reliable quality of service at a better cost to the municipality when compared to what can be achieved by public sector delivery alone. By mobilizing private expertise, human, and financial resources, PPPs can accelerate the construction of infrastructure, improve the efficiency of public services, and foster innovative solutions that offer a better response to user needs than would often poorly functioning public service provision.

At the same time, PPPs are only one of many tools available to municipalities to meet their infrastructure needs and should be viewed as such. The private sector can do some things better than the public sector, in particular around innovation, service delivery, commercial orientation, and operational efficiency. When properly structured, a PPP can leverage the distinct incentives and capabilities of the private sector¹¹ and create "win-win" arrangements. However, a PPP will not always be the most effective option for delivering a particular project and implementing a PPP presents unique challenges for the municipality, including increased project preparation requirements, direct

and contingent fiscal liabilities, and oversight responsibilities.¹²

In considering whether and why to pursue a PPP, the municipality needs to consider the relative pros and cons of using PPP as compared to the other options for delivering the same project, in particular through the lens of efficient service delivery, public investment management,¹³ fiscal risk management,¹⁴ and capital planning; i.e. whether the project represents “value for money” or “VfM”.¹⁵ To this end, the municipality should assess how PPPs factor into its broader planning and budgeting systems, and ensure adequate processes are in place to determine the most effective use of limited public resources and fiscal space.¹⁶

¹¹ See Guidance Note Section 1.3 for more information on the private sector’s distinct abilities and incentives in delivering public infrastructure services.

¹² See Guidance Note Section 1.3 for additional information on some of the challenges PPPs can present for municipalities.

¹³ For further discussion, see: www.pefa.org and International Monetary Fund’s Public Investment Management Assessment tool (2018).

¹⁴ For more information, see Irwin, Timothy C, Samah Mazraani, and Sandeep Saxena. 2018. How to Control the Fiscal Costs of Public-Private Partnerships. Washington DC: International Monetary Fund.

¹⁵ The definition of VfM will differ by municipality, depending on priorities and needs. VfM is not a strict, mathematical assessment, but rather a set of criteria to help understand whether the municipality gets a better deal from a PPP solution than other uses of public resources and opportunities.

¹⁶ See Guidance Note Sections 1.3, 2.1, 3.1, and 3.2 for more information on the importance of planning and budgeting systems, as they relate both to good project selection and the municipality’s capacity to implement PPP.

3.0

Understanding the Context

Before attempting a particular PPP project or program, the municipality must understand the broader context in which the project will be developed and delivered. This includes the public

sector context, from institutional capacity to funding PPP, and the private sector context, namely the key issues and concerns that will influence private investors' interest in investing in a PPP project.

3.1 Public

Before considering the potential to implement a PPP, it is important to first clearly understand the municipality's context as it relates to successful PPP delivery.¹⁷ Key issues include:

- The municipality's investment planning and budgeting processes;
- The institutional capacity of the municipality to deliver a PPP, including its internal human resources and its ability to procure outside

- advisers to assist with project preparatory work;
- The municipality's creditworthiness, financial capacity, and overall credibility as a contractual partner; and
- The applicable legal and regulatory framework, including as it relates to the municipality's legal authority to enter into a binding PPP agreement.



Note

Funding PPP

Municipal PPPs need a robust revenue stream to fund capital and operating expenses, including debt service and equity return. The municipality should follow a hierarchy of possible revenue sources that begins with maximizing sustainable revenues from direct beneficiaries, then explores options to capture value from indirect beneficiaries. Finally, and only then, should public money or guarantees be used to enhance project viability, and only where that public support represents VfM for the government, the community, and the economy.¹⁸

3.2 Private

In preparing and structuring a municipal PPP, the municipality should consider the project from the perspective of a private partner.¹⁹ In particular, a private investor will want to know that the project is well-studied and -prepared, with reliable forecasts of costs, demand, and revenue, as well as an appropriate allocation of risks. A prospective private partner will also be concerned with the broader context in which the project will operate. It will need confidence that the municipality will fulfill its contractual obligations and will have the capacity

and intention to make any payments due under the PPP. If foreign investment is sought, private investors and lenders will need a means to manage foreign exchange risk and will need to trust the domestic courts to fairly adjudicate contractual claims or enforce arbitration awards, should a dispute arise. By considering issues like these from the outset, the municipality will increase the likelihood of identifying, preparing, and procuring a successful PPP.

¹⁷ See Guidance Note Section 2.1 for more information on the municipal context. Also see Module 1: Municipal Readiness, which provides a tool for assessing a municipality's readiness to implement a PPP.

¹⁸ For more information and guidance on funding PPP, see Guidance Note Section 2.4 on Funding PPP, Module 1: Municipal Readiness, Module 2: Project Concept Assessment Tool, Module 3: Project Concept Note, Module 4: Feasibility Study, Module 16: Harnessing Land Value Capture, Module 17: Capturing Commercial Value, and Module 20: Summary Practical Advice for Decision Makers.

¹⁹ See Guidance Note Section 2.2 for more information on the private sector context. Also see Module 19: Private Sector Context for a deeper discussion of the relevant issues.

4.0

PPP Project Cycle

The full life-cycle of a PPP consists of four phases: i) selection; ii) development; iii) procurement and award; and iv) implementation.²⁰ These phases are not necessarily linear, a project may move back and forth between these phases as needed to ensure that it is well prepared. Furthermore, in some jurisdictions the applicable legal and regulatory framework may set out specific requirements and processes that must be followed with respect to some or all the stages in the project cycle.

Implementing a successful PPP requires significant upfront investment, both in terms of time and money, but this investment will generate substantial benefits over the life of the project and greatly reduce the likelihood of costly changes or otherwise incurring significant liabilities from the project in the future. A robust development process will help ensure, among other things, that the project:

- Provides value for money to the municipality versus other delivery options;
- Does not expose the municipality to excessive liabilities;
- Attracts more and higher quality bidders, which increases competition and so may reduce the project cost, and makes it more likely that the winning bidder will have the capacity to deliver the project to the municipality's specifications;
- Minimizes or eliminates negative environmental or social impacts from the project; and
- Provides high quality and affordable services to the project's beneficiaries.

Failure to invest adequate time and resources for project development can reduce the value of the project, result in significant costs for the

municipality, and make the project more likely to fail. The municipality is unlikely to have sufficient internal human resources in this regard, especially when undertaking its first PPP project or program. Internal human resource capacity can and should be developed over time, through appropriate hiring, formal trainings, and direct, on-the-job experience with PPPs. In many respects, expertise is best acquired by actually working on a PPP (i.e., learn-by-doing), provided that emphasis is placed on knowledge sharing to ensure that lessons learned are shared among staff and preserved within institutions despite staffing changes.

In the interim, gaps in internal capacity can be overcome by seeking external assistance with project development. To this end, recourse may be made to national or state-level PPP units and other government departments and entities at the local or national level with PPP experience that can provide hands-on support to the municipality. In addition, the municipality will almost certainly need to procure qualified, third-party consultants for project-level advisory services. This may include assistance with initial project selection, preparation of a feasibility study, and transaction advice through to selection of the private partner, signing the PPP agreement, and financial close. Costs for these services vary significantly based on the size and complexity of the project and the capacity of the municipality. These services may be paid for by national or local PPP units or by the municipality directly from various funding sources (e.g., technical assistance from development partners, or special funds created for such purpose at the national or state-level, among others).²¹

4.1 Project Selection & Prioritization

In the selection phase, the municipality identifies and selects a project for development as a PPP. The purpose of the selection stage is to determine which projects appear most suitable for delivery via PPP and then to prioritize those projects, in view of the municipality's priorities and capacity as well as the private sector appetite for investment.

Screening potential projects for PPP suitability should occur as part of the municipality's regular investment planning processes and should include consideration of projects to improve or expand existing services, not only new builds,²² as well as ad hoc projects that may arise from time to time, for instance as a result of a natural disaster.

²⁰ See Guidance Note Sections 3-6 for more information on each step in the project cycle.

²¹ For more information and guidance on understanding and building internal capacity and accessing external assistance with project development, see: Guidance Note Section 3.2, box on Project Inception Support, Guidance Note Section 3.3 on Preparation Funding, Guidance Note Section 4.3 on Hiring Advisers, Module 1: Municipal Readiness, Module 3: Project Concept Note, Module 5: Managing Consultants, Module 6: Sample Consultant Terms of Reference, and Module 13: Capacity Building.

²² See Guidance Note Section 3.1, Note on "The Temptation of New Build."

This might require reversing the municipality's usual approach to infrastructure investment planning. Common planning processes focus on the efficient allocation of public funding, and therefore the most feasible projects are generally allocated public funding and financing. More risky or complicated projects tend to be relegated to private development, including PPP. However, private financing is risk based, i.e. private financing for more risky projects attracts a higher financing cost, less risky projects can be financed at a lower interest rate. Therefore, the usual allocation dynamic should be reversed—the least risky, most feasible projects should be developed with PPP. For example, there are countries where for every project that asks for public funding, the project team must elaborate why the project cannot be implemented through a PPP structure.

In general, projects should be evaluated and screened based on the strength of the underlying rationale for the project, institutional readiness to implement the project, project readiness, and PPP suitability, using common and objective criteria and scoring.²³ As part of the analysis, the municipality should prepare a concept note to capture key

summary information (that is, need, project description, project rationale, identified sources of revenue and financing).²⁴ Projects that are more 'ready' and more attractive candidates for PPP will move on to the next phase.

The municipality must then prioritize the potential projects,²⁵ in view of its development priorities and capacity, including resource constraints, in terms of both staffing and funding, that may limit the number of PPPs that can be pursued at one time. In addition, the municipality should consider the market appetite and its expected evolution in the short to medium term, which will influence the number projects that should be prepared as a priority to fit with and avoid exceeding market appetite.

Note that at the selection phase, the amount and quality of data is likely to be very poor. Definitive decisions should not be taken against such preliminary data, but rather indicative to help guide the municipality and identify additional data required and further analysis to be done. This initial assessment should be updated and repeated as appropriate where new data is accessible.

²³ See Guidance Note Section 3.1 for more information on project screening. Also see Module 2: Project Concept Assessment Tool and Module 3: Project Concept Note for more guidance on evaluating projects.

²⁴ See Module 3: Project Concept Note for a template and sample project concept note.

²⁵ See Guidance Note Section 3.2 for more information on project prioritization.

²⁶ See Guidance Note Section 2.6 for more information on small projects.

²⁷ See Guidance Note Section 2.6, box on "Small Project, Small Liabilities?".



Note

Implementing Small Projects

One common initial screening criteria is the size of the project cost. 'Small' projects, generally referring to those that cost less than US\$ 5 million equivalent, have a number of disadvantages in terms of PPP delivery, in particular transaction costs are not proportionately lower for small projects and therefore tend to be disproportionately high. So, small projects may be screened out early, on this basis.

However, a growing practice in small PPP has led to the development of mechanisms to mitigate some of these challenges.²⁶ These mechanisms may need to be implemented at the national level, by the municipality, or by the PPP team as they develop projects. Some of these mechanisms include:

- A simplified approval process for small PPPs;
- Standard processes and documents that can make similar types of small projects easier and cheaper to prepare and deliver; and
- Aggregating small projects (i.e., pooling or bundling them into one project), to leverage economies of scale to reduce total cost and speed development, while also making the investment larger and more attractive for larger, more experienced investors and lenders.

At the same time, it is important to note that small projects do not necessarily mean small liabilities for the municipality.²⁷ Accordingly, consideration should be given to the full extent of fiscal liabilities created by a project and the municipality may consider limiting the type or amount of government support available to small PPP.

4.2 Project Development

In the development phase, the municipality undertakes a comprehensive feasibility study to assess the viability of the project: technical, economic, financial, fiscal, environmental, social, legal, risk allocation, and so on. In addition to providing a detailed assessment of the feasibility of the project as initially conceived, this stage may involve significant revisions to the project as more information becomes known. The findings of the studies undertaken for the feasibility study may, for instance, necessitate or advise changes to

the project's size, scope, outputs, structure, and financing and funding mechanisms. In brief, in the feasibility study the project is not only analyzed and assessed but also further developed and elaborated.

At this stage, if not earlier, the municipality must appoint a project manager. The project manager is responsible for supervising and managing the PPP project on a daily basis.²⁸



Recommendation

The Feasibility Study

The better and more complete the feasibility study, the more sustainable the project will be. Any temptation to cut corners to save money on this analysis, or when time is scarce and when expectations are unrealistic, must be avoided. Municipalities, even large ones, in general do not have the required human resources to carry out a full feasibility study by themselves. Therefore, feasibility studies are prepared by an external adviser or firm hired by the municipality.

The feasibility study report informs the decision-making body in the municipality about the feasibility and desirability of undertaking the project as a PPP, and about the readiness of the project to proceed to procurement.²⁹

Project preparation and development needs to involve the community, those directly affected by the project and those less immediate, the poor, women, and disenfranchised groups.³⁰

In addition, at this stage if not before, the municipality should consult the market to understand project

structures that meet market requirements and market appetite for certain projects and sectors. Market consultations should be performed at various times during project selection and preparation, with the extent, participants, and location (e.g. foreign or domestic) determined by the circumstances of the particular project.³¹

²⁸ See Guidance Note Section 4.1 for more information on the project manager. Also see Module 1: Municipal Readiness, for guidance on internal staffing needs.

²⁹ For more information and guidance on the feasibility study and procuring and supervising external advisers to complete this study, see: Guidance Note Section 3.3. on Preparation Funding, Guidance Note Section 4.2 on Feasibility Study, Guidance Note Section 4.3 on Hiring Advisers, Guidance Note Section 4.5 on Approval for Tender, Module 1: Municipal Readiness, Module 2: Project Concept Assessment Tool, Module 4: Feasibility Study, Module 5: Managing Consultants, and Module 6: Sample Consultant Terms of Reference.

³⁰ See Module 18: Community Engagement. Also See Module 14: Communication Strategy.

³¹ See Guidance Note Section 4.4 for more information on market consultations. Also see Module 6: Sample Consultant Terms of Reference for additional information on the role of advisers in market soundings.

4.3 Procurement & Award

In the procurement and award phase, the municipality conducts an open, competitive procurement process to select a private partner for the realization of the project.³² The particular processes and requirements for procurement are likely governed by local or national procurement laws and regulations, which will vary by jurisdiction. The guidance note and related modules address the basic steps and provide model documents for both a single-stage and two-stage procurement process,³³ which will need to be adjusted to fit

the particular context of the municipality and the project. As with the other stages of the project cycle, the municipality will likely require external assistance in preparing the tender documents³⁴ (i.e., requests for qualification³⁵ and proposals³⁶ and the draft PPP agreement³⁷) as well as with evaluating bids and negotiating the final PPP agreement with the preferred bidder.³⁸



Note

The Procurement Process

The procurement process generally entails soliciting and evaluating bids that set forth the qualifications, technical proposals, and financial proposals of interested bidders.³⁹ Once a preferred bidder is selected, the final PPP agreement is negotiated and signed; this is referred to as 'commercial close.' 'Financial close' is the moment when the lending agreements become binding on the lenders.⁴⁰

Note that the municipality may at times receive an unsolicited proposal (USP). A USP is submitted by a private party to the municipality to undertake a PPP project at the private firm's initiative, rather than as a response to a request from the government. It is advisable for the municipality to exclude USPs entirely,⁴¹ as many countries do, particularly until it has a significant depth of experience in PPPs. An open, competitive process

with no particular advantage to any bidder is the best way to implement a successful PPP. In certain cases, direct negotiations with a single, preferred private partner may be permitted, for example in a national state of emergency or for small changes to existing projects (where there is no real prospect of competition). Nonetheless, the municipality should obtain expert advice when approaching such negotiations, which can be complex.

³² See Guidance Note Section 5 for more information on procurement and award. Also see Module 7: Procurement.

³³ See Guidance Note Section 5.2 for more information and guidance on procurement options.

³⁴ See Guidance Note Section 5.1 for more information and guidance on preparing the tender documents.

³⁵ Module 8: Sample Request for Qualifications (RFQ).

³⁶ See Module 9: Sample Request for Proposals (Single Stage) and Module 10: Sample Request for Proposal Document Two-Stage Bid Process.

³⁷ See Guidance Note Section 5.1 for more information on the key terms of the PPP agreement. Also see Module 11: Sample PPP Agreement.

³⁸ Provincial or national government may have approval rights over the project at various stages, in particular where government financial support is to be provided. The approval stages should be mapped out to manage appropriately.

³⁹ See Guidance Note Section 5.2 for more information on bidders, particularly regarding special purpose vehicles.

⁴⁰ For more information and guidance on the procurement process and accessing external assistance, as well as model tender documents, see: Guidance Note Section 3.3. on Preparation Funding, Section 4.3 on Hiring Advisers, and Section 5 on Procurement and Award. Also see Module 1: Municipal Readiness, Module 5: Managing Consultants, Module 6: Sample Consultant Terms of Reference, Module 7: Procurement, Module 8: Sample Request for Qualifications (RFQ), Module 9: Sample Request for Proposal Single-Stage Bid Process, Module 10: Sample Request for Proposal Document Two-Stage Bid Process, and Module 11: Sample Municipal PPP Agreement.

⁴¹ See Guidance Note Section 5.4 for more information and guidance on USPs, including best practices for jurisdictions where USPs are allowed.

4.4 Implementation

During the implementation phase, the project is constructed, the private sector begins operations, and services are delivered. The role of the municipality in this phase consists of contract management and the monitoring of the performance of the private operator.⁴²

Managing a PPP agreement requires a different approach from managing a conventional public procurement contract. A conventional public procurement contract is short term (usually at most two or three years) and pertains to the execution of precisely defined activities. A PPP agreement, on the other hand, is long term and output based. The key success factor of effective contract management is a good relationship between the municipality and the private partner. The essence of PPP is that both parties proactively work together to manage conflict, avoid defaults, and deliver public services.

On project implementation, the project manager should be replaced by a contract manager to act as the primary point of contact of the municipality with the private partner. In some cases, the contract manager may be assisted by a contract management team that combines the various disciplines that are needed to monitor the performance of the private partner and manage the PPP contract.⁴³ A contract management plan (CMP) determines the composition and function of this team. The CMP is prepared (usually by the transaction adviser) even before the award and signing of the PPP agreement, and is updated after the signing of the PPP agreement.⁴⁴

The contract manager and team are generally responsible for:⁴⁵

- Monitoring the performance of the private partner and checking it against the contract requirements;
- Budgeting and settling payments due from the municipality under the PPP contract (if any);
- Handling contract events according to the provisions of the PPP contract (for instance, tariff adjustments, non-compliance with performance requirements, changes in law, contract amendments, force majeure, refinancing, disputes, and early termination);
- Reporting on the performance of the PPP to the municipality and to stakeholders; and
- Preparing for the handover of the project's residual assets from the private partner to the municipality, in accordance with and on conclusion of the PPP agreement. Note that the municipality must decide how the project services will be provided after the termination of the PPP agreement well before the end date of that agreement, in order to ensure uninterrupted service delivery.

⁴² See Guidance Note Section 6 for more information on the municipality's role during the implementation phase. Also see Module 12: Contract Management.

⁴³ See Guidance Note section 6.1 for more information on the project manager and project management team.

⁴⁴ See Guidance Note Section 6.2 for more information on the CMP.

⁴⁵ See Guidance Note Section 6.3 for more information and guidance on contract management. Also see Module 12: Contract Management for more detailed guidance on contract management procedures.

5.0

List of References

Irwin, Timothy C, Samah Mazraani, and Sandeep Saxena. 2018. *How to Control the Fiscal Costs of Public-Private Partnerships*. Washington DC: International Monetary Fund.



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- Module 6** Sample Consultant Terms of Reference
- Module 7** Procurement
- Module 8** Sample Request for Qualifications (RFQ)
- Module 9** Sample Request for Proposal Single-Stage Bid Process
- Module 10** Sample Request for Proposal Two-Stage Bid Process
- Module 11** Sample Municipal PPP Agreement
- Module 12** Contract Management
- Module 13** Capacity Building
- Module 14** Communication Strategy
- Module 15** Sector Issues
- Module 16** Harnessing Land Value Capture
- Module 17** Capturing Commercial Value
- Module 18** Community Engagement
- Module 19** Private Sector Context
- Module 20** Summary Practical Advice for Decision Makers

Preface

This Guidance Note is designed to support municipal governments and staff; it is written with their perspective in mind. Though it is written from a government perspective, it is also useful for decision makers and practitioners across a range of municipal infrastructure sectors and services.

The term 'municipal' is used in the Guidance Note to cover the many forms of local government public bodies serving local communities under different administrative, legislative, and constitutional systems around the world. The Guidance Note focuses on the common and unique features of public-private partnerships (PPPs) for municipal authorities, which in turn need to be applied according to specific local frameworks and procedures.

The Guidance Note proposes a 'light touch' process, to provide enough control for the municipality, without burdening the municipality or the project with significant bureaucratic processes.

The Guidance Note provides a simple summary of the issues. A detailed discussion of key issues is provided in 20 modules to allow the reader to access more information on specific topics as and when needed. The Executive Summary provides a summary of the Guidance Note. Finally, project summaries (maximum of two pages each) describe municipal PPP projects with innovative solutions for some of the key challenges facing municipalities.

For further information on municipal PPP, see the following:

- Amirtahmasebi, Rana, Mariana Orloff, Sameh Wahba, and Andrew Altman. *Regenerating Urban Land: A Practitioner's Guide to Leveraging Private Investment*. 2016. Urban Development Series. Washington, DC: World Bank. doi: 10.1596/978-1-4648-0473-1".
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The municipal PPP framework can be found at <https://www.thegpsc.org/knowledge-products/municipal-finance-and-ppp> and <https://ppp.worldbank.org/municipalppp>

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Overview

Introduction

What are Municipal PPPs?

Why PPPs?

1.0 Overview

1.1 Introduction

For the first time in history, more than half the world's population lives in cities, with 90 percent of urban growth taking place in the developing world. This high rate of urban growth has put pressure on cities in various ways.¹ Rapid urbanization is swelling municipal populations globally, putting pressure on an often old and insufficient infrastructure. Municipal budgets cannot keep pace with investment needs. As devolution strategies evolve, municipalities are increasingly responsible for the funding and provision of public services but often in constrained and uncertain budget environments. Municipalities have several tools available to them to deliver infrastructure services in a more efficient and fiscally effective manner, including long-term debt issuances (loans and bonds), asset sale or lease, and partnering with private investors.²

The relative pros and cons of each should be considered, in particular, through the lens of efficient service delivery, public investment management,³ fiscal risk management,⁴ and capital planning.⁵ These tools provide a link between the municipality's strategic vision, its urban land use plan, its annual budget, and its fiscal position; they identify anticipated public infrastructure and investment projects, as well as a financing approach.

Public-private partnerships (PPPs) create a long-term partnership between municipalities and the private sector, under the premise that the private sector can do some things better than the public sector, in particular around innovation, service delivery, commercial orientation, and the drive for efficiency. In some cases, a municipality can simply hire a private entity to provide a service or deliver a product, for example, under a contract for sale or a construction contract. But for many services, the best way for a project to mobilize the combined strength of the municipality and of the private sector is a PPP, where both parties share critical risks and liabilities to align interests and coordinate efforts.

If they are well designed and managed, PPPs can deliver quality, reliable, and cost-efficient infrastructure. By mobilizing private expertise

and human and financial resources, PPPs can accelerate the construction of infrastructure, improve the efficiency of public services, and foster innovative solutions that offer a better response to user needs than would poorly functioning public service provision.

A growing number of local governments are turning to PPPs for municipal services, solid waste management, recycling, water and sanitation, energy-efficient street lighting, primary health care, local transport terminals, public markets, parking facilities, parks, affordable housing, municipal facilities and 'Smart City' applications. Even the most efficient and functional municipalities such as Singapore⁶ and Hong Kong, SAR China, use PPP to achieve specific goals. However, the experience of PPPs at local levels and with smaller municipal projects has received less attention than larger, national PPPs.

To deliver infrastructure well, a PPP must be properly prepared, well structured, and carefully implemented, as appropriate to the municipality's context. But this preparation can be costly and time-consuming, in particular for small projects without economies of scale. This Guidance Note provides municipalities with a rigorous procedural framework and a set of practical tools to enable them to identify promising projects, where PPPs can deliver benefits, to prepare and implement those projects well, all on a programmatic basis to reduce costs and improve efficiency.

¹ Amirtahmasebi, Rana, Mariana Orloff, Sameh Wahba, and Andrew Altman. *Regenerating Urban Land: A Practitioner's Guide to Leveraging Private Investment*. 2016. Urban Development Series. Washington, DC: World Bank. doi: 10.1596/978-1-4648-0473-1".

² As discussed, these tools may be subject to restrictions or approvals, for example, from central government authorities.

³ For further discussion, see www.pefa.org and International Monetary Fund's Public Investment Management Assessment tool (2018).

⁴ See Irwin, Timothy C., Samah Mazraani, and Sandeep Saxena. 2018. *How to Control the Fiscal Costs of Public-Private Partnerships*. Washington DC: International Monetary Fund.

⁵ For instance, the Government of South Africa established guidelines on capital planning that provide advice to departments on how to appraise capital projects and proposals that will be submitted to the National Treasury for evaluation and funding consideration (National Treasury of Republic of South Africa 2017).

Tool

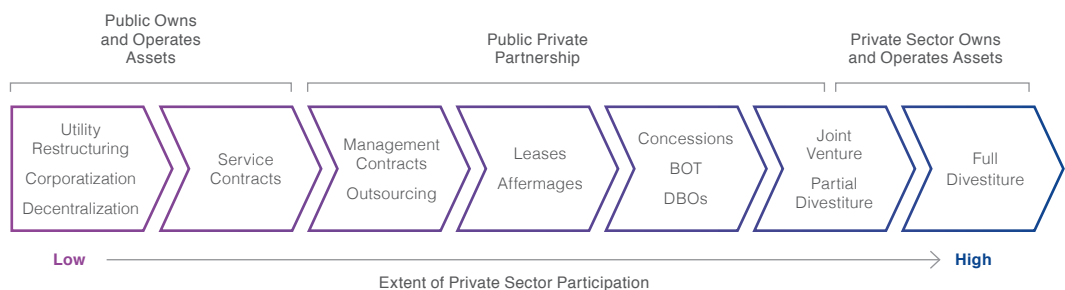
- Public-Private-Partnership Legal Resource Center**
 This World Bank managed web-site provides sample checklists, guidelines, laws, regulations, contracts and other resources for the development of PPP projects.
<https://ppp.worldbank.org>
- World Bank’s Private Participation in Infrastructure Database**
 Provides information regarding more than 6,400 projects with private sector participation, in low- and middle-income countries. The database contains information on the contractual arrangements used, the funding and financing sources, and principal investors.
<https://ppi.worldbank.org>

1.2 What Are Municipal PPPs?

For these guidelines, PPP will include different approaches to private entities partnering with municipal authorities to deliver infrastructure services, with the private sector making a long-term commitment and taking significant project risks. A municipal PPP is a PPP where *the government entity is a municipal or local government body and where the public asset or service is a municipal asset or service.*

The structure of a PPP used for a specific project is flexible. Each approach to PPPs has different characteristics and priorities. Figure 1 shows the relationship between a few of the more common structures. Note that the terms of art associated with PPPs do not benefit from a common definition (see the glossary for some of these terms). Some PPP structures like concession or affermage have the added complexity of being defined at law in different jurisdictions. Therefore, care needs to be taken when using these terms as the person you speak to may have a different perception of the term and the relevant legal system may have its own definition.⁷

Figure 1: Common Structures for Public-Private Service Arrangements



Source: PPP Legal Resource Center, World Bank.

⁶ See Public Private Partnerships in Ministry of Finance of Singapore. https://www.ifaq.gov.sg/MOF/apps/fcd_faimai.aspx?qst=hRhkP9BzcBlmsx2TBbssMsxu7lqt6UJK70a1wAEVmydmntnl%2FAOIN2tQRU4ZLpZlgE5B%2FtUOWfkV%2F05tBMT2iM%2Bk%2FPAF8LWw2e3c8436dh5mseztq24wt31l088lqrJCij4xrmlFmyuVKNwuL5TCWfooeFMtulbxseSZ5g3uan%2F%2BmRWZ9Nq3Na2d%2FsavCclsiUctowKrG2RWWPJkOlvyo%2B3jD9eqwe54tVCXGafgQ%3D#TOPIC_176

⁷ For further discussion of these terms, their usage, and meaning, see Delmon, Jeffrey. "Understanding options for public-private partnerships in infrastructure : sorting out the forest from the trees : BOT, DBFO, DCMF, concession, lease . . . (English)". Policy Research working paper no. WPS 5173. Washington, DC: World Bank, 2010. <http://documents.worldbank.org/curated/en/999661468323693635/Understanding-options-for-public-private-partnerships-in-infrastructure-sorting-out-the-forest-from-the-trees-BOT-DBFO-DCMF-concession-lease>.

A PPP combines the strengths of the municipality with its private sector partner (PSP). Just as municipalities differ in their relative capacity and sophistication, so too do private entities. Any partnership is only as good as the partners themselves and their commitment to the partnership.⁸

- The municipality will want to examine its own context first, to improve its institutions, regulations, and capacity, to become the best partner it can be, given time and resource constraints.
- Well-implemented, open, competitive procurement will help the municipality select the best available private investor on the best terms.
- A PPP must be carefully prepared to put the municipality in a strong position when negotiating with a private partner.
- The municipality should learn from and apply global lessons learned.⁹

⁸ See this blog series comparing PPPs to marriage, and the importance of the partnership in the World Bank's Infrastructure and Public-Private Partnerships blog, <https://blogs.worldbank.org/ppps/what-do-mothers-law-and-national-ppp-structures-have-common#comments>.

The exact definition of PPP can vary significantly between different countries. Where a PPP policy or legal framework is in place, users should take note of exactly how a PPP is defined by law. This is important since the definition of PPP often determines responsibilities, requirements, procedures, stakeholder expectations, and so on when PPP projects are prepared and implemented. Another key driver of the PPP structure to be adopted is the allocation of risks associated with a project among the parties to the PPP. Infrastructure projects are long-term undertakings, during which any number of events might occur that could adversely affect the project. These risks range from catastrophic weather events and changes in law that affect the project to delays and cost overruns during construction. (See Module 3: Sample Project Concept Note for a more thorough discussion of project risks.)

Case Example

The Dehradun Interstate Bus Terminal (Uttarakhand, India)



The Dehradun Interstate Bus Terminal (ISBT) was developed by the local development authority on a PPP basis. The PSP was responsible for development of a modern bus terminal, catering to long distance routes, with a capacity to accommodate 750 buses per day and operate the facility for 20 years. The concessionaire had the right to develop a commercial complex within the terminal complex and earn rents from the commercial space for the contract tenure of 20 years.

The sources of revenues for the concessionaire included the rent from the commercial complex, terminal fee charged to the bus operators, advertising in the terminal complex, and parking charges for the vehicles in the complex. The successful bidder committed to share an annual premium of INR 8.1 million (escalated annually at the inflation rate). The local development authority leveraged private investment for a public facility and unlocked value from commercial utilization.

Source: Compendium on Public Private Partnerships in Urban Infrastructure Case Studies, Ministry of Urban Development-Government of India and Confederation of Indian Industry (CII).

Photo Credit: ArmouredCyborg (https://commons.wikimedia.org/wiki/File:UTC_bus.jpg), <https://creativecommons.org/licenses/by-sa/4.0/legalcode>

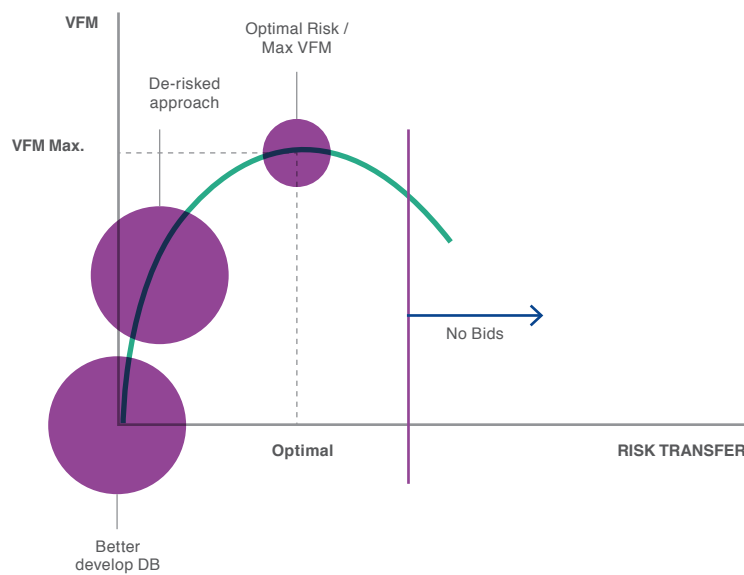
See Project Summary No. 8

While the kind and consequence of the risks arising from a project will vary, how the risks are allocated among the parties has significant implications for the success of a PPP. Risk allocation affects the ability to attract private investment, the quality of competition among bidders, and the cost of capital. A sound understanding of the risks inherent to infrastructure projects, risk allocation principles and measures, the profile of likely bidders and their perceptions of key risks, and the available risk mitigation instruments is essential when pursuing a PPP.

In general, the more risk is borne by the private partner, the more control the private sector will need to manage those risks. Thus, referring to Figure 1, as the 'Extent of Private Sector Participation' increases from low to high, so too does the amount of risk transferred to the private partner.

The private partner will need to be compensated for risk borne. The more the risk assumed by the private partner, the higher the cost of capital.¹⁰ Thus, shifting too much risk to the private partner can reduce a project's value for money (VFM) and, in the extreme, lead to failure during procurement where potential investors or their financiers are not willing to bear the levels of risk required. Even if bids are received and the project awarded, the level of risk may be too much for the private sector to manage, which can lead to project failure. The general impact of risk sharing on VFM is depicted in Figure 2.

Figure 2: Relationship between Risk Transfer and VFM



Source: Public-Private Partnerships Certification Program, PPP Program Certification Guide.
 Note: DB = Design build.

The risk premium charged by investors will reflect the context of the municipality, for example, the reputation of the municipality for interfering in commercial activities and for paying its bills on time, the perceived creditworthiness of the municipality and the government, potential macroeconomic and political volatility, instability in inflation and foreign exchange rates, concerns over access to impartial and reliable mechanisms for dispute resolution, the health and depth of the local financial system, transparency and accountability, or any combination of these and other factors. Each potential investor will have a different perception of risk and will value risks slightly differently, for

example, foreign investors will be more sensitive to country risk while local investors may have less experience with PPP and therefore price commercial and financial risks differently.

It is important for municipalities to begin identifying key risks and considering their potential allocation as early as possible; see for example the provisional risk matrix included as part of the Sample Project Concept Note in Module 3. But, clearly, it is not possible to identify every risk in advance; the project structure will need to include mechanisms that provide flexible and responsive means for adapting to the unexpected.

⁹ World Bank. n.d. "Public-Private Partnerships Legal Resource Center." PPPLRC. Accessed July 19, 2019. <https://ppp.worldbank.org/public-private-partnership/>; Delmon, Jeffrey. 2017. *Public-Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*. Second Edition. New York: Cambridge University Press; Delmon, Jeffrey. 2016. *Private Sector Investment in Infrastructure: Project Finance, PPP Projects and PPP Frameworks*. Third Edition. Wolters Kluwer.

¹⁰ This is commonly referred to as a 'risk premium'



Note

Risk Sharing in PPPs¹¹

- Risk transfer and risk sharing are essential elements of a PPP—an appropriate allocation of risks between the parties is key to a successful PPP project.
- If the municipality retains too much risk, the project loses value but transferring too much risk to the private partner can unduly increase the cost of capital and even result in project failure.
- Practitioners need to understand investors' perceived project and country risks, as well as basic risk sharing principles and risk mitigation strategies, when pursuing a PPP.

¹¹ For more information on risk allocation in PPPs: OECD. 2017. Selected Good Practices for Risk Allocation and Mitigation in Infrastructure in APEC Economies. PARIS: OECD. Accessed July 19, 2019. <http://www.oecd.org/daf/fin/private-pensions/Selected-Good-Practices-for-Risk-allocation-and-Mitigation-in-Infrastructure-in-APEC-Economies.pdf>; World Bank. 2017c. Guidance on PPP Contractual Provisions, 2017 Edition. Washington D.C.: World Bank; Global Infrastructure Hub. 2016f. Allocating Risks in Public-Private Partnership Contracts. <https://ppp-risk.github.io/content/uploads/2016/07/1606-10-GIHub-Allocating-Risks-in-PPP-Contracts-2016-Edition.pdf>; Irwin, Timothy C. 2007. *Government guarantees - allocating and valuing risk in privately financed infrastructure projects*. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/287611468339900724/Government-guarantees-allocating-and-valuing-risk-in-privately-financed-infrastructure-projects>.

¹² For further discussion, see: www.pefa.org and International Monetary Fund's Public Investment Management Assessment tool (2018).

¹³ See Irwin, Timothy C., Samah Mazraani, and Sandeep Saxena. 2018. *How to Control the Fiscal Costs of Public-*

1.3 Why PPPs?

Municipalities have several tools available to them to help deliver infrastructure services in a more efficient and fiscally effective manner, including, long-term debt issuances (loans and bonds), asset sale or lease, and partnering with private investors. The relative pros and cons of each should be considered, in particular through the lens of efficient service delivery, public investment management,¹² fiscal risk management,¹³ and capital planning.¹⁴

PPPs seek to help municipalities deliver better and more reliable quality of service at a better cost to the municipality when compared to what can be achieved by public sector delivery alone. The PSP has different incentives and accountability for managing design, procurement, construction, inspection, operation, maintenance, and ultimately delivery of services, which in the right circumstances and under a properly structured and procured PPP contract can achieve improved performance and services as compared to publicly managed services.

When a PPP project is well structured, it motivates the private operator to apply its full capabilities to deliver infrastructure services as required by the contract. The private sector's capacity differs fundamentally from the public sector, and it is these differences that provide new opportunities to deliver services for the municipality more efficiently. Some examples are the following:

- To remain competitive, and to continue improving profitability, private entities often deliver more innovative approaches to problem solving, managing costs, and delays more effectively than would a public entity.
- Public entities deliver against performance standards to satisfy political or legal requirements, but the private sector often earns

more profit if it meets or exceeds performance requirements. It is more immediately penalized by its customers if its performance falls short of expectations. A PPP can use output and outcome-based performance requirements to achieve even better service delivery. The payment and penalty regime will reinforce this service orientation. This focus on the customer can help public services achieve better levels of operation, and a happier electorate.

- Maintenance is a perennial challenge for infrastructure, as the impact of poor maintenance may not be perceived for years (during future political cycles). Where budgets are insufficient for requirements, public entities often find it preferable to reduce maintenance expenditure than any other financial obligation they may have. The impact of poor maintenance on profitability is more direct, including specific penalties imposed on the PSP for such failure. Therefore, private entities generally do a better job maintaining equipment, facilities, and assets to ensure they work properly, and managing unscheduled outages effectively.
- Through a PPP, the municipality can have a better understanding of the financial obligations and liabilities associated with maintenance of the project over time. The PPP does not, however, resolve the budget shortfall for maintenance; it only ensures that the budget constraints do not undermine proper asset maintenance.
- The private sector is generally focused on profitability, which includes a focus on revenues. They tend to be better at making sure that any end user tariffs or fees are collected when due and that the project generates any commercial revenues available, such as retail rents from vendors at municipal market places, transport terminals, and other municipal facilities. Billing, collection, and profitability generally improve, often significantly, under private management.

Case Example

Redevelopment of Library and Fire Station in Washington, D.C., United States



Washington, D.C. (the District) needed to refurbish the West End Library and West End Fire Station, and develop additional, centrally located low cost housing. The library and fire station were almost functionally obsolete; their renovations would be extremely costly. The District was able to acquire new, modern facilities while also providing affordable housing by leveraging the air rights above the library and fire station. The high-end condominiums provided additional tax revenue to the District, while the affordable housing element added much-needed affordable housing to the city.

The District awarded, through a competitive bid process, a concession to EastBanc WDC Partners. The proposal included US\$149 million of investment in a new fire station and library, approximately 150 condominiums, 52 low-cost rental units, and retail space. Financial assistance was provided by the District to build affordable units.

Source: www.dmped.dc.gov; Committee on Government Operations and the Environment. Committee Report on West End Parcels Surplus Declaration and Approval Resolution. All Council Members. Washington, DC: Council of the District of Columbia, 2010. Accessed June 13, 2019; <http://dcclims1.dccouncil.us/images/00001/20100910152405.pdf>; Office of the Deputy Mayor for Planning and Economic Development. West End Executed Land Disposition Agreement. DMPED. Washington, DC: DMPED, 2015. Accessed June 13, 2019.

Photo Credit: ParentingPatch (https://commons.wikimedia.org/wiki/File:Shelves_of_Language_Books_in_Library.JPG), „Shelves of Language Books in Library“, <https://creativecommons.org/licenses/by-sa/3.0/legalcode> (left); Tony Hisgett from Birmingham, UK ([https://commons.wikimedia.org/wiki/File:DC_Fire_and_EMS_unit_\(27610832282\).jpg](https://commons.wikimedia.org/wiki/File:DC_Fire_and_EMS_unit_(27610832282).jpg)), „DC Fire and EMS unit (27610832282)“, <https://creativecommons.org/licenses/by/2.0/legalcode> (right).

See Project Summary No. 73

Private Partnerships.
Washington DC:
International
Monetary Fund.

¹⁴ For instance, the Government of South Africa established guidelines on capital planning that provide advice to departments on how to appraise capital projects and proposals that will be submitted to the National Treasury for evaluation and funding consideration. (National Treasury of Republic of South Africa 2017).

- Financiers of infrastructure tend to treat public and private borrowers as distinct markets; therefore, private partnerships make available new sources of capital for infrastructure. Private investors will bring more equity investment, to capitalize the project and provide a cushion to lenders. Private partnerships therefore allow infrastructure to access significant new sources of financing.
- Private financing often involves the experienced monitoring and risk management expertise of lenders and investors. Private investors need clear and predictable revenues to repay financing. Where private financiers rely on project revenues, they will spend more effort performing

- due diligence on the project and ensuring that the project revenues are robust.
- Even more than with publicly procured infrastructure, the use of transparent and open competition is key to obtaining VFM from PPP. It can also stimulate new local private sector market development, and open investment and contracting opportunities for the private sector, including small and medium enterprises (SMEs) and local entrepreneurs. New entrants should be welcomed, in particular, from local businesses where they have the skills and financial capacity. Open competition helps foster new entrants.

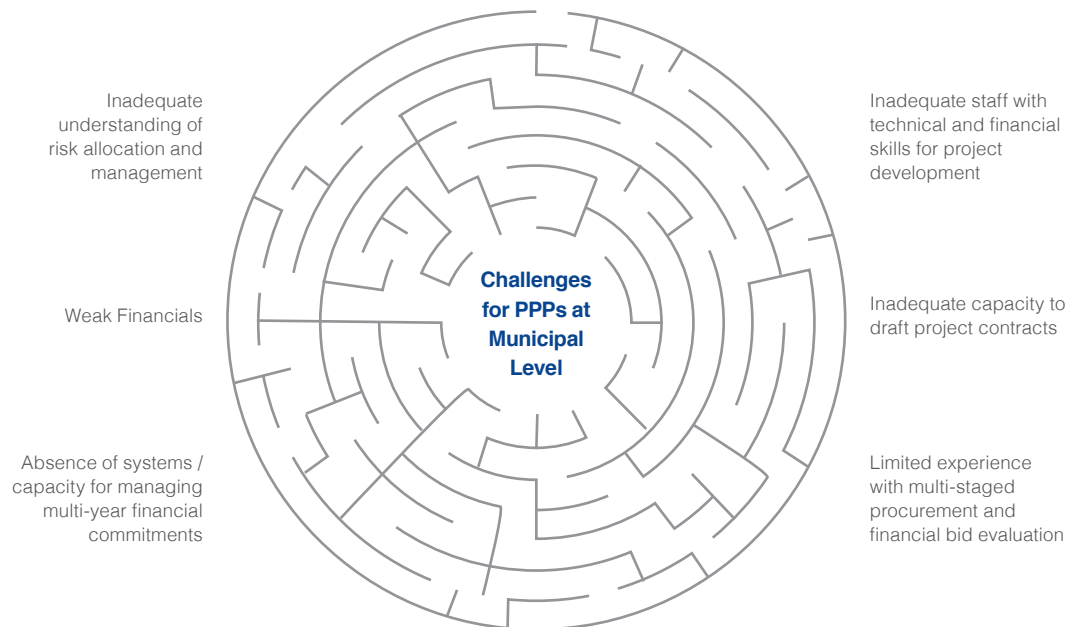
However, implementing PPPs also presents unique challenges for the municipality:

- PPP projects require more careful preparation than public projects, to select only those projects likely to be attractive to private investors, to structure the relationship between public and private. This means that PPP preparation requires more money and more time compared to preparing public projects; this may also mean delayed project execution, which may be politically challenging. Publicly financed projects should invest in an equally robust preparation process, but generally do not.
- PPPs are usually long-term contracts that commit a municipality to future liabilities which the municipality must clearly understand, analyze, value, and manage.¹⁵ They also often include guarantees of liabilities that must be analyzed and valued over time. It is important to consider such fiscal liabilities, both real and contingent, and not use PPP to hide such liabilities. However, PPP highlights these liabilities, while public financing is generally even more opaque, as contingencies are budgeted as and when they arise.

- The project must be properly structured to ensure that the improved efficiency of private sector risk management more than offsets any additional costs of private involvement, which requires investment of time and money to use best quality advice and support.
- The municipality must perform contract management and performance monitoring functions throughout the entire duration of the PPP contract, which requires allocation of staff and budgeting during the life of the project. It is often tempting to declare success after signing the contract, but at that moment the work has just begun.

The municipality remains fundamentally responsible to ensure that essential municipal infrastructure and local services are available to end-users in the local economy. When PPPs are successful, they are 'win-win' arrangements with both partners benefiting; the key to getting there is clear and detailed preparation.

Figure 3: Institutional Limitations of Municipalities in Implementing PPPs



¹⁵ For further information on how to assess potential fiscal costs and risks arising from a PPP project, see World Bank and International Monetary Fund. 2016. "Public-Private Partnership Fiscal Risk Assessment Model". <http://www.worldbank.org/en/topic/publicprivatepartnerships/brief/ppp-tools#T2>.

¹⁶ World Bank. 2013. *Value-for-Money Analysis Practices and Challenges: How Governments Choose When to Use PPP to Deliver Public Infrastructure and Services*. <http://documents.worldbank.org/curated/en/724231468331050325/pdf/840800WP0Box380ey0Analysis00PUBLIC0.pdf>; and the reference to Assessing Value for Money in the World Bank's PPP certification program <https://ppp-certification.com/ppp-certification-guide/162-assessing-value-money>.

¹⁷ See Irwin, Timothy C, Samah Mazraani, and Sandeep Saxena. 2018. *How to Control the Fiscal Costs of Public-Private Partnerships*. Washington DC: International Monetary Fund.

When considering whether to implement a project as a PPP, the municipality must consider a number of criteria associated with the project and its context, that is, whether the project represents VFM. The definition of VFM will differ by municipality, depending on priorities and needs. VFM is not a strict, mathematical assessment, but rather a set of criteria to help understand whether the municipality gets a better deal from a PPP solution than other uses of public resources and opportunities.¹⁶

PPPs are part of a fundamental, global shift in the role of the municipal government—from being the direct provider of all local public services to becoming the *planner, facilitator, contract manager, and/or regulator*—who ensures that all key local services are available, reliable, meet key quality standards, and are affordable for users and the local economy.

This paradigm shift, along with the unique challenges that PPPs present, can in turn have consequences on the size, structure, nature of work, and skill requirements of the municipality, and expose its inherent limitations as illustrated in Figure 3.



Remark

Mythbusters

PPPs are not 'free money'. PPP always includes a source of revenue sufficient to cover all operating costs and bank loans, and a reasonable return on the investor's equity is repaid. This revenue will come from some combination of payments from (a) users of the service, (b) commercial revenues generated by the project, and (c) public sector. Understanding who will pay, and how much they must pay, is an essential step for the municipality before undertaking a PPP. Therefore, municipalities must always account for the fiscal risks arising from PPP.¹⁷

PPPs are not 'easy'. PPP projects require time and money to prepare well. This investment will reap benefits in terms of likelihood of success of the project, lower cost of private investment due to reduced project risk and attracting better, more effective private partners.

PPPs are not anti-labor. A PPP will provide more opportunities, better training, and a performance-based employment regime. For those with vested interests in avoiding change, a PPP can be designed to provide a special regime for these staff and their representatives.

PPP is not privatization. The project assets either remain under government ownership or will revert to government ownership at the end of the project period.



Making it Work

Municipal Context

Private Context

PPP Project Cycle

Funding PPP

Success Factors

2.0

Making Municipal Public-Private Partnerships Work

This section explains how to implement municipal PPPs, and the key challenges in their implementation.

2.1 Municipal Context

Before considering the potential to implement a PPP, it is important to first clearly understand the context of the municipality, the legal framework that determines authority and responsibility related to PPPs, the capacity of its institutions, the teams available to it, and the funding it provides for project development and implementation.

Module 1: Municipal Readiness provides a framework to assess a municipality's readiness to implement PPP. This assessment begins with the municipality's systems for planning and budgeting, which impact the ability to identify and select projects with good PPP potential as well as the municipality's capacity to meet its obligations under a PPP agreement. The municipality needs sufficient internal resources, in terms of qualified staff and available funds, to oversee a PPP project on a day-to-day basis, from selection and development through procurement and implementation (see Section 2.3 on the PPP Project Cycle). This may involve establishing a standing PPP unit within the municipal administration and/or assigning staff to manage individual projects on an ad hoc basis.

The municipality also needs to have a clear understanding of the applicable legal framework to make sure it has the necessary authority to contract with a private partner for delivery of a PPP project and that all relevant legal requirements are fulfilled. Key legal issues include the municipality's mandate for infrastructure service delivery (the municipality cannot give a PSP rights and responsibilities that it does not itself have), capacity to enter into long-term contracts that may extend past the time in office of the current administration, and rules or restrictions on private participation, including those related to charging user fees. It is likely that a municipal PPP will involve various provincial or national government stakeholders and possibly approvals. These will need to be mapped out as part of

project preparation, and in the PPP agreement to ensure that they are managed during project implementation.

Even well-staffed municipalities will likely need to hire outside advisers to complete feasibility studies and other technical, project preparatory work. Accordingly, the municipality needs to consider its ability to procure qualified, project-level advisory services. This may include support from regional or national PPP units or similar institutions, project development facilities, and regional or international development partners, all of which may offer technical assistance or funding for PPPs. These options should be considered in addition to, or for assistance with, the municipality directly hiring outside advisers on its own.

Finally, investors will be concerned to understand the financial stability of the municipality—whether it can deliver on its obligations under the PPP agreement. To this end, the municipality needs to consider the extent to which it can demonstrate its creditworthiness. This is not limited to the municipality's history of timely debt repayment, though a good record in this regard is an asset, but also encompasses the municipality's credibility as a contractual partner. Even where a PPP project does not depend on payments from the municipality, the private partner needs to be confident that the municipality will honor its commitments under the PPP agreement and is prepared to handle any contingent liabilities that might arise, for example, making payments due in the case of early contract termination.

Tool

- **City Creditworthiness Self-Assessment & Planning Tool**

A World Bank initiative to help local and municipal governments to access financing.

<http://www.citycred.org/?locale=en>

Remark

Examples of Constitutional, Legal, and Regulatory Frameworks for Municipalities

- In India, the legal framework for municipalities is defined by the federal constitution of India, which defines the devolution of powers to municipal governments. The constitution mandates each of the state governments to legislate on functions and activities of municipal governments. As a result, every state has its own municipal laws, differing from others in specific areas. PPPs in India are not governed by a single legal framework either at a country or state level. Most states have, however, developed a similar guidance and administrative framework to support municipal PPPs.
- In the Philippines, the legal framework for municipalities is defined both by the 1987 Philippine Constitution and the national law on local governments. The national law on local governments defines the function and activities of local governments (that is, provinces, cities, and municipalities). While the constitution and the national law grant local governments the autonomy to enact their own laws, such local legislation must not contradict existing national laws and regulations. In the case of PPPs, the national BOT Law governs PPPs implemented at the national and local level, although local governments are allowed to issue implementing rules to complement the national law.
- The municipal PPP framework in South Africa is equally robust, based on the 1994 constitution's three independent 'spheres' of government: national, provincial, and local. Local governments are free to borrow funds on their own and to enter into long-term PPP contracts, without guarantees of these new local liabilities by the National Treasury. The Constitution and the Public Financial Management Act are complemented by PPP Guidance Notes developed by South Africa's National PPP Unit. As such, while municipalities are empowered to undertake PPP projects, such activities must comply with the standards and requirements of national-level laws and policies.

2.2 Private Context

When a PSP considers a municipal PPP, it will perform due diligence and test whether the risks and investment potential merit investment of time and money for due diligence. The following sets out a few of these questions to help the municipality understand the kind of issues that are important for the PSP and the due diligence it will perform. The feasibility study and the PPP agreement should

address these issues. Municipalities should review their projects from the perspective of the PSP to understand better the PSP perspective and priorities in advance of the bidding process, and to prepare for the kind of questions/concerns that the PSP will raise. These issues are discussed in more detail in Module 19: Private Sector Context.

- *Is this project important?* PSPs know that projects that are important to the municipality and to the people have a better chance of succeeding. Projects that are only important to a particular municipal official or political party are probably less likely to succeed. Investors will want to see an economic assessment, such as a cost-benefit analysis, to evidence the importance of the project (and therefore the likelihood of its resilience to change).
- *How much preparation has been done?* If the municipality has prepared the project well (with appropriate studies), the investor will be reassured that the project is more likely to be viable and is a priority for the municipality.
- *Is demand real, or just hopeful?* There is a tendency for a municipality to suffer from optimism bias and assume a much higher level of demand for a project than is realistic. Studies of traffic forecasts and similar demand forecasts show a consistent overestimation of demand. Potential investors will discount demand forecast by the municipality (even if provided by an expert) to protect themselves from the impact of this bias.
- *Are revenues real or just hopeful?* Just as demand forecasts are often optimistic, so too are revenue forecasts. The potential investor will assess carefully revenue forecasts, question all assumptions, and discount forecasts provided by the municipality.
- *What can cause costs to go up or revenues to go down? How likely are those things? How much impact would they have?* Once costs, revenues, and demand are forecast, the potential investor will assess what might happen to cause costs to go up, revenues to go down or otherwise undermine financial viability. The investors will assess the likelihood of such events and potential impact. They will apply sensitivity analysis to the project financials to assess the impact on the project if the event or series of events occurs. One example might be a national regulator, with the power to set tariffs and impose performance standards. An experienced, independent regulator will understand the financial implications of such decisions.
- *How will foreign exchange risk be managed?* Revenues from municipal services are generally denominated in local currency. Financing available for PPP is more often foreign sourced. In many cases, foreign financing brings longer tenors and lower interest rates. But, if the exchange rate between the local currency and the currency of financing changes, this may limit the ability of the project to repay debt. Local currency debt mitigates the foreign exchange risk, but is generally with shorter tenors, higher interest rates, and lower amounts available.
- *Will municipality fulfill its obligations? Does it usually do so?* The investor will feel vulnerable in the face of a municipality that has so much power over the project and its context. A municipality may not be creditworthy; it may not be sufficiently financially stable to fulfill its financial obligations. A municipality may decide not to comply with its obligations, may change rules or regulations, may impose new permits or licenses, or create other constraints, in particular in the event of a change in government or after an election. The PSP will have little power to resist such changes, even where they are fundamental to the success of the project. Potential investors will review the municipality's history of paying its bills on time, of respecting contracts, of using its power to deprive investors of assets or opportunities, and of the frequency and transparency of the regulatory and permitting authority wielded by the municipality.
- *Can the courts be trusted to be fair? To enforce arbitral or other awards?* Even if the project provides protection to the private investor, those protections are legal and contractual in nature. Local courts may not be perceived as trustworthy. In some countries, the courts are viewed as likely to take the side of the government over the private sector, or of local investors over foreign investors. Arbitration can be perceived as a more independent way to resolve disputes. Once the dispute is resolved, that award must be enforced. Local court decisions or local arbitration will need to be enforced based on local laws. International arbitration in many countries is enforced in accordance with international treaties, and is therefore preferred by most investors.

2.3 PPP Project Cycle

The full life cycle of a PPP consists of four phases: (a) selection, (b) development, (c) procurement and award, and (d) implementation. These phases are not necessarily linear, a project may move back and forth between these phases as needed to ensure that it is well prepared.

In the **Selection** phase, the municipality identifies and selects a project for development as a PPP. Projects that are more 'ready' and more attractive candidates for PPP will move on to the next phase. (See Module 2: Project Concept Assessment Tool.)

During the **Development** phase, the municipality undertakes a comprehensive feasibility study to assess the viability of the project: technical, economic, financial, fiscal, environmental, social, legal, risk allocation, and so on. The feasibility study

includes an option analysis and a recommended PPP structure. The municipality then decides whether to proceed to the procurement of the project. (See Module 4: Feasibility Study.)

During the **Procurement and Award** phase, the municipality conducts an open, competitive, procurement process to select a PSP for the realization of the project. (See Module 7: Procurement.)

During the **Implementation** phase, the project is constructed, the PSP begins operations, and services are delivered. The role of the municipality in this phase consists of contract management and the monitoring of the performance of the PSP. (See Module 12: Contract Management.)

2.4 Funding PPP

Municipal PPPs need a robust revenue stream to fund capital and operating expenses, including debt service and equity return. There are a few main sources of revenues for municipal projects:

- **User payments.** The PSP directly collects charges from the users of the infrastructure or service. The level of user charges allowed is generally defined in the PPP agreement and/or by the sector regulator. Charges must be affordable to all potential users, and demand for the services must be sufficient to ensure the anticipated revenues. Users may need to be disconnected for failure to pay, which may not be legal or practical for core services. Disconnecting poor users from water, solid waste or sewerage services can be unpopular and even dangerous. The user-pay model is typically used for metered water supply, local transit services, electricity distribution, parking facilities, primary collection of municipal solid waste, and similar services.
- **Land value.** The development of assets will often result in an increase in land values adjacent to the project site, for example, the construction of a new public market will result in an increase in the value of the land around the market significantly. The municipality has a number of methods available to capture part of this land value increase to help fund its investment. (See Module 16 for further discussion of land value capture.)



Note

Land value capture is primarily an issue for the municipality. The PSP is unlikely to be involved or to bear any risk of land value capture implementation.

- Commercial revenues.** The project generates commercial revenues from part of, or in some way related to, the public infrastructure or service it delivers. The municipality can use the public assets or rights that it provides to the PSP as part of the project—for example, concession rights, land and access rights—to specifically enable the PSP to leverage more additional commercial revenues from commercial activities such as advertising, parking, office space, residential space, and retail facilities. For example, a PPP for provision of a municipal bus terminal could allow the PSP to build and rent out shops as part of the project, charge for advertising, charge for parking, and so on in addition to providing the well-organized bus terminal for the municipality.
- Municipal payments.** The PSP is paid a fee (an 'availability payment') by the municipality (or some other public source) to make specified infrastructure or services available for use. This approach is used where the municipality itself is the main user (for example, paying the private partner for providing a municipal building or facility), where the municipality is itself collecting charges from users (for example, where the municipality collects solid waste charges from households and pays the private partner for services), or where users cannot be charged (for example, where a municipality pays the PSP to provide street lighting). The municipality may prefer to retain responsibility for collecting charges, where placing collection risk on the PSP is not efficient or practical (for example, where people are less likely to pay charges to a private entity, where collection risk is too high for the PSP to manage or where it is illegal for the PSP to collect user charges). Some projects may receive additional support in the form of grants from national government and/or external donors or agencies and in the form of capital grants to reduce initial construction costs. The purpose of such support is usually to plug gaps in the projects' finances, and/or to reduce the cost of services to users.

Case Example

Public Schools in Belo Horizonte (Minas Gerais, Brazil)



In the early 2010s, education became one of the top priorities of the Belo Horizonte Municipality, capital of the State of Minas Gerais. However, due to technical and financial constraints, the municipality had the capacity to provide the infrastructure and services needed to meet only 35 percent of the demand. The municipality decided to award, with the support of the International Finance Corporation, PPP contracts for construction, operation, maintenance, and management of 32 new preschools and 5 primary schools during a 20-year period, benefiting 18,000 children for total costs of US\$95 million.

The PPP was structured on an availability-based model, meaning that the private partner was paid a regular fee for each month that the schools were verified as being 'available' for use by the municipality. Importantly, this meant the private partner did not bear the risk or uncertainty of changes in the actual number of students that used each school facility.

The payment mechanism was designed based on a weighted average of 60 performance indicators that measure quality of service, users' satisfactions, security, and timely delivery.

Source: International Finance Corporation. 2012. Public-Private Partnership Stories – Brazil: Belo Horizonte Schools. Washington, D.C: World Bank Group. Accessed November 27, 2019. https://www.ifc.org/wps/wcm/connect/a80594c1-e030-4f2a-8d26-4cd03aa2cd29/PPPStories_Brazil_BeloHorizonteSchools.pdf?MOD=AJPERES&CVID=IH0ysFd

Photo Credit: Photo in public domain published by Prefeitura de Belo Horizonte. <https://www.flickr.com/photos/portalpbh/5249699584/in/album-72157625444894549/>

See Project Summary No. 90

A municipal project should maximize sustainable revenues from all potential beneficiaries, and therefore the municipality should use the following hierarchy of revenue sources when designing a project:

First, PPP should maximize sustainable revenues from service beneficiaries. Those who receive a service, or a better service, should pay for it. Sustainable means that the project is affordable for users and the municipality and that the users are willing to pay proposed tariffs.

Second, PPP should capture part of the land value increase resulting from the infrastructure.¹⁸ This can be achieved through taxation, property development levies, contributions, and a number of other mechanisms. (See Module 16: Harnessing Land Value Capture.)

Third, PPP should maximize sustainable commercial revenues. Infrastructure should be used to create additional economic opportunities and improve existing economic activities. When the government funds a new public market, stalls are rented at low cost, but the private land around the public market sees its rental rates soar—existing land owner

benefits are captured above, and the project can include scope to exploit some of these higher value services so that the public market capex can be cross-subsidized by these additional revenues. An affordable housing project can include higher priced residential and mixed-use facilities to attract more revenues (and create more opportunities for the residents of the affordable housing). A public parking structure can include office or residential space above it. (See Module 16: Harnessing Land Value Capture and Module 17: Capturing Commercial Value.)

Finally, only then should public money be used as project revenue or public guarantees to enhance project viability, and only where that public support represents VFM for the government, the community, and the economy.

The project will be vulnerable if the PSP makes too little or makes too much. The PPP agreement needs to address payment risk, demand risk, and sharing of superprofits (when the project performs significantly better than forecast at the time of bidding).

¹⁸ Amirtahmasebi et al., 2016.



Note

The risks associated with the mobilization of revenues, collection, and so on, will be allocated through the PPP agreement. For example, risks associated with land value capture is generally an issue for the municipality to manage.



Tool

- **Module 16 (Harnessing Land Value Capture)** provides guidance on how a PPP project can leverage additional value from land value capture and Module 17 (Capturing Commercial Value) from additional commercial revenues.
- **City Resilience Program – Track 2: Capital Mobilization**
This program from the Global Facility for Disaster Reduction and Recovery aims to help cities build capacity on how to raise capital for infrastructure projects and support transaction negotiations. <https://www.gfdrr.org/sites/default/files/publication/CapitalMobilizationToolkit.pdf> and <https://www.gfdrr.org/en/city-resilience-program/capital-mobilization>

 **Case Example****Modern Bus Terminal and Municipal Market in Danli, Honduras**

The new Danlí-El Paraíso bus terminal and municipal market will include 418 commercial stalls, warehousing, meeting rooms, space for 34 buses, waiting rooms, and ticket stalls—an investment of approximately US\$4 million. The entire project was designed to be energy saving and easily accessible by people with physical limitations. The project resulted from an unsolicited proposal (*iniciativa privada*). The market stall spaces were transferred to the private party for the construction of the upgrades at a price agreed on in the transfer agreement.

The private company will sell the commercial space and bus terminal stalls to SMEs at a price preset by the municipality or rent them to those who are not able to purchase them. The public entity will operate and maintain the common areas.

Source: Coalianza. n.d. "Proyecto "Terminal de buses y plaza comercial municipal, Danlí – El Paraíso"". Accessed November 27, 2019. <http://app.sisocs.org/index.php?r=ciudadano/FichaTecnica&control=Contratacion&id=13>

Photo Credit: Jaetguz (<https://commons.wikimedia.org/wiki/File:AnilloPerifericoTegucigalpa.jpg>), „AnilloPerifericoTegucigalpa“, <https://creativecommons.org/licenses/by-sa/3.0/legalcode>

See Project Summary No. 5

 **Caution!**

A PPP contract or model cannot be simply copied 'off the shelf' and applied to a project. Care must be taken through good project preparation to develop a practical PPP structure that fits the needs of the project and its stakeholders.

2.5 Success Factors

The following are some of the key factors that are likely to make for a successful PPP. These questions will be answered at different stages of project selection and preparation, based on available data and the gradual development of the project strategy and structure.

- Is the project a good deal for the municipality—does it provide better services, VFM, economic growth, jobs, benefits to the community? Is there broad-based support and consensus among local, provincial, and national authorities for the project?
- Does the public believe that the project is a good deal for the community/users? Is the project information made transparent to the community? Has the community been engaged in project selection and development? Has the community 'bought-in' to the project?
- Is the municipality committed to the success of the project?
- Is PPP approach important for the municipality, for example, was PPP selected as a strategic method for implementation or was it chosen for lack of another way to get financing for the project?
- Has a thorough assessment been done of the project? Does the assessment identify any critical risks or concerns that have not been mitigated or resolved?
- Does the municipality have the capacity to prepare and implement the project? Is the municipality's project team well-staffed? Are the municipal institutions organized in a manner likely to make the project a success? Is the municipality well advised (does it have good advisers in place)?
- Are the project site and necessary rights of way available and free of encumbrances? If not, what is the time frame to do so and the likelihood of success?
- Is the private market interested in the project? Are there enough good, experienced potential bidders showing sufficient interest in the project to suggest that the tender process will be competitive?
- Is the project likely to earn a reasonable profit for the PSP? Are the revenues sufficiently certain, the costs manageable, and demand robust?
- Is the partnership solid—are risks shared in a reasonable manner, and the parties mutually incentivized to make the project a success.
- If the project is too good to be true (for the municipality or the PSP), then it is probably too good to be true.

- Are municipality and PSP liabilities affordable and manageable?
- Has the municipality allocated staff and resources sufficient to deliver a quality project?

There are also a series of common mistakes that the municipality or the PSP might make.

- The project might be selected based on political priorities, rather than economic or commercial. It might be a project that could not be financed in any other way and was allocated to PPP as a last resort. A poor selection process is likely to lead to failure.
- The municipality may succumb to time pressures that do not allow for careful selection, good preparation, or thorough market engagement. By trying to be too quick to take the project to market, the municipality will often undermine the entire project and ensure its failure.
- PPP is expensive to prepare. If the municipality does not set aside sufficient budget to prepare the project well, it is more likely to fail.
- PSPs tend to become overly competitive. A well-run tender process can be used to get the best possible bid and the best deal for the municipality. But an overly competitive process can result in an unrealistic bid and a project vulnerable to changing circumstances. More generally, private bidders make mistakes and may submit unrealistic bids. While the risk of an overly optimistic bid is generally borne by the PSP, a failed project will cause significant challenges and possibly costs for the municipality. The municipality should do its own analysis on reasonable bids (these are sometimes called shadow bids) to understand better the kind of bids it is likely to receive and also to identify any overly aggressive bids. The municipality may want to exclude any such overly optimistic bids.

See Module 1: Municipal Readiness and Module 20: Summary Practical Advice for Decision Makers..

2.6 Implementing Small Projects

Whether a project is considered small will depend on the size and wealth of the municipality, the capacity of the PPP team, and the size of other investment projects in the country, but generally 'small' is project costs of less than US\$5 million equivalent. Small projects have the following challenges:

- Expensive to prepare, despite their size, because small PPP projects require disproportionate levels of due diligence and specialist support for the contracting authority and for investors compared to larger projects.
- Less attractive to experienced investors; in particular, investors coming from other countries generally prefer larger projects to absorb risk and bid costs.
- Small PPP may be financed most efficiently in local currency. Local bankers and financiers may not be familiar with PPP and may need help to understand PPP projects, their dynamics, the opportunities they provide, and how to address the challenges they raise.
- More difficult to get approved, where approval processes are designed for larger projects and where approval power lies at levels of government that may not be familiar with or interested in small projects.

A growing practice in small PPP has led to the development of mechanisms to mitigate some of these challenges. These mechanisms may need to be implemented at the national level, by the municipality or by the PPP team as they develop projects.

- Small PPP projects may merit a simplified approval process, sufficient to ensure quality and compliance, without the complexity and high-level participation of large-scale processes. Simplification may include fewer approvals and/or approvals at a more familiar (and more accessible) level of bureaucracy, less documentation (for example, less extensive studies, reports, consultations or fewer of them), and fewer procedural steps (for example, no approval at pre-feasibility is required).
- A team of PPP specialists can be formed centrally, with a mandate to provide advice and support to small PPP. This team may be part of the central PPP unit, or may be a separate unit.
- Small projects can be made simpler to understand, implement, and manage for contracting authorities and investors alike. Standard processes and documents can make the project easier and cheaper to develop, easier for investors and lenders to understand, and in the end easier to fund. A procurement 'framework' can use a single process for multiple projects.¹⁹

¹⁹ Procurement frameworks are widely used in Europe, see the OECD's work on Framework Agreements - Brief 19 Public Procurement (2011) <https://www.oecd-ilibrary.org/docserver/5js4vmnmnhf7-en.pdf?expires=1557218412&id=id&accname=guest&checksum=369FF38EAF7F11B01072E9026FADFDBC>. For instance, England's NHS Shared Business Services (joint venture between the Department of Health and Sopra Steria) reported that in 2017 procurement frameworks save £16 million for the public sector. <https://www.sbs.nhs.uk/transforming-success-stories-procurement-framework>



Caution!

Small Projects, Small Liabilities?

Consideration should be given to the fiscal liabilities created by a project. Even where a PPP is small in project value, it may create significant fiscal liabilities (for example, where project activities may cause environmental or social impact for which the municipality is liable), in which case the more comprehensive approval process should be used. This is not an easy formulation.

Any project creates some form of liability. Quantifying those liabilities (actual and contingent) in an objective manner is difficult. Another approach is to limit the types of government support that a small PPP might receive and still be considered 'small'. For example, a small PPP might be one that does not receive:

- An indemnity or guarantee from the public sector for lost revenues, lost profit, loan repayment (other than as a basis for calculating termination compensation), or other indirect damages; or
- Any grant, loan, investment, or other direct financial support from the public sector (possibly above a specified cap).

- Under a large PPP, a consortium of advisers provides transaction advice for a single project. The size of the project and complexity often demands one consortium to ensure focus and sufficiency of staffing. Small projects may be aggregated, pooled (or bundled) into one single project or portfolio of projects, making the investment larger and more attractive for larger, more experienced investors and lenders. The cost of advisory services is reduced by combining multiple processes into one and using one set of advisers to develop feasibility studies and/or provide transaction advice for more than one project. The cost of funding for one large project should be lower than the cost of several smaller projects, including by making the process simpler and less burdensome for due diligence and documentation of the project. Economies of scale reduce total cost and may speed development, cross-fertilize lessons learned more effectively, and ensure continuity of commercial terms and therefore make it easier and cheaper for bidders.
- Small projects often do not need limited recourse financing. Allowing investors to finance the project on-balance sheet will simplify the procurement process and keep costs down.

Case Example

14. Bundled Bridge Replacement, Pennsylvania, USA



The State of Pennsylvania needed to replace a series of small bridges spread throughout the state. The Pennsylvania Department of Transportation (PennDOT) selected bridges based on the need for replacement and a series of deliverability considerations, including minimizing disruption to the public, minimizing changes to existing alignment, maintaining existing profiles. Through this process, more than 2,000 bridges were screened and 558 were selected. PennDOT then aggregated the repair and maintenance of these bridges into a single PPP project under its old bridges' rehabilitation program.

While the average investment cost for each individual bridge was estimated to be as low as US\$2 million, the aggregated project was large enough to attract serious investors and significant competition, which would probably not have been the case with multiple small projects.

Source: GIH. 2017. "Pennsylvania Rapid Bridge Replacement Project." GiHub. https://gihub-webtools.s3.amazonaws.com/local-umbraco/media/1455/gih_showcaseprojects_penn-bridges_art_web.pdf;

Photo Credit: Photo in public domain published by Nyttend https://commons.wikimedia.org/wiki/File:Arroyo_Bridge_replacement.jpg

See Project Summary No. 15



Selection

Project Screening

Prioritization

Preparation Funding

3.0

Phase I: Selection

This section describes the process of developing concept notes, applying a screening framework, and prioritizing proposed projects.

A key risk factor for municipal PPP is the readiness of the municipality.

3.1 Project Screening

Planning processes identify new investments, including improvement or expansion of existing services. Municipalities are sometimes confronted with new project demands on a more ad hoc basis, for example, responding to natural disasters, unanticipated demand, and USPs. The municipality should identify and select which of these projects would be better delivered through PPP.

Planning needs to reflect economic justification benefit to the government, through cost-benefit or VFM assessments. Such assessments tend to involve incentives for those performing them to emphasize benefits and de-emphasize costs, whether consciously or not. For example, where there is competition for resources between government authorities, there may be an incentive to overstate the benefits of the project in order to access budget resources. The assessment function therefore needs to adjust for incentives to achieve a more objective assessment is possible.



Note

There tends to be a bias toward new build rather than refurbishing what exists and maintaining it properly. Maintaining an asset properly is more than three times less expensive than maintaining it poorly and rebuilding later. But the socio-political incentive is to build something big and new that can carry the name or be identified with a politician or political party. The U.S. national highway system has failed to maintain roads properly due in part to the tendency for federal monies to be allocated to new build projects rather than maintenance or refurbishment.²⁰

Examples of institutional mechanisms designed to manage such biases include the Private Infrastructure Investment Management Center in Republic of Korea, which routinely rejects 46 percent of proposed projects (compared with 3 percent before its creation) at a savings of 35 percent to the government on poorly planned or selected projects. Similarly, Chile's national Public Investment System rejects 25–35 percent of projects proposed.

Source: McKinsey Global Institute. 2013. "Infrastructure productivity: How to Save \$1 Trillion a Year."; Delmon. 2016. "Private Sector Investment in Infrastructure: Project Finance, PPP Projects, and PPP Programs."

Common planning processes focus on the efficient allocation of public funding, and therefore the most feasible projects are generally allocated for public funding and financing. Those remaining projects that are not allocated public funding, generally more risky or complicated projects, tend to be relegated to private development, including PPP. However, private financing is risk based—private financing for more risky projects attracts a higher financing cost, less risky projects can be financed at a lower interest rate. Therefore, the usual allocation dynamic should be reversed—the least risky, most feasible projects should be developed with PPP. For example, there are countries where

for every project that asks for public funding, the project team must elaborate why the project cannot be implemented through a PPP structure to ensure that scarce public funding is used only to the extent necessary.

As part of the analysis of proposed new investments, the municipality should prepare a concept note to capture key summary information (that is project description, project rationale, identified sources of revenue/financing). The concept note can also be used for the scoring exercise, discussed below.²¹

Tool

- **Module 3:** Sample Project Concept Note provides a template that serves as a guide in preparing project concept notes.
- **Public-Private-Partnership Legal Resource Center – Toolkits for PPPs**
This web site provides sample material for the development of PPP projects, in particular this section focuses on checklists, guidelines and resources for different project sectors.
<https://ppp.worldbank.org/public-private-partnership/overview/practical-tools>

There are certain fundamental characteristics that a good project should exhibit. These include the following:

- **Strong rationale.** The project is a priority for the municipality from an economic and developmental perspective, backed by a clear vision of the intended benefits and outputs of the projects.
- **Institutional readiness.** The legal and institutional framework of the sector to which the project belongs is supportive of PPPs and the municipality is equipped to deliver a PPP. This includes looking at the existing PPP laws or policies (if any) as well as sector laws and institutions to determine whether the project is a public infrastructure or service within the municipality's legal mandate and is eligible for delivery as a PPP. It also includes municipal readiness, as discussed in more detail in Section 2.1 on Municipal Context, as it concerns the municipality's capacity (for example, experience and expertise), preparedness (for example, institutional arrangements, level of internal consultation, approvals), and resources (for example, manpower, advisers, and funding) to implement the project. This criterion also takes into consideration the municipality's access to external experts (national/state-level PPP unit, advisers/transaction advisers) and funding sources.
- **Project readiness.** The project appears feasible in terms of its economic, technical, commercial, financial, and environmental/social aspects, based on adequate preparatory work, the data available and its quality, and confirmation that a PPP would be a more effective solution than a public solution.
- **PPP suitability.** There is private (both domestic and foreign) market appetite for the country, the sector and the project, access to finance, public partner creditworthiness, potential for private sector innovation or efficiency gains, and suitable risk sharing.

²⁰ Khan, Matthew E., and David M. Levinson. 2011. "Fix It First, Expand It Second, Reward It Third: A New Strategy for America's Highways," The Hamilton Project's Project Discussion Paper 2011-2013. Brookings. https://www.brookings.edu/wp-content/uploads/2016/07/02_highway_infrastructure_kahn_levinson_paper.pdf.

²¹ If prior studies have been undertaken on the project, such study may be attached to the project concept note.

Tool

Module 2: Project Concept Assessment Tool provides guidance on how to conduct the initial project concept screening process.

This same set of criteria applies to the project throughout its life. At the selection phase, the level and quality of data is likely to be very poor. Definitive decisions should not be taken based on such preliminary data but rather indicative to help guide the municipality and identify additional data required and further analysis to be done.

Remark

Project Inception Support

Municipalities usually need the assistance of external experts during PPP project appraisal to provide guidance in (a) assigning criteria weights and scoring, (b) applying threshold parameters and scoring criteria, and (c) preparing project concept notes, among others.

If available, external experts may come from national-/state-level PPP units that can provide hands-on support to the municipality or advisers hired by such PPP units or by the municipality directly from various funding sources (for example, technical assistance from development partners or special funds created for such purpose at the national or state level).

In countries such as Republic of Korea, South Africa, the United Kingdom, and the Philippines, national-level PPP units/centers provide technical support in policy guidance, review of proposed PPP projects, feasibility studies, VFM tests, and project tender. These entities may provide assistance free of charge, or may charge a fee.

In India, Australia, Canada, Brazil, and Mexico, state-level PPP units provide policy guidance and project-specific technical assistance to various municipalities within the state's jurisdiction.

3.2 Prioritization

The private finance and investment markets can only absorb so much project risk for PPP. This market demand shifts over time based on market realities (for example, as market risk perception changes, other projects succeed or fail), the position of individual firms (for example, where firms have more or less money to invest in the sector or in the municipality), and market shifts in other countries or municipalities (for example, where a competing market becomes more attractive, the relative attractiveness of the project may diminish).

The debt, equity, and sponsor markets are likely to be different and may see variant changes in market appetite. The level of appetite will indicate the amount of private investment that can be mobilized in a given period of time and how many projects can be implemented (based on the capacity of investors, for example, size of teams, number of investors). The municipality should consider the market appetite, how that appetite is likely to evolve over the short to medium term, and therefore how many and which projects should be prepared as

a priority to fit with the market appetite and avoid exceeding market appetite, which results in few bidders, higher cost of private finance, and possibly lack of bidders, despite a well-prepared project. Market appetite may be difficult for the municipality

to assess on its own. It may need the support of expert advisers to do so.



Caution!

Given the limited availability of project data at this point, the municipal managers should bear in mind that selection and prioritization is necessarily accompanied by a fair amount of subjectivity and therefore advice from experts may be essential at this stage. As such, the assessment should be updated and repeated as appropriate where new data is accessible. This process is not definitive and should be interpreted accordingly.

Prioritization should also reflect resource constraints of the municipality, for example, where the municipal PPP team is small, they should only take on a limited number of projects at a time. Stretching the capacity of the PPP team across more projects that they are able undermines project preparation and likely success. Municipal budgets for project preparation may be limited, and therefore

only provided to the most viable projects. Where the municipality is providing availability payments, guarantees, or other forms of support, it may have limits on the amount of such support it can provide over a given period, and therefore projects that fit the profile of the available funding should be prioritized.



Tool

- **Prioritizing Infrastructure Investment – A Framework for Government Decision Making**

A World Bank multi-criteria decision support tool that considers project outcomes along two dimensions, social-environmental and financial-economic. When large sets of small- to medium-sized projects are proposed, resources are limited, and basic project appraisal data (but not full social cost-benefit analysis) are available, the Infrastructure Prioritization Framework can inform project selection by combining selection criteria.

https://library.pppknowledgehub.org/attached_files/doc_formats/1101/original/InfraPrioritizationFramework_Summary.pdf?1480714297

- **PPP Qualitative Value-for-Money Toolkit**

The United Nations Economic and Social Commission for Asia and the Pacific toolkit to help governments in early stage of identification and selection of projects suitable to be delivered as PPPs. The tool contains a set of criteria to assess whether a project is likely to achieve Value-for-Money if delivered as a PPP and is based on international best practice and experiences. The toolkit is designed for screening PPP projects across developing countries in Asia and the Pacific.

<https://ppp.unescap.org/>

3.3 Preparation Funding

The decision to select and prioritize a potential municipal PPP should include a decision to provide funding for project preparation. The concept note should include an assessment of the scope and cost of the project feasibility study and to bring the project to tender and award. The cost of project preparation can vary significantly based on the size and complexity of the project, and the capacity of the municipality. The municipality might access support from national or international bodies, for example many countries provide access to PPP expertise through PPP units and extra-budgetary funding for PPP project preparation (see Remark, below). National development banks or investment funds may be available to provide finance for municipal or private entities on more attractive terms or pricing to implement the project. Such support may also be available from bilateral or multi-lateral entities (for example the World Bank or the IFC).

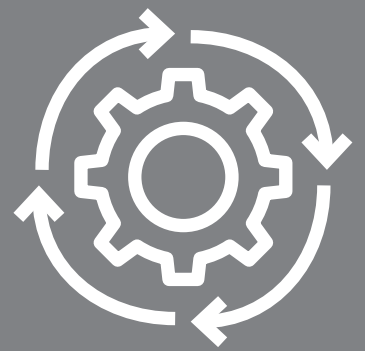


Remark

Project Development Fund (PDF)

Municipalities access funds for project preparation from municipal budgets, national/state government grants, or support from development agencies.²² In some countries, a project development fund (PDF) is established as an alternative means of financing the development of PPPs. A PDF can provide greater flexibility, for example, where the fund allocation needs to bridge government budget years and would otherwise require a separate budget allocation approval process. A PDF can also provide for some revolving, for example, where a fee is collected from successful projects to reimburse the PDF and fund future projects. PDFs are often established at the national/state level, and sometimes supplemented by loans/grants from multilateral development agencies and/or other sources allowable by applicable laws.

²² A number of facilities and trust funds have been created by development partners and donors, for example, the World Bank managed Private Participation in Infrastructure Advisory Facility (www.ppiadf.org), the Global Infrastructure Facility (www.gif.org), and the Private Infrastructure Development Group Technical Assistance Facility (www.pidg.org).



Development and Approval

Appointing a Project Manager
Feasibility Study
Hiring an Adviser

Market Consultation
Approval for Tender

4.0

Phase II: Development and Approval

Once a project is selected for preparation as a PPP, the engagement of the municipality accelerates with the development of a feasibility study.

4.1 Appointing a Project Manager

To ensure smooth and efficient development of the PPP project, the municipality must appoint a project manager at least as soon as the project is selected for development as a PPP. The municipality may want to appoint the project manager earlier to help develop the concept note.

The project manager will supervise and manage the PPP project on a daily basis. The project manager carries out, or causes to be carried out, every practical task that is required for the development and procurement of the PPP project, including:

- Acting as the key point of contact for the project;
- Engaging consultants to undertake the feasibility study and assist in the procurement of the PPP project;
- Managing and supervising the work of the consultants;
- Conducting the procurement procedure, with assistance of the consultants;
- Reporting about the progress of the project development to municipal executive and decision-making bodies;
- Briefing and advising municipal decision makers on project decisions to be taken; and
- Any other task that must be performed to enable the project to succeed.

It is essential for the successful development of the project that the project manager receives a clear mandate and full management authority from the municipal government to exercise his or her duties. The project manager must be recognized by all stakeholders as the key point of contact for all matters related to the project. The project manager must be authorized to take all decisions within his or her scope of duties or to elevate decisions to a higher level when needed.

The project manager must have good project management skills and a good knowledge of the sector. Knowledge and expertise in PPP are obviously a strong plus, but in practice often not available. The required in-depth PPP expertise will in any case be supplied by the adviser. In countries having a PPP unit or a PPP knowledge center, these can also support the project manager with PPP-specific, technical matters.

In most cases, the project manager is selected from the staff of the municipal administration. She or he may, for instance, come from the public works department or the procurement department. Sometimes the municipality appoints an external expert as project manager, if it cannot find a suitable person within its own staff. No matter the source of the project manager, they should be appointed for a minimum of three to five years to ensure continuity.

For larger projects, and if the resources of the municipality permit this, the project manager is assisted by several other municipal staff members, jointly constituting a project management team. For instance, the project management team may consist of one or more technical experts (one of them usually acting as project manager), a procurement/legal expert, and a budget/financial expert. Depending on the size of the project and the scope of their duties the members of the project management team are assigned full time or part time to the project.

4.2 Feasibility Study

The feasibility study provides a full, multidisciplinary assessment of the project's viability and recommends a PPP structure (please refer to Module 4: Feasibility Study).

This study:

- Investigates the feasibility (in all aspects, including, technical, financial, economic, legal, environmental and social) and desirability of undertaking the project as a PPP;
- Determines the best technical option for implementing the project, resulting in the definition of project output specifications;
- Determines the most suitable PPP arrangement for implementing the project, resulting in the heads of terms of the PPP agreement;
- Provides a forecast of likely project costs and a range of probable bid prices, to help the municipality identify the likely bids and set a reserve bid price, if any;²³ and
- Provides an implementation plan, describing the tasks to be undertaken, in particular by the municipality, to realize the project.

In brief, in the feasibility study the project is not only analyzed and assessed but also further developed and elaborated in view of the subsequent selection of a PSP for its implementation.

The feasibility study findings constitute the basis for the decision by the municipality to proceed or not with the procurement and implementation of the project. The feasibility study report informs the decision-making body in the municipality about the feasibility and desirability of undertaking the project as a PPP, and about the readiness of the project to proceed to procurement.

The feasibility study should cover the following areas of analysis.

- Demand study
- Technical study
- Legal, environmental, and social due diligence
- Economic analysis
- Financial analysis
- PPP structuring options
- Procurement and implementation plan

²³ The reserve price helps the municipality identify excessively unattractive bids, which if they are to be contemplated should require additional verification and approval by the municipality. This way the pressure of a procurement process does not result in the acceptance of an excessively unattractive bid. However, reserve bid prices can be dangerous, for example, where the Municipality is overoptimistic about the value of the project and the level of bids they expect to receive.

Tool

- **Module 4: Feasibility Study** provides more detailed discussion of the contents of the feasibility study.

- **World Bank PPP Screening Tool**

Tool for screening of projects to determine their potential suitability for PPP procurement, against qualitative and quantitative variables; based on data available from feasibility studies, site checks, fiscal and budget evaluations, political and economic evaluations, initial market checks, preliminary risk analysis, qualitative value-for-money check, etc.

<https://library.pppknowledgelab.org/documents/5421/download/pdf?1480714297>

- **PPP Project Preparation Status Tool**

Created by the European PPP Expertise Centre, this tool helps assess the preparation status of a given PPP project by reference to a typical good-practice PPP project development process up to the point of determining if the project is ready for launch of the public procurement process. It serves as a self-check to help the Authority spot potential areas of weaknesses in the preparation of the project and develop a structured approach to managing the PPP project preparation process.

<https://www.eib.org/epec/EPEC-PPPprep-EN.xlsm>

- **City Resilience Program – Track 1: Resilience Enhancement**

Created by the Global Facility for Disaster Reduction and Recovery, it aims to provide technical expertise to help cities design resilient projects.

<https://www.gfdrr.org/en/city-resilience-program/technical-assistance>

An important part of the feasibility study involves asking the right questions and getting the right information. The team delivering the feasibility study needs to be rigorous, careful, and strict while also being creative and open-minded. A series of project summaries are provided as part of this Guidance Note to help inspire municipalities with approaches taken by other projects. In an effort to encourage some creative thinking, the following are some examples from the project summaries:

- Consider the users of the facility, what services might they want in addition to the project services? For example, users of a public park might want public parking space or retail services (see Project Summary No. 45 and 78).
- Consider the local community, what services might they want? For example, a bus station located in a poor neighborhood might provide public toilets and washing facilities or other retail facilities (see Project Summary No. 5 and 38).
- Is there space in and around the facility that might be used to provide commercial services, without impeding the project services? (see Project Summary No. 73, 76, and 98)
- Is there space above the project that can be developed and where revenues merit the cost of building up? (see Project Summary No. 73, 74, and 75)

- Is there opportunity to develop underground space, for example for parking, where the revenues that can be earned merit the cost of building below ground level? (see Project Summary 46)

Environmental and social considerations will form an important part of the feasibility study. Commercial lenders, in particular those with a global business (see below box on Equator Principles), will be concerned to manage environmental and social issues well. International financial institutions, such as IFC, apply a strict set of standards (the IFC Environmental and Social Performance Standards).²⁴ The municipality will be best served by applying these standards to the project and in the feasibility study to ensure that such financing might be available to the extent eventually needed, even possibly for refinancing.

In a similar vein, the feasibility study should assess opportunities for the project to satisfy green financing criteria. This can give the municipality access to additional pools of green financing dedicated to green projects, including green bonds.²⁵



Note

Equator Principles

The Equator Principles²⁶ constitute a voluntary code of conduct originally developed by IFC and a core group of commercial banks, but now recognized by most of the international commercial banks active in project finance. These banks have agreed not to lend to projects that do not comply with the Equator Principles, which follow the IFC system of categorizing projects, identifying those that are more sensitive to environmental or social impact and requiring specialist assessment where appropriate. During project implementation, the borrower must prepare and comply with an environmental management plan (EMP).

Issues must be explored relevant to all stakeholders, government entities, businesses, the local community, the poor, women, and disenfranchised groups. (See Module 18: Community Engagement.) The better and more complete the feasibility study, the more sustainable the project will be; it will be tempting to cut corners, to save money on this analysis, when time is scarce and when expectations are unrealistic.

Projects must be affordable to users and to the municipality. It can be easy to focus so much on closing the deal that the municipality commits to liabilities that are beyond its ability to afford. Equally, where the project involves transfer of an existing

asset to the PSP, it may deprive the municipality of the revenues previously earned from that asset.

Undertaking a feasibility study requires substantial efforts and a broad range of expertise. Municipalities, even large ones, in general do not have the required human resources to carry out a full feasibility study by themselves. Therefore, feasibility studies are prepared by an external adviser or firm hired by the municipality.

The role of the municipality in the feasibility study is:

- Drafting and issuing the terms of reference for the preparation of the feasibility study;
- Selection and appointment of the consultants;

²⁴ For more information, please see www.ifc.org/performancestandards.

²⁵ For more information about green financing, see the Global Environment Facility's Introduction to Green Finance <https://www.thegef.org/sites/default/files/events/Intro%20to%20Green%20Finance.pdf>; and Asian Development Bank's Why Green Finance is Important? (2019) <https://www.adb.org/publications/why-green-finance-important>.

²⁶ www.equator-principles.com

- Management and supervision of the consultants during the preparation of the feasibility study;
- Helping to make data available, and providing access to various stakeholders,
- Deciding on, based on the findings of the feasibility study, which model of PPP to use and whether the project should proceed to the procurement phase.

It must be emphasized that the outsourcing of the feasibility study to an adviser does not imply that the municipality is not actively involved in the feasibility study. On the contrary, as the initiator and developer of the PPP project the municipality throughout the feasibility study determines the direction of the study through interaction with the consultants.

Tool

- **Module 4: Feasibility Study** contains detailed discussion of the contents of the feasibility study, and the criteria used to review the work of the consultants.
- **SOURCE**
A digital project preparation tool that helps governments to improve their preparation, procurement and implementation practices in infrastructure projects.
<https://public.sif-source.org/source/>

4.3 Hiring a Transaction Adviser

The adviser hired to develop the feasibility study may be a multidisciplinary consulting firm or, more often, a consortium consisting of several specialized firms each contributing its own expertise (for example technical, legal, economic, environmental, financial, PPP transactions).

Tool

- **Module 6 contains the Sample Terms of References for Procurement of Advisers.** It should be noted that these terms are generic and will need to be customized according to the specific characteristics of the project and specific requirements of applicable local procurement rules.
- **Public-Private Partnership Legal Resource Center - Sample Terms of Reference for PPP Advisors**
This web site contains sample material in diverse aspects of PPP projects and their project cycle. This section provides sample terms of reference for PPP advisors for different sectors, as well as checklists and other resources that offer guidance on seeking assistance from external advisors
<https://ppp.worldbank.org/public-private-partnership/overview/practical-tools/terms-of-reference-ppp-advisors>

The municipality manages and supervises the adviser, including:

- Managing and following up the work of the adviser (including holding regular progress and discussion meetings);
- Providing assistance to the adviser within its ability (such as providing available data and using its authority and contacts to facilitate consultation with other government entities and stakeholders);
- Reviewing draft and final versions of the feasibility study report to verify that it meets the requirements set out in the terms of reference; and

- Discussing interim findings of the study with the adviser to take decisions on the technical and contractual structuring of the PPP project;
- Approving deliverables and, if approved, arranging the payment of the contractually arranged fee of the adviser.

Module 5: Managing Consultants provides guidance on the management of advisers; this is not a simple process (see box below). PPP advisers can be sophisticated and are subject to a complex set of incentives.

Remark

Bundling of Feasibility Study and Transaction Advice

Generally, best practice is to assign the feasibility study to one adviser, and to use entirely different advisers for transaction advice, who will assist the municipality in the procurement of the PPP project after the completion of the feasibility study. Using two different sets of advisers allows the transaction advisers to review the feasibility study and test its recommendations.

In some cases, the assignment of the feasibility study is bundled with that of the transaction adviser. The bundling of both assignments allows the municipality to save procurement costs and shorten the project preparation process. However, bundling the mandates of the feasibility study adviser and transaction adviser also has drawbacks, such as the possibility of a conflict of interest. The single feasibility study adviser/transaction adviser will be incentivized to find the project to be viable and appropriate for approval to enable the consultant to advance to the more lucrative transaction phase. To avoid the drawbacks of bundling indicated earlier, the municipality must check the work of the adviser and challenge its recommendations.

Tool

Module 5: Managing Consultants contains advice on how municipalities should oversee, review, and manage external consultants hired to help prepare and implement PPP projects.

4.4 Market Consultation

The municipality will want to consult the market to understand project structures that meet market requirements and market appetite for certain projects, sectors, and municipalities. Market consultations should be performed at various times during project selection and preparation. The larger and more complex the project, the more extensive the market consultation needs to be to attract the

right investors. The market consultation may need to be held in foreign locations to facilitate engagement with potential foreign investors. Consultations with potential lenders would also be useful to gain an understanding of issues related to financing. The advisers will help with market consultations, based on a thorough analysis of potential investors.

4.5 Approval for Tender

The findings of the feasibility study are submitted to the body within the municipality that is authorized to decide whether the project proceeds to procurement. The detail of the submission and review process is provided in Module 7: Procurement.

For this decision, the municipality considers the same criteria used to select PPP projects, as set out in Section 2.1 and Module 4: Feasibility Study.

If the project fails to satisfy those criteria, the municipality should take appropriate measures or reconsider the implementation of the project as a PPP.

If the project requires financial support by the municipality, the amount of this support must also be approved by the body authorized to create municipal liabilities and/or commit funding from the municipal budget. (*Note:* The actual support required may well be determined by the financial bid of the winning bidder.) Provincial or national government may have approval rights over the project at various stages, in particular before tender and at approval. The approval stages should be mapped out to manage appropriately.



Caution!

The decision to launch a procurement process for the project involves a strong commitment by the municipality (and possibly the national government). While it is still possible to stop the project, the reputation of the municipality will be damaged if a project is aborted once the procurement process has started and the bid documents have been issued. This may hurt the credibility of the municipality in future procurement procedures. It is better to halt the project as early as possible in the process. This highlights the importance of due diligence during project preparation and of open, competitive assessment.



Procurement and Award

Preparing the Tender Documents

Procurement Options

Approval of Award and Financial Close

Unsolicited Proposals and Direct Negotiations

5.0

Phase III : Procurement and Award

Once the project is approved, the municipality will proceed with the tender of the project in line with its procurement regulations. Specifically, the municipality will:

1. Review and approve tender documents before issuance;
2. Finalize timelines of the entire procurement process;
3. Conduct investors' conference and respond to queries submitted by bidders;
4. Establish a data room;
5. Provide any site visit or access to the site for bidders to conduct engineering and demand assessments;
6. Facilitate the opening of submissions;
7. Conduct detailed evaluation of the submissions; and
8. Decide
 - a. The short-list of qualified bidders;
 - b. Scoring of technical and financial proposals; and
 - c. Award of the project to the preferred bidder.

5.1 Preparing the Tender Documents

The following comprise the documents that need to be prepared by the adviser before tender:

1. Request for Qualification (RFQ). The municipality may want to select a short list of potential bidders

to limit the field to only those bidders most likely to be able to implement the project. The RFQ contains instructions to interested bidders to submit qualification documents showcasing technical and financial capacity.

Tool

Module 8 contains the Sample Request for Qualification Document, which provides a template for qualifying bidders in case of a two-stage bidding process. This model may need to be adjusted to conform to a municipality's applicable procurement regulations.

2. Request for Proposal (RFP). The municipality will communicate to all potential bidders the instructions on the submission of technical and financial proposals. In the case of a single-

stage bidding process (where there is no RFQ shortlist), the RFP will also include instructions for the submission of qualification documents showcasing technical and financial capacity.

Tool

Module 9: Sample Request for Proposal for Single-Stage Bid Process and Module 10: Sample Request for Proposal for Two-Stage Bid Process provide RFP templates depending on the selected procurement mode and may need to be adjusted depending on the municipality's applicable procurement regulations.

3. PPP agreement. This is the document to be executed between the municipality and the PSP, which specifies the roles, responsibilities, and liabilities of all parties to the PPP project. It also specifies the timelines, deliverables, output/performance-based specifications (including key performance indicators), and payment mechanism for the project, among others.

Key terms of the PPP agreement include²⁷ the following:

- **Duration.** The contract length should be sufficient to enable the PSP to recover its costs and earn a reasonable return.
- **Performance criteria and penalties.** Clear, measurable criteria establish the PSP's delivery requirements. A monitoring regime is essential and a penalty regime to ensure that performance failures are addressed as soon as possible.
- **Establish revenue sources.** Identify the kind of activities that the PSP is allowed to pursue and any assurances by the government linked to such activities.

- **Pricing of services.** Establish the tariffs that the PSP can charge for project services to ensure affordability and adjust for inflation.
- **Government support.** Where the municipality will provide capital grants, operating payments, or guarantees, this support needs to be part of the bid package to ensure that bids consider the government support in their pricing. The nature and terms of the government support (if any) will be set out in the PPP agreement.
- **Termination.** If one of the parties fails to deliver on their promises, the other party will want the right to terminate the PPP agreement, with an agreed regime for termination compensation.
- **Dispute management and resolution.** Like any partnership, conflict and disputes are likely. Conflicts should be managed proactively and quickly to avoid becoming disputes. Mechanisms in the PPP agreement will help open communications and identify conflicts as early as possible.

²⁷ World Bank 2017c; World Bank, n.d.; Delmon 2017; Delmon 2016.

Tool

- **Module 11: Sample Municipal Public-Private Partnership Agreement** provides guidance on key provisions that need to be included in a PPP contract. The draft document will have to be adjusted to take into consideration applicable legal and regulatory provisions in the country and the municipality, and the requirements of the specific project.
- **Allocating Risks in Public-Private Partnership Contracts**
Tool created by the Global Infrastructure Hub to help PPP practitioners understand risks in PPP agreements and to best allocate them among the parties in different sectors, such as transport, energy, and water and waste, and by risk types.
<https://ppp-risk.gihub.org/>
- **Guidance on Standard PPP Contractual Provisions**
A set of contractual provisions for PPP projects that can be used across different sectors, regions and types of project. It helps contracting authorities understand common, boilerplate contractual clauses and the rationale behind them.
<https://ppp.worldbank.org/public-private-partnership/library/guidance-ppp-contractual-provisions>

5.2 Procurement Options

The PPP procurement process will generally involve three submissions: qualifications, technical proposal, and financial proposal.

In terms of procurement mode, the municipality may opt to adopt either a single-stage or a two-stage bidding process.



Note

There are various innovations in procurement methods, including framework procurement. Procurement frameworks are widely used in Europe, see the OECD's work on Framework Agreements.²⁸ For example, England's NHS Shared Business Services (joint venture between the Department of Health and Sopra Steria) reported that in 2017 procurement frameworks saved £16 million for the public sector.²⁹

Under a single-stage process, bidders will submit three envelopes, including the required bid security usually in the form of a bid bond:

- Envelope 1: Qualifications
- Envelope 2: Technical Proposal
- Envelope 3: Financial Proposal.

The municipality will open and evaluate the qualification documents (that is, first envelope), and determine which among the bidders fulfill the minimum qualification requirements. Those who satisfy the requirements will advance to the opening and evaluation of technical proposals (that is, second envelope).

Only those who pass will proceed to the opening and evaluation of the financial proposal (that is, third envelope).

Under a two-stage process, the qualification stage involves the shortlisting of interested consortia through submission of an application. The second stage involves the opening and evaluation of technical proposals and financial proposals, sequentially.

²⁸ OECD 2011.

²⁹ NHS, n.d.



Remark

Which Procurement Mode to Adopt?

The decision on which procurement mode to follow largely depends on the nature of the project and applicable laws/regulations.

Single-stage bidding would be more appropriate for less complex projects, with easily definable qualification requirements, where the cost of bidding is low for bidders. In a single stage, every bidder must prepare a full bid. In two-stage bidding only the pre-qualified bidders need to prepare full bids.

Two-stage bidding is preferable for complicated projects (that is, with a complex profile for determining, quantifying, mitigating, and sharing project risks), where only a small number of bidders should be asked to prepare full bids for the sake of efficiency and to attract more bidders.

At defined times during the bidding process, clarificatory conferences may be held to allow bidders (whether in the first or second stage of bidding) to seek clarifications and provide suggestions for consideration by the municipality. The municipality will provide clarifications and such further information as it may, in its discretion, consider appropriate for facilitating a fair, transparent, and competitive qualification process. Clarifications should be provided to all bidders, though the identity of the bidder seeking clarification is often not shared.

The municipality should also set up a (virtual) data room to provide access to project data in a format that is easy to manage and access. The virtual data room can also be used to facilitate the posting of questions/clarifications from bidders, as well as its responses thereto (including amendments to any of the bidding documents, if any). The municipality may also consider holding one-on-one discussions with bidders. Questions lodged by, and answers obtained from, the bidders as well as any relevant responses from the municipality pursuant to these discussions should be made available to all bidders.

to ensure transparency and equality. However, the identity of the party who submitted the question should be anonymous.

In addition, the municipality should provide access to the project site as well as facilitate bidders to undertake any technical or other investigations, at bidders own time and cost, if requested.

Technical and financial proposals will be evaluated against criteria outlined for parameters indicated in the RFP. (See Module 9: Model Request for Proposal for Single-Stage Bid Process and Module 10: Model Request for Proposal for Two-Stage Bid Process.)



Note

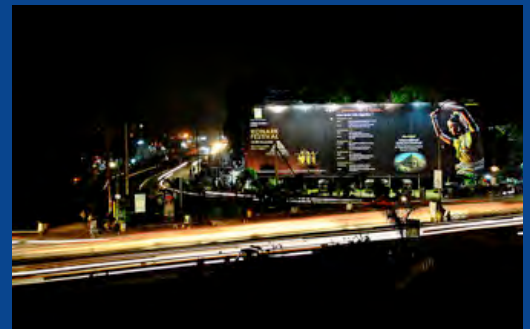
For some projects, the technical proposal may simply involve the acceptance of the technical solution set out in the RFP. For example, for some rooftop solar projects, where the PSP cannot reasonably propose technical innovations.



Case Example

Bhubaneswar Street Lighting (Odisha, India)

Bhubaneswar's street lighting fell far below national standards, leading to constant complaints from the public. Also, owing to poor quality equipment, energy consumption for street lighting was extremely high, straining the city's finances. The ESCO Shared Savings model recommended by IFC provided efficient street lighting upgrades, paid for and maintained by an ESCO, which in turn would receive payment through energy savings realized by the municipality.



The bid variable for the project was the energy savings achieved by ESCO, subject to a 30 percent minimum. The winning ESCO would undertake a joint survey to establish the baseline energy consumption. A total of 16 companies expressed interest in the project, of which 4 submitted bids. The ESCO contract was signed on October 5, 2013.

Source: World Bank Group. 2013. "Public-Private Partnership Stories, India: Bhubaneswar Street Lighting." PPP World Bank.

Photo Credit: Sabyasachi Baldev (<https://commons.wikimedia.org/wiki/File:Bhubaneswar.jpg>), "Bhubaneswar", <https://creativecommons.org/licenses/by-sa/2.0/legalcode>

See Project Summary No. 68

After the evaluation of technical proposals, the municipality will announce the bidders whose financial proposals will be opened, as well as notify the other bidders who failed to meet the minimum technical criteria.

The opening of financial proposals should be scheduled as soon as possible after the announcement of qualified technical proposals. The preferred bidder will be issued a letter of award and will thereafter be required to comply with

post-award requirements before signing the PPP agreement, which may include the following:

1. Submission of the performance guarantee or conversion of the bid bond into a performance bond, and incorporating a special-purpose vehicle (SPV) solely for undertaking the project; and
2. Payment of a bid development fee (to reimburse project development and tender expenses incurred by the municipality).

The use of an SPV is not common in normal public procurement practices, and therefore can be surprising for municipal procurement teams. This is done to allow investors to keep project debt off of their parent company balance sheet, to sell down part or all of the project as and when permitted, and to move the project to another set of investors in the event of failure (and therefore also means that the municipality will not benefit from joint and several liability among the SPV shareholders). Using an SPV also protects the project, as the SPV will remain separate from the parent company's other liabilities, and allows the municipality to require specific governance arrangements in the SPV that could not be required within the parent company (for example, assigning the project to another set of investors if the initial investors do not deliver). However, an SPV may not be practical for small projects given associated costs and complexity.

The municipality will need to address some of the disadvantages of SPVs, in particular access to information about what is happening in the SPV, changes in shareholding and control, liabilities created, and so on. This can be done through municipal consents required under the PPP agreement and as part of the municipality's due diligence process. In some cases, the SPV must obtain a credit rating to help the parties assess its financial position. In others, the SPV is managed on an open book basis. These mechanisms help the parties review and agree the financial position of the SPV and any changes thereto, for example, where compensation needs to be calculated for refinancing or risk events.

The municipality will enter into final negotiations with the preferred bidder only for finalizing the PPP agreement in accordance with changes proposed in the latter's bid. Any change in the draft PPP agreement sought by the preferred bidder can have significant impact on the value of the project to the municipality and therefore must have been explained specifically in its bid and scored accordingly. Allowing bidders to propose changes in the PPP agreement can also have legal consequences, for example, where disgruntled bidders argue that the arrangements in the winning bid were different than the tender documents and therefore provided an unfair advantage to the winning bidder. General advice is that bidders should not be allowed to propose material changes to the PPP agreement in their bid.

Once finalized, the PSP executes the PPP agreement with the municipality. The date of signing of the PPP agreement is called 'commercial close'. 'Financial close' is the moment when the lending agreements become binding on the lenders and the PSP may make a first draw-down of funds. Commercial close and financial close may happen at the same time, where all the lenders' preconditions are already satisfied. In some cases, in particular where limited recourse financing is used, the lenders perform additional due diligence after project award and before financial close. In such cases, either the PPP agreement is signed first but is subject to preconditions to effectiveness (a set of conditions must be satisfied before the PPP agreement is binding on the parties) or the PPP agreement is signed at financial close (so that the municipality and the PSP are not bound by the PPP agreement until the lenders' preconditions are satisfied). The municipality as part of the bid process will need to be clear to what extent it is willing to reopen negotiations as part of financial closure, and should specifically exclude any material changes. This can be a difficult situation to manage, and the municipality will need the advice and support from the adviser to address these issues. The municipality will want to pay the final payment of the adviser's fee only after financial close to ensure it has advisory support throughout the process.

5.3 Approval of Award and Financial Close

The findings of the tender evaluation committee will be submitted to the municipal authority that will decide whether to implement the recommended award. The municipality will need to confirm that the preferred bid will provide VFM. If the preferred bid involves financial support from the municipality,

the amount of this support must also be approved by the body authorized to commit funding from the municipal budget.

Provincial or national government may have approval rights over the project at various stages,

in particular where government financial support is to be provided. The approval stages should be mapped out to manage appropriately.

5.4 Unsolicited Proposals and Direct Negotiations

A USP is submitted by a private party to the municipality to undertake a PPP project at the private firm's initiative rather than as a response to a request from the government. There are different approaches to USPs, as discussed below.

Generally speaking, USPs are difficult for municipalities to manage and are best avoided. An open, competitive process with no particular advantage to any bidder is the best way to implement a successful PPP. Global experience shows that if the proponent is given some advantage in the tender process (for example, bonus points or the right to match the winning bid), the tender process will attract few if any competing bids, putting the municipality in a difficult negotiating position.³⁰

The municipality may ask the proponent of a USP to provide project information, to save money, for example, in delivering the feasibility study. However, this creates a significant information asymmetry between the USP proponent and the municipality—the proponent knows the detail of the project but the municipality does not. The project may therefore be designed in a manner that disadvantages the municipality and/or any competitors to the proponent.

Many countries do not allow USPs at all. Where USPs are not allowed, private companies may still suggest innovative infrastructure projects, but the project must go through the normal PPP process. It is advisable for municipalities to exclude USPs entirely, until they have a significant depth of experience in PPPs.

Where USPs are to be allowed, the following should be required:

- USPs should only be allowed for new ideas, innovative ideas, projects that are not on the municipality's plans and have a technology or process requirement that is uniquely available to the proposing PSP.
- The municipality should deliver the feasibility study for the proposed project and should otherwise drive the due diligence process designed to structure the project and verify that it represents VFM for the municipality.
- The USP proponent's sole advantage from the process should be compensation in an amount that reflects the actual benefit provided to the municipality, calculated by an independent assessor, to avoid conflicts of interest and any perception of corruption.
- If the municipality offers to compensate the proponent for its costs in developing a USP, then the municipality creates an incentive for USPs with limited value (in effect, subsidizing the proponent's bidding costs). Any compensation should reflect the actual benefit received by the municipality and nothing more.

Direct negotiations are sometime permitted for limited purposes, for example, in a national state of emergency or for small changes to existing projects (where there is no real prospect of competition). Legislation will generally regulate direct negotiations. Municipalities should obtain expert advice when approaching such negotiations, which can be complex.

³⁰ For a more detailed discussion of USPs and different approaches taken, see PPIAF, 2017. Unsolicited Proposals – An Exception to Public Initiation of Infrastructure PPPs: An Analysis of Global Trends and Lessons Learned. <https://ppp.worldbank.org/public-private-partnership/library/ppiaf-unsolicited-proposals-%E2%80%93-exception-public-initiation-infrastructure-ppps-analysis-global-trends-and-lessons-learned>

Tool

Policy Guidelines for Managing Unsolicited Proposals

These guidelines provide key policy recommendations to public authorities to manage appropriately and effectively the challenges that unsolicited proposals represent.

<https://ppp.worldbank.org/public-private-partnership/library/policy-guidelines-managing-unsolicited-proposals-infrastructure-projects>



Implementation

PPP Contract Manager
Contract Management Plan
Contract Management

6.0

Phase IV: Implementation

In general, the municipality's role during the implementation phase³¹ has four subphases:

1. **Pre-construction:** land acquisition, design review, and application for permits.
2. **Construction:** review of progress reports, verification of equipment/materials delivered, completion tests, performance tests, commissioning, payment of any capital grants or other construction period subsidies.
3. **Operations:** performance standards, periodic reporting, spot checks, tariff reviews, payment of availability payments (if any), renegotiations, refinancing, conflict management, and dispute resolution.
4. **Handback:** test condition of assets, maintenance and refurbishment plan, select SPV assets to purchase and agree price, handover of the

project assets to the municipality at the end of the PPP agreement.

Managing a PPP agreement requires a different approach from managing a conventional public procurement contract. A conventional public procurement contract is short term (usually at most two or three years) and pertains to the execution of precisely defined activities. A PPP agreement, on the other hand, is long term and output based. The key success factor of effective contract management is a good relationship between the municipality and the PSP. The essence of PPP is that both parties proactively work together to manage conflict, avoid defaults, and deliver public services.

³¹ See also www.managingPPP.github.org



Remark

Hiring an Independent Engineer

Depending on the size and complexity of the PPP project, an independent engineer may be engaged to assist both the municipality and the PSP with contract management tasks. The independent engineer is jointly appointed by both parties after signing the PPP agreement, and may intervene at various stages during project implementation to verify its conformity with the PPP agreement:

- a. During construction stage
 - Review the detailed engineering design;
 - Inspect and monitor construction works;
 - Review modification requests and claims for compensation;
 - Conduct commissioning tests; and
 - Issue the construction completion certificate.
- b. During operations stage
 - Monitor the compliance with maintenance and performance standards and submit periodic reports; and
 - Review modification requests and claims for compensation.
- c. During handback
 - Conduct handback tests; and
 - Issue the handback certificate.

The costs of the independent engineer are generally shared equally between the municipality and the PSP. This cost sharing arrangement is defined in the PPP agreement.

6.1 PPP Contract Manager

During project development, the municipality is represented by a project manager. During implementation, the project manager is replaced by a contract manager to act as the primary point of contact of the municipality with the PSP, focused on:

- Monitoring the performance of the PSP and checking it against the contract requirements;
- Budgeting and settlement of payments due under the PPP contract to the PSP (if any);
- Handling of contract events according to the provisions of the PPP contract (for instance, tariff adjustments, non-compliance of PSP with performance requirements, changes in law, contract amendments, force majeure, refinancing, disputes, and early termination); and
- Reporting on the performance of the PPP contract to the municipal government and to stakeholders.

Depending on the complexity of the project and the resources of the municipality, the contract manager may be assisted by a contract management unit that combines the various disciplines that are needed to monitor the performance of the PSP and manage the PPP contract. A typical contract management unit may be composed of (on a part-time or full-time basis depending on needs):

- A technical (engineering) expert, specialized in the services that are provided in the PPP project;
- An administrative/legal expert with expertise in public administration and public procurement contracts; and
- An accountant/budgeting expert.

6.2 Contract Management Plan

The contract management plan (CMP) describes

- The composition and responsibilities of the contract management unit;
- Procedures for dealing with contractual events in the various stages of the implementation of the PPP project;
- The performance criteria, monitoring system, and other deliverables/liabilities under the PPP agreement; and

- Procedures for reporting and disclosure of PPP performance to the municipal government and stakeholders.

The CMP is prepared (usually by the transaction adviser) even before the award and signing of the PPP agreement, and is updated after the signing of the PPP agreement.

6.3 Contract Management

This section sets out some of the key issues to be addressed by the contract manager.³²

6.3.1 Performance Monitoring

Performance monitoring is the most important daily task of the contract management unit. The contract management unit receives and reviews periodic (monthly or quarterly) performance reports submitted by the PSP and the independent engineer. In addition, it conducts scheduled and random inspections to identify performance shortfalls. The contract management unit could also seek feedback from end users, as a part of its monitoring responsibility.

6.3.2 Changes, Variations and Amendments

Due to the long duration of PPP agreements, changes may be needed to address a change in circumstances, for example, new technologies may emerge that justify changes of service specifications or data on which the project is designed may prove inaccurate.

These changes may also be needed to address errors in project development, where preparation fell short.

The contract will provide for mechanisms to address such needed changes, in particular a variations procedure (also known as a change procedure) for minor changes to be made and agreed by the parties.

Changes that do not fall within the variations procedure or which require more fundamental changes to the contract will require renegotiation, which will also often have a special regime specified in the PPP agreement. The contract manager assesses the variation or renegotiation proposal and undertakes the required steps to obtain approval.

Renegotiations, in particular, need to be managed in a strategic and transparent manner to prevent abuses and ensure buy-in from key stakeholders and avoid disputes.

³²For further information on contract management, see United Nations Public Private Partnership Contract Management Manual (2019).

6.3.3 Payment Adjustments

The PPP agreement will establish a regime for availability payment or tariff increases over time, and may provide for some compensation or other remedy where the tariffs do not meet expectations. The contract manager will secure internal approvals for time-based availability payment or tariff increases and assess requests for adjustments or compensation.

6.3.4 Compensation and Relief Events

PPP agreements will often provide for a regime to protect the PSP from the impact or risks borne by the municipality, for example, where the municipality is late in providing land to the PSP. The event, compensation, extension of time and procedure for handling requests are defined in the PPP agreement. Relief requests are assessed by the contract manager.

6.3.5 Refinancing

The debt financing of a municipal PPP project is priced against the risk borne by the PSP, which includes construction of the facility and the mobilization of operations. Once the construction is complete and operations are successfully launched, the project risk is significantly lower. The PSP may want to refinance the project to take advantage of the lower debt costs, and therefore improve equity return. The municipality should share the refinancing gain and therefore provide for a mechanism in the PPP agreement.

In other cases, the original project financing is based on short-term debt (usually where long-term financing is not available). The project will need to go back to the financial markets at the end of the term of the original project debt, to refinance project debt. Someone will need to take the risk that this refinancing will be costlier or might not be available at all.

6.3.6 Conflict Management and Dispute Resolution

Because PPPs are complex, it is natural to expect that at some point during the contract there will be disagreements about performance levels and about payment amounts, payment deductions, or other important issues. As there are usually several stakeholders involved in any of these disagreements (investors, banks, municipal departments, municipal finance offices, and so on), all parties to a PPP need a clear, fair, and cost-effective way of resolving any disagreement so that the project can continue to operate and the partnership continue to benefit all partners and the users continue to get uninterrupted services.

Conflict management and resolution should be implemented as soon as possible after a conflict arises, before it becomes a dispute or impedes the project. Conflict management often involves formal review processes, elevation of issues to different levels of management, and most importantly—communication. The contract manager will play a central role in conflict management and will be responsible for keeping open lines of communication and proactively addressing conflicts where they arise.

If conflict management fails, disputes are submitted in the first instance to mediation and/or some form of expert resolution (for example, under the independent engineer if one is appointed), to provide additional data to the parties and provide a more structured platform of communication. If this fails, the matter is generally escalated to senior executive level (for instance, the head of the municipal administration and the managing director of the SPV). Where this too fails, the dispute is submitted to final adjudication, usually through domestic or international arbitration.

Tool

- **Module 12: Contract Management** provides more detailed guidance on contract management procedures.

- **PPP Contract Management Tool**

This tool is a G20 initiative that aims to help governments to manage PPP contracts, from financial close through contract implementation, with a range of practical advice and case studies.

https://content.github.org/live/media/1495/gih_managingppp_summary.pdf

6.3.7 Expiry of PPP Agreement and Handback of Assets

A defined period before the end date of the PPP agreement (generally three to five years), the contract management unit starts to prepare the handover of the project's residual assets from the PSP to the municipality. The handover regime is generally set out in the PPP agreement. Well before the end date of the PPP agreement, the municipality must decide on how the project services will be provided after the termination of the PPP agreement. This decision must be taken sufficiently before the end date of the PPP agreement so that there is enough time to prepare and conduct the procurement procedures for the appointment of new contractors or train its own staff on the project operations and maintenance.

The contractual regime will identify which assets transfer to the municipality and the conditions those assets must be in at transfer. The parties will review together the condition of those assets some 12-18 months before handback. Based on this coordinated review, the parties will agree the remediation effort required before the assets can be transferred back.

Case Example

Yongin Everline Light Rail Transit (Seoul, Republic of Korea)

Yongin City has granted a 30-year concession to a private company, Yongin Rapid Transit Co. Ltd, with the aim to address the increase of travel demands of the city.

In 2001, when the project was structured and approved, the estimated daily passenger demand was expected to be 140,000. However, by the time construction was completed in 2009, the updated estimate of passenger volume was only 32,000 passengers per day. The municipality delayed opening of the line as it would have had to pay substantial compensation as part of the minimum revenue guarantee it had provided to the concessionaire. The concessionaire initiated an arbitration process to receive compensation, and eventually the arbitration court ruled that the concessionaire is eligible for a compensation for loss of business due to delays in opening.



Source: Park, Jin Young, and Jinsu Mun. Korea's Railway PPP (Public-Private Partnership) Projects. Gyeonggi-do: The Korean Transport Institute, 2014; Shin, Tom. 2007. "Light Rail Transit Projects in Korea: Case Study of Two International Projects." World Services Group. Accessed February 17, 2019. <https://m.worldservicesgroup.com/article.aspx?id=2097>; Sang-soo, Kwon. 2013. "Yongin Everline: New Train, Few Passengers." Korea Joongang Daily, June 1, 2013. Accessed February 17, 2019. <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=2972459>.

Photo Credit: Minseong Kim (https://commons.wikimedia.org/wiki/File:Yongin_Everline_Livery_Animal_1.jpg), <https://creativecommons.org/licenses/by-sa/4.0/legalcode>

See Project Summary No. 3

7.0

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Glossary

Adviser means the expert/experts that will be procured by the municipality to provide technical assistance in the development of the feasibility study and/or the competitive tender of the proposed PPP project.

Application means the qualification documents submitted by the private bidder in response to the issuance of an RFQ (see Section 5.1).

Bid means the technical proposal and financial proposal submitted by the bidder in response to the issuance of a RFP. In the case of single-stage bidding, the bid also contains the bidder's qualification documents (see Section 5.2).

Bidder means a private sector entity or consortium who has participated or intends to participate in the tender of the PPP project.

Capital planning means an entity's budgeting process carried out to ensure it has the resources to commit to long-term investments and whether those investments are sustainable and accord to the entity's long-term plans.

CBO means community-based organization

CMP means the contract management plan (see Section 6.2).

CMU means contract management unit (see Section 6.1)

Commercial closure occurs when the PPP agreement is signed. This occurs after a typically short period of contract negotiations between the municipality and the PSP. However, after commercial closure, if the PSP mobilizes external financing, it must reach financial closure before the PPP project's implementation (see Section 5.2).

Consultancy agreement means the contract entered between the municipality and the adviser for the provision of technical assistance to the municipality in the development of the feasibility study and/or the competitive tender of the proposed PPP project (see Section 4.3).

Contract manager is the primary point of contact of the municipality with the PSP during the implementation of the PPP project (see Section 6.1).

Data room makes reference to either a virtual records archive (that is, a virtual data room) or a physical storage room where relevant project background records, plans, and tender documents are made available to bidders during the tender process (see Section 5.2).

Due diligence means the analysis of a project to assess the viability of the project.

EIRR means the economic internal rate of return of the project.

Feasibility study is the document that provides the basis of whether or not a project is feasible and suitable to be structured as a PPP (see Section 4.2).

Financial closure occurs when the PSP secures all its required financing from its equity investors and lenders. This typically requires detailed analysis and 'due diligence' by lenders, reviewing PPP agreements and analyzing project risks in detail to ensure the project is 'bankable' and financially sustainable in the face of all commonly expected risk events (see Section 5.2 and 5.3).

Financial proposal means the documents submitted by a private bidder to the municipality containing its bid value and other supporting requirements as required by the RFP (see Section 5.2).

FIRR means the financial internal rate of return of the project.

Independent engineer means the person or entity jointly engaged by the municipality and the PSP to assist reviewing technical and engineering-related contract management tasks (see Remark under Section 6.1).

Municipality means the municipal government or local government authority.

NGO means non-governmental organization.

O&M means operations and maintenance.

PDF means project development fund
(see Section 3.3).

PMU means project management unit
(see Section 4.1).

PPP means public-private partnership
(see Section 1.1).

PPP agreement is the contract signed between the municipality and the PSP to implement the PPP project (see Section 5.1 and 5.2).

Preferred bidder means the bidder identified as providing the most advantageous bid, but before commercial close and/or financial close (see Section 5.2).

Project means the subject PPP/potential PPP project.

Project company means the incorporated entity of the PSP for the PPP project. Often this is also referred to as the special-purpose vehicle or 'SPV'.

Project manager means the person appointed by the municipality for the daily management of the PPP project.

PSP means the private sector partner.

Public investment management means an approach to managing government expenditures for public infrastructure strategically and efficiently.

RFP means request for proposal (see Section 5.1).

RFQ means request for qualification
(see Section 5.1).

Special purpose vehicle (SPV) means a corporate vehicle (also known as a project company) created to implement the project, whose sole purpose is the project, and therefore does not undertake obligations or liabilities outside of the project.

Sponsor means the strategic investor, with technical and commercial skills needed to deliver the project, which often also provides some combination of equity and debt investment.

Success fee means the payment made to a PPP transaction adviser once the PPP has reach either, or both, commercial closure and financial closure. A success fee motivates PPP transaction advisers to complete the project as quickly as possible.

Technical proposal means the documents submitted by a private bidder to the municipality to satisfy the technical requirements of the project as indicated in the RFP (see Section 5.1 and 5.2).

USP means unsolicited proposal (see Section 5.4).

VFM means value for money (see Section 1.2 and 1.3).



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MUNICIPAL READINESS

Municipal Public-Private Partnership Framework

01

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1.0

Introduction to and Instructions for the Municipal Readiness Tool

This module presents municipal practitioners with a series of fundamental questions concerning the municipality's institutional capacity and the applicable legal and regulatory framework to provide a basic assessment of whether the municipality is ready to pursue a PPP project or program. It is not essential that a jurisdiction or municipality demonstrates all the characteristics outlined in this module before attempting to implement a PPP. However, the following tool can help a municipality better assess its institutional strengths and weaknesses in terms of capacity to implement a PPP and identify reforms that may be needed to obtain sufficient expertise, capacity, and legal authority to use PPPs.

This tool is organized around six general statements that, if true, tend to indicate the municipality is well positioned to pursue a PPP. Each statement is accompanied by a brief explanation of its relevance and followed by a non-exhaustive series of illustrative questions designed to walk practitioners through a set of more specific topics that are generally relevant to the accuracy of the statement. After reviewing these questions—and with due consideration to any additional, relevant information that may not be directly addressed by these questions—practitioners should indicate the extent to which they agree or disagree with each general statement.

This readiness tool has been influenced by the following sources, which will also be helpful for any municipality looking to identify ways to improve its investment climate for PPP:

- The World Bank Group, A Checklist for Public-Private Partnership Projects (prepared by the World Bank Group for the G20 Investment and Infrastructure Working Group August 22, 2014), available at: <https://ppp.worldbank.org/public-private-partnership/library/checklist-public-private-partnership-projects-submitted-world-bank-g20-investment-and-infras>.
 - The World Bank Group, Country Readiness Diagnostic for Public-Private Partnerships (The World Bank Group June 2016), available at: <http://pubdocs.worldbank.org/en/943711467733900102/Country-PPP-Readiness-Diagnostic-Tool.pdf>.
 - The World Bank Group, Urban Regeneration Decision Tool, available at: <https://urban-regeneration.worldbank.org/survey>.
 - The World Bank Group's City Resilience Program, Rapid Capital Assessment (sample assessment). For additional information and resources, refer to: <https://www.gfdr.org/en/crp>.
 - Public-Private-Partnership Legal Resource Center (PPPLRC), <https://ppp.worldbank.org/public-private-partnership/>.
- The World Bank, Procuring Infrastructure Public-Private Partnerships Report 2018 (The World Bank 2018), available at: <https://ppp.worldbank.org/public-private-partnership/library/procuring-infrastructure-ppps-2018>.
 - The City Creditworthiness Initiative, City Creditworthiness Self-Assessment and Planning Toolkit, available at: <http://www.citycred.org/>.

2.0

The Municipal Readiness Tool

Statement 1 - Creditworthiness

Statement	Response				Explanation
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
The municipality is a creditworthy, reliable counterparty for prospective infrastructure PPPs, with a history of timely debt repayment and honoring contractual commitments.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	The municipality's creditworthiness affects the likelihood that private investors will be interested in contracting with the municipality, as well as the cost of financing such projects. Even where the municipality assumes no regular payment obligations under a PPP, a history of timely debt repayment will bolster its credibility as a contractual counterparty and provide assurance that it will honor any payment obligations that might arise in the event of project termination. In addition, some basic provisions related to municipal debt management are also directly applicable to implementing, monitoring, and evaluating a PPP project. PPPs entail long-term, contractual commitments such that potential PSPs must have confidence that the municipality will respect its contractual obligations for the duration of the project, which is best evidenced by the municipality's experience in this regard. The assessment of municipal creditworthiness involves a number of different characteristics. This section captures a few of these characteristics. Further reference should be made to www.citycred.org for a simple assessment tool. The more the municipality's financial management systems are adapted to address issues relevant to PPP, the better.

Question on Creditworthiness

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
1.1 Are financial statements prepared and audited annually?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	A first-level assessment is of the municipality's internal systems, for example, whether it issues account and are those accounts audited. These mechanisms help investors and financiers understand the financial standing of the municipality. Any lack of transparency or accountability will make investors and financiers nervous. Equally, they will want to understand the municipality's exposure to other investments, including PPP, to be sure that the municipality is monitoring and managing that exposure proactively.
1.2 Are accounts managed on an accrual basis?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.3 Are regular audits conducted? By a third-party, independent auditor?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.4 Is there any system for fixed and movable asset management and accounting?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.5 Are municipal PPP liabilities monitored under its accounting system?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.6 Is there a designated entity and/or separately staffed office responsible for debt planning and management?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.7 Has the municipality obtained a domestic credit rating?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.8 Has the municipality obtained an international credit rating?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
1.9 Has the municipality borrowed money from banks in the last three years? • If so, has it timely satisfied (that is, has not defaulted and is not in breach of any of) those debt obligations?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Investors and financiers will want to know how much experience the municipality has in borrowing money commercially, from banks and from bond markets, domestically and internationally; each involves commercial know-how and discipline that will give investors and lenders comfort that the municipality will manage its PPP projects well.
1.10 Does the municipality have an existing lending relationship with one or more commercial banks for long-term borrowing of one year or more?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.11 Has the municipality issued bonds domestically in the last three years? • If so, has it timely satisfied (that is, has not defaulted and is not in breach of any of) those debt obligations?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.12 Has the municipality issued bonds internationally in the last three years? • If so, has it timely satisfied (that is, has not defaulted and is not in breach of any of) those debt obligations?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
1.13 Does the municipality have any other recent experience with any kind of borrowing (concessional or commercial, short term or long term)? • Does the municipality use any short-term borrowing (for example, overdraft facilities, loans, lines of credit) to maintain liquidity? • Has it timely satisfied (that is, has not defaulted and is not in breach of any of) those debt obligations?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.14 Are there clear regulations or rules on municipal borrowing?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Oversight on municipal borrowing and PPP projects, for example, from central government, can provide comfort to investors and financiers, but may also represent additional delay, cost, and complexity.
1.15 Is there national or state/provincial government authority monitoring the municipality's financial condition on an annual (or more frequent) basis?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.16 Are there any caps or other restrictions on the amount or type of debt the municipality can accrue?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.17 Are there any written policies or procedures on debt service?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
1.18 Are there any safeguards against late or missed payments?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
1.19 Does the municipality have a history of respecting its contractual obligations and paying amounts due on time? • For example, is there any recent history of delays in payments to suppliers or contractors over 60 days?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	PPP is generally a contract-based relationship. If the PSP cannot trust the municipality to respect its contractual obligations, additional protections such as guarantees will be needed, adding to the cost and complexity of the project. Ideally the municipality can show that it plans to be a credible partner to the PSP by showing how well it has treated its private partners in the past.

Statement 2 - Internal Capacity

Statement	Response				Explanation
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
The municipality has sufficient internal capacity to carry out a PPP, including the ability and funding to obtain outside technical assistance if needed.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<p>Successfully preparing, procuring, and implementing a PPP can require significant costs, in terms of labor time, financial commitments, and procuring expert advice. Ultimately, these investments are likely to pay large dividends, both economic and social, by ensuring that the resulting project provides the most VFM for the municipality, limiting the risks involved (including environmental and social risks) and reducing the burden on the municipality over the course of the PPP agreement.</p> <p>Nonetheless, many municipalities will not have the needed internal capacity, especially when undertaking their first PPP project(s) or program. Internal human resource capacity can and should be developed over time through appropriate hiring, formal trainings, and direct, on-the-job experience with PPPs. In many respects, expertise is best acquired by actually working on a PPP (that is, learn-by-doing), provided that emphasis is placed on knowledge sharing to ensure that lessons learned are shared among staff and preserved within institutions despite staffing changes.</p> <p>In the interim, gaps in internal capacity can be overcome by mobilizing capable, third-party consultants, as well as by leveraging expertise from other government departments and entities at the local and national levels. Note that accessing additional sources of funding for the development of PPP projects, including hiring high-quality consultants, is addressed in Statement 3.</p>

Question on Internal Capacity

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
<p>2.1 Has the municipality previously attempted a PPP? If so</p> <ul style="list-style-type: none"> • Were past attempts deemed successful? • Has there been continuity among key staff involved? • Were formal lessons learned or other knowledge transfer mechanisms deployed to retain institutional knowledge? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	The best way to develop PPP capacity is by doing PPPs. The more experience the municipality has, the more comfortable potential investors and financiers will be.
<p>2.2 Are there enough available and sufficiently qualified (by training and/or experience) staff to oversee the day-to-day supervision of PPPs?</p> <ul style="list-style-type: none"> • Does the municipality have its own, internal PPP team, whether as a permanent or ad hoc office, committee, unit, and so on? • If so, does that unit have dedicated staff? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Capable and experienced staff need to be allocated to PPPs generally, and dedicated to specific projects as and when needed. Clearly, the more developed the PPP program, the more projects are in the pipeline, the more staff can be dedicated to PPP. Such dedicated, experienced individuals, ideally led by someone with sufficient seniority to make decisions and commit to deliver on promises, will be key to attracting good investors and financiers. Note that, in appraising the available staff, the municipality should consider the extent to which it may be able to borrow expertise from other government departments or entities, at the local or national level.
<p>2.3 Does the municipality have a designated team with commercial and financial skills who would be available to oversee PPP project, possibly drawing from relevant departments or offices as appropriate?</p> <ul style="list-style-type: none"> • Do the foreseeable members of such a team have experience with or exposure to PPP in their functional areas of expertise? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
<p>2.4 Does the municipality have internal expertise on issues related to accounting, financial management, and commercial legal issues?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<p>If the municipal government does not have PPP-specific expertise, then the next best thing is to have staff experienced in commercial transactions, with appropriate finance, accounting, and legal skills. The municipality should also consider if it has staff who may have other related and transferrable skillsets, such as staff who have previously worked on and delivered large or complex projects, including projects not directly related to infrastructure provision.</p>
<p>2.5 Does the municipality have identified staff who specialize in complex projects or have other, related skillsets and could be assigned to a PPP project team?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
<p>2.6 Are there processes or policies for selecting a</p> <ul style="list-style-type: none"> • Project manager; • Contract manager; • Project team; and/or • Consultant(s) to provide technical assistance? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<p>In addition to a standing team focused on PPP, the municipality will need processes to assign the right staff to deliver each project. The key members of this team should commit to the project over the long term, even where the municipal government changes.</p>
<p>2.7 Is there likely to be continuity of key personnel (for example, across administrations, when the municipal government changes after elections)?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
<p>2.8 With respect to hiring consultants for technical assistance, is there or will there be funds available to pay for such services?</p> <ul style="list-style-type: none"> • For example, is there a project preparation fund that could be used to hire consultants to complete feasibility studies and other preparatory work? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<p>Gaps in expertise and capacity should be filled with consultants. The municipality will need the ability to hire the best consultants for the job. In PPP, this can mean expensive consultants, possibly exceeding ceilings placed on public procurement. The municipality will need some mechanism to hire these high-quality consultants.</p>

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
2.9 Are there any regulations or policies that affect the municipality's ability to hire outside technical advisers? • For example, local hiring preferences, procurement rules that require competitive tender of consultancy services, and/or limit the remuneration payable for such services?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Statement 3 - External Assistance

Statement	Response				Explanation
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
The municipality is aware of and has access to external sources for funding and additional capacity, as needed, to help oversee, coordinate, and support PPPs.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Some countries have established specialized PPP teams at the national or regional level to facilitate, monitor, and/or regulate the use of PPPs. These institutions can be an important source of information and support, and may have review or approval authority with respect to PPPs. Regional or international organizations may also offer support to help a municipality deliver PPP, for example, the World Bank Group and the regional development banks (for example, the Asian Development Bank) can make funding and teams of experts available to help ensure that projects are well implemented, and that the municipality's investment framework is conducive to PPP.

Question on External Assistance

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
3.1 If there is a national or state/provincial PPP institution, does it have experience delivering PPP projects successfully?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	The providers of support must have more experience/capacity than the municipality to make a positive impact. In some cases, the municipality may be more experienced in PPP than the national or international institutions.

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
<p>3.2 If there is a national or state/provincial PPP institution, does it provide, or manage the provision of, any type of support for municipal PPPs, such as :</p> <ul style="list-style-type: none"> • Technical assistance for project preparation, or funding to procure such assistance from outside consultants (for example, a PDF); • Credit enhancement instruments for PPPs (for example, guarantees); • Grant funding for a portion of a project's capital expenditure to improve commercial viability; • Assistance with land acquisition; • Providing model or standard project documents (for example, concession agreements and tender documents); • Showcasing prospective PPP projects to attract investors or conducting market soundings; and/or • Assistance with or a streamlined permitting process for PPPs? 	○	○	○	○	<p>The nature of engagement will be critical. The municipality must be a willing, and ideally enthusiastic, recipient of support from the national or international institutions. The nature and extent of support is also critical. If national or international institutions provide capacity in an area where the municipality is weak, the impact will be more significant.</p>

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
<p>3.3 If there is a national or state/provincial PPP institution, does its mandate include the following:</p> <ul style="list-style-type: none"> • Coordinating different stakeholders involved? • Review and approval of PPP projects in some or all cases? • Monitoring and evaluating PPPs in the implementation stage? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
<p>3.4 Does the municipality have access to a government-led infrastructure co-financing facility that could be used to leverage private financing?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<p>In some jurisdictions, government entities or funds may provide an additional source of equity, financing, and/or credit enhancements to mobilize private capital for infrastructure projects. Such facilities include sovereign wealth funds, national and subnational development banks, state-run lending and grant programs, and guarantee funds, among others. These state-run facilities may focus on a particular sector (for example, public transport) or infrastructure in general. Access to these public sources of development assistance and the ability to blend them with private capital in the same project can de-risk the project, making it more attractive to private investors and reducing the cost of capital. This can also help compensate for any perceived lack of creditworthiness on the part of the municipality, as well as investors' perceptions regarding the risk of investing in a particular region or country.</p>

Statement 4 - Planning and Budgeting

Statement	Response				Explanation
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
<p>The municipality's planning and budgeting policies are conducive to long-term infrastructure financing commitments and PPPs.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<p>Effective budgeting and planning processes are critical to both identifying projects that are best suited to delivery as PPPs and to effectively managing and accounting for liabilities created by PPPs. The municipality should be confident that it has sufficiently effective and long-term budgeting and planning mechanisms to properly pursue and implement infrastructure PPP projects.</p>

Question on Planning and Budgeting

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
4.1 Is there a formal, approved development plan or strategy that identifies infrastructure needs and priorities for the municipality? • Are development plans available to stakeholders in the government, private sector, and civil society?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	A successful PPP program begins with good planning, namely a reliable process for identifying public infrastructure investment needs and then assessing which projects may be suited for delivery through PPPs.
4.2 Are PPPs explicitly included in the development plan or strategy as a mechanism for infrastructure delivery and service provision?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
4.3 Is there a budgetary system that does or would support multi-year fiscal commitments to infrastructure and PPPs, including government support to PPPs where needed?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Short-term budgeting rarely appreciates the long-term context of PPP.
4.4 Is the expenditure plan updated annually and well-synchronized with the development plans?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
4.5 Are there clear regulations or rules on managing contingent liabilities arising from PPP?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Any PPP might create contingent liabilities for the municipality. A system is needed to monitor and manage such liabilities.

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
4.6 Is there a formal, approved spatial plan that identifies land use purposes and restrictions within the territory of the municipality?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	A PSP will need to know that the project site may lawfully be used for the intended purpose, now and through the duration of the PPP agreement, and that the lawful owner of the site and any other entities with claims to the land (for example, leases, easements, rights of way) are readily identifiable. Any uncertainty over ownership, development rights, or usage rights with regard to the project site presents a substantial risk and will need to be resolved before pursuing a PPP.
4.7 Are there formal, transparent, and enforced regulations or ordinances related to land use, covering topics such as building density and height and functional uses (for example, zoning framework)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
4.8 Is there a centralized and updated property cadastral database, registry for land parcel information, or other record system that provides reliable property records (for example, title registry and transfer, development and usage rights)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Statement 5 - Institutional Mandate

Statement	Response				Explanation
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
The municipality has clearly defined institutional mandates for infrastructure delivery and service provision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	A PSP will want to make sure that the municipality is the right contract counterparty, and that the municipality has the authority and power to make and keep the promises set out in the PPP agreement. To this end, the municipality must clearly understand its legal mandate for infrastructure delivery and service provision, including whether service provision in any given sector is a shared responsibility (for example, where a municipal authority and a publicly owned utility both have roles in ensuring the provision of piped water to households). If responsibility is shared, the municipality will need to review the other entity's mandate and may need to involve it in any potential PPP. If institutional responsibility is not clearly defined, any uncertainty will need to be resolved before pursuing a PPP.

Question on Institutional Mandate

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
5.1 Does the municipality have the explicit authority to enter into long-term contracts? • For example, ones that last longer than the term of the municipality's chief officer?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	A PPP agreement may extend past the term in office of the public officials involved in negotiating and closing the deal. The parties to the PPP agreement need to be sure that the contract remains legally binding throughout its duration, irrespective of any change in municipal leadership.
5.2 If there are any prerequisites that must be met or approvals that must be obtained before the municipality can enter into such an agreement, are they known and manageable?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
<p>5.3 Are there sectors for which the municipality has exclusive responsibility for delivering infrastructure projects and service delivery (for example, piped water supply, building and maintaining bus stops, collecting solid waste)?</p> <ul style="list-style-type: none"> • Is this responsibility clearly defined by law? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	The mandate of the municipality will influence the scope of the PPP program and help the municipality focus on key sectors. In addition, the municipality's mandate needs to be clear. If the mandate is shared, the other responsible parties need to be engaged in the relevant PPP project from the earliest stages.
<p>5.4 Are there any sectors in which service delivery is a shared responsibility?</p> <ul style="list-style-type: none"> • If so, what is the municipality's relationship with the other entity or entities, and is there a clear delineation in roles? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
<p>5.5 If the PSP will be involved in service delivery (for example, clean water supply), does the municipality have explicit authority to delegate responsibility for providing the service in question to a private entity?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Statement 6 - Governing Law

Statement	Response				Explanation
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
The municipality is clearly empowered by law to prepare and implement PPP projects, under specific laws, regulations, or policies at the national, state/provincial, or municipal levels that are conducive to PPPs.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Whether or not the jurisdiction has established a specific legal or regulatory framework for PPP delivery, the municipality must have the mandate at law to prepare and implement PPPs, including the processes for project selection, preparation, and procurement, as well as access to institutions or funding sources that can facilitate PPP projects.

Questions on Governing Law

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
<p>6.1 Do applicable laws, regulations, and policies address the following:</p> <ul style="list-style-type: none"> • Respect for contractual obligations? • Enforcement of government obligations, in particular contractual ones? • The municipality's mandate to sign a PPP agreement; for what kind of projects/sectors? • Review and approval processes that would be applicable to PPP projects? • Delineation of institutional roles in identifying, screening, preparing, approving, and procuring projects that would be applicable to PPPs? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	The legal regime should address each of these issues to provide a clear framework for a PPP program. Any gap in the legal system will cause concern among potential investors and add to project risk and would need to be addressed contractually.

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
<ul style="list-style-type: none"> • Delineation of the sectors (for example, water supply, electrical power distribution, and public transit) in which PPPs would, or would not, be allowed? • Establishment of a framework for government support, including for PPPs? • Rules for public payments, which would be applicable to PPPs (for example, availability payments)? • Description of what types of PPP project structures (for example, BOT, DBFO, ROT) are, or are not, allowed? • Establishment of a clear and consistent process for preparing and procuring projects, including PPP? • Defining requirements, processes, and exceptions for competitive selection of the PSP, including for PPP? • Provision of standard terms and conditions for investments in infrastructure, including standard PPP agreements? • Defining requirements for transparency and disclosure before and/or after an investment project award or closing, including a PPP agreement? • Provision of processes for contract management, monitoring, and renegotiation? • Permitting or prohibiting unilateral contract modification and/or termination? 					

Statement	Response				Considerations
	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	
<ul style="list-style-type: none"> • Ability to change the ownership structure of a PPP and assign rights under a PPP contract? • Allowing the municipality to commit to compensation payments in the event of contract termination? • Protection for PSPs from expropriation? • Allowing for alternative forms of dispute resolution, such as international arbitration? • Provision of a process or otherwise indicate how to address a USP? • Establishment of clear processes and systems for obtaining any required licenses and permits, including by a PSP? 					
<p>6.2 Is it clear how a PPP project would be taxed (including withholding taxes, transfer taxes, and income taxes applied to any public contribution to the project)?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	PPP structures may be new in the country or jurisdiction, in particular financing that is based on project revenues rather than asset value. The tax regime may need to be reformed to provide for such structures.
<p>6.3 Is the regime for the municipality acquiring any land needed for a PPP project clear and efficient?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Land is often a challenge for PPPs. The PSP will ideally want to see all land acquired before bidding, or at least a system by which the PSP can see a clear line to accessing land and protecting any rights over land needed for the project. Refer to Questions 4.6 through 4.8, regarding land use planning, regulation, and property registration. Recall that the PSP will need to be confident in the status of the property interests and permissible uses with respect to the project site.
<p>6.4 Are there significant restrictions on foreign participation, ownership, investment, or repatriation of profits?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Foreign investment can be a delicate political issue, but may be important to access foreign know-how and financing.



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PROJECT CONCEPT
ASSESSMENT TOOL

Municipal Public-Private Partnership Framework

02

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1.0

Introduction to and Instructions for the Project Concept Assessment Tool

Project selection is critical to ensuring that limited municipal government resources are invested to their maximum effect. This entails obtaining and evaluating data on a project's technical, financial, and legal viability. At the same time, completing a full feasibility study can be costly, such that it is beneficial to undertake a preliminary assessment of a project's potential based on more limited information before conducting such a study.

This module is intended to help practitioners make an initial assessment of project feasibility as a PPP, based on core project characteristics set forth in Module 3: Project Concept Note. Within each section, there are a series of positive statements that, if true, indicate that the project may be suited for delivery as a PPP. Linked to each of these statements are a series of questions designed to help practitioners identify key pieces of information about the project that need to be known and, depending on the response, determine if it is realistic and desirable to proceed with the project. It is not expected that detailed information on all of the topics covered will be available at this early stage but rather that considering the type of information a feasibility study would need to produce, and the foreseeable or likely results will help practitioners determine if it is reasonable to undertake a feasibility study.

This project assessment tool has been influenced by the following sources, which will also be helpful for any municipality in evaluating projects for PPP viability and preparing PPP projects:

- Global Infrastructure Hub, Reference Tool on Governmental Processes Facilitating Infrastructure Project Preparation (Global Infrastructure Hub January 2019), available at: <https://www.gihub.org/project-preparation>. Infrastructure Working Group, G20 Principles for the Infrastructure Project Preparation Phase (July 2018), available at: http://www.g20.utoronto.ca/2018/principles_for_infrastructure_project_preparation.pdf.
- Infrastructure and Projects Authority, Project Initiation Routemap (HM Government June 15, 2016), available at: <https://www.gov.uk/government/publications/improving-infrastructure-delivery-project-initiation-routemap>.
- The World Bank Group, Success Stories and Lessons Learned: Country, Sector and Project Examples of Overcoming Constraints to Financing Infrastructure (prepared by the World Bank Group for the G20 Investment and Infrastructure Working Group January 2014), available at: http://www.g20.utoronto.ca/2014/WBG_IIWG_Success_Stories_Overcoming_Constraints_to_the_Financing_of_Infrastructure.pdf.
- The World Bank Group, A Checklist for Public-Private Partnership Projects (prepared by the World Bank Group for the G20 Investment and Infrastructure Working Group August 22, 2014), available at: <https://ppp.worldbank.org/public-private-partnership/library/checklist-public-private-partnership-projects-submitted-world-bank-g20-investment-and-infras>.

2.0

The Project Concept Assessment Tool

Section 1. Preliminary Considerations

This section addresses threshold issues designed to screen projects for fundamental viability as a PPP. Negative responses indicate that the project is not a good candidate for a PPP, or that further information needs to be obtained before considering delivery as a PPP.

		Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
1. The development rationale for the project is clear.	• Has a project concept note and/or a study been completed for the project?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Does the project have direct social, economic, and/or environmental benefits that are likely to greatly exceed the project cost?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Is the project included in, or clearly in line with, an official development plan or strategy?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. Delivery of the project as a PPP is within the municipality's legal mandate.	• Do the applicable laws clearly define the institution or institutions responsible for this type of infrastructure or service?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Is provision of this type of infrastructure or service the exclusive responsibility of the municipality, or the shared responsibility of the municipality and one or more other readily identifiable entities?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Do applicable laws permit private participation in this type of infrastructure or service?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. The estimated investment cost (capital expenditure) is known, or can be reasonably approximated, and is suitable for a PPP.	• Is the approximate investment cost known or reasonably estimable? o For example, there are comparable projects in this or similar jurisdictions, a technical study has estimated the cost	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Preliminary Considerations

	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
<ul style="list-style-type: none"> Is the investment cost reasonably resistant to change, meaning is it unlikely to increase significantly as engineering designs are completed and construction is under way? <ul style="list-style-type: none"> Consider the likelihood of cost overruns, for example resulting from changes in the project scope and design, latent defects in the project site, and variability in the supply and cost of construction labor and materials - including any foreign exchange risk where machinery, technology or materials will need to be imported 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<ul style="list-style-type: none"> Does the estimated investment cost exceed US\$1 million? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>4. The proposed duration of the project (for example, PPP agreement term) is suitable for a PPP.</p> <ul style="list-style-type: none"> Does the project entail delivery of public infrastructure and continuous service, and so involvement by the PSP (PPP), for at least five years? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>5. Funding is or will be available for project preparation.</p> <ul style="list-style-type: none"> Has the municipality or other government authority budgeted funds, or does it have access to funds, to complete project preparation? <ul style="list-style-type: none"> For example, preparing feasibility studies, acquiring land, environmental and social impact cost mitigation 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Section 2. Financial Considerations

This section addresses fundamental aspects of a project's financial viability, that is, whether project revenues are sufficient to cover costs and provide a reasonable rate of return. Positive responses, or reasonable expectations that a feasibility study will provide positive responses, generally indicate that a project may have sufficient commercial appeal for delivery as a PPP.

Note: For one question about foreign financing, a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement. That is, for this question, a negative response reflects favorably on the project's potential viability for delivery as a PPP. This should be clear from context and this question has been identified with underlined font.

Financial Considerations

	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
<p>1. There is clear demand for the project.</p> <ul style="list-style-type: none"> Does the project deliver public infrastructure or service for which there is an obvious need? <ul style="list-style-type: none"> That is, have end users expressed a demand for the infrastructure or service to be provided? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Financial Considerations

	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
<ul style="list-style-type: none"> • Is there a clear and measurable demand for the infrastructure or service? <ul style="list-style-type: none"> o For example, location, target population, and offtaker 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<ul style="list-style-type: none"> • Can the demand for the infrastructure service be reasonably and credibly forecast over the proposed term of the project? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>2. The project will generate predictable and sustainable revenues.</p> <ul style="list-style-type: none"> • Will direct beneficiaries of the project asset, output or service pay for the infrastructure or service provided? <ul style="list-style-type: none"> o Payments may include, among others, end-user fees or tariffs (e.g., utility charges, ticket fares, tolls, parking fees), leasing or purchasing real property (e.g., housing, commercial, or office space), or bulk purchase of outputs for distribution (e.g., offtake purchase payments for supplying clean water to a distributor for resale to consumers) o Note that direct beneficiaries may be businesses (e.g., offtake purchasers of bulk water) and/or individual consumers (e.g., households receiving utility services, mass transit passengers) • If direct beneficiaries will pay, are projected prices likely to be reasonably within the target demographic groups' ability and willingness to pay? • Are there additional market-based revenue streams? <ul style="list-style-type: none"> o For example, advertising and lease of commercial space o See Module 16 on Harnessing Land Value Capture and Module 17 on Capturing Commercial Value • Can revenues from direct beneficiaries and other market-based sources be reasonably estimated and reliably forecasted? <ul style="list-style-type: none"> o For example, offtake charge or user charge and volume assumptions backed by surveys or forecasting from historical data, market value of lease space • Are government (national, state/provincial, and/or municipal) funds, payments, or subsidies available to help pay for the project? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Financial Considerations

		Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
3. The approximate cost of operation and maintenance/service delivery is known, or can reasonably be approximated, and might be reduced by the PSP.	<ul style="list-style-type: none"> Is the approximate cost of operation and maintenance/service delivery over the term of the project known or reasonably estimable? <ul style="list-style-type: none"> For example, there are comparable projects in this or similar jurisdictions; a technical study has estimated the cost 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> Is the estimated cost of operation and maintenance/service delivery predictable? <ul style="list-style-type: none"> For example, unlikely to vary significantly as the project develops and over the term of the PPP agreement 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> Is there potential for the PSP to operate and manage the project more efficiently than the public sector? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. The cost of financing can be reasonably approximated and is likely to be affordable.	<ul style="list-style-type: none"> Have comparable projects reached financial close in the region or country? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> Is long-term, non-recourse financing for infrastructure likely to be accessible for the project? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> Is there an indicative or preferred type of financing? <ul style="list-style-type: none"> For example, private equity, commercial bank loan, multilateral, bilateral or national development bank loan, or bond issuance 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> Can financing assumptions be made based on similar projects, prevailing rates, or general practices of indicative or preferred lenders? <ul style="list-style-type: none"> For example, debt-to-equity ratio, interest rate and tenure of debt, and cost of equity 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> <u>If foreign financing may be sought, are there any constraints on foreign exchange or capital movements that may limit the project's access to finance?</u>¹ <ul style="list-style-type: none"> For example, restrictions on repatriating profits and lack of foreign exchange risk hedging tools 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

¹ As discussed in the instructions for this section, underlined text signifies a question for which a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement and thus reflects favorably on the project's potential viability for delivery as a PPP.

Section 3. Technical Considerations

This section addresses core technical aspects of the project, such as those related to land acquisition, engineering design, construction, and operation. Positive responses, or reasonable expectations that a feasibility study will provide positive responses, generally indicate that the project may be technologically feasible as a PPP or otherwise.

Note: For certain questions about environmental and social aspects of the project, a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement. That is, for these questions, a negative response reflects favorably on the project's potential technical feasibility. This should be clear from context and these questions have been identified with underlined font.

		Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
1. There is a clear idea of the project's location, scope, design, and outcomes.	• Has an intended site for the project been identified?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Is there a clear conceptual vision for the project? o For example, facilities to be constructed or services to be delivered	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Are project outcomes identifiable, definable, and measurable? o For example, number of people/ households served, amount of clean water supplied, and size of facility constructed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Does the project include a mechanism to involve poor communities near to or affected by the project?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Does the project include a strategy that allows women to receive information and share their views and concerns about the project?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. The project concept is realistic and the preferred solution to the identified deficiency.	• Is the intended project site readily available and likely to be suitable for the project? o For example, necessary land has been obtained, is easily or reasonably accessible, can be used for the intended purpose, and is free of all encumbrances (for example, liens, easements, rights-of-way) that could impede the project	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• If the land for the project site has not been obtained, can it be realistically obtained, free of all encumbrances that could impede the project, before tendering bids for the PPP?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Has this type of project been done before, in this or comparable jurisdictions?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Is the project likely to rely on available, proven, and tested technology?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Technical Considerations

		Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
<p>² As discussed in the instructions for this section, underlined text signifies a question for which a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement and thus reflects favorably on the project's potential technical feasibility.</p>	<ul style="list-style-type: none"> Has there or will there be an assessment of all reasonable technical solutions to address the need fulfilled by the project? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> Is the proposed technical solution likely to address the need in a cost-effective and affordable manner? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>³ As discussed in the instructions for this section, underlined text signifies a question for which a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement and thus reflects favorably on the project's potential technical feasibility.</p> <p>⁴ As discussed in the instructions for this section, underlined text signifies a question for which a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement and thus reflects favorably on the project's potential technical feasibility.</p> <p>⁵ As discussed in the instructions for this section, underlined text signifies a question for which a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement and thus reflects favorably on the project's potential technical feasibility.</p>	<p>3. There are no substantial environmental risks, or any such risks are likely to be manageable in an effective and cost-efficient manner.</p> <ul style="list-style-type: none"> <u>Does the project present a significant risk to any natural resources or protected lands?</u>² 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> Is the project operation likely to be net carbon negative or neutral, in terms of greenhouse gas emissions? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> Can the project design suitably address the impact of potential natural or human-induced hazards in the region? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> Is the project design likely to be resilient and adaptive to evolving conditions resulting from climate change or other significant long-term changes in operational or environmental conditions? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> <u>Is the preparation of an environmental management strategy, or obtaining related approvals, likely to result in uncertainties or delays that could impede the project?</u>³ 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>⁶ As discussed in the instructions for this section, underlined text signifies a question for which a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement and thus reflects favorably on the project's potential technical feasibility.</p> <p>⁷ As discussed in the instructions for this section, underlined text signifies a question for which a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement and thus reflects favorably on the project's potential technical feasibility.</p>	<p>4. There are no substantial social risks, or any such risks are likely to be manageable in an effective and cost-efficient manner.</p> <ul style="list-style-type: none"> <u>Does the project present any significant risk to the health or quality of life of users, workers, or the local population?</u>⁴ 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> <u>Does the project require resettlement?</u>⁵ 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> Is there or will there be a plan for communicating with and involving affected communities and key stakeholders during preparation of the project? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> <u>Is there known, or likely to be, opposition to the project from affected communities and/or key stakeholders?</u>⁶ 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<ul style="list-style-type: none"> <u>Is addressing community or stakeholder opposition likely to result in uncertainties or delays that could impede the project?</u>⁷ 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Section 4. Legal Considerations

This section addresses some of the key legal issues for delivering the project as a PPP, such as the municipality's authority to execute the PPP agreement, prerequisites and approvals, and legal restrictions on the PSP's participation in the sector. Positive responses generally indicate that there are likely no significant legal barriers to implementing the project as a PPP.

		Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
1. The existing legal/regulatory framework for the project's sector is supportive of PPPs.	• Is there a generally applicable PPP law/regulation that applies to this sector?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Is there an infrastructure- or sector-specific law/regulation that addresses private participation in this sector?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Is there a procurement law/regulation that applies to PPPs?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. The municipality has clear legal authority to enter into a long-term PPP agreement for the project.	• Does the municipality have a clear legal basis for entering into long-term contracts? o For example, contracts that extend past the term of office of the municipality's chief officer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Is it clear which officials need to sign the actual PPP agreement on behalf of the municipality to create a legally binding contract?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• If the PSP will be involved in service delivery (for example, clean water supply), does the municipality have explicit authority to delegate responsibility for providing this service to the PSP?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Legal prerequisites are known or identifiable and unlikely to present a significant barrier to the project.	• Is the municipality aware of the legal requirements, if any, that need to be met or fulfilled in preparing, procuring, and/or implementing the project? o For example, required contents of feasibility studies, competitive procurement, review and approval by a national or state/provincial authority	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Can the project proceed without approval from any legislative body?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Is the municipality aware of the requirements and processes for obtaining all necessary licenses, approvals, and permits for the project?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Legal Considerations

		Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
4. The municipality has clear legal authority over tariffs paid by end users, if any, consistent with the project concept.	• Is there a legal and institutional framework for charging tariffs, with transparent and well-defined methodologies for tariff adjustment?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Does the municipality or offtaker have clear and exclusive authority to collect, keep, and adjust the price of fees charged to end users?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• If appropriate in view of the project concept, can the municipality delegate the collection of fees paid by end users to the PSP?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• If appropriate in view of the project concept, can the municipality delegate to the PSP some repricing authority? o For example, in case of delays in demand growth, can the PSP be given some flexibility in repricing to offset demand shortfalls	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	• Can the municipality lawfully promise to share all or a portion of revenues collected from end users with a third party in the future?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Applicable laws confer rights that enable a lender to recover outstanding loan amounts in case of default.	• Does the municipality have clear authority to enter into a direct agreement with the lender that includes rights of substitution, step-in rights, or other applicable remedies?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Section 5. Miscellaneous Considerations

This section addresses topics that do not directly fall within the financial, legal, or technical assessment of the project but nonetheless bear on whether the project is suitable for delivery as a PPP. Positive responses generally indicate that the project may have promise for implementation as a PPP.

Note: For two questions in this section, a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement. That is, for these questions, a negative response reflects favorably on the project's potential viability for delivery as a PPP. This should be clear from context and these questions have been identified with underlined font.

Miscellaneous Considerations

		Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
1. It is reasonable to expect that private investors will be interested in the project.	• Have similar PPP projects achieved financial close locally, regionally, or nationally?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Miscellaneous Considerations

	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree
<ul style="list-style-type: none"> • Is there reason to expect a favorable response from the private sector toward the project? <ul style="list-style-type: none"> o That is, have private investors expressed an interest in the project and does the municipality expect that there will be multiple bids for the project submitted by credible bidders? o For example, based on known market actors, preliminary market consultations or similar investor interactions 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<ul style="list-style-type: none"> • <u>Have there been any discussions or other interactions involving parties with an interest in implementing the project, whether within the government or between government officials and private parties, that might discourage bidders from participating in the tender process or otherwise undermine an open and competitive bidding process?</u>⁸ 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<ul style="list-style-type: none"> • Is the proposed public partner (that is, the municipality, publicly owned utility or other offtaker) creditworthy? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<ul style="list-style-type: none"> • Are credit enhancements available to compensate for any poor creditworthiness? <ul style="list-style-type: none"> o For example, insurance, guarantees 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>2. The fiscal and contingent implications for the municipality are understood, limited and manageable.</p>				
<ul style="list-style-type: none"> • Are any payments required by the municipality as envisioned in the project concept able to be adequately planned, budgeted, and accounted for in advance? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<ul style="list-style-type: none"> • <u>Are there other significant projects or activities that will depend on this project, or on which this project will depend?</u>⁹ 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<ul style="list-style-type: none"> • If this is a brownfield project, does the municipality anticipate how it will compensate for any foregone revenue, if any? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<ul style="list-style-type: none"> • Are the contingent liabilities created by the project understood and likely to be manageable? 	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

⁸ As discussed in the instructions for this section, underlined text signifies a question for which a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement and thus reflects favorably on the project's potential for delivery as a PPP.

⁹ As discussed in the instructions for this section, underlined text signifies a question for which a negative response (e.g., "Strongly Disagree") indicates agreement with the positive statement and thus reflects favorably on the project's potential for delivery as a PPP.



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SAMPLE PROJECT
CONCEPT NOTE

Municipal Public-Private Partnership Framework

03

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1.0

Purpose of this Module

This module serves as an accompanying document to the Municipal PPP Framework Guidance Note as well as Module 2: Project Concept Assessment Tool ('PCAT'). It provides a template form, as well as a completed example of the Project Concept Note, which should be completed before assessing the project's potential for delivery as a PPP. It is not expected that detailed information on all the topics covered by the Project Concept Note will be available at the time it is completed.

Rather, this document is intended to help practitioners think strategically about what is and needs to be known about a project to evaluate its potential as a PPP and whether there is a reasonable basis for undertaking a more comprehensive feasibility study. Each section of the Concept Note template includes cross-references to relevant questions in the PCAT, which may be instructive for completing the Concept Note.

2.0

Project Concept Note Template

1. PROJECT SUMMARY

Project Name:

Project Description:

Briefly describe the public infrastructure and/or service to be delivered by the project, the intended location, scope and structure of the project, key stakeholders, and so on.

Project Rationale:

Describe the purpose and necessity of the project, that is, why the project should be delivered, including which development plan the project originated from and the expected social, economic, and/or environmental benefits of the project. Indicate if any studies have been done that relate to the project and, if so, describe the study/ies undertaken (for example, what was the scope of the study, how long ago was it done, what were the key findings).

See PCAT Questions: 1.1-1.3

Project Outputs:

Identify the quantifiable outputs of the project, in terms of facilities built, services provided, and so on. (for example, size of facility constructed, number of people or households served, amount of clean water or electrical power supplied, and kilometres of road built). As applicable, describe any performance parameters that need to be followed by the PSP during operation (for example, 24/7 availability of water supply for all households within a defined jurisdiction, public accessibility of facilities [bus terminals, parking areas]).

See PCAT Questions: 3.1-3.4

Project Cost Estimate:

Try to estimate the project's whole-life costs, for example, cost of design, construction, operation and maintenance, and service delivery, as applicable, over the entire duration of the project.

See PCAT Questions: 2.3, 2.4 and 5.2

Indicative Contract Period:

See PCAT Questions: 1.4 and 3.1

Source(s) of Revenue/Funding:

Indicate how the project cost is expected to be paid for/recovered (for example, payments or subsidies from the government [national, state/provincial, municipal], fees paid by end users, payments from an offtaker, additional revenue sources such as sale of advertising space, commercial leases, and land value capture¹). Do not include financing options here.

See PCAT Questions: 2.1, 2.2, and 1.5

¹ For more information on additional sources of revenue, see Module 16: Harnessing Land Value Capture and Module 17: Capturing Commercial Value.

2. INSTITUTIONAL READINESS

2.1. Legal and Institutional Framework

Briefly describe the legal and institutional framework that governs delivery of the project.

This should include identification of:

- *The municipality's legal mandate to deliver this type of public infrastructure and/or service, including whether this responsibility is exclusive or shared;*
- *The legal basis for delivering the project as a PPP, including reference to any laws or regulations that provide for, govern, or restrict private participation/PPPs in the sector (for example, national or local PPP law, applicable procurement rules, or sector-specific laws on private involvement);*
- *The officials that can ultimately sign the PPP agreement on behalf of the public partner (municipality, subdivision, locally owned corporation, and so on) and the legal basis to do so, as well as any prerequisites that must be met to create a legally binding contract (for example, legislative approval);*
- *Laws and regulations concerning the organization and administration of the sector, that is, rules on the setting of operation or service delivery standards, licensing and permitting, and tariffs;*
- *Key institutions and their respective roles; and*
- *If relevant, potential limits on the municipality's ability to enter into a direct agreement with the lender that includes rights of substitution, step-in rights, or other applicable remedies.*

See PCAT Questions: 1.2, 4.1-4.5

2.2. Internal Capacity to Deliver the Project

Describe the extent of the municipality's capacity (for example, experience and expertise) and resources (for example, manpower and funding) to implement the project², including the existing institutional/organizational (for example, staffing) capacity of the municipality to implement a PPP, as well as access to resources and outside experts (for example, external PPP units, knowledge centers, transaction advisers/consultants). Indicate whether there is any funding available for developing the project (for example, completing a feasibility study, preparing tender documents, acquiring land), including from external sources such as development partners or a PDF. Identify any known challenges/weaknesses that may constrain the municipality in implementing the proposed PPP project.

See PCAT Questions: 5.1

3. INDICATIVE PROJECT FEASIBILITY AND READINESS

3.1. Project Site

Indicate whether a project site has already been identified. If so, describe the status of the project site, for example, whether it is known to be suitable for the intended use, whether the land is readily available, or if it will be possible to make preliminary arrangements for its acquisition—preparation of a land acquisition plan, arranging for right-of-way acquisition, and so on—without much issue or difficulty. Identify any difficulties foreseen in identifying, planning for, and acquiring a suitable project site.

See PCAT Questions: 1.5, 2.3, and 3.3

3.2. Technical and Operational Feasibility

Describe the major technical and operational characteristics of the project, including whether this type of project has been done before and whether it relies on available, proven, and tested technology, and so on. Identify any significant, potential risks related to the design, engineering, construction, and operation of the project.

See PCAT Questions: 3.1-3.4

3.3. Technical Desirability

Indicate if there are any alternative technical solutions to the problem addressed by this project and, if so, whether there has been or will be an assessment of the relative strengths and weaknesses of the available solutions, and the results of such assessment.

See PCAT Questions: 3.2 and 5.1

² For a more thorough assessment of internal capacity, refer to Module 1: Municipal Readiness.

3.4. Preliminary Environmental Risk Assessment

Identify any existing or foreseeable environmental issues, including whether the project presents a significant risk to any natural resources or protected lands, the project's operational contribution to greenhouse gas emissions, and resiliency to potential natural or human-induced hazards and the adverse impacts of climate change. Indicate whether any such issues are complex, likely to require costly solutions, and/or likely to result in uncertainties or delays that could impede the project.

See PCAT Questions: 3.3

3.5. Preliminary Social Risk Assessment

Identify existing foreseeable concerns that may affect the project's social acceptability, including whether the project will entail any resettlement/displacement, organizational restructuring, or other risks to the health or quality of life of end users, workers, or the local population. Indicate whether there will be a formal plan for communicating with and involving affected communities, including whether such plans include a mechanism for involving poor communities near to or affected by the project, and/or a strategy for gender-inclusive design and implementation. Identify any known or likely opposition to the project and indicate whether any social risks are likely to require costly solutions and/or result in uncertainties or delays that could impede the project.

See PCAT Questions: 3.4

3.6. Demand and Revenue Forecasts

Indicate whether the project has an identified user base that will likely use the service provided. Describe the anticipated demand for the project (for example, target population and offtaker) and the extent of information that is or is likely to be available regarding the sufficiency and predictability of this demand. Identify the basis for forecasting the revenue sources identified in the Project Summary section.

See PCAT Questions: 2.1, 2.2

3.7. Affordability (End Users and Government) Assessment

If end users will pay for services, describe the basis for determining user fees that take into account ability and willingness to pay, including any studies or surveys that have been or will be conducted. If the project involves government payments or subsidies, indicate whether the indicative payor has the resources and planning/budgeting capacity to meet its payment obligations.

See PCAT Questions: 2.2

3.8. Financing Assumptions

Identify the anticipated or desired sources of financing, if any, with as much specificity as possible (for example, private equity, commercial or concessional loans [indicate if non-recourse lending is available], or bond issuance). For each form of financing, indicate any assumptions that can be made, including with respect to loan tenor, cost of financing (for example, interest rate), ratio of different forms of financing if multiple sources are anticipated (for example, debt-to-equity ratio), and any issues that might increase the cost of, or limit access to, financing (for example, lack of domestic financiers and foreign exchange risk).

See PCAT Questions: 1.5, 2.2, and 2.4

4. PPP SUITABILITY

4.1. Private Sector Appetite

Describe the basis for expecting that private investors will be interested in the project, including whether any similar PPP projects have reached financial close (locally, regionally, or national) and whether there has been any effort to engage with potential investors (for example, market consultations or soundings).

See PCAT Questions: 5.1

4.2. Public Partner Creditworthiness

Indicate whether the municipality or other public partner (for example, publicly owned utility or other offtaker) is creditworthy³. If not, identify any credit enhancements that may be available to compensate for poor creditworthiness (for example, insurance, guarantees, escrow arrangements).

See PCAT Questions: 5.1

4.3. Private Sector Innovation

Indicate whether the project design and structure offers the PSP opportunity to innovate with respect to improved designs, technology, materials, construction management, operational efficiency, and so on.

See PCAT Questions: 3.1-3.4

4.4. Project Risks and Contingent Liabilities

Provide a preliminary risk allocation table/matrix for the project and indicate how risks may be allocated between the municipality and the PSP. Identify contingent liabilities arising from the project and describe any internal units, processes, or procedures that exist to manage contingent liabilities.

See PCAT Questions: 5.2

³ For more information on assessing creditworthiness, refer to Module 1: Municipal Readiness.

3.0

Sample Project Concept Note

1. PROJECT SUMMARY

Project Name:

Municipal Water Supply Project

Project Description:

The project seeks to engage a PSP to design, build, finance, operate, maintain, and transfer water supply and distribution infrastructure sufficient for an estimated total population of 200,000, in the municipality of X, with possible expansion of the scope. The project will include the construction of the following: water intake structure, water treatment facility, and pipeline network system.

Project Rationale:

To date, the populace to be served by the project remains unconnected to Level III (individual house connection) water supply systems and rely on drawing water from public wells (Level I), natural springs, private wells, and/or water vendors. In many of these sources, water is intermittently provided and is of doubtful quality; this contributes to incidence of water-related diseases. At the same time, total water demand in the area is expected to increase due to the growth of commercial and industrial enterprises (especially tourism) in the area. The project is part of the five-year development plan of the municipality and has been identified as a priority project. The economic and social benefits brought by the project are expected to be high, considering that majority of the identified villages only have access to Level I water systems.

A study was conducted three years ago but involved a slightly different scope (that is, supply covered different villages). The study indicated that (1) based on a hydrological study, the water resource is deemed to be sustainable; and (2) the project would be affordable, considering that villagers are currently paying a high fee for their daily supply of water.

Project Outputs:

The project aims to provide 24/7 piped water supply (Level III) to all households in the area. Based on population size and statistics on typical consumption habits, the amount of bulk water supply needed (litres per second) should be estimable. The water is expected to have been treated for human consumption, in accordance with water quality standards set by law.

Project Cost Estimate:

US\$85 million of capital cost. The operating cost for the project should amount to US\$8.5 million per year, including fixed and variable costs. Major maintenance costs in the amount of US\$ 1.2 million per year will be invested every seven years. Attached is a more detailed breakdown of project costs.

Indicative Contract Period:

15–20 years

Source(s) of Revenue/Funding:

Payment from offtakers. It is not certain if the municipality can provide subsidies if required.

2. INSTITUTIONAL READINESS

2.1. Legal and Institutional Framework

The national Water Code governs water abstraction, treatment, and distribution, including institutional roles, establishment of an entity tasked with regulating water tariffs and permitting, and setting performance standards for operators. The Water Code also provides that private participation is allowed in the development and operation of water supply and sanitation facilities at the municipal level.

In addition, the national PPP law provides for its application to municipal governments, thereby providing a basis for the latter to engage private concessionaires on a PPP basis. The municipal chief executive is authorized to sign the PPP agreement, but it is unclear whether approval needs to be obtained from the municipal council (that is, legislative body), either before or after signing. There is no express statutory basis for the municipality to execute a direct agreement with lenders but given general authority to contract and municipal ownership of the project, it is believed the municipality may enter such an agreement.

2.2. Internal Capacity to Deliver the Project

This will be the first time the municipality will undertake a PPP project; it may be surmised that it has limited capacity and understanding on how to package the project as a PPP as well as the process that the project will undergo to bring the project to tender. These challenges notwithstanding, the project enjoys support both from the head of the executive of the municipal government and key decision makers from the municipal council, and hence prospects for obtaining funding for the development of the project are positive.

3. INDICATIVE PROJECT FEASIBILITY AND READINESS

3.1. Project Site

The site where the project facilities will be built has already been identified, but its allocation for the project will require the approval of the village council where the site is located.

3.2. Technical and Operational Feasibility

The technology for the extraction of water from the source, its treatment, and distribution to various off-takers have been well documented, proven, and tested. No unusual technical issues have been identified at this point.

3.3. Technical Desirability

No alternative technical solutions are available to deliver clean, piped water to the villages. Currently deployed alternatives to piped water have been shown to be more expensive and less safe.

3.4. Preliminary Environmental Risk Assessment

No substantial environmental safeguard issues have yet been identified. Completion of an environmental impact assessment is required by law.

3.5. Preliminary Social Risk Assessment

There could be potential backlash from affected stakeholders, especially because the project may require the resettlement of some residents in the area. Close coordination with the village council of the affected village is crucial and a coordination strategy is being prepared.

3.6. Demand and Revenue Forecasts

Based on preliminary consultations, residents covered by the project will avail the piped water service. Using the number of households and demographic trends, residential demand can be forecasted with some reliability. Industrial demand is contingent on more uncertain development of commercial and industrial enterprises (especially related to tourism) in the area.

3.7. Affordability (End Users and Government) Assessment

Based on the earlier study (although caution must be taken due to the slight variance in scope), the project is affordable and will likely result in a water tariff that is lower compared to how much residents are paying for their current supply of water. It is still uncertain whether and to what extent the municipality can provide subsidies if needed.

3.8. Financing Assumptions

The PSP is expected to contribute equity and obtain financing at commercial rates for the project, with a debt-to-equity ratio of approximately 70:30. The domestic market for long-term, non-recourse financing is limited, but project revenues will be in domestic currency so access to international finance may be constrained by foreign exchange risk.

4. PPP SUITABILITY

4.1. Private Sector Appetite

There have been prior water PPPs implemented at the municipal level across various countries (documented in various literatures published by international development partners such as World Bank and the International Water Association), which is indicative that private investors are active in the sector.

4.2. Public Partner Creditworthiness

The municipality has no meaningful credit history and has not obtained a credit rating. If payments from the municipality are required by the project (for example, availability payments or subsidies), the municipality will seek a national government guarantee of its obligations.

4.3. Private Sector Innovation

The private partner will be responsible for designing the facilities to be constructed, within certain parameters and investment amounts, and so will have the opportunity to produce innovative or cost-saving designs. In addition, other cases involving private operators in water distribution have seen more efficient operation and management as compared to public water utilities

4.4. Project Risks and Contingent Liabilities

Type of Risk	Public	Private	Shared
Land acquisition	✓		
Design risk (for example, faulty design)		✓	
Construction risk (for example, construction delay, increase in cost)		✓	
Demand risk (for example, demand is less than anticipated)	✓		
Environmental and social risk (for example, environmental impact, resettlement, social unrest)			
Operation and management risk (for example, labor actions, performance risk, cost overruns, asset ownership risk)		✓	
Insurance risk (for example, availability and scope of insurance)		✓	
Political and regulatory risk (for example, discriminatory change in law, change in government)	✓		
Material adverse government action (for example, nationalizing projects assets, discriminatory change in law)			
Force majeure/natural disasters (for example, extreme weather, floods, and war)			✓

Risks and contingent liabilities identified thus far can be optimally allocated and/or managed.



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Municipal Public-Private Partnership Framework

04

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1.0 Introduction

1.1 Purpose of this Module

The feasibility study constitutes the basis for the decision by the municipality for the project to proceed to procurement and implementation.

Given the importance of the assessment and detailed technical analysis required, feasibility

studies are generally implemented by a qualified external consultant hired by the municipality. The requirements described in this module can serve as a checklist for the verification by the municipality of the quality of the feasibility study report submitted by the consultant.

1.2 Determination of Scope and Depth of the Feasibility Study

The requirements described in this module are generic as they apply to all types and sizes of projects that may be implemented by a municipality. For each individual project, the municipality must adapt these requirements to the specific characteristics and context of the project being studied.

The required scope and depth of the feasibility study depends on the size and complexity of the project. For instance, the realization and subsequent operation of an urban tramway requires a much more extensive feasibility study

than a project consisting of the construction and maintenance of a standard school building. The scope of the feasibility study must allow the municipality to assess the project and meet relevant legal and regulatory requirements (including those of any potential financiers, such as international financial institutions).

A balance must be achieved between the complexity of the project and the cost of the feasibility study to achieve VFM.

1.3 Components of Feasibility Study

Feasibility studies typically address the following issues:

1. Demand study
2. Project configuration, that is, description of the various elements of the project and their respective sizes
3. Technical/engineering studies including conceptual engineering design and estimated capital expense and operations and maintenance cost
4. Project legal due diligence
5. Economic analysis
6. Financial analysis
7. PPP assessment
8. Environment impact assessment
9. Social safeguards assessment
10. Procurement and implementation plan.

These issues are discussed in the following sections.

2.0 Feasibility Study Requirements

2.1 Demand Study

The demand study is one of the most critical elements of the feasibility assessment. The demand study forecasts:

- User requirements and consequent service levels to be provided over the tenure of the project, for example, desired average speeds on roads or number of buses that a bus terminal can efficiently handle;
- Demand for project services, in numbers (volume); and
- Tariffs to be charged and the ability and willingness to pay by users.

The different elements of the demand study are interdependent, for example, the type and volume of services that can be delivered will depend on the amount that users are being charged (subject to affordability and willingness to pay).

2.1.1 User Requirements

The study needs to assess user needs in terms of:

- Type of services required (including options for different levels and type of services), for example, quantum of water required per household or commercial establishment or the number of hours of supply of piped water;
- Type of assets that are needed to deliver the services required;
- Service area that can/should be covered; and
- Required quality of services, for example, frequency and speed of bus service, quality of potable water supply, and reliability of service.

2.1.2 Demand Forecasts (Volume and Price)

The demand forecasts refer to the demand volume (initial volume and growth rate) and the price that users are willing to pay. The estimation of initial demand/volume of services is critical and the methodology used to estimate this needs to be robust and

provide a reasonable estimation (neither too optimistic nor too pessimistic) because project assets and consequently service levels to be provided would be determined based on this demand assessment (current and projected for the entire agreement period). Depending on the available information, the demand forecasts may be based on the following:

- **Extrapolation of existing demand volume and growth:** If the objective of the project is to provide additional capacity to serve existing demand, then the demand forecast can be based on an extrapolation of the observed growth of the existing demand.
- **Population size and growth rate:** If the service is targeted at a specific group or geographical area, then the demand forecast can be deduced from the size and growth rate of the population within that group or geographical area.
- **Reference projects:** If similar projects have recently been carried out or if similar services are offered in the country, then these may be used as a reference for estimating the demand volume and the price for the project. In that case, the demand study must explain how the demand data on the reference projects and services have been adjusted to account for the differences between the specific conditions and characteristics of the project and the reference projects or services.
- **User surveys:** If the project concerns a new service and no suitable reference projects can be found, then a representative survey of potential users must be conducted to estimate the demand volume and the price users are willing to pay.
- **Quantitative demand models:** For large projects, quantitative demand models can

be used (for instance, traffic models or water demand models). The development of demand models requires substantial time and resources, and is therefore only

sensible for projects of sufficiently high value (to preserve a balance between project value and feasibility study costs).

2.2 Technical Study

The technical study consists of:

- Development of project configuration, based on the demand forecast;
- Definition of project specifications and service levels;
- Assessment of suitability of project site;
- Analysis of technical options to meet user needs; and
- Estimation of the capital, maintenance, and operating costs during the lifetime of the project.

2.2.1 Definition of Project Output Performance Specifications and Service Levels

Project configuration needs to be developed based on the demand assessment discussed earlier.

Output specifications for each element of the project need to be developed. The output specifications comprise minimum performance standards of the project services, for example, for a parking lot, a performance standard could specify that a car should be able to be parked within three minutes of entering the parking lot or a car should be able to exit a parking lot within two minutes of starting the car engine. In some specific cases, the municipality may want to specify certain project assets. Minimum specifications of project assets are developed for specific assets, for example, if a particular architectural characteristic is desired, for that specific part of the facility an input specification is required. The municipality may want to specify life cycle of particular assets (to manage the cost of replacement parts and maintenance over time), the use of particular materials where this is necessary for climactic or similar reasons, or specific technology where the project will need to interface with other municipal facilities (for example, if the project involves telecommunications equipment that must interface with the municipality's network).

The specifications should be expressed in measurable terms, so that their compliance can be verified. This is critical to determine if the PSP is delivering on the project specifications or not.

For each service, a service level agreement (SLA) is established, specifying:

- Availability and quality requirements;
- Performance indicators to measure compliance with availability and quality requirements; and
- Monitoring systems for measuring the performance indicators.

2.2.2 Site Assessment

The project site/alignment is defined and is shown on maps.

Compliance of the site with relevant national, provincial, and district spatial plans is assessed.

- Geotechnical surveys are undertaken to determine the suitability of the underground characteristics of the land for the proposed project.
- The need for land preparation and improvement (for example, levelling, demolition of existing structures, and move of utility lines) is determined. The connections to transport (road, rail, airport, seaport, and so on) and utility networks (electricity, water, gas, and so on) are assessed and improvement needs are determined. The need for coordination with other government entities for approvals and the execution of such complementary works is determined. The requirements for the use of existing government assets (for example, land, existing infrastructure, and government equipment) are identified as well as any legal limitations on their use.

The outputs of the above assessments are used to determine the land development component of the total project cost.

2.2.3 Analysis of Technical Options

Technical options are developed for meeting the identified user needs, the output specification and are based on the characteristics of the project site. A technical option is defined by a description of technologies, methodologies, and construction practices to be

implemented. The set of considered technical options spans the range of possible choices with respect to project site, capacity, quality, technology, and implementation schedule. Where relevant, the following types of options should be explored:

- **Do nothing option:** Consequences of a continuation of business as usual.

- **Non-asset option:** Option to improve the service delivery that does not require investments in assets.
- **Improvement option:** Option to improve the service delivery by improving existing assets.
- **New asset option:** Option that involves investments in new assets to meet the identified service needs.

Common Pitfall in Project Definition

A common pitfall in project definition is premature focus on a single technical solution; this is reflected in a project-oriented instead of a user-oriented problem definition. In other words, the project need is defined in terms of an assumed technical input (for instance, there is a need for a new two-lane bypass) instead of in terms of providing an output solution to resolve the deficiencies of the existing infrastructure to meet current and expected user demand (for instance, the existing road experiences substantial congestion, and the traffic volume is expected to increase further). Only after defining the project need can possible options to address the problem be explored. The solution in this case might not be a new bypass but rather a different management scheme for intersections, better road maintenance to improve availability or widening of feeder roads to address the underlying causes of congestion.

The options are assessed on a cost-benefit basis to identify the option that provides the best VFM for the municipality. These options are assessed by the municipality, with the assistance of the consultant, and a preferred option is chosen. Based on the preferred technical option, a preliminary technical design of the project is developed.

In general, the technical design and analysis in the feasibility study must be as detailed (but not more) as is necessary for:

- Demonstrating the technical feasibility of the project;
- Estimating the project costs (so at least preliminary designs to estimate the bill of quantities is required to enable an estimation of construction costs);
- Providing the required information for the project due diligence (see below); and
- Providing bidders enough detail to deliver consistent and comparable bids.

As a result, the required level of detail of the technical analysis depends on the complexity of the project. For instance a large-scale transport infrastructure project will require a more extensive technical study than a straightforward building project.

If similar projects have been carried out

recently in the country or elsewhere in similar circumstances as the project, then these reference projects may be used as evidence of the technical feasibility of the project. The technical analysis should demonstrate the relevance of the chosen reference projects, and account for any (limited) differences between the reference projects and the present project (that is, must demonstrate that these differences do not have a significant impact on the technical assessment). If no suitable reference projects exist, then the technical feasibility must be demonstrated by project-specific analysis.

2.2.4 Cost Estimates

Cost estimates of all relevant technical options should be provided, and should include all relevant project costs:

- Design and construction;
- Land acquisition and improvement;
- Measures to mitigate social and environmental impacts;
- Operation, maintenance, and replacement during the lifetime of the project;
- Taxes;
- Overheads;
- Project development costs or costs incurred before commencement of construction;

- Interest during construction (which is typically capitalized and added on to the total project cost);
- Contingencies based on project risks and uncertainties;
- Inflation during the construction period.

The costs are based on market prices for inputs (materials, labor, services, and so on) at the time of the preparation of the feasibility study and according to good industry practice.

The cost estimates should consider specific characteristics of the project, such as remote location, difficult site conditions, and local availability of inputs (human resources, raw materials, support services, and so on). Assumptions should be documented (with reference to sources) and motivated, with calculations clearly explained. Also, if a similar project has been implemented in the region, a comparative cost analysis should be done and then the differences, if any, should be explained.

Common Pitfalls in Cost Estimation

- Costing methods are not explained or are not based on a reliable methodology.
- Unit prices are undocumented so their relevance and correctness cannot be ascertained.
- Cost margins for contingencies are excluded or their basis is unclear.
- Assessment and quantification of construction cost risks are not provided or are not sufficiently specific to the project, possibly resulting in a large underestimation of costs.

2.3 Compliance Assessment

Compliance comprises assessment of

- Compliance of the project with all relevant laws and regulations;
- Identification of regulatory approvals and permits that must be obtained to implement the project (either by the municipality, or by the prospective private partner);
- Any required environmental impact assessment (EIA) and establishment of an EMP to address any environmental impacts (prevention, mitigation, and compensation);
- Any required social impact assessment and establishment of a plan to address social impacts (resettlement, compensation for loss of livelihood, and so on).

2.3.1 Compliance with Laws and Regulations

Legal due diligence must establish that the municipal government has the legal authority to conclude a PPP agreement for the project, and that the proposed project complies with all relevant laws and regulations (general laws and applicable sector laws). The legal analysis identifies potential legal and regulatory obstacles to the project, and proposes measures to address these obstacles. Legal compliance includes the following¹:

- Administrative law (in particular the legal authority of the private partner in the PPP to perform the required public services,

and the legal basis for the transfer of the usage rights of public assets to the private partner);

- Corporate law (including structuring of project vehicles and governance issues associated with asset and land ownership and any transfer of Government ownership in corporate vehicles);
- Investment law (including mechanisms available for investors to fund project assets and recuperate returns on such investments);
- Competition law (including competitive processes associated with the allocation of project opportunities and the transfer of public assets to private investors);
- Environmental law;
- Spatial plans and zoning regulations;
- Land acquisition and resettlement regulations;
- Safety regulations;
- Sector regulations (including allocation of operating licenses and compliance with tariff policies).

2.3.2 Environmental Impact Assessment

Potentially significant environmental impacts of the project are identified and described, in particular through the lens of local environmental regulations, requirements of potential investors and financiers

¹ For further discussion of legal issues arising from PPP projects, see: Delmon, Jeffrey. 2016. *Private Sector Investment in Infrastructure: Project Finance, PPP Projects and PPP Frameworks*. Third Edition. Wolters Kluwer. Delmon, Jeffrey, and Victoria Rigby Delmon. 2013. *International Project Finance And PPPs. A Legal Guide To Key Growth Markets 2013*. Kluwer Law International

(including international financial institution environmental safeguards²), and global good practices³ in PPP and the sector. The environmental requirements are determined, and compliance is assessed. Often the feasibility study will include environmental assessments and mitigation plans in accordance with these requirements.

Any consequences for the technical design of the project should be included in the technical study. A plan and time schedule for obtaining any required permits should be provided. The feasibility study should include an outline environmental impact mitigation and compensation plan, including the likely cost of implementing such plan.

Environmental Impact Assessment and Environmental Management and Monitoring Plan

The feasibility study may have to include a full EIA and an Environmental Management and Monitoring Plan (EMMP), both prepared in compliance with relevant legal or institutional requirements. If a screening of environmental impacts and an outline environmental management plan are sufficient in the feasibility study stage, then the full EIA and EMMP (if required) must be prepared by the private partner after the award of the PPP contract. Of course, the private partner may price this risk of incremental costs to address any environmental issues or at the extreme, inability to implement the project due to environmental impact issues.

2.3.3 Social Impact Assessment

The social impacts of the project should be identified and assessed, including:

- Identification of affected communities and parties;
- Engagement with the communities to share project information and obtain feedback/guidance from the communities, including project services, affordability of user fees, technology to be used, and site location; and
- Identification of communities affected by any land acquisition and population resettlement and the parties that will be eligible for compensation.

The feasibility study should include a description of the community engagement process implemented, the information gathered during the process, and how

the community engagement will be implemented during project procurement and implementation to ensure robust feedback loops (to ensure the project benefits from close collaboration with the community, information sharing, and early conflict management). The plan will include any compensation and mitigation of negative social impact of the project. The costs for the implementation of this plan should be estimated over time.

An outline land acquisition and resettlement plan (LARP) should be included in the study. The land acquisition costs (preparation of land acquisition plan and price paid to current owners) and the resettlement costs (cost of compensations and resettlement measures) should be estimated.

² See, for example, the International Finance Corporation Performance Standards, www.ifc.org.

³ See, for example, the Equator Principles, www.equatorprinciples.org.

Land Acquisition and Resettlement Plan (LARP)

In the feasibility study, an outline land acquisition and resettlement plan is usually sufficient (and also necessary for assessing the feasibility of the project). However, in most cases the municipality will have to prepare and implement a full LARP complying with relevant regulations before the award of the contract, or at the latest before the commencement of works. PPP projects in which the municipality has not resolved land acquisition and resettlement issues before the commencement of the project often run into problems (delays, resulting in compensation claims by the private contractor).

2.4 Financial Analysis

The financial analysis comprises assessment of the financial health of the project from the viewpoint of the prospective PSP, the user, and the municipality.

2.4.1 Costs and Revenues

Project cash flows (over the duration of the PPP agreement) include the revenues earned from different aspects of the project (from users, the municipality, and commercial activities). These revenues are matched to project costs— such as debt service, maintenance and operating expenses—taxes, insurance, handback value at the end of the PPP agreement (if any), and return on investment. These cash flows will be mapped out in a financial model for the project.

The estimates and forecasts of expenses and revenues must be clearly documented and explained. The sources of data must be indicated, assumptions and calculations must be explained. Assumptions on macroeconomic variables (exchange rates and inflation) should be based on data and forecasts of authoritative institutions.

The financial internal rate of return (FIRR) is the stream of net project cash flows of the project (revenues less expenses). The weighted average cost of capital (WACC) measures the cost of capital (debt and equity), weighted by their proportion and cost. The assumptions are clearly documented and based on published market data (return of listed firms in the appropriate sector) or findings from market consultations. The project is financially feasible if the FIRR exceeds the WACC.

If the FIRR is less than the WACC (for example, if the affordable user fee is too low), the project in its current form is unlikely to generate any significant interest from PSP investors. Therefore, the municipality needs to look for other sources of revenue such as land value capture (see Module 16: Harnessing Land Value Capture) or other sources of commercial revenues linked to the project (see Module 17: Capturing Commercial Value). For example, where a public car parking facility cannot charge sufficiently high parking fees to make it 'financially feasible', the feasibility study should explore using excess space in the facility for commercial activities, for example, renting space for retail

facilities or for office space (of course when such revenue-generating activities are examined, the municipality needs to ensure that the commercial activities do not take away from project services, for example, investing in additional car parking to support the additional retail space created). The feasibility should also consider reducing the scope of investment, if there are dispensable investments that might make the project more feasible (for example, smaller capacity or less expensive technology). Finally, the feasibility study should explore different opportunities for public contributions (for example, capital contributions from the municipality during the construction phase to offset the cost of construction or during the operations phase to augment the project revenues stream).

A sensitivity analysis should be carried out to assess the effect of certain project risks on the financial feasibility of the project.

The usual sensitivity tests include:

- Increase of construction costs (usually around 20 percent);
- Increase of operating costs (usually around 10%);
- Lower demand (typically decreasing revenues by say 10 percent); and
- Delay of project completion or operation.

Assessing sensitivities will help the municipality identify key project risks that may need to be mitigated. Potential investors will run similar assessments, and so the municipality will want to know what issues potential investors are likely to identify. The municipality will want to address those key risks in advance to make the project more attractive to potential bidders. For some risks, the municipality may be willing to provide a guarantee to protect the PSP from the risk, or some part thereof. For example, if the sensitivity assessment identifies the availability of cement as a key project risk, the municipality may want to identify a ready source of cement before going to bid or it may be willing to provide a guarantee to compensate the PSP if the price of cement exceeds a maximum price at the critical time during construction.

2.4.2 Affordability for the End-User

The demand analysis necessarily includes an assessment of the affordability of project

services for users (households, drivers, passengers, and so on). This is typically done through direct surveys with potential users of the service to be provided or estimated by looking at what potential users are spending on alternative services, and so on. However, the municipality may be concerned with ensuring services to certain parts of the population are particularly affordable, or even less expensive, for example, the municipality may want to provide relatively less expensive services for the poorest, for certain businesses or industry that are important to economic growth, or other key constituencies. Such cross-subsidization is possible through the tariff regime that the municipality will determine before bidding out the project.

2.4.3 Affordability for the Government

The feasibility study will also need to assess the affordability of any contributions, liabilities, or commitments to be imposed on the municipality (or other government

entity). These contributions or commitments by the municipality may be required in case the project on its own is not financially attractive to potential PSPs or the perception of specific risks, for example demand of users for the service, may be too high and therefore may require a guarantee (a contingent liability) from the municipality or other mitigation measures. This affordability measure must include contingent liabilities, for example, the affordability of guarantees provided by the municipality over project revenues or payments to be made in the event of termination. The municipality needs to be certain that such costs will be affordable if and when they arise.

With the help of the financial model, a projection is made of the fiscal impact of the PPP project over its lifetime. The fiscal impact is compared with the municipality's current and future budget constraints.

2.5 Economic Assessment

The economic assessment comprises estimation of the full costs and benefits (financial as well as non-financial) of the project to society as a whole. This helps the municipality determine whether the project is desirable or not from the viewpoint of the society as a whole.

The economic assessment can be carried out by means of a Social Cost Benefit Analysis (SCBA).⁴ SCBA is a methodology developed for evaluating the costs and benefits of investment projects from the viewpoint of the society as a whole. The preparation of a SCBA is a technical, data- and time-intensive exercise. For small projects, the cost of undertaking a SCBA would often be disproportional to the value of the project. In those cases a more simple economic assessment is recommended.

2.5.1 Economic Costs

The feasibility study will provide an assessment of the economic costs of the project, including public contributions to the project in the form of:

- Construction or acquisition of the assets (for example, where the municipality pays for part of the construction cost, including value of land contributed or licensed to the project);
- Mitigating and compensating measures (for example, government guarantees or

indemnities for project risks);

- Loss of the present function of the land that will be occupied by the project (this may include lost municipal revenues that are now captured by the project or land acquisition costs);
- Maintenance and operating costs (for example, where the municipality pays an availability fee for part or all of the cost of project operation); and
- Other costs that are caused by the project.

Important costs for which no reliable quantitative estimates can be made (for lack of data or calculation models) should be described in qualitative terms, so that they can be considered by the decision maker.

2.5.2 Benefits

Calculation of the benefits of the project include:

- The cost savings realized by the municipality, the users of the project, and/or the community;
- New economic opportunities created by the project;
- Improved quality of life achieved through the additionality of the project; and
- New revenues, including taxes and fees, generated by or because of the project.

⁴ For a complete discussion of an SCBA, please see www.worldbank.org.

These benefits are assessed compared to the 'do nothing' alternative.

The estimates should be clearly documented and explained. The sources of data should be indicated, assumptions motivated, and calculations explained. Important benefits for which no reliable quantitative estimates can be made (for lack of data) are described in qualitative terms, so they can be considered by the decision maker.

2.5.3 Assessment of Economic Feasibility

The net present value of the stream of costs and benefits during the lifetime of the project is calculated (economic net present value or ENPV). Future costs and benefits are converted into their present value using the social discount rate.⁵ If there are important costs and benefits that have not

been quantified (because the required data and calculation methods are not available), then these should be considered in addition to the ENPV in the judgement on the preferred alternative.

A sensitivity analysis is carried out to assess the effect of (a) uncertainty about important assumptions in the calculation of costs and benefits and (b) project risks on the economic feasibility of the project. The usual sensitivity tests include

- Increase of costs (usually by around 20 percent);
- Low demand scenario; and
- Any important project risks that have been identified in the feasibility study (for instance, delay of the project implementation due to permit problems).

2.6 VFM Assessment

The feasibility study should assess whether the proposed PPP model offers a better price/performance than other methods for implementation of the project. This is done based on the above analysis, compared against an honest and realistic assessment of the relative merits of other solutions,

including public procurement by the municipality. The assessment is performed with a structured list of questions (see table 1). (Note: This assessment is difficult to achieve as relevant data on the relative efficiency of public procurement and other processes may not be available.)

Table 1: Qualitative VFM Assessment

	Driver	Questions	Low	Medium	High
A	Benefits of PPP				
A1	Output-based contracting	Is there scope for innovation in either the design of the solution or in the provision of the services?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A2	Efficient risk allocation	Is there scope for significant risk transfer to the private partner (in accordance with the principle of efficient risk allocation)? Can the payment mechanism and contract terms incentivize good risk management by the private contractor?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A3	Private outsourcing	Does the private sector have significant cost advantages in comparison with the municipality in the delivery of the project services (owing to greater efficiency, economies of scale, greater experience/expertise, and so on)? Could the private sector achieve better commercial utilization of the assets underpinning the project, resulting in higher revenues?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A4	Life cycle optimization	Does the project offer the potential to achieve efficiency gains from life cycle optimization? Is it possible to integrate the design, build, and operation elements of the project?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

⁵ See Fay, Marianne, Stephane Hallegate, Aart Kraay, and Adrien Vogt-Schilb. 2016. *Discounting Costs and Benefits in Economic Analysis of World Bank Projects*, which suggests that the determination of the social discount rate should be grounded in welfare theory: future benefits and costs should be valued at their marginal contribution to welfare, which will be lower the higher is growth and the wealthier are future project beneficiaries.

	Driver	Questions	Low	Medium	High
A5	Performance-based payments	<p>Can the outcomes or outputs of the investment program be described in contractual terms, which would be objective and measurable?</p> <p>Would incentives for service delivery be enhanced through a performance payment mechanism as proposed in the PPP?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A6	Private financing	<p>Is financing by the private sector necessary to undertake the project?</p> <p>Are sufficient public funds available, such that the project cannot be undertaken unless private financing steps in?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
D Feasibility of PPP					
D1	Output specifications	<p>Is it possible to describe the services in clear, objective output- and result-based terms (and not in terms of inputs), which can be objectively measured and included in a long-term contract?</p> <p>Can the quality of the service be objectively measured and assessed?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
D2	Operational flexibility of contracting authority	<p>What is the likelihood of large changes in service needs during the life of the PPP contract that would require a change of the contract?</p> <p>Will the PPP arrangement give the municipality sufficient operational flexibility to respond to future needs?</p> <p>If the services performed under the PPP arrangement interfere with other services or other projects not covered by the PPP contract, are these interfaces manageable?</p> <p>If the PPP arrangement necessitates the transfer of public sector staff to the private partner, will it be possible to accomplish this transfer without major problems or resistance?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
D3	Contracting authority capacity	<p>Does the municipal government have sufficient human and financial resources to prepare and tender the PPP project?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
D4	Absence of policy and regulatory barriers	<p>There are no legal or regulatory obstacles to the PPP. The provision of services under a PPP arrangement is compatible with the safeguarding of public interests (for instance, with respect to legal requirements for environmental sustainability, workers' safety, fair competition, and so on).</p> <p>The provision of the services under a PPP arrangement is compatible with other policy goals (for instance, with respect to land use, income distribution, economic development, and so on)?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
D5	Absence of large and uncontrollable risks	<p>There are no significant risks that are largely outside the control of the private partner and that may make private finance unfeasible or expensive.</p> <p>Examples are traffic risk (especially for greenfield projects and if macroeconomic conditions are highly uncertain), large uncertainties about the costs of meeting requirements imposed by environmental regulations, the use of unproven technology, and difficult terrain conditions.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Driver		Questions	Low	Medium	High
D6	Private sector capacity and interest	Is there evidence that the private sector is technically and financially capable of implementing the project? Is there likely to be a sufficiently large number of bidders interested in the project to ensure effective competition?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
		Is there evidence that financiers are willing to provide funds for investing in this type of project?			
VFM	Overall assessment	Given the answers to the questions above, are there enough indications that the proposed PPP arrangement yields VFM?			

2.7 Risk Analysis

The feasibility study should provide a risk matrix, which identifies all key risks relevant to the project and contains the following information about each risk:

- Name of risk;
- Description of risk;
- Consequence in case the risk occurs (qualitative description);
- Indication of the probability of occurrence (low/moderate/high);
- Indication of the likely impact on costs or revenues (low/moderate/high);
- Grade of risk (scored 1–10): product of probability and consequence;
- Proposed allocation: explains how the risk will be allocated among public, private, or shared;
- Proposed management and mitigation measures (at least for the high-grade risks): describes what mitigation might be available, for example, additional investment, technology, methodologies, and insurance;
- Additional remarks (if any).

For instance, demand risk would mean the risk that the projected numbers of users do not use the service, for example, the actual users are 10 percent lower than the projected numbers.

The risk matrix would identify the probability of this risk occurring, and also if such an event actually takes place, what would be the impact of that risk on the project and finally who bears the adverse impact of this event.

The information for the risk matrix is collected from the other parts of the feasibility study (in particular the technical analysis, the analysis of user demand, and the project due diligence). To complete the information, a risk workshop may be held with key experts of the municipal government and the consultants preparing the feasibility study. The risk workshop brings together parties with different skill sets and expertise to debate risks and their management. The workshop reviews the risks and their characterization described earlier.

Data permitting, the high-grade risks should be quantified. A minimal quantification includes:

- Probability of occurrence of risk; and
- Damage, costs, or revenue loss in case a risk occurs.

This quantifies the expected loss and the maximum loss due to the risk.

Common Pitfall in Risk Assessment

- Often no sensitivity analysis is carried out to acquire a more complete picture of the plausible range of cost and revenue forecasts.
- Risks are often allocated according to a generic, standardized allocation matrix not considering the project-specific characteristics of the risk factors.
- Insufficient attention is given to risk experiences in real projects, and to the perception of investors and lenders about risks and guarantees and their impact on the willingness of lenders to finance the project.

2.8 Key Commercial Terms of PPP Agreement

The feasibility study defines the key commercial principles of the PPP agreement, as a preparation for the procurement and contracting stage. The

key commercial terms will constitute the basis for the drafting of the PPP agreement between the municipal government and the contractor.

Table 2: Key Commercial Terms

Section of PPP Agreement ⁶	Description
Parties to the agreement (front page)	Identifying the parties to the contract, including the municipality and the PSP, and any other relevant party (for instance, if the central government is providing guarantees or fiscal support, it may also be a party to the contract). The municipality may want the PSP to establish an SPV for the project, in which case the SPV will sign the PPP agreement.
Duration of the contract (Section 3.1)	The period for which the contract would be in force. This period should be only as long as necessary, but long enough to allow the PSP to cover all project costs, debt repayment, and a reasonable return on equity.
Responsibilities of the parties (Section 3.2) (Sections 4 and 5) (Sections 9 and 10) (Section 12)	The responsibilities of both the parties must be defined in detail, and preferably divided into the following phases of the contract: <ul style="list-style-type: none"> • After contract is signed, but before financial closure is achieved and the contract construction has started (conditions precedent); • During construction; • During operations; • At expiry/termination.
Rights of the PSP (Section 4.2)	The rights of the PSP in terms of access to the site, use of existing assets, making structural changes in existing assets, and so on, depending on the nature and content of the project.
Project assets and ownerships	Who owns the existing assets? Who owns the new assets being created? How will the decision to enhance capacity and add assets within the contract period be made? Who is responsible for this decision? How is the required investment to be determined and who will make this incremental investment? When will the ownership of the project assets transfer?
Payment terms (Section 6)	Who will pay to whom? How much shall be paid? When will the payments be made? Who is responsible for determining the tariff? How often and when would tariffs be increased and by how much?
Performance management framework (Schedules 2, 3, and 6)	Output standards. Framework for measuring actual performance against output standards. Consequence of actual performance falling short of output standards.
Dispute management framework (Section 26)	What happens when there is a dispute? How will the dispute get resolved?
Force majeure events and consequences (Section 19)	What are force majeure events for the project? Compensation/relief in case of force majeure?
Material government action (Section 20)	What are material government actions (MAGA) for the project? Compensation/relief in case of MAGA?

⁶ The section numbers refer to the Sample Municipal PPP Agreement (Module 8).

Change in law (Section 21)	What are changes in law for the project? Compensation/relief in case of change in law?
Other municipality risks	Which other risks are assumed by the municipality? What is the compensation in case of a contracting authority risk occurring?
Termination and consequences (Section 18)	Who can terminate the contract and why? What happens when one of the parties terminates the contract?
Jurisdictional issues (Section 25)	Entity that will have jurisdiction on matters related to the contract (expert, mediation, arbitration, or courts)
Liabilities (Section 15)	Liabilities of each party, including liabilities to third parties

2.9 Market Sounding

The market sounding assesses the degree of interest in the project from potential investors and lenders by means of interviews and surveys. A market sounding is essential to ensure a successful competitive tendering of the project. If similar projects have recently been carried out in a PPP in the country or elsewhere, these may be used as evidence of the market interest. It may be assumed that the proposed project will attract the same types of and similar number of bidders. The market analysis must demonstrate that any (limited) differences in circumstances between the reference projects and the proposed PPP project will not have a major impact on market interest. If no suitable reference projects exist, then the market interest must be ascertained by conducting project-specific market consultations of prospective bidders and of financial institutions (national and international where relevant, that is, in the case of large projects with sufficiently high-funding requirements to be attractive for foreign lenders, or projects in sectors that are known to be of interest to foreign bidders).

In the market consultations, the views of prospective investors on the feasibility and the risks of the project and on the need for government support or guarantees are collected and assessed, as well as the views of financial institutions on their willingness to finance the project and on the potential amount of loans that may be granted to the project. The feedback from the market sounding is used in several parts of the feasibility study, especially in the financial analysis (market conditions for the financing, such as required rates of return and other financial ratios) and in the VFM analysis (optimal structuring of PPP arrangement, without deal breakers that would discourage bidders or result in high bid prices). The evidence collected in the above assessments must show a sufficient degree of market interest to ensure a competitive bidding process. If not, strategies must be developed to ensure market interest for the project.

Common Pitfall in Market Sounding

- The market consultation is too superficial and often does not go much beyond the observation of a few indications that the market is interested to invest in the project.
- Lack of preparation (collection of background information) and lack of detail in the formulation of questions, so that the data collection has a low payoff.
- Lack of assessment of the market's view on the revenue potential of the project and on the proposed business model.
- Lack of assessment of the market's confidence in the capability and reliability of the municipality, and of the market's willingness to conclude contracts with the municipality.
- Lack of an assessment of the market's risk perception and preferred risk allocation.

2.10 Procurement and Implementation Plan

The implementation and procurement plan sets out the main actions (with indicative timing) that need to be undertaken by the municipality and by other relevant government agencies to procure and implement the project. The plan must demonstrate that the municipality has the required human and budgetary resources to procure the project and to fulfill its obligations under the PPP agreement (or has a plan to secure these resources).

The procurement and implementation plan must at least include the following:

- Indicative schedule of all actions that the municipality must perform before the commissioning date, such as:
 - o Advertising the project to potential bidders (such as the organization of an investor's conference);
 - o Implementing the various phases of the procurement procedure (pre-qualification, submission and evaluation of bids, negotiation with preferred bidder, contract close, financial close, and so on);
 - o Acquiring the required right of way;
 - o Auditing existing assets in which rights will be transferred to the PSP;
 - o Preparing applications for government support; and
 - o Obtaining required permits and approvals.
- Identification of actions that need to be taken by other government entities to enable the implementation and exploitation of the project, including a plan of actions to obtain the required cooperation from these government entities.
- Outline of procurement strategy:
 - o Selection of procurement method (open or restricted, competitive dialogue, and so on);
 - o Preferred profile of prospective bidder;
 - o Initial view on selection and award criteria—the financial bid parameter to be used in the bid is a critical output that the feasibility study should determine based on the financial model.

3.0

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MANAGING
CONSULTANTS

Municipal Public-Private Partnership Framework

05

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1.0

Purpose of this Module

This module provides practical guidance on how municipalities should oversee, review, and manage consultants during each of the specific stages in the PPP project management cycle. Municipalities should rely on the support of experienced, external consultants to help prepare and implement

PPP projects, bringing in their knowledge and experience on project design and implementation. Municipalities need to be able to comfortably review the analyses, project documents, and the recommendations prepared by these specialist advisers.

2.0

The Role of PPP Consultants

PPP projects are complex, requiring detailed analysis and preparation. The workload of analyzing and preparing PPP projects is heavily front-loaded meaning that detailed technical, financial, legal, and other analysis and structuring work must be done during project development,

when assessing feasibility of the project, as compared to public projects.

The consultant can play five key roles: project selection, feasibility assessment, transaction advice, implementation support and adviser.

2.1 Selection

The early work of selecting projects likely to succeed as a PPP requires a preliminary review of many projects in an effort to identify a short list of good candidate projects. The consultant can help the municipality identify the form of concept note to be used, establish criteria for selection, gather data on potential projects, review data provided, and make assessments of projects. Most importantly, the consultant will inform project selection based on his/her experiences and learnings from other similar or not-so-similar projects to identify issues and challenges that projects need to address. Advice from a consultant can help justify some

of the difficult decisions a municipality needs to make about the use of public money to support project proposals. However, project selection is often motivated by factors that go beyond pure rational analyses and some municipal staff may try to influence consultants to select specific projects. Senior management needs to ensure that consultants are able to provide advice based on their expertise.

The consultant is generally paid a fixed fee per task to be performed, at this stage of project development. See Module 2: Project Concept



Notes

There is often political pressure to develop projects with PPP that achieve political priorities, but do not meet basic criteria of good PPP projects. A failed project, even if politically well intentioned, can set back the entire PPP program significantly.

Assessment Tool and Module 3: Project Concept Note.

2.2 Feasibility Assessment

Consultants are generally used to develop feasibility studies in an effort to obtain an objective, independent assessment of the project, and to ensure sufficient detail and technical expertise is used to develop the study. See Module 4: Feasibility Study.

During the feasibility stage, the consultant objectively analyzes the selected project to determine if it is feasible and what combination of risk allocation, risk sharing, and financial structures are needed for the PPP to be bankable and deliver important long-term VFM benefits.

The municipality must review the recommended option, and also bring to bear its local understanding and knowledge, and decide if it is affordable and meets its long-term sector goals. Municipalities should not treat a feasibility assessment study undertaken by the consultant as a contentious process, as a 'municipality versus consultant' scenario. The municipality and consultant should work together, using their respective skills and expertise in a collaborative manner. This would imply that the municipality shares its knowledge, experience, and so on, of the local environment with the consultant so that the consultant can analyze the project's feasibility in the relevant context. This close collaboration also allows municipal staff to improve their PPP capacity, by learning while doing.

Feasibility studies tend to suffer from optimism bias—those developing the study are invested in its development and therefore tend to perceive the project in a more positive light than it might merit. A feasibility study developed by an independent consultant can help manage this bias (though the municipality needs to be aware that most consultants also come with their own biases from work on similar projects in other countries). The municipality will need to challenge consultant assumptions and consider options carefully, with this potential for bias firmly in mind. Consultants also try and gauge their client's bias toward projects and 'structure' their feasibility reports accordingly. Municipalities need to guard against this and display their desire to undertake feasibility studies as objectively as possible.

Optimism Bias or Bad Incentives - How Planning Goes Wrong

Planning and forecasting need to reflect benefit to the government (as a proxy for the broader society), through cost-benefit or VFM assessments. But such assessments tend to involve incentives for those performing them to emphasize benefits and deemphasize costs, whether consciously or not.¹ There is a similar bias toward new build rather than refurbishing what exists and maintaining it properly. Maintaining an asset properly is three to seven times less expensive than maintaining it poorly and rebuilding later. However, the socio-political incentive is to build something big and new that can carry the name or be identified with a politician or political party. Khan and Levinson (2011) highlight the failure of the U.S. national highway system to maintain roads properly due in part to the tendency for federal monies to be allocated to new build projects rather than maintenance or refurbishment.²

Proper planning and monitoring can help. The Private Infrastructure Investment Management Center in Republic of Korea routinely rejects 46 percent of proposed projects (compared with 3 percent before its creation) at a savings of 35 percent to the government on poorly planned or selected projects. Similarly, Chile's national Public Investment System rejects 25–35 percent of projects proposed.³

Source: McKinsey Global Institute. 2013. "Infrastructure Productivity: How to Save \$1 Trillion a Year."

¹ See Flyvbjerg, B. 2009. "Survival of The Unfittest: Why The Worst Infrastructure Gets Built – And What We Can Do About It". Oxford Review of Economic Policy 25 (3): 344-367. doi:10.1093/oxrep/grp024; and McKinsey Global Institute. 2013. "Infrastructure productivity: How to save \$1 trillion a year". McKinsey & Company. Accessed September 2019. <https://www.mckinsey.com/industries/capital-projects-and-infrastructure/our-insights/infrastructure-productivity>.

The consultant is generally paid a fixed fee for different elements of the feasibility study, and for the delivery of the final feasibility study, including consultation processes and workshops with the municipality. The consultant's economic bias also comes into play if the municipality has built in any

2.3 Transaction Advice

Once the municipality has decided to proceed to tender, a consultant will support the completion of a transaction, such as the award of a PPP tender or reaching financial closure for the PPP (often known as a 'transaction adviser'). The consultant helps the municipality attract investor interest from potential

'success' related fee for the feasibility study. Where the municipality has procured services of the consultant with an integrated terms of reference of feasibility study assessment as well as transaction advice, the consultants have a significant economic incentive to declare a project to be feasible.

private bidders, package and promote the PPP transaction, and ensure that it reaches commercial closure (the signing of a PPP contract) and financial closure (securing all debt and equity financing for the project so that construction can begin). See Module 7: Procurement.

Sometimes the same consultant is used to deliver the feasibility study and the transaction advice. This can save time and money as the same consortium will perform both tasks, with no need to educate a new set of consultants. The difficulty with this approach is that the consultant will be incentivized to find the project feasible, as the consultant will want to earn fees from the transaction advice stage. The municipality will need to manage this risk possibly through a second opinion on the study from another consultant or need to have two different consultants for feasibility study and for transaction advice.

The consultant's reputation should be a critical factor while selecting a transaction adviser. Municipalities need to ensure that the consultant does not have any biases toward some bidders for the project and also that the consultant is 'strong' enough to resist influence from potential bidders or from decision makers within the municipality.

The municipality should nominate its own team to work closely with the consultants at this stage of the PPP process, particularly in determining the pre-qualification and qualification criteria (to ensure that they are not too stringent to discourage competitive bidding or are not being designed for one or a select few potential bidders) and also at the stage of technical bid evaluation.

The consultant is generally paid a fee for each phase of the transaction advice, with an important part of the fee paid only after commercial close and after financial close. In light of the large quantum of the 'success fee', municipalities need to ensure that there is adequate thoroughness of evaluation and that closure is not being pursued at the cost of diligence. In an effort to reach closure as early as possible, the consultant may propose a level of government support and risk allocation inconsistent with government interests.

2.4 Implementation

After financial close, the real work starts. The municipality may want to hire a consultant to help during implementation and ensure the project is built, operated, and delivered in accordance with the PPP agreement. One of the most critical consultants at this stage of the PPP process is the independent engineer, who oversees and certifies the quality of the construction. The reputation of the

independent engineer of independence, objectivity, and not being 'influenced' is critical. See Module 12: Contract Management.

Consultant fees during implementation are often on a per task basis, but may also be on a daily or monthly rate for longer-term engagement.

2.5 Adviser

The municipality will need general support in implementing the PPP program from external advisers or from advisers embedded in the municipal team (or PPP Unit), including:

- Advice on PPP policy development (municipal and national);
- The design and implementation of the institutional framework, processes, and procedures applicable to the PPP program, including PPP guidelines;
- Identification of potential PPP projects as and when they are submitted to the municipality;
- The terms of reference for the feasibility or transaction advisers, the process of hiring them, the process of managing them, and reviewing their deliverables;
- Review of feasibility studies produced by advisers, in particular where they are developed

under USPs;

- Advice on project procurement, including review of transaction adviser deliverables and support of the municipality during the procurement process;
- Support during implementation;
- Capacity building and training; and
- Analysis of data on the PPP program, identifying lessons learned, and opportunities to improve the program.

Consultant fees for this adviser role tends to be on a daily, weekly, or monthly basis, which requires the municipality to manage the consultant carefully to ensure VFM. Some tasks may be paid on a fixed fee basis.

² Khan, Matthew E., and David M. Levinson. 2011. "Fix It First, Expand It Second, Reward It Third: A New Strategy for America's Highways," The Hamilton Project's Project Discussion Paper 2011-2013. Brookings. https://www.brookings.edu/wp-content/uploads/2016/07/02_highway_infrastructure_kahn_levinson_paper.pdf; and McKinsey Global Institute 2013.

³ McKinsey Global Institute 2013.

3.0

Managing PPP Consultants

The following provides practical, real-world lessons learned on selecting and hiring PPP advisers. For further guidance, Module 6 provides terms of references for hiring advisers, including for project selection, feasibility assessment, and transaction advice.

- **Incentives.** Think through the incentives of the consultant, including where the consultant may be incentivized to be overly optimistic about the project (as mentioned earlier) or to avoid raising issues that are difficult for the municipality. A PPP is a long-term commitment that requires careful analysis. Incorrect incentives can undermine the value of the consultant's advice.
- **Coordination.** Different specialist firms or individuals (engineering, financial, technical, management consulting firms, and so on) should be encouraged to team up into consortia to provide the services. The consortium must appoint a leader for all communications and speak with one voice when presenting findings and recommendations. There are important interdependencies between the different components of a consultant's advice, where the inputs of one piece of analysis must come from the outputs of another piece of analysis. For example, the assessment of demand will influence design choices which will again affect demand. Therefore, municipal PPP managers and decision makers should be aware of this recurring need to update and to harmonize feasibility study findings and recommendations when monitoring and overseeing the PPP consultants' progress. Municipalities that appoint separate consultants to work on separate components (for example, technical, financial, and legal) find it difficult to reconcile two or more contradictory sets of analysis or recommendations.
- **Quality.** Ensure that the specific consultants (individuals) whose CVs were included in the proposals are the individuals who are undertaking the work and that they are investing the time that they had committed to invest on the project. Consultants might use junior resources to undertake the bulk of the work after they have 'won' the project. Municipalities need to guard against this and ensure that the knowledge and experience of consultants that the municipalities selected, and the project needs, are made available to the project.
- **Candid advice.** While the well-managed consortium is important, so too is the candid advice of each of the different specialist teams. Where there are different solutions proposed by technical and legal advisers, the municipality will want to understand these options. A consortium is often incentivized to keep such differences out of view of the client. The individual consultants should have the freedom and independence to candidly advise the municipality.
- **Invest in preparation.** It requires more time, human resources, and money to analyze and prepare a PPP compared to a traditional publicly financed, managed, and operated infrastructure project. Time and money spent early results in more easily implemented projects and greater likelihood of success, and must be budgeted accordingly. It is important that work plans are regularly updated and actively managed to minimize delays.
- **Gather data early.** Without quick and full access to available data, consultant costs will increase and delays ensue. Gathering data on such projects can be challenging, in particular where some municipal staff are resistant to the use of PPP. Early data gathering and gap identification can provide an important indication of the cost and time needed for selection and feasibility studies.
- **Stakeholder consultation.** One of the most challenging parts about making a PPP project feasible is that of managing the roles, contributions, and concerns of all stakeholders, including existing municipal staff, labor unions, regulatory bodies, local communities, and so on. Managing such stakeholders requires political leadership, and cannot simply be 'outsourced' to consultants. Consultants can assist in the process, by helping identify stakeholders, design the consultation process, and organize consultations, but the municipality should undertake this important policy and political function.
- **Challenging the results.** The PMU/CMU must feel comfortable questioning the consultant's advice/results, and not take a passive role in simply accepting the deliverables of PPP consultants. Equally, the relationship between the consultant, PMU/CMU, and municipality should be collaborative, not antagonistic—not an 'us against them'. The project belongs to the municipality; the consultant helps evaluate, design, and/or implement the municipality's project. The consultant should deliver to the municipality all background materials—

including assumptions, analysis, and financial models—to help the municipality understand the consultant’s work. The financial model should be modifiable and flexible so that it can be used to answer practical questions, such ‘What happens if the level of demand or revenues is lower than expected? What happens if construction costs are higher than anticipated? Is the project still financially viable?’ The municipality should test the viability and flexibility of the PPP financial model. The PMU/CMU may want to hire a separate consultant to review all deliverables. PPPs are long-term commitments for a municipality; the decision to enter into such important partnerships must be based on

a clear understanding of the assumptions and findings.

- **Interactive workshops.** PPP consultants will prefer to simply submit their deliverable reports. The terms of reference for PPP consultants should require that PPP consultants present and explain all their assumptions, methodologies, findings, and recommendations (including the financial model) in a workshop setting, to allow decision makers to understand and appropriately ‘challenge’ them. This is an important part of building capacity in the municipality, making municipal staff part of the process, and learning while doing.



Case Example

A municipality in eastern Europe was undertaking a feasibility study for a PPP to collect municipal solid waste, to sort and recycle. The private partner would receive the bulk of its revenues from the sale of recycled wastes to bulk purchasers. An important assumption in the PPP consultant’s financial model was the expected price per ton of each category of recycled products being within the existing regional market of bulk recycled products. The consultants’ financial model simply listed prices per ton for paper and cardboard, plastics, glass, and for organic compost—but it did not list a source for these important numbers. When questioned, the consultant revealed that these numbers were taken from a study undertaken by an international donor of the regional market for recycled wastes four years previously. The PPP consultants were requested to conduct a first-hand analysis of market prices for these recycled products rather than simply copying from an older report by another donor. Their revised financial model also showed the impacts on the financial sustainability of the PPP of different scenarios of changes in the prices of each of the bulk recycled products.

- **Do not rush.** Municipalities are often in a hurry to award their PPP projects, reasoning that the sooner the PPP tender documents are released the sooner the contract can be awarded, and the private partner can start delivering the needed public services. As a result, municipalities can often issue PPP tender documents that are unclear or incomplete, with the expectation that these issues can be resolved later. However, such practices regularly create more delays and problems during PPP tendering, with confused bidders, financiers, and municipal staff. It is much better to spend additional time early to resolve issues before releasing the tender documents. Consultants may have the same ‘rushed’ approach to ensure that their work is finished early and they get their fees early. However, usually such ‘rush’ ultimately either results in inordinate delays or much higher costs because bidders price in all the unknowns (or the confusion).
- **Support for tender evaluation.** Members of the PPP tender evaluation committee will need support to understand the dynamics of a PPP procurement process. PPP tender evaluation is different from tender evaluation for public projects, in the criteria to be applied and the structures to be assessed.
- **Help with financial close.** During financial closure, the municipality should ask to be informed about progress. Municipalities should make all relevant information readily available to lenders as needed and the consultant should be ready to respond to requests from lenders for additional information to facilitate their due diligence. The consultant’s scope of work should include financial closure of projects and there should be a significant fee associated with the project achieving financial close.
- **Prepare for dispute resolution.** The relationship between the municipality and the consultant is often intense, is frequently long term, and may involve conflict. The parties should identify conflict as soon as possible and coordinate to resolve the same as amicably as possible to strengthen the partnership through management of adversity.

4.0

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SAMPLE CONSULTANT
TERMS OF REFERENCE

Municipal Public-Private Partnership Framework

06

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Notes on Using this Module

This Terms of Reference is provided only as a sample document. It must be adapted to fit the unique circumstances and needs of each particular Municipality and project for which its use is intended. National and local laws, regulations, policies and practices may prescribe a different approach to procuring project-level consulting services.

The Terms of Reference used in a particular project should clearly articulate all the requirements of the consulting services to be provided and expectations of the contracting authority.

The consulting services covered in this sample Terms of Reference include the completion of a pre-feasibility study, market sounding and feasibility study, as well as the provision of transaction advisory services from the project's bidding preparation through financial close.

For any particular project, the Municipality must consider what type of outside consulting services are needed, as well as the adequacy and convenience of contracting all the services from the same contractor. In some cases, the Municipality may not require all the services included in this sample document (e.g., where the Municipality chooses to proceed directly to a full feasibility without first completing a pre-feasibility study). In some jurisdictions, the type and content of project preparatory work may be defined by law or regulation.

Furthermore, the Municipality should be aware that contracting for the provision of all project preparatory services from only one vendor may a cause conflict of interest (see Guidance Note section 4.3 on Hiring an Adviser).

Accordingly, this sample document will need to be adjusted to fit the particular needs of the Municipality in relation to a specific project. To this end, the sample Terms of Reference has been drafted to be modular, such that the Municipality may readily delete or amend the activities and deliverables, as required in the context of a particular project.

Sample Document, Adapted for Illustrative

2.0 Introduction

[Summarize the Municipality's underlying rationale for procuring outside consulting services and any contextual information that helps explain the need for such services. Note that the precise headings and organization of the Terms of Reference should be adjusted to reflect the applicable procurement rules, standards and practices that prevail in the Municipality's jurisdiction. For example, some jurisdictions may combine all the information in the "Introduction," "Background" and "Description & Scope of the Project" sections into a single section of the Terms of Reference. Sample introductory language is provided below, for demonstration purposes.]

Priority PPP projects have been identified through a project screening and prioritization process, to rank the PPP projects in the short-list for funding purposes, among which include *[name of project]*, hence the issuance of this Terms of Reference.

Sample Document, Adapt as Appropriate

3.0 Project Background

[Describe the basis and rationale for the project, including identified need, intended location, social, economic and/or environmental benefits of the project, which development plan the project originated from, as well as considerations that explain why the project was considered as a potential PPP by the Municipality. Also indicate if any prior studies have been done that relate to the project and, if so, describe the prior study/ies undertaken (i.e., what was the scope of the study, how long ago was it done, what were the key findings, etc.).]

Sample Document, Adapt as Appropriate

4.0 Description & Scope of the Project

[To the extent known, which will vary depending on the stage of the project cycle at which the consultant is being procured and the type of the consulting services to be provided, summarize the main objective(s) that the project wants/aims to achieve, as well the planned scope of the PPP project and anticipated PPP contracting modality—i.e. design, build, finance, maintain operate a facility, etc. Identify the quantifiable outputs of the project, in terms of facilities built, services provided, etc. (e.g. size of facility constructed, number of people or households served, amount of clean water or electrical power supplied, kilometers of road built). As applicable, describe any performance parameters that need to be followed by the private sector partner during operation (e.g., 24/7 availability of water supply for all households within a defined jurisdiction, public accessibility of facilities (bus terminals, parking areas), etc.). Indicate the estimated project cost and anticipated revenue sources for the project (e.g., payments or subsidies from the government (national, state/provincial, municipal), fees paid by end-users, payments from an off-taker, additional revenue sources such as sale of advertising space, commercial leases).]

Sample Document, Adapt as Appropriate

5.0

Objective & Key Outputs of the Consulting Assignment

The objective of this assignment is to support the delivery of a well-structured, bankable PPP that ensures value for money to *[the contracting authority]*, is acceptable for the relevant stakeholders, and is affordable and manageable for *[the contracting authority]*.

The Consultant will be expected to develop and present the following outputs in a well-defined manner:

[Note: Depending upon the requirements of each project and contracting authority, the expected outcomes will vary. Please adapt to the particulars of the project by deleting or adding required outputs, as applicable]

- *[Pre-feasibility study: The objective of the preliminary study is to assess the viability of the project(s) prior to conducting detailed feasibility studies.]*
- *[Marketing Sounding: The objective of this exercise is to assess the market appetite for the project as well as ensure that the PPP project is likely to attract quality bids by responding to the market needs.]*
- *[Feasibility study: A comprehensive feasibility study is intended to assess the viability of the project as a PPP and its different modalities, demonstrate affordability for the full project cycle, propose an optimal value for money solution as well as the most appropriate implementation strategy for *[the contracting authority]* to achieve the desired outcomes.]*

- *[Bidding documents and draft contract: Request for Qualification (RFQ) (if needed); Request for Proposals (RFP); Draft PPP Agreement.]*
- *[Transaction implementation assistance through financial close: Facilitation of successful tender of the Project through provision of transaction support services during the bid process and through signing of the PPP Agreement (i.e. contract close). Delivery of RFQ final evaluation report- List of Pre-qualified bidders; RFP final evaluation report to help identify successful bidder(s); negotiations report (if any); final negotiated contract; and financial close report.]*

6.0 Scope of Work

[Describe in general terms the services the consultant is expected to provide (e.g., technical, financial and/or legal advisory services) and the stage(s) of the project cycle through which the consultant is expected to provide assistance. For demonstration purposes, sample language is provided below, assuming the procurement of a single contractor for all project advisory services, beginning with the completion of a pre-feasibility study and continuing through financial close. This language should be adapted to fit the particular needs of the Municipality in relation to a specific project. More detailed descriptions of the different types of project advisory services a consultant may be procured to provide are set forth in separate sections, below. These sections must also be adjusted to suit the Municipality's individual needs.]

Broadly, the services of the Consultant shall comprise technical (including social and environmental aspects), financial, legal and procurement services, including management of the bidding process and PPP contract negotiation through the project's financial close.

The services shall cover the different stages of project preparation and implementation including: project due diligence, carrying out detailed project financial modeling to support the commercial and

financial structuring (develop project term sheet), managing the PPP bidding process, including bid document preparation, assisting in contract award and providing advisory services until the financial close of the project.

The Consultant is expected to work closely with *[the contracting authority]*, *[the local PPP unit / project team, if any]* and any other government agencies as may be required during the assignment. *[The contracting authority]* shall have an oversight role during the project development and procurement process.

The Consultant shall be expected to carry out the services described but will not be limited to them. It shall also be responsible for other aspects of the project, as needed, to successfully develop and bring to commercial close a well-structured, bankable PPP project.

The scope of the services is described below.

[Note: *The following provides a summary description of the scope of work for a Consultant to deliver the pre-feasibility study, market sounding, feasibility study and transaction advice for a project through to financial close. It will need to be adapted to the specific requirements of the project.]*

A. Preliminary Feasibility Study

[Note: *The contents of the pre-feasibility study will vary by project and jurisdiction. In some countries, for example, the applicable legal and regulatory framework may set out the required contents for this type of assessment. National or regional entities (e.g., national PPP office) may also provide guidelines or toolkits on project preparation. Sample language regarding the scope and content of the pre-feasibility study is provided below. It will need to be adjusted in view of the applicable PPP framework, if any, and the project type (e.g., sector, anticipated project structure, funding modality, expected outputs, etc.)]*

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

- Review and assess the Project Concept Note (see Module 3: Project Concept Note) and determine the adequacy of available information in relation to the requirements of the study. If found inadequate, provide the required data through research from other sources, preferably by reference to similar projects in comparable jurisdictions.
- Conduct a review of global best practice on project management in the *[insert relevant*

sector, e.g.: transport, water, housing, school, street lighting] sector and indicate how to apply global best practice into the project.

- Carry out a preliminary assessment of the current [insert relevant sector, e.g.: transport, water, housing, school, street lighting] needs, practices and requirements of existing facilities and related projects/business/ services. Particular emphasis should be on the regulatory requirements for the construction and operation of [insert relevant sector, e.g.: transport, water, housing, school, street lighting] facilities.
- Carry out a legal review of the project based on the relevant and applicable international, national and local laws and regulation. The Consultant shall identify legal processes and concerns as well as impediments/ requirements to undertake the implementation of the proposed project under a PPP arrangement.
- Develop the initial technical design of the project in consultation with [the contracting authority] including technical parameters/ standards/ specifications based on best practices.
- Carry out a preliminary market research and demand estimation/ analysis with details on the methods and parameters to be used in the projection and the need for the project.
- Carry out preliminary financial and economic analysis, including value for money (VFM)/ value engineering, based on preliminary cost estimates and proposed cost-recovery mechanism.

- Conduct initial environmental and social/ resettlement/gender assessment and associated risk factors.
- Carry out a preliminary financial, political and legal risk analysis including institutional issues that may impede the implementation of the project and the required government support, if any.
- Preliminarily assess the different public procurement modalities for the project and determine the most adequate PPP options that will provide the best value for money to [the contracting authority].

If at the pre-feasibility stage it is determined that the project is not viable or otherwise cannot or should not be implemented as a PPP, [the contracting authority] shall determine the way forward in implementation of the project.

If the pre-feasibility study shows that the project is viable for PPP implementation, the Consultant will provide all necessary technical, legal and financial advisory support including all necessary approvals in compliance with all elements of [the PPP Act (if any)] and its implementing regulations, and all other applicable laws and regulations.

B. Market Sounding

[Note: The precise timing of the Market Sounding will vary. It may be done in parallel with or at or near the conclusion of the pre-feasibility or feasibility study, depending on the circumstances of the individual project or program of projects, including the amount of detailed project information that is needed to conduct a successful market sounding and the existence of any other evidence of strong market appetite for a particular project or type of project. What is essential is evaluating the interest in the project from potential investors and identifying the project structure that is most attractive to those investors before proceeding to procurement, to ensure that a sufficient number of credible bids for the project are received.]

The Consultant shall conduct a market sounding in consultation with [the contracting authority] to assess the private sector interest for undertaking the project on PPP principles. This exercise will help to

determine the market appetite for the project as well as ensure that the PPP project will attract quality bids by responding to the market needs.

To further, enable the preparation of a responsive Feasibility Study Report, the market sounding exercise shall include the following tasks:

- Prepare a Market Sounding document that will include a Project Information Memorandum (which will cover the objectives of the Project, an overview of the Project structure, the process and timetable for procurement, outline Risk Allocation), as well as a summary of the key issues to be discussed with and questions to be asked of the market (i.e. equity investors, debt financiers, contractors and operators), the process of how the market sounding will be conducted, and the proposed list of parties to be approached.

- Provide the project Information Memorandum (indicated above) to the identified private parties and hold discussions with them (real or virtual).
- Organize and participate in workshops with [the contracting authority] and other stakeholders to review findings of the market sounding and determine key areas that will need consideration in preparing the Feasibility Study and/or procurement documents;
- Prepare a Market Sounding Report (which will form an appendix to the Feasibility Study) that will summarize the findings from the exercise and will consist of, but is not limited to, the following information:
 - o Market sounding objective;
 - o Key issues that needed to be considered;
 - o List of reputable firms, financiers, PPP arrangers etc. consulted both locally and internationally with experience in undertaking PPP's or major housing/infrastructure projects;
 - o List of questions with answers from the one-on-one sessions;
 - o Summary findings and matters to be considered in the detailed Feasibility stage.

C. Feasibility Study

[Note: The contents of the feasibility study will vary by project and jurisdiction. In some countries, for example, the applicable legal and regulatory framework may set out the required contents for this type of assessment. National or regional entities (e.g., national PPP office) may also provide guidelines or toolkits on project preparation. Sample language regarding the scope and content of the feasibility study is provided below. It will need to be adjusted in view of the applicable PPP framework, if any, and the project type (e.g., sector, anticipated project structure, funding modality, expected outputs, etc.).]

The Consultant is required to prepare a comprehensive Feasibility Study for the project, which needs to clearly demonstrate affordability for the full project cycle and propose the optimal value for money solution for [the contracting authority] to achieve the desired outcomes.

The Feasibility Study should include but it is not limited to:

i. Demand study:

- Assess user requirements and service level to be provided over the project tenure (i.e., kind of service(s) required and comparison of different levels/types of service, service coverage area, necessary assets to deliver required service, standard/quality of service);
- Forecast demand volume (initial and growth rate) and price (willingness and ability of end-users to pay), with clearly stated methodology and assumptions.

ii. Technical study:

- Develop/refine project design configuration and requirements, based on the demand forecast;
- Define output performance specifications and required service levels (i.e., availability and quality requirements, performance indicators to measure compliance, monitoring system for measuring the performance indicators);
- Assess the project site, including compliance with applicable spatial plans, completion of geotechnical survey(s) to determine sizing and capacity, suitability of the land for the project, environmental impact and identification of necessary land preparation and improvement works (e.g., levelling, connection to transportation and utilities);
- Analyse technical options (i.e., cost-benefit comparison of available technical options to address user needs);
- For all relevant technical options, estimate the whole-life project costs (e.g., design, construction, operation and maintenance, etc.);
- Identify ancillary revenues from commercial development potential of the project, if any e.g. shopping centers and schools and any other facility in the project;
- Conclude on the preferred configuration of the Project from a technical and commercial point of view.

iii. Compliance assessment:

- Assist with comprehensive legal due diligence, including the municipal government's legal authority to execute the project and the proposed project's compliance with all relevant laws and regulations;

- Identify the regulatory approvals and permits that must be obtained to implement the project (whether by the municipal government or the prospect private partner);
- Assess and recommend how to address outstanding institutional aspects and legal issues;
- Assess and recommend how to address land acquisition / right of way and other related issues;
- Identify and assess potentially significant environmental impacts of the project, permitting requirements and, as needed, complete an environmental impact assessment and prepare an environmental management plan to address any environmental impacts (prevention, mitigation, compensation);
- Identify and assess social impacts of the project, identify and consult with affected communities, and, as needed, complete a social impact assessment and prepare a plan to address social impacts (e.g., resettlement, compensation for loss of livelihood, etc.);
- Identify how to engage the community impacted by the project and develop a program/strategy/activities to effectively integrate them in the project. (see *Module 18: Community Engagement*);
- Conduct gender analysis and identification of gender issues and gender gaps that can come up in the project and recommend strategies on how to address them. (see *Module 18: Community Engagement*);
- Assess the impact of the project on the relevant poor communities and recommend strategies/activities to integrate them in the project. (see *Module 18: Community Engagement*);
- Recommend changes to the Project's Action Plan, Implementation Schedule and the Municipality's Project Management Plan;

iv. Financial analysis and Project structuring:

- Develop the financial model for the project based on forecasted project cash flows and costs, clearly indicating the sources of data used and assumptions made;
- Develop the details of the payment mechanism / tariff structure, taking into account affordability to end-users;
- Determine the commercial viability and bankability of the project under several scenarios;
- Develop a financing plan including project financing and government support assumptions;

v. Economic assessment:

- Assess the full economic costs of the project, including identification and description of important costs for which no quantitative estimates can be made;
- Assess the full economic benefits of the project, including identification and description of important benefits for which no quantitative estimates can be made;
- Evaluate the economic feasibility of the project under several (risk-based) scenarios;
- Propose the financing plan and related applications for government support;
- Develop the project term sheet, summarizing the key output and performance requirements, payment and tariff mechanism, risk allocation matrix, government support assumptions, etc.

vi. PPP Options & Value for Money:

- Describe a range of credible alternative procurement and PPP options including justification for their selection;
- Evaluate various PPP options where funding sources and mix, cost recovery mechanisms, among others, should be considered shall identify necessary risks (i.e. licensing, permitting and other legal risks etc.) that need to be addressed and allocated for each PPP option;
- Indicate whether the PPP project model offers a better price/performance (i.e. better value for money) than other methods of implementing the project, including public procurement, using clearly stated methodology, data and assumptions;
- Recommend which PPP option in his professional judgment is the most viable and bankable, providing a detailed description of the preferred procurement option and PPP Structure, including:
 - o Key Risk Allocation
 - o Outline Payment Mechanism of the project
 - o Indicative Financing Structure and sources

– private sector bank debt, multilateral debt, public sector debt, project bonds, grants (indicate source), developer equity, other (specify).

vii. Risk analysis:

- Develop a risk matrix that identifies all key project risks during all project stages;
- For each risk, provide, in quantifiable terms where appropriate and data permitting:
 - o A description;
 - o Consequences if the risk occurs;
 - o Probability of occurrence (low/moderate/high);
 - o Likely impact on costs/revenues;
 - o Relative grade of the risk based on probability of occurrence and impact;
 - o Proposed mitigation measures for high grade risks;
 - o Proposed allocation between parties;
 - o Review of the extent to which the risks of the project can be underwritten by commercial insurance cover and the likely cost of such cover
 - o Additional information, if any.

Based on the risk analysis, prepare a contingent liability model for *[the contracting authority]* that quantifies the contingent liabilities and how the same shall be managed.

viii. PPP Agreement key terms:

Provide proposed key terms (e.g., material term sheet) for the PPP Agreement, including:

- a. Parties;
- b. Duration;
- c. Responsibilities of the parties;
- d. Rights of the private partner;
- e. Project assets and ownership;
- f. Payment terms;
- g. Performance management framework;
- h. Dispute management framework;
- i. Force majeure events and consequences;
- j. Material government actions and consequences;
- k. Change in law;
- l. Termination and consequences;
- m. Jurisdictional issues;
- n. Liabilities.

D. Management of the PPP Bidding Process and Transaction

[Note: Generally, best practice is to assign the feasibility study to one adviser, and to use an entirely different adviser for transaction advice, who will assist the Municipality in the procurement of the PPP project after the completion of the feasibility study, if the municipality decides to bid out the project. This allows the transaction advisers to review the feasibility study and make sure its recommendations are not too optimistic. In some cases, the assignment of the feasibility study is bundled with that of the transaction advisor. The bundling of both assignments allows the Municipality to save procurement costs and shorten the project preparation process. However, bundling the mandates of the feasibility study adviser and transaction advisor also has drawbacks, such as the possibility of a conflict of interest. The single feasibility study adviser/transaction advisor will be incentivized to find the project to be viable and appropriate for approval. In order to avoid the drawbacks of bundling indicated above, the Municipality must check the work of the adviser and challenge its recommendations.]

Furthermore, note that the consultant's scope of work and deliverables will need to be adjusted to reflect the applicable procurement process (e.g., single versus two-stage bidding).]

- o negotiation with preferred bidder, contract close, financial close, etc.).
 - o Acquisition of the required right of way.
 - o Audit of existing assets in which rights will be transferred to the winning bidder.
 - o Preparation of applications for government support;
 - o Obtaining required permits and approvals;
 - Identify actions that must be taken by other government entities to implement the project and prepare a plan for obtaining cooperation from these entities;
 - Outline the proposed procurement strategy, including procurement method, preferred profile of prospective bidder, and selection/award criteria;
 - Assist with implementing the chosen procurement method, bidding process, evaluation, and contract finalization through financial close.
- Develop detailed timeline to undertake an open, competitive, and transparent bidding process and its PPP agreement signing (i.e. implementation and procurement plan), in accordance with applicable procurement rules and procedures and all licensing and permitting requirements, including but not limited to:
 - o Advice on mechanisms to maximize competition while avoiding unrealistic bids and project vulnerability from overly aggressive bidding.
 - o Prepare all necessary bid/tender documents, including: Request for Qualification (RFQ), Request for Proposal (RFP), Draft Contract, bid bulletins, qualification and evaluation criteria, invitation to bid, including all appropriate bid forms such as bid letter, statement of bid, technical bid proposal, financial bid proposal, PPP agreement and other related documents complying with applicable law and other relevant policies and guidelines.
 - o Marketing the project to potential bidders (such as the organization of an investor's conference).
 - o Implementing the various phases of the procurement procedure (pre-qualification, submission and evaluation of bids,

7.0

Consultant Requirements

A. General Requirements

A prospective Consultant should have required experience providing PPP legal advice, project finance advice (financial modeling, analysis, structuring, risk assessment, and other relevant tasks) and sector-specific technical advice. Generally, the international experts should have 10 years and national experts should have 5 years of demonstrated project-relevant experience in the preparation and transaction of at least 3 PPP

projects, with additional merit given to experience with PPP projects in *[insert local region name]*. Likewise, the international sector experts should have 10 years and national sector experts should have 5 years of demonstrated experience in the preparation, development (design & construction), and/or operations and maintenance of 3 projects in the *[name of sector]*.

B. Qualifications of Key Personnel

[Note: The number, type and expertise of the consultants will vary depending on the project and the activities and deliverables for which the consultants will be responsible. The language provided below describes the various types of consultants the Municipality might procure to assist with the delivery of a PPP project, as well as their respective qualifications and responsibilities.]

The team of transaction support Consultants will include qualified experts from specific sectors, public-private partnerships, project preparation and appraisal, project implementation, financial modeling/structuring, investment promotion, economic and financial analysis, risk analysis, procurement, policy and legal issues. The Team shall be composed of Consultants, who shall have extensive technical and country-specific experience that would include extensive knowledge of the sector, regulatory issues involved and government instruments to enhance the development of bankable PPPs.

The team composition and indicative scope of work and deliverables from each Consultant area are as indicated below:

i. Team Leader

The Team Leader will generally be responsible for coordinating all inputs of the team; submission of all reports; facilitating meetings and stakeholder consultations, as required; and liaising with the Municipality, as required. Specific tasks would include, among others, the following:

- Liaise with Municipality and keep all stakeholders apprised of any issues or concerns that could impact project performance and or completion of the consulting assignment;
- Be responsible for drafting inception report, progress reports, and updating the agreed work program, and provision of timely information to Municipality on contract administration issues;
- Manage the team of experts to ensure integrated monitoring of the agreed work program;
- Coordinate the inputs of team members as per the agreed work plan, advise team members of changes to the work plan, and monitor team members' other project commitments to ensure appropriate priority attention is given to the assigned task;
- Ensure outputs of team members are in accordance with the contractual Terms of Reference and the client's quality expectations;
- Ensure smooth implementation of the internal quality assurance mechanism and be ultimately responsible for output quality by reviewing, commenting upon and approving all such outputs;
- Ensure all contracted deliverables are prepared in a timely manner and manage project scheduling; and

- Brief and supervise team members on (a) quality management, and (b) integrity and professional conduct; and keep the team updated on changes in the operating environment or procedures.

ii. Project Finance Expert

The Consultant shall have proven work experience in financial modeling and project structuring of PPP projects. It shall develop a financial model, incorporating an appropriate structuring of the selected PPP modality with detailed capex, opex and revenue (payment mechanism and tariff scheme) assumptions and manage the financial aspects of the transaction preparation and bidding process according to the provisions of the relevant PPP and government support regulations. In doing so, the Consultant will, among others, carry out the following tasks:

- Develop an appropriate project finance model with suitable assumptions, resulting in a set of projected financial statements (balance sheet, cash flow, income statement, key ratio analysis) and sensitivity scenarios;
- Develop the financial / commercial and risk allocation terms of the envisaged PPP modality after assessment of alternative choices including the commercial, legal, and institutional impacts;
- Ascertain the potential acceptability of the recommended PPP structure by the investors and potential lenders;
- Recommend a suitable, bankable financing plan, including appropriate debt equity ratios, loan tenures, rates and cash flow requirements for project viability and bankability, and required government support;
- Identify appropriate funding sources, including private sector funding, government funding and government support. Identify their likely terms and conditions, incorporating them in the project financial model;
- Develop all required due diligence documents for potential lenders;
- Test all key assumptions against financial model outputs, including the financial internal rate of return and debt service coverage ratio, identifying any required policy revisions for project sustainability, including on the revenue model;
- Provide project risk analysis with suitable mitigation strategies;
- Assess contingent liabilities arising from the project;
- Assess project financial management capacity;
- Produce and manage all project and bidding process documentation and post-bid

monitoring frameworks in coordination with the legal Consultant;

- Manage the bidding process, including marketing, pre-bid meetings, identification of potential bidders, bidder query responses, bidder qualification and evaluation criteria development; and
- Provide all required support until the financial close of the project;
- Provide inputs related to taxes, tax exemptions and tax incentives, financial accounting systems.

iii. Legal Expert

The Consultants will develop a legal / regulatory and institutional analysis to take into account the requirements of the selected PPP modality, and assist in the bidding process, project documentation, and evaluation procedures. Specifically, this analysis will include, but not limited to:

- Conducting a policy and institutional assessment to ascertain the validity and viability of the proposed PPP structure for the project;
- Assessment of the Municipality's capacity to manage the project once operational, and recommend required changes and capacity improvement measures as appropriate;
- Recommend institutional measures to improve the governance of the Municipality's with the purpose of ensuring efficient management of project assets after PPP project completion;
- Develop "bankability" measures for the proposed PPP project structure, such as payment and guarantee mechanisms, preconditions for a private operator to fulfill in meeting service obligations, default and risk clauses, and step-in rights;
- In accordance with relevant sector and PPP legislation and associated regulation, assist in the bidding process management through documentation preparation, including Request for Prequalification, request for proposal, contractual agreements between project sponsor and winning bidder, as well as in developing bidder instructions, bid qualification parameters and bid evaluation criteria, bidding process schedules, and undertake stakeholder consultations;
- Providing advice on country-specific legal experience of PPP projects in the sector, judiciary-related, legal and regulatory issues pertaining to the project, legal perspective on special privileges and incentives available for PPP projects and other country-specific legal knowledge;
- Provide all required support until the financial close of the project.

iv. Social Impact Expert

The Consultants will ensure adequate management of project social impacts consistent with the country's social/gende/poverty and safeguard policies. To fulfill this, the Consultant will, among others, do the following:

- Assess the Municipality's capacity and commitment to undertake social impact due diligence, impact monitoring, and mitigation measures implementation (e.g., Land Acquisition and Resettlement Action Plan (LARAP) implementation);
- Ensure proper implementation of LARAP and overall project compliance with the relevant social safeguard and regulatory framework.

- Assist in the project financing modeling, providing project costs (capital expenditures, operations, maintenance), required contingency levels, and any other information as requested;
- Provide all required support until the financial close of the project.

v. Environmental Expert¹

The expert shall support the Municipality with properly implementing the Environmental Management Plan in accordance with the *[insert name of relevant local environmental regulatory authority]*. The support shall consist of:

- Evaluate the Municipality's capacities to implement mitigation measures, and where necessary recommend capacity improvement training programs and measures;
- Seek government environmental clearance, required permits, and approvals; and
- Include environmental management plan in the bidding documents, along with the requirement to comply with mitigation measures therein.

vi. Sector Technical Expert

The Consultant will need to complete the sector-specific technical validation of project design and cost estimates through, but not limited to, implementation of the following tasks:

- Update the technical analysis in the feasibility study to confirm the technical validity/ viability of the project, including verifying assumptions such as *[current and projected demand levels for project outputs, design criteria and standards, capacity, prevailing topographical and other conditions,...]*;
- Produce the technical parts of the RFP / produce the projects output specifications;
- Verify quantities and rates for major civil works, equipment, construction and supervision consulting, and other input items;
- Verify and develop projected operation and maintenance costs for the project on a whole of life basis;
- Review and quantify costs and benefits from the project, and confirm the project design on a least-cost basis in financial and economic terms;

¹ The role of the environmental expert will be less extensive where the project is small and/ or the environmental impacts are expected to be minor.

8.0

Outputs of the Assignment

[Note: *The particular deliverables produced by the consultant will need to be revised based on the Scope of Work, as adjusted by the Municipality to meet its needs in relation to a specific project.*]

The general deliverables of the project are as represented in the table below. Bidders are expected to include, as a part of their proposal, anticipated dates of delivery. It is estimated that the above services would require a period of about *[estimated time]* from the date of commencement of the services until the financial close of the project or a period of *[estimated time]* from the effective date of the contractual agreements signed with the private party, whichever is earlier.

No	Deliverables	Date of completion (after contract signing)
1	Pre-feasibility Study
2	Market Sounding
3	Feasibility Study Report including PPP Implementation Plan
4	Pre-qualification Document (RFQ) preparation, issuance and Evaluation Reports
5	Bidding documents, including RFP, draft PPP Project agreements, Design Criteria and Performance Specifications, evaluation criteria, including any other relevant bid documents
6	Complete Tender Evaluation Reports
7	Negotiations and Financial close
8	Close-out Report

The Consultant, in close coordination with *[the contracting authority]*, shall conduct quality reviews to obtain feedback on all draft versions of deliverables as appropriate. The Consultant shall make presentations to *[the contracting authority]* on each deliverable (e.g. draft Feasibility Study), with the team's key experts present.

9.0 Evaluation Criteria

[Note: Sample language for evaluating proposals submitted by prospective consultants is provided, below. The Municipality may need to revise this section to suit its own requirements and preferences, particularly in light of national and local procurement rules, policies and practices.]

The evaluation committee appointed by [the contracting authority] shall evaluate the proposal on the basis of their legal standing and responsiveness to TOR's as outlined in the table below:

No	Evaluation Criteria for Technical Proposal	Scoring Criteria
A	Preliminary Screening (Mandatory requirements)	Yes/No
A1	Legal status of the lead consultant/consortium member and any firm engaged including practicing licenses.	
A2	If a consortium, signed joint consortium agreement by all consortium members to be provided.	
NB	<i>A bidder who scores NO in the mandatory criteria shall not proceed to the technical evaluation stage.</i>	
B	Technical Evaluation	Points
B1	Specific experience of the consultant/consortia related to the assignment.	
B2	Adequacy of the proposed work plan and methodology in responding to the terms of reference.	
B3	Qualifications and competence of the key staff for the assignment (Relevant education, training, experience in the sector/similar assignments).	
B4	Suitability to the transfer of Technology Program (Training)-Relevance of approach and methodology.	
B5	Proof of involvement of local staff in the assignment.	
	TOTAL	100
NB	<i>A firm/consortium that attains a PASSMARK of St 70 Points and above shall proceed to the last stage of Financial evaluation.</i>	

10.0

Terms of Payment

The Consultant will be paid on a lump sum basis. The total fees shall be paid based on specific milestones achieved. The Municipality shall accord this approval after ensuring that the outputs delivered by the Consultant conform to the regulatory requirements.

The indicative milestones for payment are shown below.

1. Submission of Pre-feasibility Study (10%) – *indicate due date;*
2. Submission of first draft of the Feasibility Study (10%) – *indicate due date;*
3. Submission of final draft of the Feasibility Study (15%) - *indicate due date;*
4. Approval of implementation and procurement plan (including RFQ documents, RFP documents and draft PPP agreement) (15%) – *indicate due date;*
5. Pre-Qualification of applicants (10%) – *indicate due date;*
6. Completion of bid evaluation and determination of winning bidder (20%) – *indicate due date;*
7. Signing of PPP agreement with the prospective private partner and financial close (20%) – *indicate due date.*

Sample Document, Adapt as Appropriate



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Municipal Public-Private Partnership Framework

07

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1.0

Purpose of this Module

This module provides more detailed, practical guidance on how municipalities, their PPP project managers, and their transaction advisers should oversee, review, and manage the tendering and procurement phase of municipal PPPs, including recommendations for addressing the more common real-world challenges and issues when implementing PPP procurement.

2.0

Preparing for Procurement

PPP procurement will commence once the feasibility study has been approved by the municipality, and possibly by a national government authority, such as a PPP unit. The procurement process should integrate any recommendations and instructions from this reviewing and approval process.

The feasibility study will identify a PPP procurement plan, including the different steps to be implemented and the specific financial and human resources that the municipality will need to complete the PPP procurement, especially from outside PPP advisers.

The plan for PPP procurement should feature realistic deadlines, provide the PPP transaction support skills required, and support clear and timely PPP decision making by the municipality. Without sufficient time and resources, PPP tenders are more likely to have flaws, to take longer to implement, and to fail.

The feasibility study may identify recommended activities that need to be completed before tendering, such as the following:

- Retail tariffs or user fees for services may need to be raised to a new baseline level that would allow the PPP to be commercially viable and financially sustainable.
- Land, buildings, office space, or other existing assets needed for the project may need to be officially acquired before the PPP tender.
- Resolution of the legal ownership of assets and equipment related to the PPP project. In some cases, the existing assets, equipment, and public facilities that are expected to be

transferred to private operation under the PPP contract might be co-owned by different public authorities or other bodies.

- In some cases where PPPs involve multiple client public authorities (such as neighboring municipalities, regional/provincial governments and authorities, and national public contracting bodies or ministries), a single new joint public contracting body may need to be officially established and incorporated or some other joint venture vehicle may need to be created to act on behalf of the different authorities.
- Debts owed by a municipal public corporation may need to be fully paid or restructured, such as long-standing accounts receivable owed to it by other public authorities who have received services but not yet paid.
- Consultation with the public sector's current workforce including confirmation of any severance packages, quantification of pension liabilities, and the completion of any changes in staffing levels or reassignments of personnel, and so on.
- Changes in local ordinances, decrees, regulations, or directives may be needed to allow the structure of the PPP.
- Any other project-specific changes required for the tendering, award, and signing of the PPP agreement to proceed.

The amount of time required to complete these steps will depend on the issues identified in the feasibility study and on the given sector, size, complexity, and the perceived level of risk for the specific municipal PPP project.

Lessons Learned and Good Practices

In practice, municipalities are often in a hurry to award PPP projects, reasoning that the sooner the PPP tender documents are released the sooner the contract can be awarded, and the private partner can start delivering the needed services. As a result, municipalities often issue PPP tender documents that are unclear or incomplete (especially about how risks will be allocated, what the output performance standards are, or how bids will be evaluated). Often municipal decision makers expect that these detailed issues can be resolved later, such as during or after the tendering process. However, such practices regularly create more delays and problems during PPP procurement. Private bidders will review PPP tender documents and draft contracts in detail. Any uncertainty or lack of clarity will increase perceptions of risk and reduce appetite to bid. Potential bidders will raise questions and seek clarifications, which requires time and effort. It is always more efficient to make the effort to achieve clarity before issuing the PPP tender documents, and this will attract more and better bids.

The municipality should consider the long-term context of the project when establishing bid criteria. For example, the project may need to access financing, or refinancing, from bilateral or multi-lateral financiers (for example the International Finance Corporation (IFC) or the Asian Development Bank). The requirements of these entities should be built into the feasibility study and the bid criteria, in particular the environmental and social standards of such entities. The IFC's environmental and social performance standards is an industry standard.

3.0

Evaluation Methods and Procurement Modes

The municipality must select the appropriate procurement method from the various options, in terms of (1) evaluation method and (2) procurement modes. Each has its own advantages and disadvantages, as discussed later.

Because PPPs are long-term contracts for the delivery of services (that is, outputs), and not

one-time delivery of commodities or materials (that is, inputs), the procurement of PPPs is fundamentally different from the traditional public sector procurement practices. This is why many countries that have developed new PPP programs and strategies have included new PPP procurement guidelines as a key part of their PPP framework.

3.1 PPP Procurement Evaluation Methods

In evaluating proposals, the municipality may choose to adopt either a pass-fail method or a weighted composite score method.

Under a pass-fail method, the municipality adopts a set of minimum technical requirements that each bidder will have to satisfy in their respective technical proposals. Only bidders who are able to satisfy the minimum technical requirements (that is, 'pass') will advance and have their financial proposals considered. The municipality then selects the winning bid based on the best financial proposal submitted

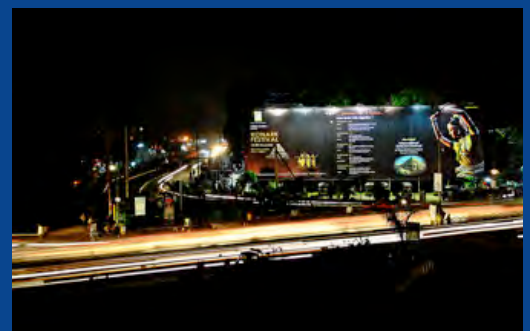
in accordance with the financial bid parameter (that is, highest concession fee paid to the municipality, lowest subsidy required, or lowest tariff). A pass-fail method provides for a more straightforward and transparent evaluation of bids and is recommended for projects whose required minimum output performance standards are clearly understood, defined, and accepted by all private bidders. This would mean limited variation in the technical proposals of bidders, and therefore no incentive to exceed the minimum output performance standards.



Case Example

Bhubaneswar Street Lighting (Odisha, India)

Bhubaneswar's street lighting fell far below national standards, leading to constant complaints from the public. Also, owing to poor quality equipment, energy consumption for street lighting was extremely high, straining the city's finances. The ESCO Shared Savings model recommended by IFC provided efficient street lighting upgrades, paid for and maintained by an ESCO, which in turn would receive payment through energy savings realized by the municipality.



The bid variable for the project was the energy savings achieved by ESCO, subject to a 30 percent minimum. The winning ESCO would undertake a joint survey to establish the baseline energy consumption. A total of 16 companies expressed interest in the project, of which 4 submitted bids. The ESCO contract was signed on October 5, 2013.

Source: International Finance Corporation. 2013. Public-Private Partnership Stories India: Bhubaneswar Street Lighting. https://www.ifc.org/wps/wcm/connect/c97d4db6-4fd5-4483-9617-4793bd9e4ad7/PPPStories_India_BhubaneswarStreetLighting.pdf?MOD=AJPERES&CVID=IKbKhV3

Photo Credit: Sabyasachi Baldev (<https://commons.wikimedia.org/wiki/File:Bhubaneswar.jpg>), "Bhubaneswar", <https://creativecommons.org/licenses/by-sa/2.0/legalcode>

See Project Summary No. 68

By contrast, under a weighted composite score method the municipality calculates a composite score using the weighted average of the technical proposal score and the financial proposal score. The technical proposal score is computed against a set of technical criteria adopted by the municipality. The financial proposal score is based on the most

advantageous bid. This analysis can be more or less complex, depending on the characteristics of 'advantageous'. A simple assessment benchmarks all financial proposals against the best submitted financial proposal in accordance with the bid parameter.

Remark

Examples of Scoring of Financial Proposals

Where the bid parameter is the amount of the grant required by the bidders:

Financial score of Bidder X = (lowest grant requested among all the bidders / grant requested by Bidder X) × 100

Where the bid parameter is the amount of the concession fee paid to the municipality:

Financial score of Bidder X = (concession fee offered by Bidder X / highest concession fee offered among all the bidders) × 100

Where the bid parameter is the level of the user fee required by the bidders:

Financial score of Bidder X = (lowest user fee quoted among all the bidders / user fee quoted by Bidder X) × 100

The weights to be used for calculating the composite score depend on the nature of the project. The more the project is technology-intensive and has substantial scope for innovation, the higher

the weight assigned to the technical proposal score. PPP procurement should prioritize the best bid that responds to municipal needs and should not prioritize the 'cheapest' bid.

3.2 PPP Procurement Modes

The municipality may choose between different PPP procurement modes, including either a single-stage, three-envelope bidding process or a two-stage bidding process.

3.2.1 Single-Stage Three-Envelope Mode

Under a three-envelope, single-stage process, bidders will be required to submit three envelopes—which together, comprise their bid—containing the following:

- Envelope 1: Qualification Documents
- Envelope 2: Technical Proposal
- Envelope 3: Financial Proposal

The municipality will open and evaluate the qualification documents (that is, first envelope), and determine which among the bidders fulfill the minimum qualification requirements. Those who satisfy the requirements will advance to the opening and evaluation of technical proposals (that is, second envelope).

In evaluating the technical proposals, depending on the evaluation method, the municipality may either score the technical proposals based on a set of technical criteria (weighted composite score method) or subject the technical proposals to a set of minimum technical requirements (pass-fail method), in which case only those who pass will proceed to the opening and evaluation of the financial proposal (that is, third envelope). In evaluating the financial proposals, depending on the evaluation method, the municipality may either score the financial proposals and determine the winning bid by obtaining the weighted average of the technical proposal score and the financial proposal score of submitted bids or determine the winning bid by identifying the best offer among the submitted financial proposals.

3.2.2 Two-Stage Procurement Mode

Under a two-envelope, two-stage process, the first stage—that is, the qualification stage—involves the qualification/shortlisting of interested parties/consortia through their submission of an application in response to the municipality's issuance of an RFQ. Evaluation of applications will then proceed in

a way similar to the evaluation of qualification documents under a single-stage bid process. The second stage of the process is the bid and can proceed in a way similar to the opening and evaluation of technical proposals and financial proposals under a single-stage process, whichever is the selected evaluation method.



Remark

Which Procurement Mode to Adopt?

The decision on which procurement mode to follow largely depends on the nature of the project.

Single-stage bidding would be more appropriate for projects that are less complex and have easily definable qualification requirements (that is, does not require niche or highly technical qualifications). Pursuing a single-stage procurement method in this case would facilitate the review process and allow the municipality to complete the tender process more swiftly.

Two-stage bidding on the other hand may be advisable for complex projects (that is, multiple and changing risk profile that could pose challenges in determining, quantifying, mitigating, and sharing project risks between the municipality and the PSP, and hence may require a more in-depth investigation and analysis from bidders before bid submission) or would require the qualification of highly technical experts.

Single-stage bidding is also more appropriate where few bids are expected. Two-stage bidding thins out the field of bidders, asking only the most qualified bidders to submit technical and financial proposals. This is attractive for the most qualified bidders as their likelihood of success increases. These same qualified bidders may not be willing to spend significant money developing bids for processes where a number of other less qualified bidders will compete, reducing the likelihood of success. Bidding is expensive, and bidders will need to work out the likelihood of success.

4.0

Marketing and Promotion

The information memorandum (or 'info memo') is a useful way to inform potential private investors about a municipal PPP bidding opportunity. The info memo provides a summary of the overall purpose, objectives, key components, and major financial requirements and return opportunities of the project. Unlike feasibility studies, which can go into detail describing and analyzing a PPP project, an info memo provides a summarized version (usually 30–70 pages) to allow investors and financiers to decide whether and how to invest in the project.

Investor conferences are meetings conducted by municipalities to promote private investor interest in PPP investment projects opportunities.

Based on all the available sources of information, the info memo usually includes the following:

- Introduction - Brief description of the PPP project.
- Economy - Background information on the national and local economy, the investment environment, foreign exchange issues, commercial lending markets, and other key economic issues important to the PPP project.
- PPP program - Descriptions of the key elements of the PPP program including objectives, accomplishments, key elements, legal and regulatory framework, and so on.
- The structure and description of the relevant infrastructure sector - Information on Sector

size, scope, and performance; sector policies; sector investment plans and forecast demand levels; and institutional roles in the sector.

- The specific PPP project - Description of scope, size/capacity, output standards, risk allocation, available public sector contributions, and procurement timetable.
- Annexes - Further information on service delivery standards, other project requirements, and so on.

The investor conference must be designed to reach the target audience for PPP promotion. National investment promotion agencies and boards can be an important source of assistance in preparing and implementing local and regional investors' conferences and promotional activities.

For municipal PPP projects that seek foreign investment, in addition to locally held investor conferences, they may wish to consider investor conferences held in locations closer to potential investors, sometimes called 'road shows'.

A formal record should be kept of matters discussed and information provided during the road shows to ensure open and transparent promotion.

5.0

Preparing the PPP Tender Documents

The following sections describe the documents that need to be prepared by the PPP advisers before tender.

5.1 Invitation for Expressions of Interest (Eoi)

The municipality may wish to issue an invitation for Eoi to potential investors, to assess market appetite for the project and potentially obtain early feedback on market concerns about the project. This is often not a mandatory step in the process but may be useful strategically to engage with the market of potential investors and spread awareness of the upcoming PPP tender among private investors.

Communications must be clear about the nature and purpose of the invitation for Eoi, which should generally contain the following information:

- Name and brief description of the municipal authority's functions;
- Background with respect to the present state of the relevant service;
- Objectives and overview of the project;

- Nature of the PPP being considered;
- Services that the private sector is expected to deliver;
- Proposed risk allocation;
- Expertise being sought from the private sector, including level of experience in the sector and region;
- Required information about the private entity including the name, address, nature of the organization, relevant experience, and comments on the project;
- Any local participation requirements;
- Outline of bid process, including expected timetable with milestones;
- Any disclaimer of liability and reservation of rights.

5.2 Request for Qualifications

Pre-qualification ensures that bidders are clearly qualified to do the work, including technical experience, designing facilities, managing building projects, raising long-term financing, and delivering public services over the long term. Often these are capabilities, skills, and experience that relatively few firms in the private sector have. Therefore, the pre-qualification evaluation criteria must differentiate between general experience and proven long-term PPP delivery.

The request for qualification (Module 8), issued in the case of a two-stage bidding process, contains instructions to interested bidders to submit qualification documents showcasing their technical and financial capacity to undertake the PPP project.

While an RFQ does not contain all the detailed specifications for the final PPP, it should contain enough information about the project to allow potential bidders to make a judgement about the fit between their experience and qualifications and the project's required output standards and risks. Generally, the preparation of RFQ responses should not require significant expense but should be enough to allow an informed evaluation by the municipality.

Illustration: Contents of a PPP RFQ

1. Letter of invitation to submit qualifications.
2. Description of the purpose and requirements of the PPP project.
 - a. Background, objectives, and overview of the project.
 - b. Name and brief description of the municipal authority's functions and the sources of any statutory powers.
 - c. The specific services that the PSP is expected to deliver expressed as outputs and key performance indicators.
 - d. Proposed risk allocation (summary matrix) and description of PPP modality.
 - e. Description of payment mechanisms, including amount and nature of any public support available.
3. Description of the PPP procurement technique and process.
 - a. Description of the procurement technique (that is, short-listing, competitive negotiations, and best and final offers).
 - b. Description of the legal requirements of existing procurement laws and implementing regulations.
 - c. Proposed timetable and key milestones for the tendering process.
 - d. Other procurement process requirements: language and translation requirements, if any; any disclaimer of liability, including the cost of preparing the response, and reservation of rights, such as the right to not proceed with the project; period of validity of the responders' offer; grounds for disqualification, and so on.
 - e. Invitation to interested firms to submit comments, questions, and recommendations on the proposed output standards and PPP risk allocation structure.
4. Instructions to interested applicants in submitting qualifications.
 - a. Format, time, date, place, and addressee name for submitting the response.
 - b. Selection criteria/minimum conditions to be met by the bidder and instructions for completing qualification forms.
 - i. Technical experience and capacity: Minimum technical capacity required and instructions for how to present technical experience using standard templates in forms (attached in annex).
 - ii. PPP-related experience: Minimum PPP risk management experience and capacity required, and instructions for how to present PPP management experience using standard templates in forms (attached in annex).
 - iii. Financial capacity: Minimum financial capacity/size of the firm/consortia, including experience with limited recourse project finance (if necessary) for funding large PPP projects. Instructions for how to present PPP financial capacity and project-backed financing experience using standard templates in forms (attached in annex). Bid bond requirements, including terms of the bond and any requirements on the bank issuing the bond.
 - iv. Legal structure: Legal requirements of consortium (such as incorporated locally), legal description of bidder (as a consortium or joint venture), ownership structure, proof of power of attorney for lead firm, statement of no existing conflict of interest, and statement of litigation history.
 - v. Personnel: Minimum technical, management, and other requirements for key personnel to work on the project.
5. Annexes.
 - a. Standard forms and templates for interested firms to use in submitting qualifications.
 - b. Relevant specifications for the PPP project: Technical, economic, financial, commercial, legal, and institutional.

Some criteria to use when evaluating qualification submissions from interested applicants include the following:

1. The general experience

- a. General business experience
 - i. Require minimum of three to five years in the relevant sector.
 - ii. Specify, in the case of joint ventures, whether the experience of each member firm is counted equally.
 - iii. Require that the firm/consortium has experience in a similar environment.
- b. General financial performance
 - i. Require annual revenues of at least twice the projected revenues of the new PPP project. This will help ensure that the financial demands of the new PPP project do not overwhelm a smaller size company.

2. Sector specific/project relevant experience

- a. Require firms to demonstrate the number, size, and age of similar relevant PPP contracts they have implemented or are implementing.
- b. Be clear on how to treat the project experiences of different partners, for example is experience of sub-contractors sufficient.
- c. For specific sectors, ask for relevant technical information on the size of previous projects, such as number of transactions, key performance indicators, size and nature of new investments required, and so on.

3. Ability to meet the financial requirements of the specific project

- a. Minimum required cash flow to meet the project's predicted working capital needs and collection periods.
- b. Audited financial statements for last five years, or three years for smaller projects.
- c. If the project is foreseen to require long-term project-backed financing, require firms to show the size, term, and structure of financings as well as lenders.

4. Personnel capabilities

- a. Require full CVs of key personnel with references.
- b. Clearly define what constitutes 'relevant experience'.
- c. Generally, require a minimum of five years of relevant sector experience.

5. Joint ventures

- a. Ask consortia to clearly define the management structure of any joint venture to clarify roles and responsibilities.
- b. While consortia with a large number of firms (more than five) can appear impressive due to the different technical specializations they provide, the risk of default of the overall consortium (if one member withdraws) tends to be greater.
- c. Request for information on other projects in which the consortia have successfully worked together.

Tool

Module 8: Sample Request for Qualifications (RFQ) provides a generic template for qualifying bidders in case of a two-stage bidding process and may need to be adjusted to conform to a municipality's applicable procurement regulations.

5.3 Request for Proposals

The preparation of the RFP documents represents the culmination of the feasibility study and the competitive process by which the municipality seeks to procure the PSP. The bid documents need to be clear about the minimum performance requirements, the allocation of key risks, the rules by which bidders must present and submit their

bids, and the evaluation criteria against which those bids will be reviewed. Any lack of quality in PPP bid documents generally results in numerous requests for clarification or protests from bidders, and possibly vastly different PPP bids each based upon differing assumptions, all of which will delay the bid process significantly and may result in its failure.

In the case of a single-stage bidding process, the RFP will also include instructions for the submission of qualification documents of prospective bidders

showcasing their technical and financial capacity to undertake the PPP project.

Tool

Module 9: Sample Request for Proposal Single-Stage Bid Process and Module 10: Sample Request for Proposal Two-Stage Bid Process provide RFP templates for both procurement modes.

5.4 Draft PPP Agreements

The draft PPP agreement—the document to be executed between the municipality and the PSP—specifies the roles, responsibilities, and liabilities of both parties in the implementation of the PPP

project, as well as the time lines, deliverables, output/performance-based specifications (including key performance indicators), and payment mechanism for the project, among others.

Tool

Module 11 (Sample Municipal PPP Agreement) provides guidance on key provisions that need to be present in a PPP agreement. The draft document will have to be adjusted to consider applicable legal and regulatory provisions in the country and the municipality.

The municipality should constantly coordinate and monitor the progress of the consultant's preparation of the above-mentioned documents, as well as review and provide comments on the documents in preparation for approval.

6.0

Implementing the PPP Procurement Process

This section describes the core elements of the PPP procurement process: (1) qualifications assessment, (2) data room and site visits, (3) technical proposal assessment, (4) financial proposal assessment, and (5) award and contract signing.

6.1 Qualifications Assessment

Interested bidders must furnish information that demonstrates their technical and financial capacity to undertake the PPP project. A bidder is allowed to submit only one application/qualification envelope either individually or as a member of a consortium.

A clarificatory conference may be held to allow bidders to seek clarifications and provide suggestions for consideration by the municipality. The municipality will provide clarifications and such further information as it may, in its discretion, consider appropriate for facilitating a fair, transparent, and competitive qualification process.

The municipality will determine whether the application/qualification envelope is responsive to the requirements stipulated in the RFQ/RFP, that is, if it (1) contains all the documents required to be submitted; (2) is received on or before the submission due date and time; (3) is signed, sealed, and marked; and (4) does not contain any condition or qualification. If necessary, the municipality can request the applicant for clarification. If the bidder fails to respond to the request within a time period or does not provide the information or documentation requested, the municipality may consider the application non-responsive and reject it.

To determine technical capacity, the applicant is required to submit information on relevant projects to showcase its experience (for example, design, engineering, construction, operation, and maintenance), supported by certificates from clients specifying the completion of the contracts and the quality of the work undertaken. For determination of financial capacity, the applicant will be required to specify its net worth, and other financial parameters, supported by audited financial statements that reflect the financial capacity of the applicant.

The evaluation will identify the short list of permitted bidders. The municipality may wish to establish a maximum number of applicants that may be shortlisted, to keep the number of bids manageable for the evaluation team and for bidders.

After evaluation, the municipality will announce the qualified bidders and notify other applicants that they have not been shortlisted.

6.2 Maintaining the PPP Project 'Data Room' and Conducting Bidder Site Inspections

Bidders for PPP projects generally need access to background information about the PPP project. Data rooms are typically libraries of detailed records, reports, and plans relevant to a specific infrastructure project that bidders may access while they are preparing their bids. The nature of the data provided will depend on the project.

The data rooms may include the following:

- Site maps and geological data.
- Existing project designs, construction engineering reports, and as-built drawings.
- Updated infrastructure/utility network maps and expansion plans.
- Asset and equipment registries.
- Inventory records, including spares.
- Equipment maintenance and other maintenance records.
- Customer databases and cadastral studies.
- Existing service contracts and so on.
- Demand, billing, collection, and revenue records.
- Operating and maintenance data, including major maintenance plans.
- Audited financial statements of any existing company.
- Company registry, articles or association, shareholder agreements, and other corporate documents.

- Data on current staff, including salary, costs, contract terms, and so on subject to confidentiality obligations.
- Audited financial statements of the municipal authority, if available.
- Information on other liabilities, such as debts, held by the municipality.
- Other detailed technical, financial, and legal reports and records relevant to the specific PPP project.

'Virtual' data rooms are web based to make information available electronically and simplify bidder due diligence. Virtual data rooms are also easier for municipalities to manage.

Bidders may also need 'site inspections' and 'walk-throughs' to physically inspect the proposed right of way and key project facilities first hand (wearing appropriate safety equipment). The purpose is to allow them to see the proposed project site first hand and to prepare any new questions related to design and construction issues. Any questions that emerge from these visits should be submitted to the municipality in writing, and both the full text of the question (though not attributed to the relevant bidder) as well as the full text of the answer or response should be distributed to all shortlisted bidders to ensure a fair access to information for all bidders.

6.3 Technical Proposal Assessment

Under a two-stage process, the municipality will issue an RFP for bidders to submit their bids, including technical proposals and financial proposals in two separate envelopes (two-stage process). The RFP will include a draft PPP agreement and other key documents.

A bidder conference is usually held to provide information and allow bidders to seek clarifications and provide suggestions to the municipality before the tender documents are finalized.

After the bid date, the municipality will assess whether bids received are responsive. A submission will be considered responsive if it (1) contains all the

documents required to be submitted as specified by the RFP; (2) is received on or before the bid date; (3) is signed, sealed, and marked; and (4) does not contain any condition or qualification. Only responsive bids will be evaluated. If necessary, the municipality can seek further clarification from any bidder.

Technical proposals will be evaluated against the criteria indicated in the RFP. A simplified set of criteria is provided in Table 1, as an example.

Table 1. Sample Criteria

Technical Parameter	Evaluation Criteria
<p>Conceptual Engineering Design</p> <ul style="list-style-type: none"> • Architectural layout and how it conforms to the specifications and the local area • Details of the design of the facility and technology selected that satisfy the specifications • Conceptual layout of the facility illustrating technical specifications of essential components of the facility 	<ul style="list-style-type: none"> • The conceptual engineering design must conform to the output specifications prescribed in the bidding documents • The architectural solution must conform to the specifications and fit with the local context • Technology chosen must be proven and consistent with local requirements
<p>Technical Plan for Construction/Rehabilitation</p> <ul style="list-style-type: none"> • Construction methodology fitting with chosen technology, context of the site, and access to materials • Implementation plan: Present a detailed activity schedule along with milestones in line with the requirements set out in the PPP agreement. This should also outline the time line envisaged for obtaining various permits and approvals 	<ul style="list-style-type: none"> • Construction methodology and planning are well defined and feasible, and are likely to succeed in timely delivery and fit with local context/constraints • In line with output specifications
<p>Operation and Maintenance Plan</p> <ul style="list-style-type: none"> • Process flow chart setting out the activities and the outputs at each stage of operation • Methodology for operations • Time lines and frequency of operations, maintenance activities, equipment replacement, major maintenance and other key activities • Resource utilization statement indicating the proposed organizational structure, employee deployment, equipment procurement and utilization, contracting activities, and utilization of office and other facilities. • Maintenance (regular and emergency) schedules, including major maintenance, and how operations will adjust to the constraints of the maintenance regime 	<ul style="list-style-type: none"> • System/methodology for operation and maintenance are well defined, shown to be feasible, and practicable in context • Key performance indicators are achievable by the proposed operation and maintenance plan
<p>Organization and Staffing</p> <p>Staffing requirements for the project, proposed organization structure, and composition of project and operational team, including staff deployment plan, number of shifts per day of operations, and roles and responsibilities. Bidders should indicate the number of staff to be sourced locally</p>	<ul style="list-style-type: none"> • Adequacy of proposed organizational arrangements • Well-defined roles and responsibilities of the proposed technical, operation, and maintenance plans • Local staffing in line with performance requirements

Under a pass-fail evaluation method, the technical evaluation criteria are minimum requirements. The technical proposal must 'pass' every parameter to qualify for the opening of the financial proposal.

Under a scored evaluation method, the municipality will assign a weight to each technical parameter and score technical proposals accordingly. The municipality should achieve a minimum score before the financial proposal can be opened.

After the evaluation of technical proposals, the municipality will announce the bidders whose financial proposals will be opened, as well as notify the bidders who failed to meet the minimum technical criteria.

6.4 Financial Proposal Assessment

The opening of financial proposals should be scheduled as soon as possible from the announcement of qualified technical proposals. To be considered, the submitted financial proposal must:

1. Contain the following documents as attachments:
 - a. Supporting cost estimates for the design, construction, operation and maintenance components.
 - b. A financial model consistent with the

above cost estimates and the technical proposal, and which includes a short explanatory memorandum.

- c. A project financing plan compliant with the bid requirements, setting out, for example, timing and terms of equity to be infused, sources and terms of debt, and the security package to be developed.
- d. An indication of the extent to which lenders have reviewed and approved the project on the terms indicated in the financial proposal and the draft PPP agreement.

2. Agree to the draft PPP agreement provided in the bid documents;
3. Be signed, sealed, and marked; and
4. Not contain any condition or qualification.

If necessary, the municipality may seek clarification from any of the bidders.

The tender evaluation committee will assess whether each financial proposal satisfies the basic documentary and formal requirements set out in the bid documents. Of those compliant financial

proposals, the best financial proposal will need to be selected.

In some cases, the best financial proposal is a comparison of the figure set out in the financial proposal, for example, the lowest government support requirements, the highest percentage of project revenue to be shared with the municipality, the most low cost housing units to be delivered.

In other cases, the financial proposal requires a more nuanced assessment, for example, where multiple financial criteria are applied, where some modifications to the risk allocation are allowed, where the extent to which lenders have completed their due diligence is to be assessed, where government guarantees may be requested, where services can be delivered in different amounts and timing. In this scenario, the bid evaluation criteria will need to apply a scoring regime, weighted to indicate the municipality's preferences and priorities.

6.5 Award and Contract Signing

Based on the evaluation of the technical and financial proposals, the best bid will be awarded the project. The successful bidder will be issued a letter of award and will have to satisfy post-award requirements before signing the PPP agreement, which may include:

- a. Incorporating a special purpose company to undertake the project; and
- b. Payment of a bid development fee (to reimburse project development and tender expenses incurred by the municipality).

The municipality will enter into final negotiations with the successful bidder only for finalizing the PPP agreement in accordance with the latter's bid. Once finalized, the PSP will execute the PPP agreement with the municipality. On signing of the PPP agreement, the PSP may be required to furnish the municipality with a performance security (or convert the bid security into a performance security).

In general, the finalization of the PPP agreement should be a relatively simple and quick process. As noted previously, PPP bidding documents should include a draft PPP agreement to be signed without significant modification. The municipality will give the bidders the opportunity to comment on the draft

PPP agreement during the consultation process.

The municipality must be careful to listen to bidders if they raise concerns about the PPP agreement to avoid bidders proposing amendments in their bids (which would need to be rejected as noncompliant) and the failure of the bid process.

When planning the process for finalizing the PPP agreement, the municipality should provide a specific deadline. Generally, such negotiations should begin within two weeks of the announcement of the preferred bidder and should be completed within two to six weeks. The municipality should both be able to call the bid bond of the selected bidder if negotiations are not completed within that time frame and commence discussions with the second best bidder, or it may evaluate whether there are fundamental problems with the structure of the project and therefore the project needs to be restructured and re-tendered.

7.0

Managing Transaction Advisers During Procurement

The following sections provide a few additional lessons learned for municipalities to consider when managing PPP procurement.

7.1 Don't Rush

In practice, municipalities are often in a hurry to award a PPP project, reasoning that the sooner the PPP tender documents are released the sooner the contract can be awarded, and the private partner can start delivering the needed public services. As a result, municipalities often issue PPP tender documents that are unclear and incomplete, with the expectation that these issues can be resolved later, such as after the tendering process. However, such an approach regularly creates more delays and problems. Bidders will review PPP tender documents and draft PPP agreements in detail to identify and resolve issues with the PPP structure and terms before they become larger problems or even project failures.

It is better for the municipality and its advisers to complete the structuring of the PPP first, and to include a detailed description of the PPP project's risk allocation structure and performance output standards in the RFQ. This sends an important signal to prospective bidders that they should be similarly prepared to invest in innovative, competitive, and detailed bids. This also allows the municipality to receive informed comments and questions about the proposed PPP deal structure from interested bidders before the RFP is finalized and released.

7.2 Provide Clear Instructions to the Tender Evaluation Committee

Tender evaluation committee members are unlikely to be familiar with the context of PPP procurement, and should be given clear instructions on how to determine whether the technical approach proposed by the bidder is viable (using an output-based procedure). For example, a bidder should not 'fail' simply because it proposes a new technology or a design that may be different from one that is preferred by the individual reviewer. Often designers, engineers, and technology specialists from municipalities and the public sector have decades of sound experience with input-based projects, in which they themselves select the design and technology. When such individuals are asked to review a different design or technology, they may be

inclined to give it a 'failing' score, simply because it differs from how the municipality has been designing and building projects for many decades.

Tender committees familiar with public procurements may also not understand the relevance of the SPV, the reason that PPP investors are not jointly and severally liable, the context of lenders in a PPP project, the function of an output-based performance specification, the context of folding construction and operation into a single counterparty, and so on. Capacity support for the tender committee should be started early to avoid delaying the bid evaluation process.

7.3 Contract Management Plan

The transaction advisers should develop the contract management plan and help form the contract management team, before the PPP agreement is signed. Once the agreement is signed and financed, the transaction team will move to the

next deal, and it is difficult to pull together a team and a plan once those most familiar with the project have moved on.

8.0

List of References

International Finance Corporation. 2013.
Public-Private Partnership Stories India:
Bhubaneswar Street Lighting.
[https://www.ifc.org/wps/wcm/connect/
c97d4db6-4fd5-4483-9617-4793bd9e4ad7/
PPPStories_India_BhubaneswarStreetLighting.
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SAMPLE REQUEST
FOR QUALIFICATION

Municipal Public-Private Partnership Framework

08

Important Note:

This Request for Qualifications is provided only as a sample document. It must be adapted to fit the unique circumstances and needs of each particular Municipality and project for which its use is intended. National and local laws, regulations, policies and practices may prescribe a different approach to procuring project-level consulting services.

ADDITIONAL GUIDANCE MATERIAL

World Bank Group's Public-Private Partnership Legal Resource Center,
<https://ppp.worldbank.org/public-private-partnership/>

Sample Document, Adapt as Appropriate

[CONTRACTING AUTHORITY'S NAME]

Request for Qualification

for the

[Title of PPP Project]

[DATE]

Sample Document, Adapt as Appropriate

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Sample Document, Adapt as Appropriate

DISCLAIMER

The information contained in this Request for Qualification (**RFQ**) or subsequently provided to Applicants, whether verbally or in documentary or any other form by or on behalf of the Contracting Authority or any of its employees or advisors, is provided to Applicants on the terms and conditions set out in this RFQ and such other terms and conditions subject to which such information is provided.

This RFQ is not an agreement and is neither an offer nor invitation by the Contracting Authority to the prospective Applicants or any other person. The purpose of this RFQ is to provide interested parties with information that may be useful to them in the formulation of their Application for qualification pursuant to this RFQ. This RFQ includes statements, which reflect various assumptions and assessments arrived at by the Contracting Authority in relation to the PPP Project. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFQ may not be appropriate for all persons, and it is not possible for the Contracting Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFQ. The assumptions, assessments, statements and information contained in this RFQ may not be complete, accurate, adequate or correct. Each Applicant should therefore conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFQ and obtain independent advice from appropriate sources.

Information provided in this RFQ to the Applicant(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. None of the Contracting Authority, its employees, or advisors accepts any responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein. The Contracting Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFQ or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ or arising in any way by the participation in this prequalification process.

The Contracting Authority, its employees or advisors, likewise accept no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Applicant upon the statements contained in this RFQ. The Contracting Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFQ. The issuance of this RFQ does not imply that the Contracting Authority is bound to select and shortlist prequalified Applications for Bid Stage or to appoint the selected Bidder for the Project and the Contracting Authority reserves the right to reject all or any of the Applications or Bids or otherwise discontinue the process without assigning any reason whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Contracting Authority or any other costs incurred in connection with or relating to its Application. All such costs and expenses will remain with the Applicant and the Contracting Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Addendum or Addenda means addendum or addenda to the RFQ.

Applicant means an interested single entity or Consortium which submits an Application to the Contracting Authority in accordance with provisions of this RFQ.

Application means the document/s submitted by an Applicant to qualify to submit a bid for the Project.

Application Due Date means the date specified in Schedule 2 as the last date for submission of Applications.

Bid means a proposal submitted by a Bidder for the Project.

Bidder means a single entity or Consortium qualified to submit a Bid to the Contracting Authority.

Bidding Documents means the RFP, the draft PPP Agreement, any Addenda or clarification issued by the Contracting Authority in accordance with the RFP and the PPP Agreement, and any other documents to be provided by the Contracting Authority.

Bidding Process is the two-stage bidding process – comprising of the Qualification Stage and Bid Stage – being followed by the Contracting Authority to award the Project to the Selected Bidder, the terms of which are set out in Clauses 2.4 to 2.7 of this RFQ.

Bid Stage is the second stage of the bidding process which involves the submission of Bids by shortlisted bidders.

Consortium means any combination of entities that have formed a consortium or association by fulfilling the requirements set out in this RFQ, for the purpose of submitting an Application, and if shortlisted, submit a Bid for the implementation of the Project.

Consortium Agreement means the binding consortium agreement to be executed between Consortium Members in the form set out in Schedule 10.

Contracting Authority means any local/municipal government authority public, statutory corporation or other subnational agency.

Control means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, or the power to appoint majority of the directors on the board of directors of such company or corporation and/or the power to direct the management and policies of such person by operation of law, agreement or otherwise and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law, agreement or otherwise.

Government means the Government of ****.

Lead Member in the context of a Consortium, means the Consortium Member nominated by the Consortium Members as the lead member with the rights and obligations as set out in this RFQ.

PPP means public-private partnership.

PPP Agreement means the agreement to be executed between the Contracting Authority and the Selected Bidder to implement the PPP project.

Project Company means the special purpose company specifically formed and incorporated in [LOCATION] for the purpose of undertaking the Project pursuant to the PPP Agreement.

RFP means Request for Proposals.

RFQ means this Request for Qualification document dated **** along with its Schedules, and Addenda, if issued.

Successful Bidder means the Bidder selected by the Contracting Authority to award the Project following the completion of the Bidding Process.

Tender Committee means the working group established by the Contracting Authority to carry out the PPP procurement.

Sample Document, Adapt as Appropriate

1. INTRODUCTION

A. Purpose of Issuing the RFQ

- 1.1. The purpose of issuing the RFQ is to enable the Contracting Authority to qualify interested Applicants who wish to be involved in the PPP, by assessing whether the interested Applicants fulfill the Contracting Authority's requirements as set out Section 3 of this RFQ.
- 1.2. It is intended that the Qualification Stage and subsequent processes be conducted in a transparent and open manner in order to ensure that the Contracting Authority's objectives for initiating the PPP are achieved, and value for money objectives met. The qualification process will identify a shortlist of qualified Applicants, who will be asked to submit detailed functional and price information in a later bid process.
- 1.3. The objectives of the RFQ include ensuring that those interested Applicants who successfully qualify have: (a) the financial prerequisites; and (b) an established track record in the development and operation of a similar project so as to enable the interested applicant to successfully manage the PPP.

B. Project Background

- 1.4. The Contracting Authority is seeking private sector participation to improve [SERVICE] in the [LOCATION] through [DESCRIPTION OF FACILITIES] on a PPP basis.
- 1.5. The Service Provider shall undertake: [indicate scope – i.e. design, construction and maintenance of new facilities / operation and maintenance of existing facilities, etc].
- 1.6. Further details on the PPP Project may be found in Schedule 1.

C. Brief Description of the Bidding Process

- 1.7. The Contracting Authority has adopted a two-stage process (collectively referred to as the "Bidding Process") for selection of the Successful Bidder for award of the PPP Project.
- 1.8. The first stage (the "Qualification Stage") of the process is the qualification / shortlisting of interested parties/consortia through their submission of an Application in accordance with the provisions of this RFQ (the "Applicant"). In this stage, Applicants are required to furnish the information specified in this RFQ. The Contracting Authority shall be entitled to disqualify an Applicant in accordance with the aforesaid documents at any stage of the Bidding Process. At the end of this stage, the Contracting Authority shall announce a short-list of prequalified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the "Bid Stage") comprising Request for Proposals (the "Request for Proposals" or "RFP").
- 1.9. The second stage of the process is the bid proper or the Bid Stage. The shortlisted Applicants / Bidders will be called upon to submit their proposals (the "**Bids**") in respect of the project, in accordance with the RFP and other documents to be provided by the Contracting Authority (collectively the "**Bidding Documents**"). Bidders will be required to deposit, along with its Bid, a refundable bid security which will be specified in the RFP.
- 1.10. Further and other details of the process to be followed at the Bid Stage and the terms thereof will be indicated in the RFP.

2. INSTRUCTIONS TO APPLICANTS

A. General Requirements

2.1 Eligibility of Applicants

- 2.1.1 An Applicant shall submit only 1 (one) Application for shortlisting either individually or as a Member of a Consortium. An Applicant applying individually or as a member of a Consortium shall not be entitled to submit another Qualification either individually or as a member of any Consortium, as the case may be.
- 2.1.2 An Applicant may be a natural person, private entity, or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in this RFQ.
- 2.1.3 The Application should be furnished in the formats specified in this RFQ and signed by the Applicant's authorized signatory. The Applicants should note that the formats specified in the RFQ have been provided for the convenience of the Applicants and may not exhaustively enumerate or describe various information required to be provided by the Applicants under this RFQ. The Applicants should ensure that all the information required to be provided by them under this RFQ is included in their Application whether or not a particular format specified herein makes provision for submission of such information and/or whether or not a format for submission of such information is incorporated in this RFQ.
- 2.1.4 The Applicant should submit a power of attorney in accordance with Schedule 8, authorizing the signatory of the Bid to commit the Bidder.
- 2.1.5 In case the Applicant is a Consortium, the Members thereof should furnish a power of attorney in favour of the Lead Member in accordance with Schedule 9.
- 2.1.6 Any condition or qualification or any other stipulation contained in the Application which is inconsistent with the terms of this RFQ may render the Application liable to rejection as a non-responsive Application.
- 2.1.7 The Application and all communications in relation to or concerning this RFQ and the Application shall be in the English language. Supporting documents and printed literature furnished by the Applicant with the Application may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Applicant. Supporting materials which are not translated into English may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.
- 2.1.8 This RFQ and all attached or other documents, are and shall remain the property of the Contracting Authority and are made available to the Applicants solely for the purpose of preparation and submission of an Application. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparing and submitting their Application.
- 2.1.9 **Conflict of Interest:** An Applicant shall not have a conflict of interest that affects the Bidding Process. Any Applicant found to have a conflict of interest shall be disqualified. Determining the presence of Conflict of Interest shall be the prerogative of the Contracting Authority. An Applicant may be considered to have a conflict of interest that affects the Bidding Process, if:
- (a) Such Applicant (or any constituent thereof) and any other Applicant (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding of an Applicant (or any constituent thereof) is less than **** % of the paid up and subscribed capital of the other Applicant (or any constituent thereof) and it does not have Control of the Applicant; or
 - (b) a consortium member or any constituent of such Applicant is also a consortium constituent of another Applicant; or

- (c) such Applicant (or any constituent thereof) receives or has received any direct or indirect subsidy from any other Applicant (or any constituent thereof), or has provided any such subsidy to any other Applicant (or any constituent thereof); or
- (d) such Applicant (or any constituent thereof) has the same legal representative for purposes of the Application as any other Applicant (or any constituent thereof); or
- (e) such Applicant (or any constituent thereof) has a relationship with another Applicant (or any constituent thereof), directly or through common third parties, that puts them in a position to have access to each others' information about, or to influence the Application of either or each other; or
- (f) such Applicant (or any constituent thereof) has participated as a consultant to the Contracting Authority in the preparation of any documents, design or technical specifications of the PPP Project, or
- (g) Any legal, financial or technical adviser of the Contracting Authority in relation to the PPP Project is engaged by the Applicant (or any constituent thereof) in any manner for matters related to or incidental to the PPP Project.

2.2 Change in composition of the Consortium

- 2.2.1 Change in the composition of a Consortium will not be permitted by the Contracting Authority after the Submission of Application Due Date.
- 2.2.2 The Consortium shall submit a Power of Attorney and a Consortium Agreement following Schedule 9 and Schedule 10 respectively along with the Application on or before the Submission of Application Due Date.
- 2.2.3 The Consortium Agreement shall, inter alia:
 - (a) convey the intent to form a Project Company with shareholding/ownership equity commitments in accordance with this RFQ;
 - (b) clearly outline the proposed roles and responsibilities of each Member and the Lead Member; and
 - (c) fulfil the minimum shareholding structure indicated in Clauses 2.2.4 and 2.2.5 below.
- 2.2.4 The Lead Member of the Consortium shall hold at least **** % of the subscribed and paid up equity of the Project Company for **** years after the Completion Date, and at least **** % for the following **** years.
- 2.2.5 [Each member of the Consortium shall hold at least **** % of the subscribed and paid up equity of the Project Company for **** years after the Completion Date, and at least **** % for the following **** years.]

2.3 Verification of Information by Applicants

- 2.3.1 It shall be deemed that by submitting the Application, the Applicant has:
 - (a) made a complete and careful examination of the RFQ;
 - (b) agreed to be bound by the undertakings provided by it under and in terms hereof; and
 - (c) acknowledged that it does not have a Conflict of Interest.
- 2.3.2 The Contracting Authority, its employees, and consultants shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFQ or the Bidding Process, including any error or mistake therein or in any information or data given by or on behalf of the Contracting Authority.

2.4 Prequalification Conference

- 2.4.1 A prequalification conference of the Applicants shall be convened at the designated date, time and place. Only duly authorized representatives of the Applicants shall be allowed to participate in the pre-qualification conference.
- 2.4.2 During the course of the prequalification conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Contracting Authority. The

Contracting Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Qualification Process.

2.5 Verification and Disqualification

2.5.1 The Contracting Authority reserves the right to verify all statements, information and documents submitted by the Applicant in response to this RFQ and the Applicant shall, when so required by the Contracting Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the Contracting Authority shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Contracting Authority thereunder.

2.5.2 The Contracting Authority reserves the right to reject any Application if:

- (a) at any time, a material misrepresentation is made or uncovered; or
- (b) the Applicant does not provide, within the time specified by the Contracting Authority, the supplemental information sought by the Contracting Authority for evaluation of the Application, or
- (c) a Conflict of Interest as discussed in Clause 2.1.9 persists.

2.5.3 Such misrepresentation / improper response shall lead to the disqualification of the Applicant. If the Applicant is a Consortium, then the entire Consortium and each Member shall be disqualified/ rejected.

B. Documents

2.6 This RFQ comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any addendum issued in accordance with Clause 3.9 and any clarifications and interpretations issued in accordance with Clause 3.8.

Request for Qualification	Schedules
Section 1. Introduction	Schedule 1. Project Information
Section 2. Instructions to Applicants	Schedule 2. Bidding Process Timelines
Section 3. Evaluation Criteria	Schedule 3. Letter of Application
	Schedule 4. Applicant Information
	Schedule 5. Consortium Member Information
	Schedule 6. Financial Capacity
	Schedule 7. Technical Capacity
	Schedule 8. Power of Attorney for Signing of Application and Bid
	Schedule 9. Power of Attorney for Lead Member of Consortium
	Schedule 10. Consortium Agreement
	Schedule 11. Declaration of Undertaking

2.7 Clarifications

- 2.7.1 Applicants requiring any clarification on the RFQ may notify the Contracting Authority by e-mail at the following e-mail address: ****
- 2.7.2 Queries must be received by the Contracting Authority on or before the last date for receipt of queries indicated in Schedule 2.
- 2.7.3 The Contracting Authority shall endeavour to respond to the questions raised or clarifications sought by the Applicants within fifteen (15) days of receipt of such questions or clarifications. The Contracting Authority will notify Applicants by e-mail that queries and its responses have been posted in the website.
- 2.7.4 The Contracting Authority will organize the clarification response procedure. The queries and its responses will be updated in the website of the Contracting Authority. The Contracting Authority may notify Applicants by e-mail that responses to queries have been posted at the Contracting Authority's website.
- 2.7.5 The Contracting Authority may also on its own initiative, if deemed necessary, issue interpretations and clarifications. All clarifications and interpretations issued by the Contracting Authority shall be deemed to be part of the RFQ. Verbal clarifications and information given by the Contracting Authority or its employees or representatives shall not be binding on the Contracting Authority.
- 2.7.6 Should the Contracting Authority deem it necessary to amend the RFQ as a result of a clarification, it shall do so following the procedure in Clause 2.8 below.

2.8 Amendment

- 2.8.1 At any time prior to the deadline for submission of Application, the Contracting Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of addenda.
- 2.8.2 Any Addendum thus issued will be uploaded in the website of the Contracting Authority. The Contracting Authority may notify Applicants about the issuance of an Addendum by e-mail.
- 2.8.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Contracting Authority may, at its own discretion, extend the deadline for submission of the Application.

C. Preparation and Submission of Application

2.9 Format and Signing of Application

- 2.9.1 The Applicant shall provide in its Application all the information sought under this RFQ. The Contracting Authority will evaluate only those Application that are received in the required formats and complete in all respects. Incomplete and /or conditional Application shall be rejected.
- 2.9.2 The Applicant shall prepare one original set of its Application (together with originals/copies of documents required to be submitted along therewith) and clearly marked "ORIGINAL". In addition, the Applicant shall submit one copy of the Application marked "COPY". In the event of any discrepancy between the original and the copy, the original shall prevail.
- 2.9.3 The Application shall be signed by the authorized signatory of the Applicant who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Application shall be initialed by the person signing the Application. The Application shall contain page numbers.

2.10 Contents of the Application

- 2.10.1 The Application shall be marked as follows:
"APPLICATION FOR THE [NAME OF THE PROJECT]"
and shall clearly indicate the name and address of the Applicant.
- 2.10.2 The documents constituting the Application submission shall include the following accomplished forms:
- (a) The Letter of Application (Schedule 3);
 - (b) The Applicant Information (Schedule 4) including attachments;
 - (c) If a consortium, the Consortium Member Information to be accomplished by each member of the consortium (Schedule 5) including attachments;
 - (d) The Applicant's Financial Capacity (Schedule 6) including attachments;
 - (e) The Applicant's Technical Capacity (Schedule 7) including attachments;
 - (f) The Power of Attorney for Signing of Application (Schedule 8);
 - (g) If a consortium, the Power of Attorney for Lead Member of Consortium (Schedule 9);
 - (h) If a consortium, the Consortium Agreement; and
 - (i) The Declaration of Undertaking.

2.11 Sealing and Marking of Application

- 2.11.1 The Application shall be sealed it in an envelope marked with the following: "APPLICATION FOR QUALIFICATION FOR [NAME OF PPP PROJECT]."
- 2.11.2 The Application shall be addressed to:
- ATTENTION: [Name of Head of Contracting Authority's Tender Committee]
ADDRESS: [Address of Contracting Authority]
- 2.11.3 If the envelopes are not sealed and marked as instructed above, the Contracting Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application submitted.

2.12 Application Submission Deadline

- 2.12.1 Applications must be received by the Contracting Authority at the address specified in Schedule 2 no later than the Application Due Date.
- 2.12.2 The Application must be hand delivered as prescribed by the Contracting Authority. The Contracting Authority shall, on request, provide the Applicant with a receipt showing the date and time when the Application was received.
- 2.12.3 The Contracting Authority may, at its discretion, extend the Application Due Date by amending the RFQ in accordance with Clause 2.8, in which case all rights and obligations of the Contracting Authority and Applicants previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 2.12.4 Applications received by the Contracting Authority after the specified deadline for submission shall be declared late and shall not be eligible for consideration and shall be returned unopened to the Applicant.

2.13 Modifications / Substitution / Withdrawal of Applications

- 2.13.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the modification, substitution or withdrawal is received by the Contracting Authority prior to Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Application Due Date.
- 2.13.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and

delivered in accordance with this Clause 2.11, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.13.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Contracting Authority, shall be disregarded.

D. Evaluation Process

2.14 Opening and Evaluation of Applications

2.14.1 The Tender Committee shall open the Applications exactly one hour after the deadline for submission, at the place specified in Schedule 2 and in the presence of the Applicants who choose to attend.

2.14.2 Applications for which a notice of withdrawal has been submitted shall not be opened.

2.14.3 Upon the opening of Applications, the Tender Committee shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive only if it:

- (a) contains all the documents required to be submitted by this RFQ;
- (b) is received on or before the Submission of Application Due Date, including any extension thereof;
- (c) is signed, sealed and marked as stipulated in this RFQ; and
- (d) does not contain any condition or qualification.

2.14.4 Only applications that are deemed to be responsive will be evaluated and shortlisted.

2.14.5 The Tender Committee reserves the right to reject any Application which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Tender Committee in respect of such Application.

2.14.6 Only responsive Applications that fulfill the following may be shortlisted:

- (a) Contains all the required information stipulated in this RFQ;
- (b) Submitted documents in the format prescribed by this RFQ; and
- (c) Hurdled the minimum qualification requirements stipulated in Section 3 of this RFQ.

2.15 Confidentiality

2.15.1 Information relating to the examination, clarification, evaluation, and recommendation for the short-listed Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Contracting Authority in relation to or matters arising out of, or concerning the Bidding Process.

2.15.2 The Contracting Authority will treat all information, submitted as part of the Application, in confidence and will require all those who have access to such material to treat the same in confidence.

2.15.3 The Contracting Authority may not divulge any such information unless it is directed to do so by any statutory body that has the power under law to require its disclosure or to enforce or assert any right or privilege of the statutory body and/or the Contracting Authority.

E. Qualification and Bidding

2.16 After the evaluation of Applications, the Tender Committee will announce a shortlist of prequalified Applicants ('Bidders') who will be eligible for participation in the Bid Stage. At the same time, the Tender Committee will notify the other Applicants that they have not been shortlisted.

2.17 Only shortlisted Applicants shall be issued the RFP and allowed to submit their proposals for the PPP Project.

2.18 All documents and other information supplied by the Contracting Authority or submitted by an Applicant to the Contracting Authority shall remain or become the property of the Contracting Authority. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The Contracting Authority will not return any Application or any information provided along therewith.

2.19 Fraudulent and Corrupt Practices

2.19.1 It is the Government's policy to require that Contracting Authorities (including beneficiaries of public funds), as well as applicants/suppliers/contractors under PPP or publicly funded contracts, observe the highest standard of ethics during the procurement and execution of such contracts.

2.19.2 In pursuit of this policy, the Government defines, for the purposes of this provision, the terms set forth below as follows:

- (a) "corrupt practice" means the offering, giving, receiving, or soliciting, of anything of value to influence the action of a public official in the Bidding Process (for the avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Contracting Authority who is or has been associated in any manner with the Bidding Process, at any time during the Bidding Process and within one year from the date of the conclusion of such process, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process), and includes inter alia, bribery, extortion or coercion, which involves threats of injury to person, property or reputation;
- (b) "fraudulent practice" means a misrepresentation, omission, or suppression of facts, or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) "coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process; and
- (d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Contracting Authority or member of the Tender Committee with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest.

2.19.3 Should the Applicant commit any of the foregoing, the Tender Committee is mandated to:

- (a) Reject the recommendation for the shortlisting of the Applicant; and
- (b) Declare the Applicant ineligible, for a period of ten years, to be awarded a PPP contract.

2.20 The Government reserves the right, where the Applicant has been found by a national or international entity to have engaged in corrupt or fraudulent practices, to declare such Applicant ineligible, for a period of ten years, to be awarded a PPP contract or any publicly funded contract.

F. Miscellaneous

2.21 The Bidding Process shall be governed by, and construed in accordance with, the laws of [LOCATION] and the Courts of [LOCATION] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the RFQ and/or the Bidding Process.

2.22 The Contracting Authority, in its sole discretion and without incurring any obligation or liability or assigning any reason, reserves the right, at any time, to:

- (a) suspend, withdraw and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- (b) consult with any Applicant in order to receive clarification or further information;
- (c) retain any information and/or evidence submitted to the Contracting Authority by, on behalf of, and/or in relation to any Applicant;

- (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant;
- (e) amend, modify or reissue the RFQ or any part thereof; and/or
- (f) accept or reject any or all of the Applications.

2.23 An Applicant who claims to have suffered or that may suffer any loss or injury as a result of breach of a duty imposed on a Contracting Authority or an approving authority in the course of the Bidding Process may seek a review by the appropriate authority in accordance with applicable law.

2.24 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Contracting Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

Sample Document, Adapt as Appropriate

3. EVALUATION CRITERIA

3.1 The following criteria will be used in the evaluation of the Applicant's submission: (a) General requirements; (b) Financial capacity; and (c) Technical experience.

3.2 **General Requirements**

The general requirements are clearly stated in Clause 2.1. Whether the Applicant has met the general requirements will be decided upon a review of the following documents:

- (a) Copy of a registration document which certifies that the legal entity or consortium member is duly incorporated;
- (b) Authorisation of Applicant's representative; and
- (c) If there is a case mentioned in Clause 2.1, the Applicant must notify the Contracting Authority's Tender Committee and present the decision made by the court or competent authority.

3.3 **Financial Capacity**

The Applicant must demonstrate that it has a Net Worth of at least [AMOUNT] ([AMOUNT in words] only) at the close of the immediately preceding financial year.

3.4 **Technical Capacity**

The Applicant must demonstrate that it possesses the following experience:¹

Indicator	Schedules
1. Experience in the Design of Similar Infrastructure Projects	Experience in the design of similar infrastructure projects demonstrated through at least two contracts undertaken in the last ten years for projects of a similar type, size and complexity [indicate examples and minimum project size].
2. Experience in the Construction of Similar Infrastructure Projects	Experience in the construction of similar infrastructure projects demonstrated through at least two contracts undertaken in the last ten years for projects of a similar type, size and complexity [indicate examples and minimum project size].
3. Experience in the Operations & Maintenance of Similar Infrastructure Projects	Experience in the operation & maintenance of similar infrastructure projects demonstrated through at least two contracts undertaken in the last ten years for projects of a similar type, size and complexity [indicate examples and minimum project size].

¹ In the case of a Consortium, the Applicant, through its Consortium members, must demonstrate that it collectively possesses all of the required technical experience. The Indicators may vary and may be further expanded based on the requirements of the PPP Project.

Schedule 1: Project Information²

- 1.1. The Contracting Authority has, as part of its [*insert development strategy*]³, identified the PPP opportunity at [*insert location*].
- 1.2. It is intended that by the Contracting Authority entering into the PPP with a private party, the Contracting Authority may be able to [*insert the purpose for entering into PPP*]. It is intended that the project will be implemented by the private party in compliance with any terms and conditions stipulated in the PPP Agreement.
- 1.3. The Contracting Authority embarked on the project after conducting feasibility studies in order to determine whether it could proceed with the project and whether the project may be viable.
- 1.4. Under the project, the private partner will build an asset by using its own funds or funds it has raised, transfer the possession as specified in the PPP Agreement, and transfer it to local ownership upon the expiration of the PPP Agreement. The payment to the private partner will comprise of [user payments from users of the PPP project]; [and/or] [availability payments from the Contracting Authority].

² All numbered footnotes in Schedule 1 are for guidance of the Contracting Authority and should be omitted prior to issue of the RFQ.

³ All project specific provisions have been enclosed in square parenthesis and may be modified, as necessary, before issuing the RFQ for the project. The square parenthesis should be removed after carrying out the required modifications.

⁴ The Contracting Authority must provide relevant details regarding the asset and the possible product or service categories which could be provided through the use of the asset. The Contracting Authority will be heavily guided by its feasibility study as to what information is relevant. The Contracting Authority must provide sufficient information so as to allow interested parties to consider whether they would wish to be involved in the PPP.

⁵ The Contracting Authority must provide a summary on the site information and on issues that were identified during the feasibility phases, such as: legal, environmental, stakeholders, personnel and human resources, infrastructure, equipment, performance standards, transfer of risk and other information identified as being relevant through the inception and feasibility phases.

1.5. [DESCRIPTION OF THE ASSET]⁴

1.6. [SITE REVIEW]⁵

Sample Document, Adapt as Appropriate

Schedule 2: Bidding Process Timelines

The Contracting Authority shall endeavor to adhere to the following timelines:

Event Description	Estimated Date, Time, and Location (if applicable)
QUALIFICATION STAGE	
Last date for receipt of queries	
Prequalification conference	
Contracting Authority's response to queries	
Submission of Application Due Date	
Opening of Applications	
Announcement of Short List	
BID STAGE	
Issuance of RFP to Qualified Bidders	
Last date for receiving queries	(to be finalized)
Pre-bid conference	(to be finalized)
Submission of bidders comments on draft PPP Agreement	(to be finalized)
Contracting Authority responses to queries by and, if necessary, issue a revised and amended PPP Agreement	(to be finalized)
Bid Due Date	(to be finalized)
Opening of Technical Proposals	(to be finalized)
Announcement of Qualified Technical Proposals	(to be finalized)
Opening of Financial Proposals	(to be finalized)
Selection and Announcement of Successful Bidder	(to be finalized)
Approval of Successful Bidder	(to be finalized)
Finalisation of matters to permit signing of PPP Agreement	(to be finalized)

Schedule 3: Letter of Application

[On the letterhead of the Applicant / Lead Member]

Original or Copy number:

Date:

To: [Contracting Authority's Name]

[Insert Contracting Authority's Address]

Re: Application for Qualification for the [name of project]

Dear Madam/Sir,

With reference to your RFQ dated [DATE], I/we, having examined the document and understood its contents, hereby submit my/our Application for the aforesaid Project. We hereby confirm that we/our members in the Consortium satisfy the terms and conditions laid out in the RFQ document. We have agreed that _____ [insert member's name] will act as the Lead Member of our consortium, and that _____ [insert individual's name] will act as our representative/ will act as the representative of the consortium on its behalf* and has been duly authorized to submit the Application.⁶

The Application is being submitted for the express purpose of qualifying as a shortlisted Bidder for the aforesaid Project. The Application is unconditional and unqualified.

I/We hereby certify/declare that:

1. All the required accompanying documents are complete and are all included in this Application;
2. All information provided in the Application are true and correct;
3. Nothing has been omitted which renders such information misleading;
4. All documents accompanying such Application are true copies of their respective originals;
5. I/we shall make available to the Contracting Authority any additional information it may find necessary or require to supplement or authenticate the submissions;
6. I/we will abide by all the terms and conditions of the RFQ;
7. I/We have examined and have no reservations to the RFQ, including any addendum issued by the Contracting Authority;
8. In the last 3 years, I/we/any of the Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach by [us/any of the Members];
9. I/we are not barred by the Government, or any public agencies from participating in similar projects as of [Submission of Application Due Date];
10. I/We do not have any Conflict of Interest;
11. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in this RFQ, in respect of any tender or request for proposal issued by or any agreement entered into with the Contracting Authority or any other public sector enterprise or any government, at central or state level;
12. I/we have taken steps to ensure that in conformity with the provisions of this RFQ, no person acting for me/us or on my/our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
13. You may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive, without incurring any liability to the Applicants;

⁶ Please strike out if not applicable.

14. I/we/any Member, am/are not a member of a/any other Consortium applying for the Project;
15. I/we or any Member of our consortium have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community;
16. In regard to matters relating to security and integrity of the country, I/we have not been charged by any government agency or convicted by a court of law;
17. No investigation by a regulatory authority is pending either against me/us/any Member or against our chief executive officer or any of my/our directors/managers/employees;

I/We believe that I/we satisfy(ies) and meet(s) all the requirements as specified in this RFQ and are/is qualified to submit an Application.

Respectfully,

(Name, designation, and signature of the authorised representative)

For and on behalf of: (name and seal of the Applicant / Lead Member of the Consortium)

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Schedule 4: Applicant Information⁷

Application Information

Applicant's legal name:

In case of Consortium, legal name
of each member:

Applicant's actual or intended
country of constitution:

Applicant's actual or intended year
of constitution:

Applicant's legal address in country
of constitution:

Applicant's authorized
representative information (name,
designation, address, Telephone/
Fax numbers, E-mail):

Attached are copies of original documents of:

- 1. Notarized documents of constitution of the legal entity named above
- 2. Letter of authorization to represent the applicant
- 3. Letter of intent to form Consortium or Consortium agreement.

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⁷ This section must be completed by the authorized consortium representative, or if the applicant is a sole organization, by that organization

Schedule 5: Consortium Member Information⁸

Consortium Member Information

Consortium member's legal name:

Consortium member's actual or
intended country of constitution:

Consortium member's actual or
intended year of constitution:

Consortium member's legal
address in country of constitution:

Consortium member's authorized
representative information (name,
designation, address, Telephone/
Fax numbers, E-mail):

Attached are copies of original documents of:

- 1. Notarized documents of constitution of the legal entity named above
- 2. Letter of authorization to represent consortium member
- 3. Letter of intent to form Consortium or Consortium agreement.

⁸ This section is to be
completed by each
consortium member.

Schedule 6: Financial Capacity⁹

[On the letter head of the Applicant]

(In [CURRENCY])

Applicant Type	Member Code ¹⁰	Net Worth
		Year 1
Single entity Applicant		
Consortium		

Name & address of Bidder's Banks:

Instructions:

The Applicant/Members of the Consortium will attach copies of the balance sheets, financial statements and audited annual reports for 5 years preceding the Application Due Date. The financial statements will:

1. reflect the financial situation of the Applicant;
2. be audited by a statutory auditor;
3. be complete, including all notes to the financial statements; and
4. correspond to accounting periods already completed and audited (no statements for partial periods will be requested or accepted, if no audited results are available for such partial periods).

“Net Worth” shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders). Year 1 will be the latest completed financial year, preceding the Application Date.

The Applicant will provide an Auditor’s Certificate specifying the Net Worth of the Applicant and also specifying the methodology adopted for calculating such Net Worth.

If the annual accounts for the latest financial year are not audited, the Applicant will provide the provisional annual accounts for the latest financial year. The provisional annual accounts will be accompanied by an undertaking by the Applicant to the effect that: if it is chosen as a Bidder, the Bidder will submit the audited annual accounts for the latest financial year during the RFP process; and such audited annual accounts shall not vary by more than 5% from the provisional accounts submitted by it with its Application.

⁹ This section must be completed by the authorized consortium representative, or if the applicant is a sole organization, by that organization.

¹⁰ Member Code will indicate NA for Not Applicable in case of a single entity Applicant. For other members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the project relates to an Associate of the Applicant or its Member, write “Associate” along with Member Code.

Schedule 7: Technical Capacity

Name of Prospective Applicant:	
Name of entity fulfilling the requirement:	
Relationship to Prospective Bidder:	<i>[indicate whether Prospective Bidder / Consortium Member / Design & Engineering Contractor]</i>

Project List

Project Title:	
Location:	
Project Size: (provide indicative investment requirement)	
Description of the Project:	
Date of Contract:	
Date of Commissioning:	
Scope of Work:	
Client/Project Owner: <i>(indicate client's contact details)</i>	

The above table should contain the summary details that need to be provided for the projects that the Applicant wishes to showcase as relevant experience (i.e. design & engineering, construction, operation, maintenance, etc).

In case various aspects of the project are to be undertaken by different entities in a Consortium, separate forms need to be accomplished for each (i.e. one form for the entity nominated to fulfill design & engineering experience; separate form if a different entity is nominated by the Applicant to fulfill construction, etc).

For each project showcased, a certification from the client should be enclosed. The certificate should at least state the following: (1) Name of project and scope of work; (2) date of award and commercial operations date; and (3) current status of the project.

Schedule 8: Power of Attorney for Signing of Application

I, (name of the company) incorporated under applicable laws and having its registered office at [__]
"Company", do hereby irrevocably constitute, nominate, appoint and authorize Mr. /Ms (name), presently
residing at [indicate business address], who is presently employed with us and holding the position of
[designated position], as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in
our name and on our behalf, all such acts, deeds, matters and things as are necessary or required in
connection with or incidental to submission of our Application for prequalification for the [Title of Project]
(the 'Project') proposed or being developed by the Contracting Authority including but not limited to signing
and submission of all applications and other documents and writings, participate in prequalification and
other conferences and providing information/responses to the Contracting Authority, and generally dealing
with the Contracting Authority in all matters in connection with or relating to or arising out of our Application
for the said Project.

We hereby agree to ratify and confirm all acts, deed, matters and things lawfully done or caused to be done
by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that
all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and
shall always be deemed to have been done by us.

Capitalised terms not defined herein shall have the meaning assigned to them under the RFQ.

IN WITNESS WHEREOF,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS
POWER OF ATTORNEY ON THIS DAY OF, 20**

For

(Signature)

(Name, Title and Address)

Witnesses:

(Notarised)

Accepted

..... (Signature)

(Name, Title and Address of the Attorney)¹¹

¹¹ The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure. Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

Schedule 9: Power of Attorney for Lead Member of Consortium

Whereas, the Members of the Consortium are interested in bidding for the Project and implementing the [Title of Project] (the 'Project') in accordance with the terms and conditions of the Request for Qualification (RFQ) and other connected documents in respect of the Project.

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's prequalification for the Project.

NOW THIS POWER OF ATTORNEY WITNESSES THAT;

We, M/s. _____ (Lead Member) and M/s _____ (the respective names and addresses of the registered office) do hereby designate M/s. _____ being one of the Members of the Consortium, as the Lead Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the prequalification of the Consortium and submission of its Application for the Project, including but not limited to signing and submission of relevant documents and writings, participating in prequalification and other conferences, responding to queries, and generally to represent the Consortium in all its dealings with the Contracting Authority or any person in connection with the Consortium's Application for the Project.

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

Dated this ____ day of _____, 20..

(Executors) ¹²

¹² The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable Law and the charter documents of the executors and when it is so required the same should be under common seal affixed in accordance with the required procedure. Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

Schedule 10: Consortium Agreement

THIS CONSORTIUM AGREEMENT is entered into on this [•] day of [•] 20[•] (the "Agreement") AMONGST

1. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the "First Part" which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

2. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the "Second Part" which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

3. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the "Third Part" which expression shall, unless repugnant to the context include its successors and permitted assigns).

The above mentioned parties of the FIRST, SECOND and, THIRD PART are collectively referred to as the "Parties" and each is individually referred to as a "Party".

WHEREAS,

1. The Contracting Authority has invited Applications through its Request for Qualification No [•] dated [•] (the "RFQ") for shortlisting of potential bidders for the [Title of the Project] through Public Private Partnership;
2. The Parties are interested in jointly bidding for the Project as members of a Consortium (as defined below) and in accordance with the terms and conditions of the RFQ and other documents in respect of the Project; and
3. It is a necessary condition under the RFQ that the members of the Consortium shall enter into a concession agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFQ.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the "Consortium") for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/or through any other consortium constituted for the Project, either directly or indirectly.

3. Covenants

The Parties hereby undertake that in the event the Consortium is shortlisted, and eventually declared the Successful Bidder and awarded the Project, it shall incorporate the Project Company under [legislation] as required by and in accordance with the RFP and other Bidding Documents to be issued for performing all its obligations as the Concessionaire in terms of the PPP Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below.

Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process;

{Party of the Second Part shall be [•]; and}

{Party of the Third Part shall be [•]}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project in accordance with the terms of the RFQ, RFP and for the performance of the Project Company's obligations under the PPP Agreement.

6. Shareholding in the Project Company

The Parties agree that the proportion of shareholding among the Parties in the Project Company shall be as follows:

First Party:

Second Party:

Third Party:

Subject to the terms of the PPP Agreement, the Lead Member shall for [•] years hold equity share capital not less than **% (** per cent) of the subscribed, paid up and voting equity share capital of the Project Company; and

Each member of the Consortium shall hold at least ** % of the subscribed and paid up equity of the Project Company for [•] years after the Completion Date, and at least ** % for the following [•] years.

The Parties undertake that they shall comply with all equity lock-in requirements set forth in the PPP Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- 7.1 Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- 7.2 The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Member of Consortium is annexed to this Agreement, and will not, to the best of its knowledge:
- 7.3 Require any consent or approval not already obtained;
- 7.4 Violate any applicable law presently in effect and having applicability to it;
- 7.5 Violate the memorandum of association and articles of association, by-laws or other applicable organizational documents thereof;
- 7.6 Violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; and
- 7.7 Create or impose any liens, mortgages, pledges, claims, security interests, charges or any other encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- 7.8 This Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

7.9 There is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the full and final satisfaction of all obligations under the PPP Agreement in accordance with the terms thereof, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project as the Successful Bidder, the Agreement will stand terminated, in accordance with the mutual agreement of the Parties.

9. Miscellaneous

This Consortium Agreement shall be governed by the laws of ****.

The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Contracting Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of THIRD PART

(Signature)

(Name)

(Designation)

(Address)

Sample Document, Adapt as Appropriate

Schedule 11: Declaration of Undertaking

We underscore the importance of a free, fair and competitive procurement process that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our Application, nor will we offer or grant or accept any such incentives or conditions in this Bidding Process or, in the event that we are awarded the contract, in the subsequent execution of the contract.

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the client if this situation should occur at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding for the client, the client is entitled to exclude our company/ the consortium from the Bidding Process and, if the contract is awarded to our company/ the consortium, to terminate the contract immediately if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion occurs after the Declaration of Undertaking has been issued.

Place, date

Authorized Representative of the Bidder

Sample Document, Adapt as Appropriate



Global
Platform for
Sustainable
Cities



THE WORLD BANK
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**SAMPLE REQUEST FOR PROPOSAL
FOR SINGLE-STAGE BID PROCESS**

Municipal Public-Private Partnership Framework

09

Important Notes:

This Request for Proposals is provided only as a sample document. It must be adapted to fit the unique circumstances and needs of each particular Municipality and project for which its use is intended. National and local laws, regulations, policies and practices may prescribe a different approach to procuring project-level consulting services.

ADDITIONAL GUIDANCE MATERIAL

World Bank Group's Public-Private Partnership Legal Resource Center,
<https://ppp.worldbank.org/public-private-partnership/>

Sample Document, Adapt as Appropriate

[CONTRACTING AUTHORITY'S NAME]

Request for Proposal

for the

[Title of PPP Project]

Sample Document, Adapt as Appropriate

[DATE]

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Sample Document - Adapt as Appropriate

DISCLAIMERS

The information contained in this Request for Proposal (RFP) or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of the Contracting Authority or any of its employees or advisors, is provided to Bidders on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Contracting Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide Bidders with information that may be useful to them in preparing and submitting their Bid pursuant to the Bidding Documents including this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Contracting Authority in relation to the PPP Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. The information contained in the Bidding Documents may not be appropriate for all persons, and it is not possible for the Contracting Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. Each Bidder should conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidders is on a wide range of matters, some of which depends upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. None of the Contracting Authority, its employees, or advisors accepts any responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein. The Contracting Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way by participating in this Bidding Process.

The Contracting Authority, its employees or advisors, likewise accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. The Contracting Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP. The issuance of this RFP does not imply that the Contracting Authority is bound to select a Bidder or to appoint the Successful Bidder for the Project and the Contracting Authority reserves the right to reject all or any of the Bidders or Bids or otherwise discontinue the process without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Contracting Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Contracting Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Addendum or Addenda means addendum or addenda to the RFP.

Bid means a proposal submitted by a Bidder for the Project.

Bidder means an interested single entity or Consortium which submits a Bid to the Contracting Authority in accordance with the provisions of this RFP.

Bidding Company means a single entity submitting a Bid pursuant to the RFP.

Bidding Documents means the RFP, the draft PPP Agreement, any Addenda or clarification issued by the Contracting Authority in accordance with the terms of this RFP, and any other documents provided by the Contracting Authority pursuant to this RFP, as such documents may be modified, altered, amended and clarified from time to time by the Contracting Authority.

Bidding Process means the single-stage bidding process being followed by the Contracting Authority to award the Project to the Selected Bidder, the terms of which are set out in this RFP.

Bid Parameter means the financial criterion which determines the best bid for the PPP Project. The bid parameter is not necessarily equivalent to "least-cost", and may vary from one PPP project to another (i.e. highest concession payment to government, lowest tariff to meet minimum output performance standards, etc).

Bid Security means an amount equivalent to [AMOUNT] to be provided by a Bidder as security for its Bid.

Bid Submission Deadline means the date specified in Schedule 2 as the last date for submission of Bids.

Availability Payments means the payments, if any, to be paid to the Service Provider by the Contracting Authority (CA) for making the services or facility "available" for use by the CA provided under the PPP Project.

Conflict of Interest has the meaning ascribed to it in Clause 2.1.12.

Consortium means any combination of private entities that have formed an association by fulfilling the requirements set out in this RFP, for the purpose of submitting a Bid and for implementing the Project, if such consortium or association is declared as the Selected Bidder.

Consortium Agreement means the binding consortium agreement to be executed between Consortium Members in the form set out in Schedule 11.

Contracting Authority means any local/municipal government authority public, statutory corporation or other subnational agency.

Control means, with respect to a company or corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such company, or the power to appoint majority of the directors on the board of directors of such company or corporation and/or the power to direct the management and policies of such person by operation of law, agreement or otherwise and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law, agreement or otherwise.

Data Room means a virtual data room providing project information, records, and general background documents relevant to the PPP Project.

Financial Proposal means the Financial Proposal to be submitted by a Bidder for the development and implementation of the PPP Project as prescribed in Clause 2.13.5.

Government means the Government of ****.

Lead Member in the context of a Consortium, means the Consortium Member nominated by the Consortium Members as the lead member with the rights and obligations as set out in this RFP.

Letter of Award means the letter of award that will be issued by the Contracting Authority to the Selected Bidder in accordance with Clause 3.20.

Member means a member of a Consortium.

Net Worth means the difference between the sum of subscribed and paid up equity, reserves and the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

O&M means operation and maintenance.

PPP means public-private partnership.

PPP Agreement means the agreement to be executed between the Contracting Authority and the Selected Bidder to implement the PPP project, substantially in the format set out in Schedule 16.

Pre-Bid Conference means a conference that will be held by the Contracting Authority to answer queries or clarifications raised by Bidders and to provide information to Bidders on the Project.

Project Company means the special purpose company specifically formed and incorporated in [LOCATION] for the purpose of undertaking the Project pursuant to the PPP Agreement.

RFP or Request for Proposals means this request for proposal dated **** along with its Schedules, and Addenda, if issued.

Service Provider means the legal entity proposed by the Successful Bidder in its proposal to undertake the PPP Project in accordance with the PPP Agreement

Successful Bidder means the Bidder selected by the Contracting Authority to award the Project following the completion of the Bidding Process.

Technical Proposal has the meaning ascribed to it in Clause 2.13.4.

Tender Committee means the working group established by the Contracting Authority to carry out the PPP procurement.

Term means the period during which the Service Provider shall undertake the PPP Project in accordance with the PPP Agreement.

User Payment means a payment to be paid to the Service Provider by a user of the PPP Project.

1. INTRODUCTION

A. Purpose of Issuing the RFP

- 1.1. The purpose of issuing the RFP is to enable the Contracting Authority to select the Successful Bidder for the PPP project, by evaluating which among the qualified Bidders presents the best Bid that offers the best value for money for the public in undertaking the PPP Project as set out in the technical and financial criteria in this RFP.
- 1.2. It is intended that the Bidding Process be conducted in a competitive and transparent manner in order to ensure that the Contracting Authority's objectives for initiating the PPP are achieved and value for money objectives met.

B. Project Background

- 1.3. The Contracting Authority is seeking private sector participation to improve [SERVICE] in the [LOCATION] through [DESCRIPTION OF FACILITIES] on a PPP basis.
- 1.4. The Service Provider shall undertake: [indicate scope – i.e. design, construction and maintenance of new facilities / operation and maintenance of existing facilities, etc].
- 1.5. Further details on the PPP Project may be found in Schedule 1.

C. PPP Agreement

- 1.6. The Contracting Authority shall enter into the PPP Agreement with the Service Provider.
- 1.7. The Term shall be **** years from [here insert start event or date].
- 1.8. At the end of this period, the Service Provider shall release or otherwise transfer the assets to the Contracting Authority free of charge and free of any liens or encumbrances. A draft of the PPP Agreement is set out in Schedule 16.

D. Financing assumptions

- 1.9. The Service Provider shall be responsible for financing the PPP Project.
- 1.10. [Describe any concessional financing or grant funding that was made available for the PPP Project]
- 1.11. [Indicate key financing assumptions]
- 1.12. In consideration, the Service Provider shall have access to the following types of revenue streams:
 - (a) User Payments from users of the PPP Project; or/and
 - (b) Availability Payments from Contracting Authority.

E. Brief Description of the Bidding Process

- 1.13. The Contracting Authority has adopted a three-envelope, single-stage process (collectively referred to as the "Bidding Process") for selection of the preferred bidder for award of the PPP Project. Bidders will be required to submit three envelopes – which together, comprises their Bid – containing the following:
Envelope 1: Qualification Documents;

Envelope 2: Technical Proposal; and
Envelope 3: Financial Proposal.

- 1.14. Bidders will be required to deposit, along with its Bid, a refundable bid security as specified in this RFP.
- 1.15. The first envelope, which contains the Bidder's qualification documents, shall first be opened and evaluated. The Contracting Authority shall then announce the Bidders whose qualification documents meet its minimum requirements, as prescribed in this RFP. Only Bidders who satisfy the Contracting Authority's minimum qualification requirements shall advance to the opening of the second envelope. For those that do not qualify, their second and third envelopes shall be returned to them unopened.
- 1.16. The second envelope, which contains the Bidder's Technical Proposal, shall next be opened and evaluated. The Contracting Authority shall then announce the Bidders whose Technical Proposals meet its minimum requirements, as prescribed in this RFP. Only Bidders who satisfy the Contracting Authority's minimum technical specifications and requirements shall advance to the opening of the third envelope. For those that do not qualify, their third envelopes shall be returned to them unopened.
- 1.17. Finally, the third envelope containing the Bidder's Financial Proposal, shall be opened and evaluated. The Bidder who submits the best Financial Proposal based on the Contracting Authority's Bid Parameter shall be chosen as the Successful Bidder and shall be awarded the PPP Contract.
- 1.18. The timeline for this Bidding Process is included as Schedule 2 of this RFP. The Contracting Authority may, in its sole discretion and without prior notice to the Bidders, amend the timeline. Bidders shall not rely on this current, timeline and the Contracting Authority shall not incur any liability whatsoever arising out of amendments to the timelines. The Contracting Authority shall give notice of changes to the timelines, if any, by addenda.

2. INSTRUCTIONS TO BIDDERS

A. General Requirements

2.1. Eligibility of Bidders

- 2.1.1. A Bidder shall submit only 1 (one) Bid for the PPP Project either individually or as a Member of a Consortium. A Bidder applying individually, or as a member of a Consortium, shall not be entitled to submit another Bid, either individually or as a member of any Consortium, as the case may be.
- 2.1.2. A Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in this RFP.
- 2.1.3. The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Bidding Documents shall be binding on the Contracting Authority nor confer any right to the Bidders, and the Contracting Authority its employees and consultants shall have no liability whatsoever in relation to or arising out of any or all contents of the Bidding Documents.
- 2.1.4. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft PPP Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the PPP Agreement.
- 2.1.5. The Bid should be furnished in the formats specified in this RFP and signed by the Bidder's authorized signatory. The Bidders should note that the formats specified in the RFP have been provided for the convenience of the Bidders and may not exhaustively enumerate or describe various information required to be provided by the Bidders under the Bidding Documents. The Bidders should ensure that all the information required to be provided by them under the Bidding Documents is included in their Bid whether or not a particular format specified herein makes provision for submission of such information and/or whether or not a format for submission of such information is incorporated in the Bidding Documents.
- 2.1.6. The Bidder shall submit as part of its Bid, a Bid Security in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a demand draft or in the form of a bank guarantee, from a [*** rated] bank registered in [LOCATION] acceptable to the Contracting Authority, as per the format at Schedule 8.
- 2.1.7. The Bidder should submit a power of attorney as per the format in Schedule 9, authorizing the signatory of the Bid to commit the Bidder.
- 2.1.8. In case the Bidder is a Consortium, the Members thereof should furnish a power of attorney in favour of the Lead Member as per the format in Schedule 10.
- 2.1.9. Any condition or qualification or any other stipulation contained in the Bid which is inconsistent with the terms of the Bidding Documents may render the Bid liable to rejection as a non-responsive Bid.
- 2.1.10. The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in the English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials which

are not translated into English may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

- 2.1.11. The Bidding Documents, including this RFP and all attached or other documents, are and shall remain the property of the Contracting Authority and are transmitted to the Bidders solely for the purpose of preparation and submission of a Bid in accordance with the Bidding Documents. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparing and submitting their Bid.
- 2.1.12. Conflict of Interest: A Bidder shall not have a Conflict of Interest that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Contracting Authority shall be entitled to forfeit and appropriate the Bid Security and/or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Contracting Authority under the Bidding Documents or otherwise. Determining the presence of Conflict of Interest shall be the prerogative of the Contracting Authority. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (a) the Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding of a Bidder (or any constituent thereof) is less than **** % of the paid up and subscribed capital of the other Bidder (or any constituent thereof) and it does not have Control of the Bidder; or
 - (b) a consortium member or any constituent of such Bidder is also a consortium member or constituent of another Bidder; or
 - (c) such Bidder (or any constituent thereof) receives or has received any direct or indirect subsidy from any other Bidder (or any constituent thereof), or has provided any such subsidy to any other Bidder (or any constituent thereof); or
 - (d) such Bidder (or any constituent thereof) thereof has the same legal representative for purposes of this Bid as any other Bidder (or any constituent thereof); or
 - (e) such Bidder (or any constituent thereof) has a relationship with another Bidder (or any constituent thereof), directly or through common third parties, that puts either or both of them in a position to have access to each other's' information about, or to influence the Bid of either or each other; or
 - (f) such Bidder (or any constituent thereof) has participated as a consultant to the Contracting Authority in the preparation of any documents, design or technical specifications of the PPP Project, or
 - (g) Any legal, financial or technical adviser of the Contracting Authority in relation to the PPP Project is engaged by the Bidder (or any constituent thereof) in any manner for matters related to or incidental to the PPP Project.
- 2.1.13. This RFP is not transferable and can only be used by the person to whom it has been issued.
- 2.1.14. Any award of the PPP Agreement pursuant to this RFP shall be subject to the terms of the Bidding Documents.
- 2.1.15. For a detailed list of documents and information to be provided with each envelop constituting a Bid, please refer to Clause 2.9.

2.2. Change in composition of the Consortium

- 2.2.1. Change in the composition of a Consortium will not be permitted by the Contracting Authority after the Bid Submission Deadline.
- 2.2.2. The Consortium shall submit a Power of Attorney and a Consortium Agreement following Schedule 10 and Schedule 11 respectively along with the Bid on or before the Bid Submission Deadline.

- 2.2.3. The Consortium Agreement shall, inter alia:
- (a) convey the intent to form a Project Company with shareholding/ownership equity commitments in accordance with this RFP;
 - (b) clearly outline the proposed roles and responsibilities of each Member and the Lead Member; and
 - (c) fulfil the minimum shareholding structure indicated in Clauses 2.2.4 and 2.2.5 below.
- 2.2.4. The Lead Member of the Consortium shall hold at least **** % of the subscribed and paid up equity of the Project Company for **** years after the Completion Date, and at least **** % for the following **** years.
- 2.2.5. [Each member of the Consortium shall hold at least **** % of the subscribed and paid up equity of the Project Company for **** years after the Completion Date, and at least **** % for the following **** years.]

2.3. Cost of bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bid and their participation in the Bidding Process. The Contracting Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.4. Data Room

- 2.4.1. For the benefit of the prospective Bidders, the Contracting Authority has provided a virtual Data Room. The Bidding Documents can be downloaded from the Data Room.
- 2.4.2. The Data Room can be accessed by any prospective Bidder by submitting the relevant details to be provided on the website on the following link. [Insert url]

2.5. Site visit and Verification of Information by Bidders

- 2.5.1. Bidders are encouraged to submit their respective Bids after visiting the Project Site[s] and ascertaining for themselves the sites' conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to sites, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.
- 2.5.2. A site visit shall be organized by the Contracting Authority prior to the pre-bid conference for all Bidders. Further details regarding this site visit shall be given by the Contracting Authority to all Bidders in due course.
- 2.5.3. It shall be deemed that by submitting a Bid, the Bidder has:
- (a) made a complete and careful examination of the Bidding Documents;
 - (b) acknowledged accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Contracting Authority relating to any of the matters referred to in Clause 2.5.1;
 - (c) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
 - (d) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits, or a ground for termination of the PPP Agreement by the Service Provider; and

(e) acknowledged that it does not have a Conflict of Interest.

2.5.4. The Contracting Authority, its employees, and consultants shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by or on behalf of the Contracting Authority.

2.6. Pre-Bid Conference

2.6.1. A pre-bid conference of the Bidders shall be convened at the designated date, time and place. Only duly authorized representatives of the Bidders shall be allowed to participate in the pre-bid conference.

2.6.2. During the course of the pre-bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Contracting Authority. The Contracting Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

2.7. One-on-One Discussions

2.7.1. The Contracting Authority may schedule one-on-one discussions with Bidders after the conduct of the Pre-Bid Conference, but prior to the Bid Submission Deadline.

2.7.2. Questions lodged by, and answers obtained from, the Bidders, as well as any relevant responses from the Contracting Authority pursuant to these discussions will be made available to all Bidders through the Data Room. However, the identity of each respective Bidder who issued a question / provided a response, will be made anonymous.

2.8. Verification and Disqualification

2.8.1. The Contracting Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Contracting Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the Contracting Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Contracting Authority thereunder.

2.8.2. The Contracting Authority reserves the right to reject any Bid and appropriate the Bid Security if:

- (a) at any time, a material misrepresentation is made or uncovered; or
- (b) the Bidder does not provide, within the time specified by the Contracting Authority, the supplemental information sought by the Contracting Authority for evaluation of the Bid, or
- (c) a Conflict of Interest as discussed in Clause 2.1.12 persists.

2.8.3. Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member shall be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Successful Bidder gets disqualified/ rejected, then the Contracting Authority reserves the right to select the Bidder which proposed the second-best Bid as Successful Bidder or cancel the Bidding Process.

B. Documents

2.9. This RFP comprises the Disclaimer, the contents as listed below, and will additionally include any addendum issued in accordance with Clause 2.11 and any clarifications and interpretations issued in accordance with Clause 2.10.

Invitation for Bids		Schedules	
Section 1.	Introduction	Schedule 1.	Project Information
Section 2.	Instructions to Bidders	Schedule 2.	Bidding Process Timelines
Section 3.	Evaluation of Bids	Schedule 3.	Bid Letter
		Schedule 4.	Applicant Information
		Schedule 5.	Consortium Member Information
		Schedule 6.	Financial Capacity
		Schedule 7.	Technical Capacity
		Schedule 8.	Bank Guarantee for Bid Security
		Schedule 9.	Power of Attorney for Signing of Bid
		Schedule 10.	Power of Attorney for Lead Member of Consortium
		Schedule 11.	Consortium Agreement
		Schedule 12.	Anti-Collusion Certificate
		Schedule 13.	Format for the Technical Proposal
		Schedule 14.	Format for the Financial Proposal
		Schedule 15.	Declaration of Undertaking
		Schedule 16.	Draft PPP Agreement

2.10. Clarifications

- 2.10.1. Bidders requiring any clarification on the Bidding Documents may notify the Contracting Authority by e-mail at the following e-mail address: ****
- 2.10.2. Queries must be received by the Contracting Authority on or before the last date for receipt of clarifications mentioned in Schedule 2.
- 2.10.3. The Contracting Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders within fifteen (15) days of receipt of such questions or clarifications. The Contracting Authority will notify Bidders by e-mail that queries and its responses have been posted in the website / data room.
- 2.10.4. The Contracting Authority will organize the clarification response procedure. The queries and its responses will be updated in the website of the Contracting Authority. The Contracting Authority may notify Bidders by e-mail that responses to queries have been posted at the Contracting Authority's website.
- 2.10.5. The Contracting Authority may also on its own initiative, if deemed necessary, issue

interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Contracting Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by the Contracting Authority or its employees or representatives shall not be binding on the Contracting Authority.

- 2.10.6. Should the Contracting Authority deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure in Clause 2.11 below.

2.11. Amendment

- 2.11.1. At any time prior to the Bid Submission Deadline, the Contracting Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of addenda.
- 2.11.2. Any addendum issued hereunder will be uploaded in the website of the Contracting Authority. The Contracting Authority may notify Bidders about the issuance of an Addendum by e-mail.
- 2.11.3. In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Contracting Authority may, at its sole discretion, extend the Bid Submission Deadline.

C. Preparation and Submission of Bid

2.12. Format and Signing of Bid

- 2.12.1. The Bidder shall provide in its Bid all the information sought under the Bidding Documents. The Contracting Authority will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Application shall be rejected.
- 2.12.2. The Bidder shall prepare one original set of its Bid (comprising of the three envelopes mentioned in Clause 2.13.1 together with originals/copies of documents required to be submitted along therewith) clearly marked "ORIGINAL". In addition, the Bidder shall submit one copy of its Bid clearly marked "COPY". In the event of any discrepancy between the original and the copy, the original shall prevail.
- 2.12.3. The Bid shall be signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person signing the Bid. The Bid shall contain page numbers.

2.13. Contents of the Bid

- 2.13.1. The "Bid" shall be comprised of 3 envelopes:
Envelope 1: Qualification
Envelope 2: Technical Proposal
Envelope 3: Financial Proposal
- 2.13.2. Each of these three envelopes shall be marked as follows:
"BID FOR THE [NAME OF PROJECT]
ENVELOPE [•of 3]"
and shall clearly indicate the number of the envelope and the name and address of the Bidder. Each envelope shall be individually sealed.
- 2.13.3. **Envelope 1: Qualification:** This envelope should clearly be marked as "Envelope 1: Qualification" and the documents to be submitted in this envelope shall include the

following accomplished:

- (a) The Bid Letter (Schedule 3);
- (b) The Bidder Information (Schedule 4) including attachments;
- (c) If a consortium, the Consortium Member Information to be accomplished by each member of the consortium (Schedule 5) including attachments;
- (d) The Bidder's Financial Capacity (Schedule 6) including attachments;
- (e) The Bidder's Technical Capacity (Schedule 7) including Attachments;
- (f) The Bank Guarantee for Bid Security (Schedule 8);
- (g) The Power of Attorney for Signing of Bid (Schedule 9);
- (h) If a consortium, the Power of Attorney for Lead Member of Consortium (Schedule 10);
- (i) If a consortium, the Consortium Agreement (Schedule 11);
- (j) The Anti-Collusion Certificate (Schedule 12); and
- (k) The Declaration of Undertaking (Schedule 15).

2.13.4. **Envelope 2: Technical Proposal:** This envelope should clearly be marked as "Envelope 2: Technical Proposal" and shall contain the following as part of the Technical Proposal (Schedule 13):

- (a) Conceptual Engineering Design;
- (b) Technical Plan for Construction/Rehabilitation;
- (c) Operation and Maintenance Plan; and
- (d) Organization and Staffing.

2.13.5. **Envelope 3: Financial Proposal:** This envelope should clearly be marked as "Envelope 3: Financial Proposal" and shall contain the Financial Proposal (Schedule 14), supported by the following documents:

- (a) Cost estimates for the design, construction, operation and maintenance components;
- (b) A financial model consistent with the above cost estimates and the technical proposal, and which includes a short explanatory memorandum; and
- (c) A project financing plan showing positively showing that the same can adequately meet the cost requirements of the PPP Project, which may include the amount of equity to be infused, debt to be obtained for the Project, and sources of financing.

2.14. Bid Security

2.14.1. The Bidder shall furnish as part of its Bid a Bid Security.

2.14.2. The Bid Security may be in the form of an irrevocable, unconditional and first demand bank guarantee issued by a bank registered in [LOCATION] acceptable to the Contracting Authority in favour of the Contracting Authority in the format prescribed in Schedule 8; or an on-demand bond issued by a bank registered in [LOCATION], drawn in favour of the Contracting Authority and payable at [LOCATION].

2.14.3. The Bid Security shall have a validity period of not less than ** days¹ from the Bid Submission Deadline.

2.14.4. Any Bid not accompanied by a Bid Security shall be summarily rejected by the Contracting Authority as non-responsive.

2.14.5. The Bid Security of unsuccessful Bidders (which term shall exclude the first and second best bidders) will be returned by the Contracting Authority, without any interest, as promptly as possible after execution of the PPP Agreement with the Service Provider or when the Bidding Process is cancelled by the Contracting Authority.

2.14.6. The Successful Bidder's Bid Security will be returned, without any interest, upon the Service Provider signing the PPP Agreement and, if required, providing the Performance Security in the form required by the PPP Agreement.

2.14.7. The Contracting Authority shall be entitled to forfeit and appropriate the Bid Security, without prejudice to any other right or remedy that may be available to the Contracting

¹ Period should be equal to the period for the bid to be extant plus a margin to allow for delays in making a call where appropriate.

Authority under the RFP, under the following conditions:

- (a) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 2.22 of this RFP;
- (b) If a Bidder modifies or substitutes (without the prior written approval of the Contracting Authority) or withdraws its Bid during the period of Bid validity as specified in this RFP;
- (c) In the case of a Successful Bidder, if within the specified time:
 - (i) it fails to incorporate a Project Company or such Project Company fails or refuses to sign the PPP Agreement; or
 - (ii) the Project Company fails to provide the Performance Security in accordance with the Bidding Documents; or
 - (iii) Successful Bidder fails to transmit the project development fee to the Contracting Authority.

2.15. Sealing and Marking of Bid

- 2.15.1. Each of the three (3) aforementioned envelopes shall be placed in an outer envelope, which shall be sealed and shall be marked as follows: "BID FOR THE [NAME OF PROJECT]"
- 2.15.2. The Bids shall be addressed to:
ATTENTION: [Name of Head of Contracting Authority's Tender Committee]
ADDRESS: [Address of Contracting Authority]
- 2.15.3. If the envelopes are not sealed and marked as instructed above, the Contracting Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.
- 2.15.4. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected².

2.16. Bid Submission

- 2.16.1. Bids must be received by the Contracting Authority at the address specified in Schedule 2 no later than the Bid Submission Deadline.
- 2.16.2. The Bid must be hand-delivered as prescribed by the Contracting Authority. The Contracting Authority shall, on request, provide the Bidder with a receipt showing the date and time when the Bid was received.
- 2.16.3. The Contracting Authority may, at its discretion, extend the Bid Submission Deadline by issuing an addendum in accordance with Clause 2.11 uniformly for all Bidders.
- 2.16.4. Bids received by the Contracting Authority after the specified Bid Submission Deadline shall be declared late and shall not be eligible for consideration and shall be summarily rejected.

2.17. Modifications / Substitution / Withdrawal of Bid

- 2.17.1. The Bidder may modify, substitute or withdraw its Bid after submission, provided that the written notice of the modification, substitution or withdrawal is received by the Contracting Authority prior to the Bid Submission Deadline. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Submission Deadline.
- 2.17.2. The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.15, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

² Option for online submission of bids using secure software and procedures may be provided.

2.18. Rejection of Bids

- 2.18.1. Notwithstanding anything contained in this RFP, the Contracting Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore.
- 2.18.2. In the event that the Tender Committee rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids under this RFP.

2.19. Validity of Bids

- 2.19.1. The Bids shall be valid for a period of not less than **** days from the Bid Submission Deadline.
- 2.19.2. The validity of Bids may be extended by mutual consent of the respective Bidders and the Tender Committee.

2.20. Confidentiality

- 2.20.1. Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the Contracting Authority in relation to or matters arising out of, or concerning the Bidding Process.
- 2.20.2. The Contracting Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence.
- 2.20.3. The Contracting Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Contracting Authority.

2.21. Correspondence with the Bidder

Save and except as provided in this RFP, the Tender Committee shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

2.22. Fraudulent and Corrupt Practices

- 2.22.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the Letter of Award and during the subsistence of the PPP Agreement.
- 2.22.2. The Tender Committee may reject a Bid, withdraw the Letter of Award, or terminate the PPP Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or the Service Provider, as the case may be, if it determines that the Bidder or Service Provider, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 2.22.3. In such an event, the Tender Committee shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Contracting Authority under the Bidding Documents and/or the PPP Agreement or otherwise.
- 2.22.4. In pursuit of this policy, the Government defines, for the purposes of this provision, the terms set forth below as follows:

- (a) "corrupt practice" means the offering, giving, receiving, or soliciting, of anything of value to influence the action of a public official in the Bidding Process (for the avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Contracting Authority who is or has been associated in any manner with the Bidding Process, at any time during the Bidding Process and within one year from the date of the conclusion of such process, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process), and includes inter alia, bribery, extortion or coercion, which involves threats of injury to person, property or reputation;
- (b) "fraudulent practice" means a misrepresentation, omission, or suppression of facts, or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) "coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process; and
- (d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Contracting Authority or member of the Tender Committee with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest.

2.22.5. Government reserves the right, where the Applicant has been found by a national or international entity to have engaged in corrupt or fraudulent practices, to declare such Applicant ineligible, for a period of ten years, to be awarded a PPP contract or any publicly funded contract.

Sample Document, Adapt as Appropriate

3. EVALUATION OF BIDS

A. Opening and Evaluation of First Envelopes (Qualification Documents)

- 3.1. The Tender Committee shall open Envelope 1 of the Bids exactly one hour after the Bid Submission Deadline, at the place specified in Schedule 2 and in the presence of the Bidders who choose to attend.
- 3.2. Bids for which a notice of withdrawal has been submitted shall not be opened.
- 3.3. Upon the opening of first envelopes, the Tender Committee shall determine whether each envelope is responsive to the requirements of the RFP. A submission shall be considered responsive only if it:
 - (a) contains all the documents required to be submitted by Clause 2.13.3 of this RFP;
 - (b) is received on or before the Bid Submission Deadline, including any extension thereof;
 - (c) is signed, sealed and marked as stipulated in this RFP; and
 - (d) does not contain any condition or qualification.
- 3.4. Only applications that are deemed to be responsive will be evaluated.
- 3.5. The Tender Committee reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Tender Committee in respect of such Bid.
- 3.6. Only Bids with responsive Qualification Documents that fulfil the following may be considered for opening of the second envelope:
 - (a) Contains all the required qualification information stipulated in this RFP;
 - (b) Submitted qualification documents (and the required attachments) prescribed by this RFP; and
 - (c) Hurdled the minimum qualification requirements stipulated in Clause 3.8 of this RFP.
- 3.7. The Contracting Authority reserves the right to reject any Bid which is non-responsive. If necessary, the Contracting Authority may ask the Bidders for clarifications. In this case, the Tender Committee will make a request for supplementary information or documentation from the Bidder, provided that this request may only be made to clarify information already provided by a Bidder or to request a document that should have been included. Whenever a supplementary request is made, the Bidder must respond to the Tender Committee within the time period set by the Committee in its request. If the Bidder does not respond to a supplementary request within such time period or does not provide the information or documentation requested, the Tender Committee may consider the Bid non-responsive and reject it.
- 3.8. For purposes of evaluating the first envelope, the following criteria will be used:
 - 3.8.1. Technical Qualifications– the Bidder must demonstrate that it possesses the following experience:³

³ In the case of a Consortium, the Applicant, through its Consortium members, must demonstrate that it collectively possesses all of the required technical experience. The Indicators may vary and may be further expanded based on the requirements of the PPP Project.

Indicator	Evaluation Criteria
1. Experience in the Design of Similar Infrastructure Projects	Experience in the design of similar infrastructure projects demonstrated through at least two contracts undertaken in the last ten years for projects of a similar type, size and complexity [indicate examples and minimum project size].
2. Experience in the Construction of Similar Infrastructure Projects	Experience in the construction of similar infrastructure projects demonstrated through at least two contracts undertaken in the last ten years for projects of a similar type, size and complexity [indicate examples and minimum project size].

Indicator	Evaluation Criteria
3. Experience in the Operations & Maintenance of Similar Infrastructure Projects	Experience in the operation & maintenance of similar infrastructure projects demonstrated through at least two contracts undertaken in the last ten years for projects of a similar type, size, duration and complexity [indicate examples and minimum project size].

- 3.8.2. Financial Capacity – The Applicant must demonstrate that
- a. it has a Net Worth of at least [AMOUNT] ([AMOUNT in words] only) at the close of the immediately preceding financial year.
 - b. [experience in mobilizing financing for similar infrastructure projects demonstrated through at least two projects financed in the last ten years for projects of a similar type, size, duration and complexity [indicate examples and minimum project size].]

- 3.9. After the evaluation of first envelopes, the Tender Committee will announce the qualified Bidders, and whose Technical Proposals (i.e. Envelope 2) will be evaluated. At the same time, the Tender Committee will notify the other Bidders who failed to qualify.

B. Opening and Evaluation of Second Envelopes (Technical Proposal)

- 3.10. The Tender Committee shall schedule the opening of Technical Proposals, which shall be no later than five (5) days after the announcement of qualified Bidders from Clause 3.9.
- 3.11. Upon the opening of Technical Proposals, the Tender Committee shall determine whether such proposal is responsive to the requirements of the RFP. A Technical Proposal shall be considered responsive only if it:
- (a) contains all of the required content indicated in Schedule 13 of this RFP;
 - (b) is signed, sealed and marked as stipulated in this RFP; and
 - (c) does not contain any condition or qualification.
- 3.12. The Contracting Authority reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Tender Committee in respect of such Proposal. If necessary, the Tender Committee may ask the Bidders for clarifications following the procedure stipulated in Clause 3.7 of this RFP.
- 3.13. Once considered responsive, the Technical Proposal must next demonstrate the feasibility of its proposed technical approach and methodology for implementing the PPP project, based on the criteria indicated in Schedule 13 of this RFP. Only Bids whose Technical Proposal fulfils the minimum criteria may be considered for opening of the third envelope.
- 3.14. After the evaluation of second envelopes, the Tender Committee will announce the technical scores of all the bidders. Bidders who have received less than [70%]⁴ will not be eligible for evaluation of their respective Financial Proposals. The Financial Proposals of such bidders would be returned unopened.

OR

After the evaluation of Technical Proposals, the Tender Committee will announce the technical scores of all the bidders. The scores from evaluation of the Technical Proposals will be used for calculation of the combined score for Technical and Financial Proposals based on the weighted average of the respective scores.⁵

⁴Suggested threshold, can be modified based on the technical intensity of the project, capacity of the market and the possible number of bidders.

⁵The Municipality will have to select one of the two paragraphs above based on the approach used for evaluation of bids. The first paragraph will be used if the Municipality is using the pass-fail criteria for technical evaluation, to identify the bidders whose financial proposal would be opened. In such case the final selection of the best Bid would be based on the evaluation of the financial proposal only. The second paragraph will be selected if the Municipality intends to use the weighted average of the scores from Technical and Financial Evaluations for the selection of the financial proposal.

C. Opening and Evaluation of Third Envelopes (Financial Proposal) and Selection of Successful Bidder

- 3.15. The Tender Committee shall schedule the opening of Financial Proposals, which shall be no later than five (5) days after the announcement of qualified Bidders from Clause 3.14.
- 3.16. The best Financial Proposal is the one that offers the best value-for-money for Government, based on the Bid Parameter as follows: [DEFINITION OF BID PARAMETER]

Examples of Financial Bid Parameters for PPP projects and guidance on their use

1. PPP projects (based on User Pays PPP models) where it is expected that the Municipality will have to provide capital grant, the financial bid parameter would be the least capital grant quoted.
2. PPP projects (based on User Pays PPP models) where the maximum tariff for the service is not regulated and will be driven by market forces, will have the minimum tariff quoted as the financial bid parameter.
3. PPP projects based on annuity/ availability payment model will have the least amount of periodic annuity or per unit availability payment quoted as the financial bid parameter
4. PPP projects that are expected to have reasonably high financial returns, without support from the Municipality, may have the highest revenue share or profit share or lease premium as the financial bid parameter

- 3.17. Financial Proposals will be evaluated using the following methodology⁶.

$$\text{Score (in \%)} \text{ for Financial Proposal of Bidder 'N'} = \frac{\text{Financial Bid of Bidder N}}{\text{Highest Financial Bid among all Bidders}} \times 100$$

OR

$$\text{Score (in \%)} \text{ for Financial Proposal of Bidder 'N'} = \frac{\text{Lowest Financial Bid among all Bidders}}{\text{Financial Bid of Bidder N}} \times 100.$$

- 3.18. The best Bid will be identified based on the highest score from the evaluation of Financial Proposal. (from Clause 3.17).

OR

The best Bid will be identified based on the highest weighted average combined score from the evaluation of the Financial Proposal (from Clause 3.17) and Technical Proposal (as described in Schedule 13), as indicated below:

$$\begin{aligned} \text{weighted average score of Bidder 'N'} = & \\ & (\text{weight for technical score in \%} \times \text{aggregate technical score}) \\ & + (\text{weight for financial score in \%} \times \text{financial score}) \end{aligned}$$

where:

technical score= score from the evaluation of the Technical Proposal;

financial score= score from the evaluation of the Financial Proposal:

weight for technical score= weight assigned by Municipality
(can be in the range of 70%-80%);

weight for financial score= (1- weight for technical score).

- 3.19. The best Bid, based on the Bid Value submitted, may only be considered indicative until the Tender Committee confirms that such Financial Bid fulfils the following:
- (a) It is supported by the documents/attachments required to be included in the Financial Proposal according to Schedule 14 of this RFP;

⁶ The first option is selected if a higher Financial Bid would deliver higher value for the Municipality (like revenue share or lease premium), the second option is selected if a lower Financial Bid would deliver higher value for the Municipality (like viability gap grant or annuity).

- (b) It is signed, sealed and marked as stipulated in this RFP; and
- (c) It does not contain any condition or qualification.

- 3.20. The Contracting Authority reserves the right to entertain the next best Bid if the indicative best Bid fails to fulfil the requirements indicated in Clause 3.19. If necessary, the Tender Committee may ask the Bidder/s for clarifications following the procedure stipulated in Clause 3.7 of this RFP.
- 3.21. The Bidder whose Bid is declared to be the best Bid and complies with the requirements of Clause 3.19, or if two or more Bidders have offered exactly the same Bid Value, then the Bidder that has the better Financial Capacity based on Clause 3.8.2, shall be declared as the Successful Bidder.

D. Award and Execution of the PPP Agreement

- 3.22. A letter of award ("Letter of Award") shall be issued to the Successful Bidder by the Contracting Authority. Within seven (7) days from the date of issue of the Letter of Award, the Successful Bidder shall send an acknowledgement agreeing to comply with the conditions set out therein and to execute the PPP Agreement.
- 3.23. The Tender Committee will promptly notify other Bidders that they have been unsuccessful and their Bid Security shall be returned within 30 days, without interest, of the signing of the PPP Agreement with the Service Provider.

3.24. Special Purpose Company

- 3.24.1. The Successful Bidder shall incorporate a special purpose company specifically formed and incorporated in [LOCATION] solely for the purpose of undertaking the Project pursuant to the PPP Agreement ("Project Company"). The Successful Bidder shall ensure that the Project Company is incorporated and capitalised within 30 days from the date of issue of the Letter of Award and promptly upon such incorporation and capitalisation provide evidence thereof to the Contracting Authority.
- 3.24.2. The Successful Bidder shall ensure that the Project Company is incorporated and capitalised within 30 days from the date of issue of the Letter of Award and promptly upon such incorporation and capitalisation provide evidence thereof to the Contracting Authority.
- 3.24.3. Subject to the terms of the PPP Agreement, in the event that the Successful Bidder is a single entity, the shareholding of the Project Company shall be fully owned by such entity. In the event that the Successful Bidder is a Consortium, the shareholding of the Project Company shall be owned by the Members in accordance with the terms of the Bidding Documents and the Consortium Agreement.
- 3.24.4. The Project Company shall execute the PPP Agreement within 45 days from the date of issue of the Letter of Award. On the date of signing of the PPP Agreement, the Service Provider shall provide the Contracting Authority with a Performance Security as defined in the PPP Agreement. In the event the PPP Agreement is not signed within 45 days, the Contracting Authority may commence discussions with the next best Bidder and so on, on the same terms.

3.25. Bid Development Fee

- 3.25.1. The Successful Bidder is required to pay, within ten (10) days from the issuance of the Letter of Award, the bid development fee, in consideration of the transaction costs and efforts expended in the tender of the PPP Project.
- 3.25.2. The payment of the Bid Development Fee shall be made in immediately available funds in an account to be specified for this purpose.

E. Miscellaneous

- 3.26. The Bidding Process shall be governed by, and construed in accordance with, the laws of [LOCATION] and the Courts of [LOCATION] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Documents and/or the Bidding Process.
- 3.27. The Contracting Authority, in its sole discretion and without incurring any obligation or liability or assigning any reason, reserves the right, at any time, to:
- (a) suspend, withdraw and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to the Contracting Authority by, on behalf of, and/or in relation to any Bidder;
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder;
 - (e) amend, modify or reissue the Bidding Documents or any part thereof; and/or
 - (f) accept or reject any or all of the Bids.
- 3.28. It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Contracting Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

Sample Document, Adapted Appropriately

Schedule 1: Project Information⁷

- 1.1. The Contracting Authority has, as part of its **[insert development strategy]⁸**, identified the PPP opportunity at **[insert location]**.
- 1.2. It is intended that by the Contracting Authority entering into the PPP with a private party, the Contracting Authority may be able to **[insert the purpose for entering into PPP]**. It is intended that the project will be implemented by the private party in compliance with any terms and conditions stipulated in the PPP Agreement.
- 1.3. The Contracting Authority embarked on the project after conducting feasibility studies in order to determine whether it could proceed with the project and whether the project may be viable.
- 1.4. Under the project, the private partner will build an asset by using its own funds or funds it has raised, transfer the possession as specified in the PPP Agreement, and transfer it to local ownership upon the expiration of the PPP Agreement. The payment to the private partner will comprise of [user payments from users of the PPP project]; [and/or] [availability payments from the Contracting Authority].
- 1.5. [DESCRIPTION OF THE ASSET]⁹
- 1.6. [SITE REVIEW]¹⁰

⁷ All numbered footnotes in Schedule 1 are for guidance of the Contracting Authority and should be omitted prior to issue of the RFQ.

⁸ All project specific provisions have been enclosed in square parenthesis and may be modified, as necessary, before issuing the RFQ for the project. The square parenthesis should be removed after carrying out the required modifications.

⁹ The Contracting Authority must provide relevant details regarding the asset and the possible product or service categories which could be provided through the use of the asset. The Contracting Authority will be heavily guided by its feasibility study as to what information is relevant. The Contracting Authority must provide sufficient information so as to allow interested parties to consider whether they would wish to be involved in the PPP.

¹⁰ The Contracting Authority must provide a summary on the site information and on issues that were identified during the feasibility phases, such as: legal, environmental, stakeholders, personnel and human resources, infrastructure, equipment, performance standards, transfer of risk and other information identified as being relevant through the inception and feasibility phases.

Schedule 2: Bidding Process Timelines

The Contracting Authority shall endeavor to adhere to the following timelines:

Event Description	Estimated Date, Time, and Location (if applicable)
Last date for receipt of queries	
Pre-bid conference	
Contracting Authority's response to queries	
Bid Submission Deadline	
Opening of Envelope 1 (Qualification Documents)	
Announcement of Envelope 1 Short List	
Opening of Envelope 2 (Technical Proposal)	
Announcement of Envelope 2 Short List	
Opening of Envelope 3 (Financial Proposal)	
Selection and Announcement of Successful Bidder	
Approval of Successful Bidder	
Finalization of matters to permit signing of PPP Agreement	

Sample Document, Adapt as Appropriate

Schedule 3: Bid Letter

[On the letterhead of the Bidder / Lead Member]

Original or Copy number:

Date:

To: [Contracting Authority's Name]

[Insert Contracting Authority's Address]

Re: Submission of Bid for the [name of project]

Dear Madam/Sir,

With reference to your RFP dated [DATE], I/we, having examined the document and understood its contents, hereby submit my/our Bid for the aforesaid Project. We hereby confirm that we/our members in the Consortium satisfy the terms and conditions laid out in the Bidding Documents. We have agreed that _____ [insert member's name] will act as the Lead Member of our consortium, and that _____ [insert individual's name] will act as our representative/ will act as the representative of the consortium on its behalf* and has been duly authorized to submit the Bid.¹¹

The Bid is being submitted for the express purpose of qualifying as a Successful Bidder for the aforesaid Project. The Bid is unconditional and unqualified.

I/We hereby certify/declare that:

1. all the required accompanying documents are complete and are all included in this Bid;
2. all information provided in the Bid are true and correct;
3. nothing has been omitted which renders such information misleading;
4. all documents accompanying such Bid are true copies of their respective originals;
5. I/we shall make available to the Contracting Authority any additional information it may find necessary or require to supplement or authenticate the submissions;
6. I/we will abide by all the terms and conditions of the RFP;
7. I/We have examined and have no reservations to the Bidding Documents, including any addendum issued by the Contracting Authority;
8. in the last 3 years, I/we/any of the Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach by [us/any of the Members];
9. I/we are not barred by the Government, or any public agencies from participating in similar projects as of [Bid Submission Deadline];
10. I/We do not have any Conflict of Interest;
11. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in this RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Contracting Authority or any other public sector enterprise or any government, at central or state level;
12. I/we have taken steps to ensure that in conformity with the provisions of this RFP, no person acting for me/us or on my/our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
13. you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive, without incurring any liability to the Bidders;

¹¹ Please strike out if not applicable.

14. I/we/any Member, am/are not a member of a/any other Consortium applying for the Project;
15. I/we or any Member of our consortium have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community;
16. in regard to matters relating to security and integrity of the country, I/we have not been charged by any government agency or convicted by a court of law;
17. no investigation by a regulatory authority is pending either against me/us/any Member or against our chief executive officer or any of my/our directors/managers/employees;

I/We believe that I/we satisfy(s) and meet(s) all the requirements as specified in the RFP and are/is qualified to submit a Bid.

I/We understand that the Successful Bidder shall be required to incorporate and capitalize a Project Company in accordance with the Bidding Documents prior to execution of the PPP Agreement.

I/We agree and undertake to be jointly and severally liable for all our obligations under the PPP Agreement as per the provisions set out therein.

Yours faithfully,

(Name, designation, and signature of the authorised representative)

For and on behalf of: (name and seal of the Bidder / Lead Member of the Consortium)

Sample Document, Adapt as Appropriate

Schedule 4: Bidder Information¹²

Bidder Information	
Applicant's legal name	
In case of Consortium, legal name of each member	
Applicant's actual or intended country of constitution	
Applicant's actual or intended year of constitution	
Applicant's legal address in country of constitution	
Applicant's authorized representative information (name, designation, address, Telephone/ Fax numbers, E-mail)	

¹²This section must be completed by the authorized consortium representative, or if the applicant is a sole organization, by that organization.

Attached are copies of original documents of:

- 1. Notarized documents of constitution of the legal entity named above
- 2. Letter of authorization to represent the applicant
- 3. Letter of intent to form Consortium or Consortium agreement.

Sample Document, Adapt as Appropriate

Schedule 5: Consortium Member Information¹³

Consortium Member Information	
Consortium member's legal name	
Consortium member's actual or intended country of constitution	
Consortium member's actual or intended year of constitution	
Consortium member's legal address in country of constitution	
Consortium member's authorized representative information (name, designation, address, Telephone/ Fax numbers, E-mail)	

Attached are copies of original documents of:

- 1. Notarized documents of constitution of the legal entity named above
- 2. Letter of authorization to represent the applicant
- 3. Letter of intent to form Consortium or Consortium agreement.

¹³This section is to be completed by each consortium member.

Sample Document, Adapt as Appropriate

Schedule 6: Financial Capacity¹⁴

[On the letter head of the Applicant]

(In [CURRENCY])

Applicant type	Member Code ¹⁵	Net Worth
		Year 1
Single entity Applicant		
Consortium		

Name & address of Bidder's Banks:

Instructions:

The Applicant/Members of the Consortium will attach copies of the balance sheets, financial statements and audited annual reports for 5 years preceding the Application Due Date. The financial statements will:

1. reflect the financial situation of the Applicant;
2. be audited by a statutory auditor;
3. be complete, including all notes to the financial statements; and
4. correspond to accounting periods already completed and audited (no statements for partial periods will be requested or accepted, if no audited results are available for such partial periods).

“Net Worth” shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders). Year 1 will be the latest completed financial year, preceding the Bid Date.

The Bidder will provide an Auditor's Certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth.

If the annual accounts for the latest financial year are not audited, the Bidder will provide the provisional annual accounts for the latest financial year. The provisional annual accounts will be accompanied by an undertaking by the Bidder to the effect that: if it is chosen as the Successful Bidder, the Bidder will submit the audited annual accounts for the latest financial year within 2 months of the signing of the PPP Agreement; and such audited annual accounts shall not vary by more than 5% from the provisional accounts submitted by it with its Bid.

Project List

Project Title:	
Location:	
Project Size: <i>(provide indicative investment requirement)</i>	
Description of the Project:	
Date of Contract:	
Date of Commissioning:	
Scope of Work:	
Client/Project Owner: <i>(indicate client's contact details)</i>	

¹⁴This section must be completed by the authorized consortium representative, or if the applicant is a sole organization, by that organization.

¹⁵Member Code will indicate NA for Not Applicable in case of a single entity Applicant. For other members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the project relates to an Associate of the Applicant or its Member, write "Associate" along with Member Code.

The above table should contain the summary details that need to be provided for the projects that the Bidder wishes to showcase as relevant experience in mobilizing finance.

For each project showcased, a certification from the client should be enclosed. The certificate should at least state the following: (1) Name of project and scope of work; (2) date of award and commercial operations date; and (3) current status of the project.

Sample Document, Adapt as Appropriate

Schedule 7: Technical Capacity

Name of Prospective Applicant:

Name of entity fulfilling the requirement:

Relationship to Prospective Bidder: *[Indicate whether Prospective Bidder / Consortium Member / Design & Engineering Contractor]*

Project List

Project Title:

Location:

Project Size: *(provide indicative investment requirement)*

Description of the Project:

Date of Contract:

Date of Commissioning:

Scope of Work:

Client/Project Owner: *(indicate client's contact details)*

The above table should contain the summary details that need to be provided for the projects that the Bidder wishes to showcase as relevant experience (i.e. design & engineering, construction, operation, maintenance, etc.)

In case various aspects of the project are to be undertaken by different entities within a Consortium, separate forms need to be accomplished for each (i.e. one form for the entity nominated to fulfill design & engineering experience; separate form if a different entity is nominated by the Bidder to fulfill construction, etc).

For each project showcased, a certification from the client should be enclosed. The certificate should at least state the following: (1) Name of project and scope of work; (2) date of award and commercial operations date; and (3) current status of the project.

Schedule 8: Bank Guarantee for Bid Security

Address of the guarantor bank: [•]

Address of the beneficiary: [•]

We, the undersigned [•] (the "Guarantor"), in order to enable [Name of Bidder] to bid for the [Name of the Project], hereby irrevocably and independently guarantee to pay to you an amount up to a total of [•] waiving all objections and defences.

We shall effect payments under this guarantee on your first written demand, which must be accompanied by your confirmation that you have accepted the above-mentioned bid and that the firm [Name of Bidder] is no longer prepared to abide by this bid.

This guarantee shall remain in full force for a period of 180 days from the Bid Submission Deadline (as defined in the RFP).

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

This guarantee is governed by the laws of [LOCATION] and shall be subject to the exclusive jurisdiction of the Courts of [LOCATION].

Date

Guarantor

Sample Document, Adapt as Appropriate

Schedule 9: Power of Attorney for Signing of Bid

I (name of the company) incorporated under applicable laws and having its registered office at [____] "Company", do hereby irrevocably constitute, nominate, appoint and authorize Mr. /Ms (name), presently residing at [indicate business address], who is presently employed with us and holding the position of [designated position], as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds, matters and things as are necessary or required in connection with or incidental to submission of our Bid and for our selection as Successful Bidder for the [Title of Project] (the 'Project') proposed or being developed by the Contracting Authority including but not limited to signing and submission of our Bid and other documents and writings, participate in pre-bid conferences and other conferences and providing information/responses to the Contracting Authority, representing us in all matters before the Contracting Authority, signing and execution of all contracts including the PPP Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Contracting Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the PPP Agreement with the Contracting Authority.

We hereby agree to ratify and confirm all acts, deed, matters and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

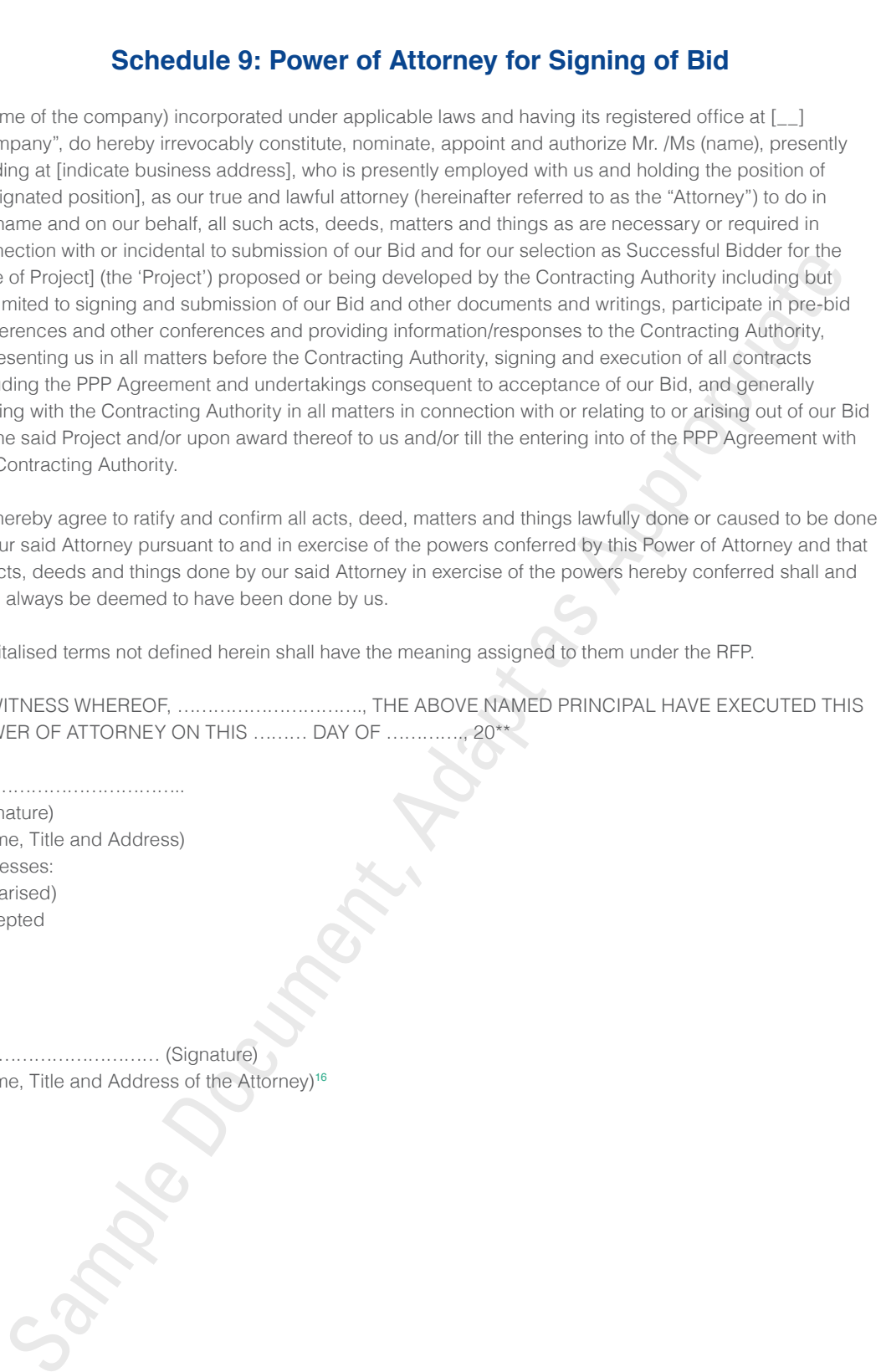
Capitalised terms not defined herein shall have the meaning assigned to them under the RFP.

IN WITNESS WHEREOF,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20**

For
(Signature)
(Name, Title and Address)
Witnesses:
(Notarised)
Accepted

..... (Signature)
(Name, Title and Address of the Attorney)¹⁶

¹⁶The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure. Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.



Schedule 10: Power of Attorney for Lead Member of Consortium

Whereas, the members of the Consortium are interested in bidding for the Project and implementing the [Title of Project] (the 'Project') in accordance with the terms and conditions of the Bidding Documents and other connected documents in respect of the Project.

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

NOW THIS POWER OF ATTORNEY WITNESSETH THAT;

¹⁷The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable Law and the charter documents of the executors and when it is so required the same should be under common seal affixed in accordance with the required procedure. Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

We, M/s. _____ (Lead Member) and M/s _____ (the respective names and addresses of the registered office) do hereby designate M/s. _____ being one of the members of the Consortium, as the Lead Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium's bid and submission of its proposal for the Project, including but not limited to signing and submission of relevant documents and writings, participating in pre-bid and other conferences, responding to queries, and generally to represent the Consortium in all its dealings with the Contracting Authority or any person in connection with the Project until the PPP Agreement is entered into between the Concessionaire and the Contracting Authority.

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

Dated this the _____ day of _____, 20**

(Executors)¹⁷



Schedule 11: Consortium Agreement

THIS CONSORTIUM AGREEMENT is entered into on this [•] day of [•] 20[•] (the "Agreement") AMONGST

1. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the "First Part" which expression shall, unless repugnant to the context include its successors and permitted assigns);
AND
2. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the "Second Part" which expression shall, unless repugnant to the context include its successors and permitted assigns);
AND
3. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the "Third Part" which expression shall, unless repugnant to the context include its successors and permitted assigns).

The above mentioned parties of the FIRST, SECOND and, THIRD PART are collectively referred to as the "Parties" and each is individually referred to as a "Party".

WHEREAS,

1. The Contracting Authority has invited Bids by its Request for Proposal No. [•] dated [•] (the "RFP") for selecting the Successful Bidder for the [Title of the Project] through Public Private Partnership;
2. The Parties are interested in jointly bidding for the Project as members of a Consortium (as defined below) and in accordance with the terms and conditions of the Bidding Documents including this RFP; and
3. It is a necessary condition under the RFP that the members of the Consortium shall enter into a concession agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the "Consortium") for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/or through any other consortium constituted for the Project, either directly or indirectly.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate the Project Company under [legislation] as required by and in accordance with the Bidding Documents for performing all its obligations as the Concessionaire in terms of the PPP Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below.
Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process;
{Party of the Second Part shall be [•]; and}
{Party of the Third Part shall be [•]}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project in accordance with the terms of the RFP, and for the performance of the Service Providers obligations under the PPP Agreement.

6. Shareholding in the Project Company

The Parties agree that the proportion of shareholding among the Parties in the Project Company shall be as follows:

First Party:

Second Party:

Third Party:

Subject to the terms of the PPP Agreement, the Lead Member shall for [•] years hold equity share capital not less than **% (** percent) of the subscribed, paid up and voting equity share capital of the Project Company; and

Each member of the Consortium shall hold at least ** % of the subscribed and paid up equity of the Project Company for [•] years after the Completion Date, and at least ** % for the following [•] years.

The Parties undertake that they shall comply with all equity lock-in requirements set forth in the PPP Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- 7.1 such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- 7.2 the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Member of Consortium is annexed to this Agreement, and will not, to the best of its knowledge:
- 7.3 require any consent or approval not already obtained;
- 7.4 violate any applicable law presently in effect and having applicability to it;
- 7.5 violate the memorandum of association and articles of association, by-laws or other applicable organizational documents thereof;
- 7.6 violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; and
- 7.7 create or impose any liens, mortgages, pledges, claims, security interests, charges or any other encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- 7.8 this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- 7.9 there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect till the full and final satisfaction of all obligations under the PPP Agreement in accordance with the terms thereof, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project as the Successful Bidder, the Agreement will stand terminated, in accordance with the mutual agreement of the Parties.

9. Miscellaneous

This Consortium Agreement shall be governed by laws of ****.

The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Contracting Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of THIRD PART

(Signature)

(Name)

(Designation)

(Address)

Sample Document, Adapt as Appropriate

Schedule 12: Anti-Collusion Certificate¹⁸

We undertake that, in competing for (and, if the award is made to us, in executing) the Project, we will strictly observe the laws against fraud and corruption in force in [LOCATION].

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

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

Dated thisday of, 20**

.....
(Name of the Bidder)

.....
(Signature of the Bidder / Authorised Person)

¹⁸To be executed on stamp paper of appropriate value.

.....
(Name of the Authorised Person)

Sample Document, Adapt as Appropriate

Schedule 13: Format and Evaluation of Technical Proposal

The Bidders shall prepare a Technical Proposal based on the requirements given in the RFP, setting out the proposed plan for implementation of the PPP Project. The Technical Proposal shall comprise the technical approach and methodology for implementing the Project, implementation schedule and timelines, manpower deployment, etc. The Technical Proposal shall be in adherence to Laws and the requirements set out in the draft PPP Agreement.

The Bidders shall submit their Technical Proposal in line with the contents provided in the table below. The Technical Proposals shall be evaluated against the criteria outlined for each of the parameters in the table below, with Bidder getting either a “pass” of a “fail” for each of the parameter. A Bidder shall have to “pass” against each and every parameter in order to qualify for the opening of the Financial Proposal.

Parameter ¹⁹	Criteria for Evaluation	
<p>Conceptual Engineering Design:</p> <ul style="list-style-type: none"> - Architectural analysis of the Project Location and its peripheral areas - Details key design/engineering concepts considered in the design of the facility - Conceptual layout of the facility, illustrating technical specifications of key components of the facility. 	<ul style="list-style-type: none"> - The conceptual engineering design must conform to the output specifications prescribed in the Bidding Documents - The engineering surveys, plans, and estimates should be doable within +/- **% of the final quantities 	To be defined based on the needs and characteristics of each individual project
<p>Technical Plan for Construction/ Rehabilitation:</p> <ul style="list-style-type: none"> - Methodology statement outlining appreciation of the project - Implementation Plan – present a detailed activity schedule along with milestones in line with the requirements set out in the PPP Agreement. This should also outline the timeline envisaged for obtaining various Government/Local Government approvals 	<ul style="list-style-type: none"> - <i>Time planning and procedures for the construction of the completed facility must be well-defined, shown to be feasible at the municipal context, allow a completion, commissioning, and handover of the PPP Project on time</i> - <i>Must be in line with output specifications</i> 	To be defined based on the needs and characteristics of each individual project
<p>Operation & Maintenance Plan:</p> <ul style="list-style-type: none"> - Process Flow Chart and Material Balance Statement setting out the activities and the outputs at each stage - Methodology for operations. - Timelines and frequency for carrying out and completion of various activities. - Resource Utilization Statement indicating the proposed organizational structure, employee deployment, equipment procurement and utilization, contracting activities, utilization of office and other facilities. - The maintenance (regular & emergency) schedules should also be indicated over the Term 	<ul style="list-style-type: none"> - System/methodology for the O&M of the completed facility must be well-defined, shown to be feasible and practicable at the municipal context, - Must show that key performance indicators are achievable by the proposed O&M system 	To be defined based on the needs and characteristics of each individual project
<p>Organization & Staffing:</p> <p>Bidders should present the calculations for manpower requirement for the Project. Proposed organization structure and composition of the project and operational team to be presented, including staff deployment plan, number of shifts per day of operations and roles and responsibilities Bidders should indicate the number of staff to be sourced locally.</p>	<ul style="list-style-type: none"> - Adequacy of proposed organization - Well defined roles & responsibility that facilitates the implementation of the proposed Technical and O&M Plans - Local staffing in line with public sector expectations 	To be defined based on the needs and characteristics of each individual project

¹⁹ May vary based on the requirements of the PPP Project.

The marks would be summed up for all evaluation parameters for each individual bidder. The score for evaluation of the Technical Proposal will be calculated as follows:

$$\text{Score (in \%)} \text{ for evaluation of Technical Proposal of Bidder 'N'} \\ = (\text{total marks from evaluation for Bidder N} / \text{highest total marks among all Bidders}) \times 100$$

Bidders receiving less than 70% score would not be eligible for the evaluation of their financial proposals. Financial proposals of all such bidders would be returned unopened.²⁰

OR

The scores from evaluation of the Technical Proposal would be used for calculation of the weighted average score, along with the score from the evaluation of the Financial Proposal, as described in Section 3.8 of this document.

²⁰ The Municipality will have to select one of the two paragraphs above based on the approach used for evaluation of bids. The first paragraph will be used if the Municipality is using the pass-fail criteria for technical evaluation, to identify the bidders whose financial proposal would be opened. In such case the final selection of the best Bid would be based on the evaluation of the financial proposal only. The second paragraph will be selected if the Municipality intends to use the weighted average of the scores from Technical and Financial Evaluations for the selection of the financial proposal.

Sample Document, Adapt as Appropriate

Schedule 14: Format of Financial Proposal

[On the letterhead of the Applicant / Lead Member]

Original or Copy number:

Date:

To: [Contracting Authority's Name]

[Insert Contracting Authority's Address]

Re: Financial Proposal for the [Title of the PPP Project]

Dear Madam/Sir,

Please find below our Financial Proposal for the [Title of the Project] (the "Project") in response to the Request for Proposal ("RFP") issued by [the Name of the Contracting Authority] ("the Contracting Authority") on [DATE].

We hereby confirm the following:

- This Financial Proposal is being submitted by [name of Bidder] in accordance with the conditions stipulated in the RFP;
- We have examined in detail and understand and agree to abide by all terms and conditions stipulated in the Bidding Documents issued by the Contracting Authority, as amended, and in any subsequent communication sent by the Contracting Authority;
- Our Financial Proposal is consistent with all requirements of submission stated in the RFP and in any subsequent communication sent by the Contracting Authority;
- It is adequately supported by the following documents as attachments:
 - (a) Supporting cost estimates for the design, construction, operation and maintenance components;
 - (b) A financial model consistent with the above cost estimates and the technical proposal, and which includes a short explanatory memorandum; and
 - (c) A project financing plan showing positively showing that the same can adequately meet the cost requirements of the PPP Project, which may include the amount of equity to be infused, debt to be obtained for the Project, and sources of financing.

Our Bid Value is as follows:

[Grant/ Fee]	[amount in [CURRENCY]/ percentage]
--------------	------------------------------------

We are solely responsible for any errors or omissions in our Financial Proposal.

Respectfully,

(Name, designation, and signature of the authorised representative)

For and on behalf of: (name and seal of the Applicant / Lead Member of the Consortium)

Schedule 15: Declaration of Undertaking

We underscore the importance of a free, fair and competitive procurement process that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our Application, nor will we offer or grant or accept any such incentives or conditions in this Bidding Process or, in the event that we are awarded the contract, in the subsequent execution of the contract.

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the client if this situation should occur at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding for the client, the client is entitled to exclude our company/ the consortium from the Bidding Process and, if the contract is awarded to our company/ the consortium, to terminate the contract immediately if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion occurs after the Declaration of Undertaking has been issued.

.....
Place, date

.....
Authorized Representative of the Bidder

Sample Document, Adapt as Appropriate

Schedule 16: Draft PPP Agreement

Sample Document, Adapt as Appropriate

**SAMPLE REQUEST FOR PROPOSAL
FOR TWO-STAGE BID PROCESS**



Municipal Public-Private Partnership Framework

10

Important Notes:

This Request for Proposals – Two Stages is provided only as a sample document. It must be adapted to fit the unique circumstances and needs of each particular Municipality and project for which its use is intended. National and local laws, regulations, policies and practices may prescribe a different approach to procuring project-level consulting services.



Notes

ADDITIONAL GUIDANCE MATERIAL

World Bank Group's Public-Private Partnership Legal Resource Center,
<https://ppp.worldbank.org/public-private-partnership/>

Sample Document, Adapt as Appropriate

[CONTRACTING AUTHORITY'S NAME]

Request for Proposal

for the

[Title of PPP Project]

Sample Document, Adapt as Appropriate

[DATE]

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Sample Document, Adapt as Appropriate

DISCLAIMERS

The information contained in this Request for Proposal (RFP) or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of the Contracting Authority or any of its employees or advisors, is provided to Bidders on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Contracting Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide Bidders with information that may be useful to them in preparing and submitting their Bid pursuant to the Bidding Documents including this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Contracting Authority in relation to the PPP Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. The information contained in the Bidding Documents may not be appropriate for all persons, and it is not possible for the Contracting Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. Each Bidder should conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidders covers a wide range of topics, some of which depends upon interpretation of local laws & regulations. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. None of the Contracting Authority, its employees, nor advisors accept any responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein. The Contracting Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way by participating in this Bidding Process.

The Contracting Authority, its employees or advisors, likewise accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. The Contracting Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP. The issuance of this RFP does not imply that the Contracting Authority is bound to select a Bidder or to appoint the Successful Bidder for the Project and the Contracting Authority reserves the right to reject all or any of the Bidders or Bids or otherwise discontinue the process without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Contracting Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Contracting Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Addendum or Addenda means addendum or addenda to the RFP.

Bid means a proposal submitted by a Bidder for the Project.

Bidder means an interested single entity or Consortium which submits a Bid to the Contracting Authority in accordance with the provisions of this RFP.

Bidding Company means a single entity submitting a Bid pursuant to the RFP.

Bidding Documents means the RFP, the draft PPP Agreement, any Addenda or clarification issued by the Contracting Authority in accordance with the terms of this RFP, and any other documents provided by the Contracting Authority pursuant to this RFP, as such documents may be modified, altered, amended and clarified from time to time by the Contracting Authority.

Bidding Process means the single-stage bidding process being followed by the Contracting Authority to award the Project to the Selected Bidder, the terms of which are set out in this RFP.

Bid Parameter means the criteria which determines the best bid for the PPP Project.

Bid Security means an amount equivalent to [AMOUNT] to be provided by a Bidder as security for its Bid.

Bid Submission Deadline means the date specified in Schedule 2 as the last date for submission of Bids.

Availability Payments means the payments, if any, to be paid to the Service Provider by the Contracting Authority (CA) for the services or facility "available" for use by the CA, as provided under the PPP Project.

Conflict of Interest has the meaning ascribed to it in Clause 2.1.12.

Consortium means any combination of entities that have formed a consortium or association by fulfilling the requirements set out in this RFP, for the purpose of submitting a Bid and for implementing the Project, if such consortium or association is declared as the Selected Bidder.

Consortium Agreement means the binding consortium agreement to be executed between Consortium Members in the form set out in Schedule 11.

Contracting Authority means any local/municipal government authority public, statutory corporation or other subnational agency.

Control means, with respect to a corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of a company or corporation or the power to appoint majority of the directors on the board of directors of such company or corporation and/or the power to direct the management and policies of such person by operation of law, agreement or otherwise and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law, agreement or otherwise.

Data Room means a virtual data room providing more detailed project information, records, and other background documents relevant to the PPP Project.

Eligible Project means a project demonstrating that a Bidder has the requisite technical capacity to implement the Project.

Financial Proposal means the Financial Proposal to be submitted by a Bidder for the development and implementation of the PPP Project as prescribed in Clause 2.13.5.

Government means the Government of ****.

Lead Member in the context of a Consortium, means the Consortium Member nominated by the Consortium Members as the lead member with the rights and obligations as set out in this RFP.

Letter of Award means the letter of award that will be issued by the Contracting Authority to the Selected Bidder in accordance with Clause 3.20.

Member means a member of a Consortium.

Net Worth means the difference between the sum of subscribed and paid up equity, reserves and the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

O&M means operation and maintenance.

PPP means public-private partnership.

PPP Agreement means the agreement to be executed between the Contracting Authority and the Selected Bidder to implement the PPP project, substantially in the format set out in Schedule 16.

Pre-Bid Conference means a conference that will be held by the Contracting Authority to answer queries or clarifications raised by Bidders and to provide information to Bidders on the Project.

Project Company means the special purpose company specifically formed and incorporated in [LOCATION] for the purpose of undertaking the Project pursuant to the PPP Agreement.

RFP or Request for Proposals means this request for proposal dated **** along with its Schedules, and Addenda, if issued.

Service Provider means the legal entity proposed by the Successful Bidder in its proposal to undertake the PPP Project in accordance with the PPP Agreement

Successful Bidder means the Bidder selected by the Contracting Authority to award the Project following the completion of the Bidding Process.

Technical Proposal has the meaning ascribed to it in Clause 2.13.4.

Tender Committee means the working group established by the Contracting Authority to carry out the PPP procurement.

Term means the period during which the Service Provider shall undertake the PPP Project in accordance with the PPP Agreement.

User Payment means a payment to be paid to the Service Provider by a user of the PPP Project

1. INTRODUCTION

A. Purpose of Issuing the RFP

- 1.1. The purpose of issuing the RFP is to enable the Contracting Authority to select the Successful Bidder for the PPP project, by evaluating which among the qualified Bidders presents the best Bid that offers the best value for money for the public in undertaking the PPP Project as set out in the technical and financial criteria in this RFP.
- 1.2. It is intended that the Bidding Process be conducted in a competitive and transparent manner in order to ensure that the Contracting Authority's objectives for initiating the PPP are achieved and value for money objectives met.

B. Project Background

- 1.3. The Contracting Authority is seeking private sector participation to improve [SERVICE] in the [LOCATION] through [DESCRIPTION OF FACILITIES] on a PPP basis.
- 1.4. The Service Provider shall undertake: [indicate scope – i.e. design, construction and maintenance of new facilities / operation and maintenance of existing facilities, etc].

C. PPP Agreement

- 1.5. The Contracting Authority shall enter into the PPP Agreement with the Service Provider.
- 1.6. The Term shall be **** years from [here insert start event or date].
- 1.7. At the end of this period, the Service Provider shall release or otherwise transfer the assets to the Contracting Authority free of charge and free of any liens or encumbrances. A draft of the PPP Agreement is set out in Schedule 16.

D. Financing assumptions

- 1.8. The Service Provider shall be responsible for financing the PPP Project.
- 1.9. [Describe any concessional financing or grant funding that was made available for the PPP Project]
- 1.10. [Indicate key financing assumptions]
- 1.11. In consideration, the Service Provider shall have access to the following types of revenue streams:
 - (a) User Payments from users of the PPP Project; or/and
 - (b) Availability Payments from Contracting Authority.

E. Brief Description of the Bidding Process

- 1.12. The Contracting Authority has adopted a two-envelope, two-stage process (collectively referred to as the "Bidding Process") for selection of the preferred bidder for award of the PPP Project.
- 1.13. The first stage (the "Qualification Stage") of the process is the qualification / shortlisting of interested

parties/consortia through their submission of an Application in accordance with the provisions of this RFQ (the "Applicant"). In this stage, Applicants are required to furnish the information specified in this RFQ. The Contracting Authority shall be entitled to disqualify an Applicant in accordance with the aforesaid documents at any stage of the Bidding Process. At the end of this stage, the Contracting Authority shall announce a short-list of prequalified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the "Bid Stage") comprising Request for Proposals (the "Request for Proposals" or "RFP").

- 1.14. The second stage of the process is the bid proper or the Bid Stage. The shortlisted Applicants / Bidders will be called upon to submit their proposals (the "Bids") in respect of the project, in accordance with the RFP and other documents herein provided by the Contracting Authority. Bidders will be required to deposit, along with its Bid, a refundable bid security which will be specified in the RFP.
- 1.15. Bidders will be required to deposit, along with its Bid, a refundable bid security as specified in this RFP.
- 1.16. Bidders will be required to submit two envelopes – which together, comprises their Bid – containing the following: (1) the Technical Proposal and (2) the Financial Proposal.
- 1.17. The first envelope, which contains the Bidder's Technical Proposal, shall first be opened and evaluated. The Contracting Authority shall then announce the Bidders whose Technical Proposals meet its minimum requirements, as prescribed in this RFP. Only Bidders who satisfy the Contracting Authority's minimum technical specifications and requirements shall advance to the opening of the Financial Proposal. For those that do not qualify, their third envelopes shall be returned to them unopened.
- 1.18. The second envelope, containing the Bidder's Financial Proposal, shall be opened and evaluated. The Bidder who submits the best Financial Proposal based on the Contracting Authority's Bid Parameter shall be chosen as the Successful Bidder and shall be awarded the PPP Contract.
- 1.19. The timeline of the Bidding Process is included as Schedule 2 of this RFP. The Contracting Authority may, in its sole discretion and without prior notice to the Bidders, amend the timelines. Bidders shall not rely in any way whatsoever on the initial timeline and the Contracting Authority shall not incur any liability whatsoever arising out of amendments to the timelines. The Contracting Authority shall give notice of changes to the timelines, if any, by written addenda.

2. INSTRUCTIONS TO BIDDERS

A. General Requirements

2.1. Eligibility of Bidders

- 2.1.1. A Bidder shall submit only 1 (one) Bid for the PPP Project either individually or as a Member of a Consortium. A Bidder applying individually, or as a member of a Consortium, shall not be entitled to submit another Bid, either individually or as a member of any Consortium, as the case may be.
- 2.1.2. A Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in this RFP.
- 2.1.3. The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Bidding Documents shall be binding on the Contracting Authority nor confer any right to the Bidders, and the Contracting Authority its employees and consultants shall have no liability whatsoever in relation to or arising out of any or all contents of the Bidding Documents.
- 2.1.4. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft PPP Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the PPP Agreement.
- 2.1.5. The Bid should be furnished in the formats specified in this RFP and signed by the Bidder's authorized signatory. The Bidders should note that the formats specified in the RFP have been provided for the convenience of the Bidders and may not exhaustively enumerate or describe various information required to be provided by the Bidders under the Bidding Documents. The Bidders should ensure that all the information required to be provided by them under the Bidding Documents is included in their Bid whether or not a particular format specified herein makes provision for submission of such information and/or whether or not a format for submission of such information is incorporated in the Bidding Documents.
- 2.1.6. The Bidder shall submit as part of its Bid, a Bid Security in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a demand draft or in the form of a bank guarantee, from a [*** rated] bank registered in [LOCATION] acceptable to the Contracting Authority, as per the format at Schedule 8.
- 2.1.7. The Bidder should submit a power of attorney as per the format in Schedule 9, authorizing the signatory of the Bid to commit the Bidder.
- 2.1.8. In case the Bidder is a Consortium, the Members thereof should furnish a power of attorney in favour of the Lead Member as per the format in Schedule 10.
- 2.1.9. Any condition or qualification or any other stipulation contained in the Bid which is inconsistent with the terms of the Bidding Documents may render the Bid liable to rejection as a non-responsive Bid.
- 2.1.10. The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in the English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials which are

not translated into English may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

- 2.1.11. The Bidding Documents, including this RFP and all attached or other documents, are and shall remain the property of the Contracting Authority and are transmitted to the Bidders solely for the purpose of preparation and submission of a Bid in accordance with the Bidding Documents. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparing and submitting their Bid. The Contracting Authority reserves the right to make Bids and element thereof public or otherwise transparent.
- 2.1.12. **Conflict of Interest:** A Bidder shall not have a Conflict of Interest that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Contracting Authority shall be entitled to forfeit and appropriate the Bid Security and/or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Contracting Authority under the Bidding Documents or otherwise. Determining the presence of Conflict of Interest shall be the prerogative of the Contracting Authority. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (a) the Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding of a Bidder (or any constituent thereof) is less than **** % of the paid up and subscribed capital of the other Bidder (or any constituent thereof) and it does not have Control of the Bidder; or
 - (b) a consortium member or any constituent of such Bidder is also a consortium member or constituent of another Bidder; or
 - (c) such Bidder (or any constituent thereof) receives or has received any direct or indirect subsidy from any other Bidder (or any constituent thereof), or has provided any such subsidy to any other Bidder (or any constituent thereof); or
 - (d) such Bidder (or any constituent thereof) thereof has the same legal representative for purposes of this Bid as any other Bidder (or any constituent thereof); or
 - (e) such Bidder (or any constituent thereof) has a relationship with another Bidder (or any constituent thereof), directly or through common third parties, that puts either or both of them in a position to have access to each other's' information about, or to influence the Bid of either or each other; or
 - (f) such Bidder (or any constituent thereof) has participated as a consultant to the Contracting Authority in the preparation of any documents, design or technical specifications of the PPP Project, or
 - (g) Any legal, financial or technical adviser of the Contracting Authority in relation to the PPP Project is engaged by the Bidder (or any constituent thereof) in any manner for matters related to or incidental to the PPP Project.
- 2.1.13. This RFP is not transferable and can only be used by the person to whom it has been issued.
- 2.1.14. Any award of the PPP Agreement pursuant to this RFP shall be subject to the terms of the Bidding Documents.
- 2.1.15. For a detailed list of documents and information to be provided with each envelop constituting a Bid, please refer to Clause 2.9.

2.2. Change in composition of the Consortium

- 2.2.1. Change in the composition of a Consortium will not be permitted by the Contracting Authority after the Bid Submission Deadline.
- 2.2.2. If a Bidder has changed the composition of its Consortium since the submission of Application, it is required to submitted an updated Consortium Member Information (Schedule 5), an updated Consortium Agreement (Schedule 9), and the Power of

Attorney for Lead Member of Consortium (Schedule 8) together with its Technical Proposal on or before the Bid Submission Deadline.

- 2.2.3. Notwithstanding a change in Consortium composition, the Bidder is required to maintain the minimum shareholding structure prescribed as follows:
- (a) The Lead Member of the Consortium shall hold at least **** % of the subscribed and paid up equity of the Project Company for **** years after the Completion Date, and at least **** % for the following **** years; and
 - (b) Each member of the Consortium shall hold at least **** % of the subscribed and paid up equity of the Project Company for **** years after the Completion Date, and at least **** % for the following **** years.

2.3. Cost of bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bid and their participation in the Bidding Process. The Contracting Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.4. Data Room

- 2.4.1. For the benefit of the prospective Bidders, the Contracting Authority has provided a virtual Data Room. The Bidding Documents can be downloaded from the Data Room.
- 2.4.2. The Data Room can be accessed by any prospective Bidder by submitting the relevant details to be provided on the website on the following link. [Insert url]

2.5. Site visit and Verification of Information by Bidders

- 2.5.1. Bidders are encouraged to submit their respective Bids after visiting the Project Site[s] and ascertaining for themselves the sites' conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to sites, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.
- 2.5.2. A site visit shall be organized by the Contracting Authority prior to the pre-bid conference for all Bidders. Further details regarding this site visit shall be given by the Contracting Authority to all Bidders in due course.
- 2.5.3. It shall be deemed that by submitting a Bid, the Bidder has:
- (a) made a complete and careful examination of the Bidding Documents;
 - (b) acknowledged accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Contracting Authority relating to any of the matters referred to in Clause 2.5.1;
 - (c) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
 - (d) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits, or a ground for termination of the PPP Agreement by the Service Provider; and
 - (e) acknowledged that it does not have a Conflict of Interest.
- 2.5.4. The Contracting Authority, its employees, and consultants shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter

or thing arising out of or concerning or relating to the RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by or on behalf of the Contracting Authority.

2.6. Pre-Bid Conference

- 2.6.1. A pre-bid conference of the Bidders shall be convened at the designated date, time and place. Only duly authorized representatives of the Bidders shall be allowed to participate in the pre-bid conference.
- 2.6.2. During the course of the pre-bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Contracting Authority. The Contracting Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 2.6.3. Questions lodged by, and answers obtained from, the Bidders, as well as any relevant responses from the Contracting Authority pursuant to these discussions will be made available to all Bidders through the Data Room. However, the identity of each respective Bidder who issued a question / provided a response, will be made anonymous.

2.7. Verification and Disqualification

- 2.7.1. The Contracting Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Contracting Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the Contracting Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Contracting Authority thereunder.
- 2.7.2. The Contracting Authority reserves the right to reject any Bid and appropriate the Bid Security if:
- (a) at any time, a material misrepresentation is made or uncovered; or
 - (b) the Bidder does not provide, within the time specified by the Contracting Authority, the supplemental information sought by the Contracting Authority for evaluation of the Bid, or
 - (c) a Conflict of Interest as discussed in Clause 2.1.12 persists.
- 2.7.3. Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member shall be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Successful Bidder gets disqualified/ rejected, then the Contracting Authority reserves the right to select the Bidder which proposed the second best Bid as Successful Bidder or cancel the Bidding Process.

B. Documents

2.8. This RFP comprises the Disclaimer, the contents as listed below, and will additionally include any addendum issued in accordance with Clause 2.11 and any clarifications and interpretations issued in accordance with Clause 2.10.

Invitation for Bids		Schedules	
Section 1.	Introduction	Schedule 1.	Updated Project Information
Section 2.	Instructions to Bidders	Schedule 2.	Updated Bidding Process Timelines
Section 3.	Evaluation of Bids	Schedule 3.	Bid Letter
		Schedule 4.	Updated Bidder Information
		Schedule 5.	Updated Consortium Member Information
		Schedule 6.	Bank Guarantee for Bid Security
		Schedule 7.	Power of Attorney for Signing of Bid
		Schedule 8.	Power of Attorney for Lead Member of Consortium
		Schedule 9.	Updated Consortium Agreement
		Schedule 10.	Anti-Collusion Certificate
		Schedule 11.	Format for the Technical Proposal
		Schedule 12.	Format for the Financial Proposal
		Schedule 13.	Declaration of Undertaking
		Schedule 14.	Draft PPP Agreement

2.9. Clarifications

- 2.9.1. Bidders requiring any clarification on the Bidding Documents may notify the Contracting Authority by e-mail at the following e-mail address: ****
- 2.9.2. Queries must be received by the Contracting Authority on or before the last date for receipt of clarifications mentioned in Schedule 2.
- 2.9.3. The Contracting Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders within fifteen (15) days of receipt of such questions or clarifications. The Contracting Authority will notify Bidders by e-mail that queries and its responses have been posted in the website / data room.
- 2.9.4. The Contracting Authority will organize the clarification response procedure. The queries and its responses will be updated in the website of the Contracting Authority. The Contracting Authority may notify Bidders by e-mail that responses to queries have been posted at the Contracting Authority's website.
- 2.9.5. The Contracting Authority may also on its own initiative, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Contracting Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by the Contracting Authority

or its employees or representatives shall not be binding on the Contracting Authority.

- 2.9.6. Should the Contracting Authority deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure in Clause 2.10 below.

2.11. Amendment

- 2.10.1. At any time prior to the Bid Submission Deadline, the Contracting Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of addenda.
- 2.10.2. Any addendum issued hereunder will be uploaded in the website of the Contracting Authority. The Contracting Authority may notify Bidders about the issuance of an Addendum by e-mail.
- 2.10.3. In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Contracting Authority may, at its sole discretion, extend the Bid Submission Deadline.

C. Preparation and Submission of Bid

2.11. Format and Signing of Bid

- 2.11.1. The Bidder shall provide in its Bid all the information sought under the Bidding Documents. The Contracting Authority will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Application shall be rejected.
- 2.11.2. The Bidder shall prepare one original set of its Bid (comprising of the two envelopes mentioned in Clause 2.12.1 together with originals/copies of documents required to be submitted along therewith) clearly marked "ORIGINAL". In addition, the Bidder shall submit one copy of its Bid clearly marked "COPY". In the event of any discrepancy between the original and the copy, the original shall prevail.
- 2.11.3. The Bid shall be signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person signing the Bid. The Bid shall contain page numbers.

2.12. Contents of the Bid

- 2.12.1. The "Bid" shall be comprised of two envelopes: (1) the Technical Proposal, and (2) the Financial Proposal.
- 2.12.2. Both envelopes shall be marked as follows:
"BID FOR THE [NAME OF PROJECT]
ENVELOPE [•of 2]"
and shall clearly indicate the number of the envelope and the name and address of the Bidder. Each envelope shall be individually sealed.
- 2.12.3. **Envelope 1: Technical Proposal:** This envelope should clearly be marked as "Envelope 2: Technical Proposal" and shall contain the following attachments to Technical Proposal (Schedule 11):
(a) The Bid Letter (Schedule 3);
(b) If necessary, the Updated Bidder Information (Schedule 4) including attachments;

- (c) If Bidder underwent change in consortium composition, the Updated Consortium Member Information to be accomplished by each member of the consortium (Schedule 5) including attachments;
- (d) The Bank Guarantee for Bid Security (Schedule 6);
- (e) The Power of Attorney for Signing of Bid (Schedule 7);
- (f) If Bidder underwent change in consortium composition, the Power of Attorney for Lead Member of Consortium (Schedule 8);
- (g) If Bidder underwent change in consortium composition, the Consortium Agreement (Schedule 11);
- (h) The Anti-Collusion Certificate (Schedule 10); and
- (i) The Declaration of Undertaking (Schedule 13).

2.12.4. The Technical Proposal itself (Schedule 11), must contain the following elements:

- (a) Conceptual Engineering Design;
- (b) Technical Plan for Construction/Rehabilitation;
- (c) Operation and Maintenance Plan; and
- (d) Organization and Staffing.

2.12.5. **Envelope 2: Financial Proposal:** This envelope should clearly be marked as "Envelope 3: Financial Proposal" and shall contain the Financial Proposal (Schedule 14), supported by the following documents:

- (a) Cost estimates for the design, construction, operation and maintenance components;
- (b) A financial model consistent with the above cost estimates and the technical proposal, and which includes a short explanatory memorandum; and
- (c) A project financing plan showing positively showing that the same can adequately meet the cost requirements of the PPP Project, which may include the amount of equity to be infused, debt to be obtained for the Project, and sources of financing.

2.13. Bid Security

2.13.1. The Bidder shall furnish as part of its Bid a Bid Security.

2.13.2. The Bid Security may be in the form of an irrevocable, unconditional and first demand bank guarantee issued by a bank registered in [LOCATION] acceptable to the Contracting Authority in favour of the Contracting Authority in the format prescribed in Schedule 6; or an on-demand bond issued by a bank registered in [LOCATION], drawn in favour of the Contracting Authority and payable at [LOCATION].

2.13.3. The Bid Security shall have a validity period of not less than ** days¹ from the Bid Submission Deadline.

2.13.4. Any Bid not accompanied by a Bid Security shall be summarily rejected by the Contracting Authority as non-responsive.

2.13.5. The Bid Security of unsuccessful Bidders (which term shall exclude the first and second best bidders) will be returned by the Contracting Authority, without any interest, as promptly as possible after execution of the PPP Agreement with the Service Provider or when the Bidding Process is cancelled by the Contracting Authority.

2.13.6. The Successful Bidder's Bid Security will be returned, without any interest, upon the Service Provider signing the PPP Agreement and, if required, providing the Performance Security in the form required by the PPP Agreement.

2.13.7. The Contracting Authority shall be entitled to forfeit and appropriate the Bid Security, without prejudice to any other right or remedy that may be available to the Contracting Authority under the RFP, under the following conditions:

- (a) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 2.22 of this RFP;
- (b) If a Bidder modifies or substitutes (without the prior written approval of the Contracting Authority) or withdraws its Bid during the period of Bid validity as

¹ Period should be equal to the period for the bid to be extant plus a margin to allow for delays in making a call where appropriate.

specified in this RFP;

- (c) In the case of a Successful Bidder, if within the specified time:
 - (i) it fails to incorporate a Project Company or such Project Company fails or refuses to sign the PPP Agreement; or
 - (ii) the Project Company fails to provide the Performance Security in accordance with the Bidding Documents; or
 - (iii) Successful Bidder fails to transmit the project development fee to the Contracting Authority.

2.14. Sealing and Marking of Bid

- 2.14.1. Each of the three (3) aforementioned envelopes shall be placed in an outer envelope, which shall be sealed and shall be marked as follows: "BID FOR THE [NAME OF PROJECT]"
- 2.14.2. The Bids shall be addressed to:
ATTENTION: [Name of Head of Contracting Authority's Tender Committee]
ADDRESS: [Address of Contracting Authority]
- 2.14.3. If the envelopes are not sealed and marked as instructed above, the Contracting Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.
- 2.14.4. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected².

2.15. Bid Submission

- 2.15.1. Bids must be received by the Contracting Authority at the address specified in Schedule 2 no later than the Bid Submission Deadline.
- 2.15.2. The Bid must be hand-delivered as prescribed by the Contracting Authority. The Contracting Authority shall, on request, provide the Bidder with a receipt showing the date and time when the Bid was received.
- 2.15.3. The Contracting Authority may, at its discretion, extend the Bid Submission Deadline by issuing an addendum in accordance with Clause 2.11 uniformly for all Bidders.
- 2.15.4. Bids received by the Contracting Authority after the specified Bid Submission Deadline shall be declared late and shall not be eligible for consideration and shall be summarily rejected.

2.16. Modifications / Substitution / Withdrawal of Bid

- 2.16.1. The Bidder may modify, substitute or withdraw its Bid after submission, provided that the written notice of the modification, substitution or withdrawal is received by the Contracting Authority prior to the Bid Submission Deadline. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Submission Deadline.
- 2.16.2. The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.15, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.17. Rejection of Bids

- 2.17.1. Notwithstanding anything contained in this RFP, the Contracting Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore.

² Option for online submission of bids using secure software and procedures may be provided.

- 2.17.2. In the event that the Tender Committee rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids under this RFP.

2.18. Validity of Bids

- 2.18.1. The Bids shall be valid for a period of not less than **** days from the Bid Submission Deadline.
- 2.18.2. The validity of Bids may be extended by mutual consent of the respective Bidders and the Tender Committee.

2.19. Confidentiality

- 2.19.1. Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the Contracting Authority in relation to or matters arising out of, or concerning the Bidding Process.
- 2.19.2. The Contracting Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence.
- 2.19.3. The Contracting Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Contracting Authority.

2.20. Correspondence with the Bidder

Save and except as provided in this RFP, the Tender Committee shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

2.21. Fraudulent and Corrupt Practices

- 2.21.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the Letter of Award and during the subsistence of the PPP Agreement.
- 2.21.2. The Tender Committee may reject a Bid, withdraw the Letter of Award, or terminate the PPP Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or the Service Provider, as the case may be, if it determines that the Bidder or Service Provider, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 2.21.3. In such an event, the Tender Committee shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Contracting Authority under the Bidding Documents and/or the PPP Agreement or otherwise.
- 2.21.4. In pursuit of this policy, the Government defines, for the purposes of this provision, the terms set forth below as follows:
- (a) "corrupt practice" means the offering, giving, receiving, or soliciting, of anything of value to influence the action of a public official in the Bidding Process (for the avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Contracting Authority who is or has been associated in any manner with the Bidding Process, at any time during the Bidding Process and within one year from the date of the conclusion of such process, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process), and includes inter alia, bribery, extortion or

- coercion, which involves threats of injury to person, property or reputation;
- (b) "fraudulent practice" means a misrepresentation, omission, or suppression of facts, or disclosure of incomplete facts, in order to influence the Bidding Process;
 - (c) "coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process; and
 - (d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Contracting Authority or member of the Tender Committee with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest.

- 2.21.5. Government reserves the right, where the Applicant has been found by a national or international entity to have engaged in corrupt or fraudulent practices, to declare such Applicant ineligible, for a period of ten years, to be awarded a PPP contract or any publicly funded contract.

Sample Document, Adapt as Appropriate

3. EVALUATION OF BIDS

A. Opening and Evaluation of Technical Proposals

- 3.1. The Tender Committee shall open Envelope 1 of the Bids exactly one hour after the Bid Submission Deadline, at the place specified in Schedule 2 and in the presence of the Bidders who choose to attend.
- 3.2. Bids for which a notice of withdrawal has been submitted shall not be opened.
- 3.3. Upon the opening of first envelopes, the Tender Committee shall determine whether each envelope is responsive to the requirements of the RFP. A submission shall be considered responsive only if it:
 - (a) contains all the documents required to be submitted by Clause 2.12.3 of this RFP;
 - (b) is received on or before the Bid Submission Deadline, including any extension thereof;
 - (c) is signed, sealed and marked as stipulated in this RFP; and
 - (d) does not contain any condition or qualification.
- 3.4. Only applications that are deemed to be responsive will be evaluated.
- 3.5. The Tender Committee reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Tender Committee in respect of such Bid.
- 3.6. Only Bids with responsive Technical Proposals that fulfil the following may be considered for opening of the Financial Proposal:
 - (a) Contains all the required elements/content stipulated in Clause 2.12.4 of this RFP; and
 - (b) Demonstrates the feasibility of its proposed technical approach and methodology for implementing the PPP project based on the minimum criteria indicated in Schedule 11 of this RFP.
- 3.7. The Contracting Authority reserves the right to reject any Bid which is non-responsive. If necessary, the Contracting Authority may ask the Bidders for clarifications. In this case, the Tender Committee will make a request for supplementary information or documentation from the Bidder, provided that this request may only be made to clarify information already provided by a Bidder or to request a document that should have been included. Whenever a supplementary request is made, the Bidder must respond to the Tender Committee within the time period set by the Committee in its request. If the Bidder does not respond to a supplementary request within such time period or does not provide the information or documentation requested, the Tender Committee may consider the Bid non-responsive and reject it.
- 3.8. After the evaluation of Technical Proposals, the Tender Committee will announce the technical scores of all the bidders. Bidders who have received less than [70%]³ will not be eligible for evaluation of their respective Financial Proposals. The Financial Proposals of such bidders would be returned unopened.

OR

After the evaluation of Technical Proposals, the Tender Committee will announce the technical scores of all the bidders. The scores from evaluation of the Technical Proposals will be used for calculation of the combined score for Technical and Financial Proposals based on the weighted average of the respective scores.⁴

³ Suggested threshold, can be modified based on the technical intensity of the project, capacity of the market and the possible number of bidders.

⁴ The Municipality will have to select one of the two paragraphs above based on the approach used for evaluation of bids. The first paragraph will be used if the Municipality is using the pass-fail criteria for technical evaluation, to identify the bidders whose financial proposal would be opened. In such case the final selection of the best Bid would be based on the evaluation of the financial proposal only. The second paragraph will be selected if the Municipality intends to use the weighted average of the scores from Technical and Financial Evaluations for the selection of the financial proposal.

B. Opening and Evaluation of Financial Proposals

- 3.9. The Tender Committee shall schedule the opening of Financial Proposals, which shall be no later than five (5) days after the announcement of qualified Bidders from Clause 3.8.
- 3.10. The best Financial Proposal is the one that offers the most value-for-money for Government, based on the Bid Parameter as follows: [DEFINITION OF BID PARAMETER]



Notes

Examples of Financial Bid Parameters for PPP projects and guidance on their use

1. PPP projects (based on User Pays PPP models) where it is expected that the Municipality will have to provide capital grant, the financial bid parameter would be the least capital grant quoted.
2. PPP projects (based on User Pays PPP models) where the maximum tariff for the service is not regulated and will be driven by market forces, will have the minimum tariff quoted as the financial bid parameter.
3. PPP projects based on annuity/ availability payment model will have the least amount of periodic annuity or per unit availability payment quoted as the financial bid parameter
4. PPP projects that are expected to have reasonably high financial returns, without support from the Municipality, may have the highest revenue share or profit share or lease premium as the financial bid parameter

- 3.11. Financial Proposals will be evaluated using the following methodology⁵.

$$\text{Score (in \% for Financial Proposal of Bidder 'N')} = \frac{\text{(Financial Bid of Bidder N)}}{\text{(Highest Financial Bid among all Bidders)}} \times 100$$

OR

$$\text{Score (in \% for Financial Proposal of Bidder 'N')} = \frac{\text{(Lowest Financial Bid among all Bidders)}}{\text{(Financial Bid of Bidder N)}} \times 100.$$

- 3.12. The best Bid will be identified based on the highest score from the evaluation of Financial Proposal. (from Clause 3.11).

OR

The best Bid will be identified based on the highest weighted average combined score from the evaluation of the Financial Proposal (from Clause 3.11) and Technical Proposal (as described in Schedule 11), as indicated below:

$$\begin{aligned} \text{weighted average score of Bidder 'N'} = & \\ & (\text{weight for technical score in \%} \times \text{aggregate technical score}) \\ & + (\text{weight for financial score in \%} \times \text{financial score}) \end{aligned}$$

where:

technical score= score from the evaluation of the Technical Proposal;
financial score= score from the evaluation of the Financial Proposal;
weight for technical score= weight assigned by Municipality
(can be in the range of 70%-80%);
weight for financial score= (1- weight for technical score).

- 3.13. The best Bid, based on the Bid Value submitted, may only be considered indicative until the Tender Committee confirms that such Financial Bid fulfils the following:
- (a) It is supported by the documents/attachments required to be included in the Financial Proposal

⁵ The first option is selected if a higher Financial Bid would deliver higher value for the Municipality (like revenue share or lease premium), the second option is selected if a lower Financial Bid would deliver higher value for the Municipality (like viability gap grant or annuity).

according to Schedule 14 of this RFP;

(b) It is signed, sealed and marked as stipulated in this RFP; and

(c) It does not contain any condition or qualification.

- 3.14. The Contracting Authority reserves the right to entertain the next best Bid if the indicative best Bid fails to fulfil the requirements indicated in Clause 3.13. If necessary, the Tender Committee may ask the Bidder/s for clarifications following the procedure stipulated in Clause 3.7 of this RFP.
- 3.15. The Bidder whose Bid is declared to be the best Bid and complies with the requirements of Clause 3.13, or if two or more Bidders have offered exactly the same Bid Value, then the Bidder that has the better Financial based on the Qualification Documents submitted during prequalification, shall be declared as the Successful Bidder.

C. Award and Execution of the PPP Agreement

- 3.16. A letter of award ("Letter of Award") shall be issued to the Successful Bidder by the Contracting Authority. Within seven (7) days from the date of issue of the Letter of Award, the Successful Bidder shall send an acknowledgement agreeing to comply with the conditions set out therein and to execute the PPP Agreement.
- 3.17. The Tender Committee will promptly notify other Bidders that they have been unsuccessful and their Bid Security shall be returned within 30 days, without interest, of the signing of the PPP Agreement with the Service Provider.

3.18. Special Purpose Company

- 3.18.1. The Successful Bidder shall incorporate a special purpose company specifically formed and incorporated in [LOCATION] solely for the purpose of undertaking the Project pursuant to the PPP Agreement ("Project Company"). The Successful Bidder shall ensure that the Project Company is incorporated and capitalised within 30 days from the date of issue of the Letter of Award and promptly upon such incorporation and capitalisation provide evidence thereof to the Contracting Authority.
- 3.18.2. The Successful Bidder shall ensure that the Project Company is incorporated and capitalised within 30 days from the date of issue of the Letter of Award and promptly upon such incorporation and capitalisation provide evidence thereof to the Contracting Authority.
- 3.18.3. Subject to the terms of the PPP Agreement, in the event that the Successful Bidder is a single entity, the shareholding of the Project Company shall be fully owned by such entity. In the event that the Successful Bidder is a Consortium, the shareholding of the Project Company shall be owned by the Members in accordance with the terms of the Bidding Documents and the Consortium Agreement.
- 3.18.4. The Project Company shall execute the PPP Agreement within 45 days from the date of issue of the Letter of Award. On the date of signing of the PPP Agreement, the Service Provider shall provide the Contracting Authority with a Performance Security as defined in the PPP Agreement. In the event the PPP Agreement is not signed within 45 days, the Contracting Authority may commence discussions with the next best Bidder and so on, on the same terms.

3.19. Bid Development Fee

- 3.19.1. The Successful Bidder is required to pay, within ten (10) days from the issuance of the Letter of Award, the bid development fee, in consideration of the transaction costs and efforts expended in the tender of the PPP Project.
- 3.19.2. The payment of the Bid Development Fee shall be made in immediately available funds in an account to be specified for this purpose.

D. Miscellaneous

- 3.20. The Bidding Process shall be governed by, and construed in accordance with, the laws of [LOCATION] and the Courts of [LOCATION] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Documents and/or the Bidding Process.
- 3.21. The Contracting Authority, in its sole discretion and without incurring any obligation or liability or assigning any reason, reserves the right, at any time, to:
- (a) suspend, withdraw and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to the Contracting Authority by, on behalf of, and/or in relation to any Bidder;
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder;
 - (e) amend, modify or reissue the Bidding Documents or any part thereof; and/or
 - (f) accept or reject any or all of the Bids.
- 3.22. It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Contracting Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

Schedule 1: Updated Project Information⁶

- 1.1. The Contracting Authority has, as part of its **[insert development strategy]**⁷, identified the PPP opportunity at **[insert location]**.
- 1.2. It is intended that by the Contracting Authority entering into the PPP with a private party, the Contracting Authority may be able to **[insert the purpose for entering into PPP]**. It is intended that the project will be implemented by the private party in compliance with any terms and conditions stipulated in the PPP Agreement.
- 1.3. The Contracting Authority embarked on the project after conducting feasibility studies in order to determine whether it could proceed with the project and whether the project may be viable.
- 1.4. Under the project, the private partner will build an asset by using its own funds or funds it has raised, transfer the possession as specified in the PPP Agreement, and transfer it to local ownership upon the expiration of the PPP Agreement. The payment to the private partner will comprise of [user payments from users of the PPP project]; [and/or] [availability payments from the Contracting Authority].
- 1.5. [DESCRIPTION OF THE ASSET]⁸
- 1.6. [SITE REVIEW]⁹

⁶ All numbered footnotes in Schedule 1 are for guidance of the Contracting Authority and should be omitted prior to issue of the RFQ.

⁷ All project specific provisions have been enclosed in square parenthesis and may be modified, as necessary, before issuing the RFQ for the project. The square parenthesis should be removed after carrying out the required modifications.

⁸ The Contracting Authority must provide relevant details regarding the asset and the possible product or service categories which could be provided through the use of the asset. The Contracting Authority will be heavily guided by its feasibility study as to what information is relevant. The Contracting Authority must provide sufficient information so as to allow interested parties to consider whether they would wish to be involved in the PPP.

⁹ The Contracting Authority must provide a summary on the site information and on issues that were identified during the feasibility phases, such as: legal, environmental, stakeholders, personnel and human resources, infrastructure, equipment, performance standards, transfer of risk and other information identified as being relevant through the inception and feasibility phases.

Schedule 2: Updated Bidding Process Timelines

The Contracting Authority shall endeavor to adhere to the following timelines:

Event Description	Estimated Date, Time, and Location (if applicable)
Last date for receipt of queries	
Pre-bid conference	
Contracting Authority's response to queries	
Bid Submission Deadline	
Opening of Envelope Technical Proposal	
Announcement of Technical Proposal Short List	
Opening of Envelope Financial Proposal	
Selection and Announcement of Successful Bidder	
Approval of Successful Bidder	
Finalization of matters to permit signing of PPP Agreement	

Sample Document, Adapt as Appropriate

Schedule 3: Bid Letter

[On the letterhead of the Bidder / Lead Member]

Original or Copy number:

Date:

To: [Contracting Authority's Name]

[Insert Contracting Authority's Address]

Re: Submission of Bid for the [name of project]

Dear Madam/Sir,

With reference to your RFP dated [DATE], I/we, having examined the document and understood its contents, hereby submit my/our Bid for the aforesaid Project. We hereby confirm that we/our members in the Consortium satisfy the terms and conditions laid out in the Bidding Documents. We have agreed that _____ [insert member's name] will act as the Lead Member of our consortium, and that _____ [insert individual's name] will act as our representative/ will act as the representative of the consortium on its behalf* and has been duly authorized to submit the Bid.¹⁰

The Bid is being submitted for the express purpose of qualifying as a Successful Bidder for the aforesaid Project. The Bid is unconditional and unqualified.

I/We hereby certify/declare that:

1. all the required accompanying documents are complete and are all included in this Bid;
2. all information provided in the Bid are true and correct;
3. nothing has been omitted which renders such information misleading;
4. all documents accompanying such Bid are true copies of their respective originals;
5. I/we shall make available to the Contracting Authority any additional information it may find necessary or require to supplement or authenticate the submissions;
6. I/we will abide by all the terms and conditions of the RFP;
7. I/We have examined and have no reservations to the Bidding Documents, including any addendum issued by the Contracting Authority;
8. in the last 3 years, I/we/any of the Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach by [us/any of the Members];
9. I/we are not barred by the Government, or any public agencies from participating in similar projects as of [Bid Submission Deadline];
10. I/We do not have any Conflict of Interest;
11. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in this RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Contracting Authority or any other public sector enterprise or any government, at central or state level;
12. I/we have taken steps to ensure that in conformity with the provisions of this RFP, no person acting for me/us or on my/our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
13. you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive, without incurring any liability to the Bidders;

¹⁰ Please strike out if not applicable.

14. I/we/any Member, am/are not a member of a/any other Consortium applying for the Project;
15. I/we or any Member of our consortium have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community;
16. in regard to matters relating to security and integrity of the country, I/we have not been charged by any government agency or convicted by a court of law;
17. no investigation by a regulatory authority is pending either against me/us/any Member or against our chief executive officer or any of my/our directors/managers/employees;

I/We believe that I/we satisfy(s) and meet(s) all the requirements as specified in the RFP and are/is qualified to submit a Bid.

I/We understand that the Successful Bidder shall be required to incorporate and capitalize a Project Company in accordance with the Bidding Documents prior to execution of the PPP Agreement.

I/We agree and undertake to be jointly and severally liable for all our obligations under the PPP Agreement as per the provisions set out therein.

Yours faithfully,

(Name, designation, and signature of the authorised representative)

For and on behalf of: (name and seal of the Bidder / Lead Member of the Consortium)

Sample Document, Adapt as Appropriate

Schedule 4: Updated Bidder Information¹¹

Bidder Information

Applicant's legal name	
In case of Consortium, legal name of each member	
Applicant's actual or intended country of constitution	
Applicant's actual or intended year of constitution	
Applicant's legal address in country of constitution	
Applicant's authorized representative information (name, designation, address, Telephone/ Fax numbers, E-mail)	

¹¹ This section must be completed by the authorized consortium representative, or if the applicant is a sole organization, by that organization.

Attached are copies of original documents of:

- 1. Notarized documents of constitution of the legal entity named above
- 2. Letter of authorization to represent the applicant
- 3. Letter of intent to form Consortium or Consortium agreement.

Sample Document, Adapt as Appropriate

Schedule 5: Updated Consortium Member Information¹²

Consortium Member Information	
Consortium member's legal name	
Consortium member's actual or intended country of constitution	
Consortium member's actual or intended year of constitution	
Consortium member's legal address in country of constitution	
Consortium member's authorized representative information (name, designation, address, Telephone/ Fax numbers, E-mail)	

Attached are copies of original documents of:

- 1. Notarized documents of constitution of the legal entity named above
- 2. Letter of authorization to represent the applicant
- 3. Letter of intent to form Consortium or Consortium agreement.

¹²This section is to be completed by each consortium member.

Sample Document, Adapt as Appropriate

Schedule 6: Bank Guarantee for Bid Security

Address of the guarantor bank: [•]

Address of the beneficiary: [•]

We, the undersigned [•] (the "Guarantor"), in order to enable [Name of Bidder] to bid for the [Name of the Project], hereby irrevocably and independently guarantee to pay to you an amount up to a total of [•] waiving all objections and defences.

We shall effect payments under this guarantee on your first written demand, which must be accompanied by your confirmation that you have accepted the above-mentioned bid and that the firm [Name of Bidder] is no longer prepared to abide by this bid.

This guarantee shall remain in full force for a period of 180 days from the Bid Submission Deadline (as defined in the RFP).

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

This guarantee is governed by the laws of [LOCATION] and shall be subject to the exclusive jurisdiction of the Courts of [LOCATION].

Date

Guarantor

Sample Document, Adapt as Appropriate

Schedule 7: Power of Attorney for Signing of Bid

I (name of the company) incorporated under applicable laws and having its registered office at [____] "Company", do hereby irrevocably constitute, nominate, appoint and authorize Mr. /Ms (name), presently residing at [indicate business address], who is presently employed with us and holding the position of [designated position], as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds, matters and things as are necessary or required in connection with or incidental to submission of our Bid and for our selection as Successful Bidder for the [Title of Project] (the 'Project') proposed or being developed by the Contracting Authority including but not limited to signing and submission of our Bid and other documents and writings, participate in pre-bid conferences and other conferences and providing information/responses to the Contracting Authority, representing us in all matters before the Contracting Authority, signing and execution of all contracts including the PPP Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Contracting Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the PPP Agreement with the Contracting Authority.

We hereby agree to ratify and confirm all acts, deed, matters and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

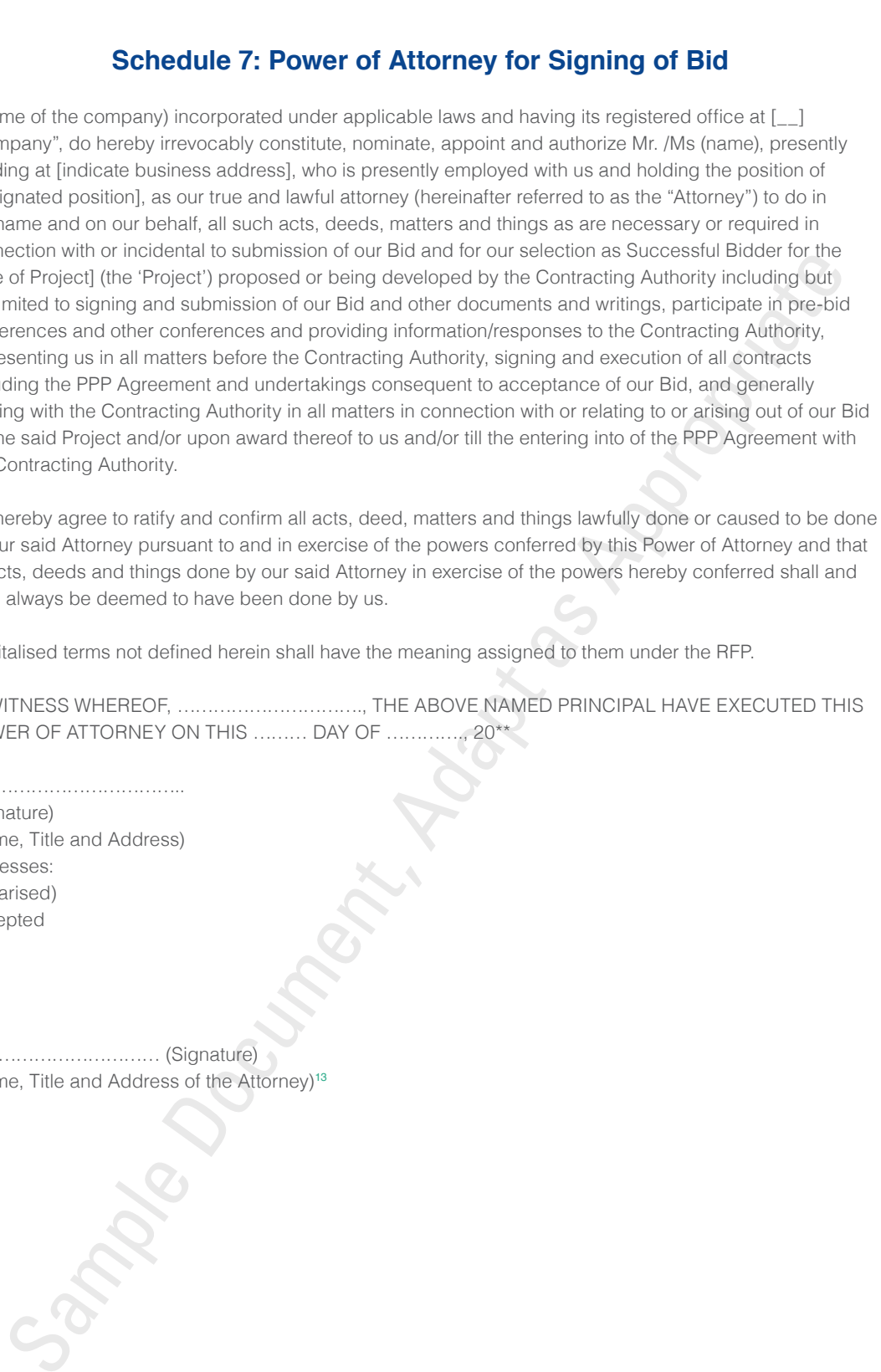
Capitalised terms not defined herein shall have the meaning assigned to them under the RFP.

IN WITNESS WHEREOF,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20**

For
(Signature)
(Name, Title and Address)
Witnesses:
(Notarised)
Accepted

..... (Signature)
(Name, Title and Address of the Attorney)¹³

¹³The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure. Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.



Schedule 8: Power of Attorney for Lead Member of Consortium

Whereas, the members of the Consortium are interested in bidding for the Project and implementing the [Title of Project] (the 'Project') in accordance with the terms and conditions of the Bidding Documents and other connected documents in respect of the Project.

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

NOW THIS POWER OF ATTORNEY WITNESSETH THAT;

¹⁴The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable Law and the charter documents of the executors and when it is so required the same should be under common seal affixed in accordance with the required procedure. Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

We, M/s. _____ (Lead Member) and M/s _____ (the respective names and addresses of the registered office) do hereby designate M/s. _____ being one of the members of the Consortium, as the Lead Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium's bid and submission of its proposal for the Project, including but not limited to signing and submission of relevant documents and writings, participating in pre-bid and other conferences, responding to queries, and generally to represent the Consortium in all its dealings with the Contracting Authority or any person in connection with the Project until the PPP Agreement is entered into between the Concessionaire and the Contracting Authority.

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

Dated this the _____ day of _____, 20**

(Executors)¹⁴

Sample Document, Account Appropriate

Schedule 9: Updated Consortium Agreement

THIS CONSORTIUM AGREEMENT is entered into on this [•] day of [•] 20[•] (the "Agreement") AMONGST

1. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the "First Part" which expression shall, unless repugnant to the context include its successors and permitted assigns);
AND
2. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the "Second Part" which expression shall, unless repugnant to the context include its successors and permitted assigns);
AND
3. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the "Third Part" which expression shall, unless repugnant to the context include its successors and permitted assigns).

The above mentioned parties of the FIRST, SECOND and, THIRD PART are collectively referred to as the "Parties" and each is individually referred to as a "Party".

WHEREAS,

1. The Contracting Authority has invited Bids by its Request for Proposal No. [•] dated [•] (the "RFP") for selecting the Successful Bidder for the [Title of the Project] through Public Private Partnership;
2. The Parties are interested in jointly bidding for the Project as members of a Consortium (as defined below) and in accordance with the terms and conditions of the Bidding Documents including this RFP; and
3. It is a necessary condition under the RFP that the members of the Consortium shall enter into a concession agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the "Consortium") for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/or through any other consortium constituted for the Project, either directly or indirectly.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate the Project Company under [legislation] as required by and in accordance with the Bidding Documents for performing all its obligations as the Concessionaire in terms of the PPP Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below.
Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process;
{Party of the Second Part shall be [•]; and}
{Party of the Third Part shall be [•]}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project in accordance with the terms of the RFP, and for the performance of the Service Providers obligations under the PPP Agreement.

6. Shareholding in the Project Company

The Parties agree that the proportion of shareholding among the Parties in the Project Company shall be as follows:

First Party:

Second Party:

Third Party:

Subject to the terms of the PPP Agreement, the Lead Member shall for [•] years hold equity share capital not less than **% (** percent) of the subscribed, paid up and voting equity share capital of the Project Company; and

Each member of the Consortium shall hold at least ** % of the subscribed and paid up equity of the Project Company for [•] years after the Completion Date, and at least ** % for the following [•] years.

The Parties undertake that they shall comply with all equity lock-in requirements set forth in the PPP Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- 7.1 such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- 7.2 the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Member of Consortium is annexed to this Agreement, and will not, to the best of its knowledge:
- 7.3 require any consent or approval not already obtained;
- 7.4 violate any applicable law presently in effect and having applicability to it;
- 7.5 violate the memorandum of association and articles of association, by-laws or other applicable organizational documents thereof;
- 7.6 violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; and
- 7.7 create or impose any liens, mortgages, pledges, claims, security interests, charges or any other encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- 7.8 this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- 7.9 there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect till the full and final satisfaction of all obligations under the PPP Agreement in accordance with the terms thereof, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project as the Successful Bidder, the Agreement will stand terminated, in accordance with the mutual agreement of the Parties.

9. Miscellaneous

This Consortium Agreement shall be governed by laws of ****.

The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Contracting Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of THIRD PART

(Signature)

(Name)

(Designation)

(Address)

Sample Document, Adapt as Appropriate

Schedule 10: Anti-Collusion Certificate¹⁵

We undertake that, in competing for (and, if the award is made to us, in executing) the Project, we will strictly observe the laws against fraud and corruption in force in [LOCATION].

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

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

Dated thisday of, 20**

.....
(Name of the Bidder)

.....
(Signature of the Bidder / Authorised Person)

¹⁵To be executed on stamp paper of appropriate value.

.....
(Name of the Authorised Person)

Sample Document, Adapt as Appropriate

Schedule 11: Format and Evaluation of Technical Proposal

The Bidders shall prepare a Technical Proposal based on the requirements given in the RFP, setting out the proposed plan for implementation of the PPP Project. The Technical Proposal shall comprise the technical approach and methodology for implementing the Project, implementation schedule and timelines, manpower deployment, etc. The Technical Proposal shall be in adherence to Laws and the requirements set out in the draft PPP Agreement.

The Bidders shall submit their Technical Proposal in line with the contents provided in the table below. The Technical Proposals shall be evaluated against the criteria outlined for each of the parameters in the table below, with Bidder receiving marks for each parameter based on the predefined scoring scale.

Parameter ¹⁶	Criteria for Evaluation	Marking Scale
<p>Conceptual Engineering Design:</p> <ul style="list-style-type: none"> - Architectural analysis of the Project Location and its peripheral areas - Details key design/engineering concepts considered in the design of the facility - Conceptual layout of the facility, illustrating technical specifications of key components of the facility. 	<ul style="list-style-type: none"> - The conceptual engineering design must conform to the output specifications prescribed in the Bidding Documents - The engineering surveys, plans, and estimates should be doable within +/- **% of the final quantities 	To be defined based on the needs and characteristics of each individual project
<p>Technical Plan for Construction/ Rehabilitation:</p> <ul style="list-style-type: none"> - Methodology statement outlining appreciation of the project - Implementation Plan – present a detailed activity schedule along with milestones in line with the requirements set out in the PPP Agreement. This should also outline the timeline envisaged for obtaining various Government/Local Government approvals 	<ul style="list-style-type: none"> - <i>Time planning and procedures for the construction of the completed facility must be well-defined, shown to be feasible at the municipal context, allow a completion, commissioning, and handover of the PPP Project on time</i> - <i>Must be in line with output specifications</i> 	To be defined based on the needs and characteristics of each individual project
<p>Operation & Maintenance Plan:</p> <ul style="list-style-type: none"> - Process Flow Chart and Material Balance Statement setting out the activities and the outputs at each stage - Methodology for operations. - Timelines and frequency for carrying out and completion of various activities. - Resource Utilization Statement indicating the proposed organizational structure, employee deployment, equipment procurement and utilization, contracting activities, utilization of office and other facilities. - The maintenance (regular & emergency) schedules should also be indicated over the Term 	<ul style="list-style-type: none"> - System/methodology for the O&M of the completed facility must be well-defined, shown to be feasible and practicable at the municipal context, - Must show that key performance indicators are achievable by the proposed O&M system 	To be defined based on the needs and characteristics of each individual project
<p>Organization & Staffing:</p> <p>Bidders should present the calculations for manpower requirement for the Project. Proposed organization structure and composition of the project and operational team to be presented, including staff deployment plan, number of shifts per day of operations and roles and responsibilities Bidders should indicate the number of staff to be sourced locally.</p>	<ul style="list-style-type: none"> - Adequacy of proposed organization - Well defined roles & responsibility that facilitates the implementation of the proposed Technical and O&M Plans - Local staffing in line with public sector expectations 	To be defined based on the needs and characteristics of each individual project

¹⁶ May vary based on the requirements of the PPP Project.

The marks would be summed up for all evaluation parameters for each individual bidder. The score for evaluation of the Technical Proposal will be calculated as follows:

$$\text{Score (in \%)} \text{ for evaluation of Technical Proposal of Bidder 'N'} \\ = (\text{total marks from evaluation for Bidder N} / \text{highest total marks among all Bidders}) \times 100$$

Bidders receiving less than 70% score would not be eligible for the evaluation of their financial proposals. Financial proposals of all such bidders would be returned unopened.¹⁷

OR

The scores from evaluation of the Technical Proposal would be used for calculation of the weighted average score, along with the score from the evaluation of the Financial Proposal, as described in Section 3.8 of this document.

¹⁷ The Municipality will have to select one of the two paragraphs above based on the approach used for evaluation of bids. The first paragraph will be used if the Municipality is using the pass-fail criteria for technical evaluation, to identify the bidders whose financial proposal would be opened. In such case the final selection of the best Bid would be based on the evaluation of the financial proposal only. The second paragraph will be selected if the Municipality intends to use the weighted average of the scores from Technical and Financial Evaluations for the selection of the financial proposal.

Sample Document, Adapt as Appropriate

Schedule 12: Format of Financial Proposal

[On the letterhead of the Applicant / Lead Member]

Original or Copy number:

Date:

To: [Contracting Authority's Name]

[Insert Contracting Authority's Address]

Re: Financial Proposal for the [Title of the PPP Project]

Dear Madam/Sir,

Please find below our Financial Proposal for the [Title of the Project] (the "Project") in response to the Request for Proposal ("RFP") issued by [the Name of the Contracting Authority] ("the Contracting Authority") on [DATE].

We hereby confirm the following:

- This Financial Proposal is being submitted by [name of Bidder] in accordance with the conditions stipulated in the RFP;
- We have examined in detail and understand and agree to abide by all terms and conditions stipulated in the Bidding Documents issued by the Contracting Authority, as amended, and in any subsequent communication sent by the Contracting Authority;
- Our Financial Proposal is consistent with all requirements of submission stated in the RFP and in any subsequent communication sent by the Contracting Authority;
- It is adequately supported by the following documents as attachments:
 - (a) Supporting cost estimates for the design, construction, operation and maintenance components;
 - (b) A financial model consistent with the above cost estimates and the technical proposal, and which includes a short explanatory memorandum; and
 - (c) A project financing plan showing positively showing that the same can adequately meet the cost requirements of the PPP Project, which may include the amount of equity to be infused, debt to be obtained for the Project, and sources of financing.

Our Bid Value is as follows:

[Grant/ Fee]	[amount in [CURRENCY]/ percentage]
--------------	------------------------------------

We are solely responsible for any errors or omissions in our Financial Proposal.

Respectfully,

(Name, designation, and signature of the authorised representative)

For and on behalf of: (name and seal of the Applicant / Lead Member of the Consortium)

Schedule 13: Declaration of Undertaking

We underscore the importance of a free, fair and competitive procurement process that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our Application, nor will we offer or grant or accept any such incentives or conditions in this Bidding Process or, in the event that we are awarded the contract, in the subsequent execution of the contract.

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the client if this situation should occur at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding for the client, the client is entitled to exclude our company/ the consortium from the Bidding Process and, if the contract is awarded to our company/ the consortium, to terminate the contract immediately if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion occurs after the Declaration of Undertaking has been issued.

.....
Place, date

.....
Authorized Representative of the Bidder

Sample Document, Adapt as Appropriate

Schedule 14: Draft PPP Agreement

Sample Document, Adapt as Appropriate



Global
Platform for
Sustainable
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SAMPLE PPP
AGREEMENT

Municipal Public-Private Partnership Framework

11

Important Note:

This PPP Agreement is provided only as a sample document. It must be adapted to fit the unique circumstances and needs of each particular Municipality and project for which its use is intended. National and local laws, regulations, policies and practices may prescribe a different approach to procuring project-level consulting services. It is based on the World Bank Guidance on PPP Contractual Provisions (2017 Edition).

This agreement has been kept as simple as possible.

It should be modified to take into account the specific aspects of the transaction in question, including:

- Payment structure of the project (e.g. availability payment);
- Liquidity support (e.g. escrow account, performance bond);
- Greenfield/brownfield (this template assumes that there will be at least some assets constructed and financed).
- External financing (the template assumes that the asset will be financed by way of limited recourse debt financing).
- Whether or not there will be employees transferred to the project;
- Whether the Service Provider will deliver services directly to Users and/or collect payment from them. Whether tariffs will be regulated by an independent authority.
- The application of local legislation, in particular PPP laws.
- Time allotted for notices and decisions and other actions: the periods of time indicated are based on usual practice, and may need to be adapted.
- A Government guarantee template is included, but if used will need to be adapted to applicable law and State practice.

ADDITIONAL GUIDANCE MATERIAL

World Bank Group's Public-Private Partnership Legal Resource Center,
<https://ppp.worldbank.org/public-private-partnership/>

Sample Document, Adapt as Appropriate

DATED [·]

MUNICIPAL PPP AGREEMENT

Between

[CONTRACTING AUTHORITY]

and

[SERVICE PROVIDER]

Sample Document, Adapt as Appropriate

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This agreement (the "**Agreement**") is made on [•]

BETWEEN

- (1) **[Contracting Authority]**, a **[local public entity]** established under the laws of the **[relevant country]**, whose address is [•] (the "**Contracting Authority**"); and
- (2) **[Service Provider]**, a **[form of the company]** incorporated in **[relevant country¹]** under certificate of incorporation number [•], whose address is [•] (**Service Provider**).

The Contracting Authority and the Service Provider shall hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS²

- (A) The Contracting Authority wishes to engage the Service Provider to deliver the Services and to develop the Facilities, all as described in Schedule 2 and Schedule 3.
- (B) [The Contracting Authority]³ has procured the Services and the development of the Facilities by competitive tender in accordance with Applicable Laws, and the Service Provider has been selected by the Contracting Authority following its offer dated [•] (the "**Bid Submission Date**")⁴.
- (C) The Contracting Authority wishes to contract with the Service Provider to **[design, finance, build, maintain, operate]** the Facilities and carry out the Services and then hand over the Facilities to the Contracting Authority at the end of the Term.

NOW THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement (including the recitals and schedules), the following words and expressions have the following meanings:

Acceptable Bank means a bank or financial institution having international ratings for its long-term unsecured unsubordinated debt obligations from at least two of Standard & Poor's Ratings Services, Fitch Ratings Limited and Moody's Investors Service, Inc., such ratings being no less than "A-" (Standard & Poor's Ratings Services or Fitch Ratings Limited) or "A3" (Moody's Investors Service, Inc.) or as otherwise agreed by the Parties from time to time.

Affected Party means the Party affected by a Force Majeure Event.

Affiliate means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls or is controlled by or is under common Control with such Person.

Annual Financial Report has the meaning given in Schedule 6.

Antiquities means all fossils, antiquities and all other forms of Cultural Heritage as identified in Performance Standard 8 including structures, and other remains, objects or things, having archaeological, historical, artistic, geological and/or monetary value or interest, discovered on the Site.

Applicable Law⁵ means laws and any other legal instruments having the force of law in the Country and includes any applicable statute, ordinance, decree, regulation or by-law or any rule, circular, directive or any license, consent, permit, authorization, concession or other approval issued by any Governmental authority which has appropriate jurisdiction, or any binding interpretation thereof.

¹ Drafting note: the country of incorporation of the Service Provider may depend on applicable PPP laws. Most PPP laws require the Service Provider to be locally incorporated within the country where the PPP takes place.

² Drafting note: Project and rationale for entry into Agreement to be briefly described here.

³ Drafting note: the Contracting Authority may not be the one in charge of the tendering of the delivery of the Services and development of the Facilities.

⁴ Drafting note: this agreement assumes that the Services have been procured under a competitive bidding process. The key steps of the competitive bidding process should be briefly described. If this is not the case, additional wording to be added.

⁵ Drafting note: to be adjusted depending on jurisdiction.

Approval means any approval, consent, license, permit or other authorization of any kind that is required from any Government entity under the Applicable Law in order for the Service Provider to carry out the Works and perform the Services and otherwise to perform its obligations under this Agreement.

Base Case Equity IRR means the Equity IRR set out in the Original Base Case.

[Bid Submission Date] means the date in Recital (B).⁶

Bulk Payments means the payments, if any, to be paid to the Service Provider by the Contracting Authority for the Services pursuant to Clause 4.2 (*Service Provider's Rights*) and Schedule 5.

Certificate of Insurance Policy means any certificate to be provided by the Service Provider to the Contracting Authority as a condition precedent to the Commencement Date.

Change Confirmation means the confirmation to be given under Clause 13 (*Change Notice*).

Change in Law means, after the **[Bid Submission Date/Effective Date]** any of the following events occurring in the Country:

- (a) the enactment of any new Applicable Law;
- (b) the repeal, modification or re-enactment of any existing Applicable Law;
- (c) a change in the interpretation or application of any Applicable Law;

which:

- (a) materially and adversely affects the ability of a Party to enforce its rights or comply with its obligations under the Agreement; and
- (b) was not published as a draft law in the [specify the relevant source of publication] at the date on which the [successful bidder submitted its bid/the Service Provider signed this Agreement]⁸.

Change Notice means the notification of a contemplated change to be given under Clause 13 (*Change Notice*).

Commencement Date has the meaning given under Clause 3.2.3.

Conditions Precedent has the meaning given to it under Clause 3.2 (*Conditions Precedent*).

Construction Period has the meaning given to it in Schedule 1.

Construction Program has the meaning given in Schedule 2.

Contracting Authority Event of Default has the meaning given to it under Clause 18.2 (*Contracting Authority Event of Default*).

Contractor means any entity appointed by the Service Provider to perform functions in relation to the Services, but shall not include staff of the Service Provider.

Control means (i) the power to elect a majority of the board of directors (or other similar constituent body) or otherwise direct the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; or (ii) the holding of the majority of the rights to dividends with respect to a Person.

Country mean the **[specify the country where the PPP Project takes place]**.

Default Interest means the interest to be paid according to the Default Interest Rate.

Default Interest Rate has the meaning set out in Part 1 of Schedule 1.

⁶ Drafting note: only applicable when the Services were procured under a competitive bidding process.

⁷ Drafting note: to be adapted depending on the fact that the Services were procured under a competitive bidding process.

⁸ Drafting note: to be adapted depending on the fact that the Services were procured under a competitive bidding process.

Defects Notification Period means the period of twelve (12) months from the date of the Performance Certificate.

Design and Construction Plan has the meaning given in Schedule 2.

Dispute has the meaning given under Clause 26.

Dispute Resolution Procedure has the meaning set out under Clause 26 (*Dispute Resolution*).

Distribution means:

- (a) the payment of a distribution by the Service Provider (whether directly or indirectly) to its Shareholders;
- (b) any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) declared, paid or made on or in respect of share capital (or any class of share capital) in the Service Provider;
- (c) the redemption, repurchase, defeasance, retirement or repayment of any share capital of the Service Provider, including in connection with any merger or consolidation, or any resolution to do so.

Early Termination has the meaning given under 18.1 (*Early Termination Event*).

Effective Date means the date on which this Agreement is executed by both Parties.

Equity means the capital of the Service Provider attributed to its Shareholders in respect of their investment in the Service Provider (including indebtedness for money borrowed by the Service Provider from a Shareholder or any Affiliate of a Shareholder which by its terms is subordinated to any indebtedness for borrowed money incurred by the Service Provider under any Lenders Documents).

Equity IRR means the projected blended internal rate of return to the Shareholders and any of their Affiliates over the entire Agreement period, having regard to Distributions made and projected to be made.

Escrow Account means, where applicable, the **[offshore/onshore] [specify currency]** bank account with the Escrow Agent.

Escrow Agent means, where applicable, **[specify the bank elected by the Parties]**.

Escrow Letter means, where applicable, any letter agreement to be entered into between the **[Contracting Authority]**⁹, the Service Provider and the Escrow Agent dated on or before the Effective Date substantially in the form set out in Schedule 12, as may be adjusted to reflect the legal requirements of the jurisdiction of the Escrow Agent¹⁰.

Estimated Change in Project Costs means the aggregate of any estimated increase in construction costs, operating costs and Financing Costs less the aggregate of any estimated reduction in construction costs, operating costs and Financing Costs.

Exempt Refinancing¹¹ means:

- (a) any Refinancing fully contemplated in the Original Base Case;
- (b) a change in taxation or in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters
- (d) any sale of shares in the Service Provider by the Shareholders.

[Existing Facilities means the structures and other facilities, whether immovable or movable, equipment, supplies and other property, owned or used by or on behalf of the Contracting Authority on the Effective Date which are to be transferred in connection with the Project as detailed in Schedule 9.]¹²

⁹ Drafting note: to be adapted depending on who will deposit funds on the Escrow Account, i.e. the Contracting Authority or the Government.

¹⁰ Drafting note: depending on the security mechanism, reference to Escrow Account, Escrow Agent and Escrow Letter should be deleted.

¹¹ Drafting note: this definition may be extended/reduced on a case-by-case basis, to reflect the particular circumstances of the PPP Project.

¹² Drafting note: only applicable in the event of a brownfield project.

Expiry Date means the last day of the Term as specified Schedule 1.

Environmental and Social Impact Assessment means the environmental assessment prepared by [•].

Facilities means [Existing Facilities and New Facilities]¹³.

Financial Closing means the date on which the conditions precedent to drawdown under the Lender Documents covering;

- (a) one hundred percent (100%) of the total capital cost of the PPP Project; less
- (b) the percentage to be funded by Equity as specified in the Service Provider's offer, have been met or otherwise waived in accordance with the terms of the Lenders Documents.

Financial Year means the period from 1 January to 31 December of any year.

Financing Costs means those costs to be determined and agreed between the Parties following the securing of finance in accordance with Schedule 1.

Financial Model means the financial model [provided by the Service Provider as part of its bid/ agreed between the Parties prior to the date of the Agreement]¹⁴ and as amended from time to time.

First Demand Guarantee means any irrevocable, unconditional, first demand guarantee in a form acceptable to the Service Provider, acting reasonably, issued in favor of the Service Provider by an Acceptable Bank and valid for a term of no less than 12 (twelve) months, in the form of Schedule 13.

Force Majeure Event has the meaning given under Clause 19.1 (*Definition of Force Majeure Event*).

Government means the government of [*specify the relevant country*]

[**Government Guarantee** means a guarantee issued by the Government of the Country to secure the Contracting Authority's obligations under the Agreement substantially in the form of Schedule 11.]¹⁵

Insurance Policies means those insurances required to be effected and maintained by the Service Provider pursuant to Clause 3.2 and Schedule 7.

[**Lease** means the lease agreement to be entered into between the Contracting Authority and the Service Provider in relation to the Site and request for the Service Provider to [**construct/ modernize**] and operate the Facilities.]¹⁶

Lenders means any Person providing debt financing or refinancing under the Lenders Documents to the Service Provider for the PPP Project and their permitted successors and assigns and transferees, including any agent or trustee for such Persons but not including a Shareholder or Affiliate of a Shareholder or any other Person providing Equity.

Lenders' Direct Agreement means a direct agreement executed between the Contracting Authority, any of the Lenders and the Service Provider based on the principles set out in Schedule [•].

Lenders Documents means any and all loan agreements, notes, bonds, indentures, security agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, credit agreements, note or bond purchase agreements, participation agreements, hedging agreements, and other documents entered into by the Service Provider relating to the financing or refinancing of the PPP Project provided by any Lender, including any modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

Liquidated Damages for Delay has the meaning given in Schedule 1.

¹³ Drafting note: this definition should be amended based on the nature of the project.

¹⁴ Drafting note: to be adapted depending on whether the Financial Model is agreed between the Parties or is part of the bid of the Service Provider.

¹⁵ Drafting note: applies if a Government Guarantee is required to obtain financing at acceptable rates.

¹⁶ Drafting note: depending on the Applicable Laws, a lease agreement might be necessary to govern the right of the Service Provider on the Site.

Liquidity Support Balance means, at any time, the sum of:

- (a) The balance standing to the credit of the Escrow Account; and
- (b) the uncalled and available for draw face value of any valid and enforceable First Demand Guarantee.

Material Adverse Government Action has the meaning given in Clause 20.1.1.

Mediation Notice has the meaning given in Clause 26.2 (*Mediation*).

Monthly Construction Report has the meaning given in Schedule 6.

Monthly Service Report has the meaning given in Schedule 6.

Net Present Value means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Base Case Equity IRR.

[New Facilities] means facilities, whether immovable or movable, including vehicles, equipment, supplies and other property, constructed or purchased by the Service Provider during the Term for the provision, by the Service Provider, of the Services including those facilities set out in Schedule 2.]¹⁷

Operating Staff means the staff engaged by the Service Provider or its Contractors to deliver the Services pursuant to this Agreement.

Operating and Maintenance Plan or O&M Plan has the meaning given under Clause 10 (*Operation And Maintenance Plan*).

Original Base Case means the Financial Model for the purpose of amongst other things calculating **[insert the various defined terms used to calculate the Parties payment scheme]**, as updated from time to time in accordance with the terms of this Agreement.

Performance Certificate means a certificate issued under Clause 5.3.4.

Performance Indicators has the meaning given in Schedule 1.

Performance Security means an unconditional and irrevocable on-demand bank guarantee issued by a bank reasonably acceptable to the Contracting Authority and with offices in the Country, having a credit rating of at least [BBB under Standards and Poor's rating or with Baa2 under Moody's rating]¹⁸, in an amount of [•] and substantially in the form set out in Schedule 14 (*Form of Performance Security*) (or in any other form acceptable to the Contracting Authority).

Performance Tests means the tests, specified in the Specifications and designated as such, to be carried out before the Performance Certificate is issued by the Contracting Authority.

Person means any Country national or foreign natural or legal person, partnership, enterprise, Governmental agency or any other entity or instrumentality, whether public or private.

PPP Project means the project described in this Agreement, including [the development of the New Facilities, the operation, repair and maintenance of Facilities and the provision of Services by the Service Provider.]¹⁹

Pre-Refinancing Equity IRR means the Equity IRR calculated immediately prior to any Refinancing, but without taking into account the effect of such Refinancing and using the Financial Model as updated (including as to the performance of the PPP Project).

[Project Fee] means the initial or periodic payment to be made by the Service Provider to the Contracting Authority as set out in Schedule 1, and calculated in accordance with Schedule 5.]²⁰

¹⁷ Drafting note: only applicable in the event of a greenfield project.

¹⁸ Drafting note: to be adapted depending on the PPP Project.

¹⁹ Drafting note: to be adapted depending on the PPP Project.

²⁰ Drafting note: this definition shall be amended or deleted depending on the Service Provider's remuneration structure.

Project Officer means the person designated as such by the Contracting Authority and performing the functions stated under Clause 9.1.1.

Prudent Industry Practice means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions as contemplated by this Agreement.

Qualifying Refinancing means any Refinancing that will give rise to a Refinancing Gain greater than zero and that is not an Exempt Refinancing.

Recitals means recitals of this Agreement.

Reference Shareholder means [to be inserted from the Bid].

Refinancing means:

- (a) any amendment, variation, novation, supplement or replacement of any Lenders Documents;
- (b) the grant of any waiver or consent, or the exercise of any similar right under any Lenders Documents;
- (c) the creation of or granting of any form of benefit or interest in the Lenders Documents, or the creation or granting of any rights or interest in any contracts, revenues or assets of the Service Provider's whether by way of security or otherwise; and
- (d) any other arrangement having been put in place by any Person which has an effect similar to any of (a) to (c) above or which has the effect of limiting the Service Provider's ability to carry out any of (a) to (c) above.

Refinancing Gains means a positive amount equal to A-B, where:

A = the Net Present Value of Distributions, as projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Financial Model as updated so as to be current immediately prior to the Refinancing) to be made to each Shareholder or affiliate over the remaining term of the Agreement following the Refinancing; and

B = the Net Present Value of Distributions, as projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated so as to be current immediately prior to the Refinancing) to be made to each Shareholder or affiliate over the remaining term of this Agreement following the Refinancing.

Regulatory Agency means the regulatory body stated in Schedule 1.

[**Regulatory Fee** means an amount payable to the Regulatory Agency during the Term]²¹.

Required Liquidity Support Amount means the amount specified in Schedule 1.

Rules has the meaning given under Clause 26.4.3.

Scheduled CP Satisfaction Date has the meaning given under Clause 3.2.2.

Service Commencement Date means the date following the date on which the Contracting Authority issues the Performance Certificate under Clause 5.3 (*Performance Tests*), whichever is the earlier.

Service Period means the period commencing on Service Commencement Date and ending on the Expiry Date or earlier termination of this Agreement in accordance with its terms.

Service Provider means [*name of the company*] incorporated in [*place of incorporation*] in charge of the Works to be provided under this Agreement as specified in Schedule 2.

²¹ To be adjusted/deleted

Service Provider Event of Default has the meaning given under Clause 18.3 (*Service Provider Event of Default*).

Service Standards means those standards listed in the Schedule 3.

Services means the services provided by the Service Provider in connection with the PPP Project during the Term under this Agreement.

Shareholder means any shareholder in the share capital of the Service Provider from time to time.

Site means the area described in Schedule 5.

Specifications mean the specifications for the Facilities set out in Schedule 2.

Taxation means all taxes (direct and indirect) and including:

- (a) customs and excise duties, corporate tax, income tax (including pay-as-you-earn withholdings), national insurance contributions, VAT and stamp duty;
- (b) all other levies, imposts, duties, charges or withholdings in the nature of taxes imposed by any Government entity having functions (including the right to levy Tax) in relation to Taxation in the Country; and
- (c) all interest, penalties, fines and other charges relating to any of the above or to a failure to make any return or supply any information in connection with any of the above, and "**Tax**" and "**Taxes**" shall be construed accordingly.

Term means the period stated in Clause 3.1 (*Effective Date and Term*).

Termination Date means the date that any termination of this Agreement takes effect.

Termination Payments mean the net amounts payable under Schedule 8.

Testing and Commissioning Plan has the meaning given in Schedule 2.

Time for Completion means the date by which the Facilities are to have passed the Performance Tests as set out in Schedule 2, calculated from the Effective Date.

Users means any person or class of persons or legal entity entitled to benefit from the Services.

[**User Payment** means a payment by a User in accordance with the provisions of Clause 6.2, subject to User Payment Adjustments under Schedule 5.]²²

[**User Payment Adjustments** means the level of User Payments payable by Users in accordance with this Agreement.]²³

Working Hours means those hours during which the Facilities are generally open, as designated in Schedule 1 and Schedule 3.

Works means those works to be undertaken by the Service Provider in accordance with Schedule 2.

2. INTERPRETATION

2.1 The Recitals and the Schedules to this Agreement shall form an integral part thereof. This Agreement shall be read as a whole. In the event of discrepancy and/or contradiction between the main body of the Agreement and its Schedules, the Agreement shall prevail.

2.2 References to Schedules shall be references to Schedules to this Agreement unless otherwise agreed by the Parties.

²² Drafting note: this definition shall be amended or deleted depending on the Service Provider's remuneration structure.

²³ Drafting note: this definition shall be amended or deleted depending on the Service Provider's remuneration structure.

- 2.3 The headings of Clauses of this Agreement and the Table of Contents are inserted for convenience and reference purposes only and shall not in any way limit, alter or affect the interpretation of this Agreement.
- 2.4 In this Agreement, words denoting the singular include the plural and vice-versa, words denoting persons include companies, corporations, partnerships or other legal persons and references to any Party or person include references to its respective successors and permitted assigns.
- 2.5 References to gender include any other gender as well as neuter.
- 2.6 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Contracting Authority, nor the failure of the same, shall unless expressly stated in this Agreement, relieve the Service Provider of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.
- 2.7 The words "include", "includes", and "including" shall at all times be construed as if followed by the words "without limitation" or "but not limited to".
- 2.8 A reference to any law shall include any amendment brought to such law from time to time or any law which may replace or consolidate the same.

3. COMMENCEMENT, DURATION, RENEWAL

3.1 Effective Date and Term

This Agreement shall enter into full force and effect on the date of its execution by all Parties (the "**Effective Date**") and shall remain in full force and effect for a period of [•] ([•]) years starting from the Commencement Date (the "**Term**"), unless terminated earlier or extended in accordance with the provisions of this Agreement.

3.2 Conditions Precedent

- 3.2.1 Subject to Article 3.2.6, the rights and obligations of the Parties under this Agreement shall be conditional upon the occurrence of the Commencement Date.
- 3.2.2 The Service Provider and the Contracting Authority shall use their best efforts to respectively procure the satisfaction of the conditions precedent listed in Schedule 1 as being their responsibility (the "**Conditions Precedent**") as soon as is practicable and in any event no later than [one hundred and twenty/one hundred and eighty] ([120/180]²⁴) days from the Effective Date (the "**Scheduled CP Satisfaction Date**").
- 3.2.3 Within five (5) days from the date on which the Service Provider and the Contracting Authority have provided to the other written notice that they have met or are in a position to meet or waive (as applicable) the Conditions Precedent, the Contracting Authority and the Service Provider shall meet to evidence the fulfillment of the Conditions Precedent and if they are satisfied that all the Conditions Precedent have been satisfied or waived pursuant to this Agreement they shall both sign a joint statement to that effect. The date of signature of this joint statement shall be the "**Commencement Date**".
- 3.2.4 If any of the Conditions Precedent are not satisfied or waived on the last day before the Scheduled CP Satisfaction Date, the Parties shall promptly meet to discuss how to satisfy the outstanding Conditions Precedent. If the Parties cannot agree on a timetable for the completion of the outstanding Conditions Precedent within thirty (30) days after the Scheduled CP Satisfaction Date then:

- (a) If the only conditions that have not been satisfied or waived at that time are Conditions Precedent under the Service Provider's responsibility as specified in Schedule 1:
- (1) the Contracting Authority may choose to terminate this Agreement by giving a thirty (30)

²⁴ To be adjusted depending on whether financial close is a CP

- days' notice to the Service Provider; and
- (2) upon the expiry of such period, this Agreement shall automatically terminate without the need for further notice, unless, during such period, the Service Provider has provided notice that all the outstanding Conditions Precedent have been satisfied and the Contracting Authority is satisfied of the same, in which case this Agreement shall not terminate.
- (b) If the only conditions that have not been satisfied or waived at that time are the Conditions Precedent under the Contracting Authority's responsibility as specified in Schedule 1 Part 1:
- (1) the Service Provider may choose to terminate this Agreement by giving give a thirty (30) days' notice to the Contracting Authority; and
- (2) upon the expiry of such period, this Agreement shall automatically terminate without the need for further notice, unless, during such period, the Contracting Authority has provided notice that all the outstanding Conditions Precedent have been satisfied and the Service Provider is satisfied of the same, in which case this Agreement shall not terminate.
- (c) If the only conditions that have not been satisfied or waived at that time are the Conditions Precedent under both Parties' responsibility as specified in Schedule 1:
- (1) any of the Parties may choose to terminate this Agreement by giving a thirty (30) days' notice to the other Party; and
- (2) upon the expiry of such period, this Agreement shall automatically terminate without the need for further notice, unless, during such period, the Parties agree that all the outstanding Conditions Precedent have been satisfied, in which case this Agreement shall not terminate.
- 3.2.5 In the event of termination of the Agreement under Clause 3.2.4:
- (a) if the conditions that have not been satisfied at that time are conditions precedent under the Service Provider's responsibility, the Service Provider shall compensate the Contracting Authority for all dully evidenced reasonable costs and expenses suffered or incurred by the Contracting Authority in connection with this Agreement, up to [•]
- (b) if the conditions that have not been satisfied at that time are conditions precedent under the Contracting Authority's responsibility, the Contracting Authority shall compensate the Service Provider for all dully evidenced reasonable losses (excluding loss of profits), costs and expenses suffered or incurred by the Service Provider in connection with this Agreement, up to [•]; and
- (c) if the conditions that have not been satisfied at that time are conditions precedent under both Parties' responsibility, no Party shall have any liability to the other Party under or in connection with this the termination of this Agreement.
- 3.2.6 The rights and obligations of the Parties under the following Clauses shall not be conditional upon the fulfillment of the Conditions Precedent and are effective from the Effective Date: Clause 3 (*Commencement, Duration, Renewal*), Clause 19 (*Force Majeure*), Clause 20 (*Material Government Action*), Clause 21 (*Change In Law*), Clause 22 (*Representations And Warranties Of The Service Provider*), Clause 23 (*Representations And Warranties Of Contracting Authority*), Clause 24 (*Refinancing*), Clause 27 (*Confidentiality*), and Clause 28 (*Miscellaneous*).

3.3 Commencement of Services

The Service Provider shall take over the Site²⁵ and thereafter commence the provision of the Services in accordance with the programme set out in Schedule 2 as soon as the Commencement Date is reached.

3.4 Term

Unless terminated earlier pursuant to Clause 18 (*Early Termination*), this Agreement shall remain in full force for the Term.

²⁵ Drafting note: subject to the structuring of the Project, the Service Provider may need to have access to the Site before the Commencement Date, including if any land survey has to be performed.

4. RIGHTS AND OBLIGATIONS

4.1 Service Provider Obligations

4.1.1 The Service Provider shall, at its own costs and expenses:

- (a) design, build and [modernize] the Facilities in accordance with the Specifications, the Construction Schedule and Prudent Industry Practice;
- (b) provide all financing for the Facilities;
- (c) operate the Facilities and deliver the Services under this Agreement in accordance with Prudent Industry Practice, Service Standards, and all Applicable Laws;
- (d) obtain all necessary licenses, permits and warranties necessary to carry out its obligations under this Agreement, other than the permits if any listed in Schedule 1 to be obtained by the Contracting Authority;
- (e) [unless otherwise stated in Schedule 2, arrange for the utility supplies for the Facilities to be installed in accordance with Schedule 2 and supply such utilities as required for the performance of its obligations under this Agreement]²⁶;
- (f) repair and maintain the Facilities in good working order and not dispose of any of the Facilities without the authorization of the Contracting Authority, other than to charge or otherwise pledge its interest in the Facilities to the Lenders, subject to Applicable Law and the Lenders' Direct Agreement;
- (g) employ Operating Staff who have the relevant qualifications / experience for the performance of its obligations under this Agreement;
- (h) provide as a minimum to staff [statutory benefits and terms and conditions of employment]²⁷;
- (i) obtain appropriate insurance coverage for the Term in accordance with Clause 28.3 (*Insurance*);
- (j) prepare operating manuals within six (6) months of the [Commencement Date / the Service Commencement Date], including the information set out in Schedule 2 keep a copy thereof on site and keep such operating manuals up to date;
- (k) cooperate with the Contracting Authority, the Project Officer and [the Regulatory Agency]²⁸ to allow effective monitoring, including for the purposes of Clause 4.4 (*Contracting Authority Supervision*);
- (l) [pay the Project Fee];
- (m) update any Environmental and Social Impact Assessment where its design impacts on the assessment prepared by the Contracting Authority so as to meet the requirements of not only the Applicable Laws but also the IFC Performance Standards on Environment and Social Sustainability; and
- (n) act in a non-discriminatory manner toward Users.

4.2 Service Provider's Rights

4.2.1 The Service Provider shall be entitled to:

- (a) access, use and occupy the Site, and more generally benefit from peaceful and unencumbered possession of the Site for the purpose of the Project [in accordance with the Lease]²⁹ including any necessary easements, rights of way and rights to [lay pipes or other conduits to the Site]³⁰;
- (b) [payment of the Bulk Payments in accordance with Schedule 5]³¹;
- (c) payment of the Termination Payments in accordance with Schedule 8; and
- (d) [levy User Payment Adjustments on Users in accordance with Schedule 5]³².

4.3 Contracting Authority Obligations

4.3.1 The Contracting Authority, from the Commencement Date shall:

- (a) [grant the Lease to the Service Provider]³³;
- (b) assist the Service Provider to gain access to assets or to other land on which it is required to exercise its duties;
- (c) cooperate with the Service Provider to facilitate the securing by the Service Provider of the funding of the Project;

²⁶ Drafting note: to be deleted if no utility supplies are to be provided under the Agreement.

²⁷ Drafting note: this depends on local law applicable to the Agreement.

²⁸ Drafting note: this depends on local law applicable to the Agreement.

²⁹ Drafting note: to be adapted if a lease agreement is not necessary.

³⁰ Drafting note: to be adapted depending on the type of Services to be provided.

³¹ Drafting note: to be adapted depending on the remuneration method of the Service Provider

³² Drafting note: to be adapted depending on the remuneration method of the Service Provider.

³³ Drafting note: this provision shall be deleted if a lease agreement is not necessary.

- (d) except where expressly entitled pursuant to the terms of this Agreement, not interfere and cause its employees, sub-contractors or agents not to interfere or obstruct the Service Provider in carrying out its obligations under this Agreement and providing the Services;
- (e) give the Service Provider full access to all available necessary information, plans, policies, papers, reports and data in order to enable the Service Provider to carry out the Services; and
- (f) assist the Service Provider in obtaining, from the Government, other local Government or statutory bodies, all necessary consents, permits and authorizations as required by Applicable Law, other than permits listed in Schedule 4 to be obtained by the Contracting Authority.

4.4 Contracting Authority Supervision

The Contracting Authority (including the Project Officer and all other duly authorized officers, employees and representatives as well as the financial and technical auditors) may access during Working Hours the Facilities and premises, works and sites of the Service Provider and its Contractors and access the Service Provider's employees and the books, records and other material kept by or on behalf of the Service Provider in connection with the Facilities, for the purposes of monitoring, inspection, supervision and, as applicable, retendering, and shall use all reasonable efforts not to disturb the Service Provider's performance of its obligations under this Agreement.

5. CONSTRUCTION, TESTING AND COMMISSIONING

5.1 Works

- 5.1.1 The Service Provider shall carry out and complete the design, procurement, construction, installation and commissioning of the Works.
- 5.1.2 The Service Provider shall procure the issue of Performance Certificate in accordance with Clause 5.3.4 below by the Time for Completion.
- 5.1.3 The Service Provider will provide monthly status reports to the Contracting Authority during the Construction Period setting out progress of the Works and whether there are any delays or issues that have arisen. The first report shall be provided following the end of the first calendar month after the Commencement Date. Each monthly report shall be provided within ten (10) days from the end of the related calendar month.

5.2 Delay in Construction

If the Service Provider fails to comply with Clause 5.1.2 for reasons other than a Force Majeure Event, a Material Adverse Government Action or a Change in Law, the Service Provider shall pay to the Contracting Authority Liquidated Damages for Delay as set out in Schedule 1, up to the cap set out therein.

5.3 Performance Tests

- 5.3.1 The Service Provider shall carry out the Performance Tests in accordance with this Clause 5.3 (*Performance Tests*) and the Specifications set out in Schedule 2. The Service Provider shall give to the Contracting Authority a seven (7) days' notice of the date on which the Service Provider will carry out the Performance Tests and invite the Contracting Authority to observe the performance of such Performance Tests. The Performance Tests shall be carried out as scheduled by the Service Provider irrespective of whether the Contracting Authority is attending the Performance Tests or not.
- 5.3.2 As soon as the Facilities have passed the Performance Tests, the Service Provider shall provide the Contracting Authority with a report of the results of all such Performance Tests, and in any case no later than five (5) days from the execution of the Performance Tests.
- 5.3.3 If the Facilities fail to pass the Performance Tests, the Service Provider shall promptly and in any event within three (3) days from the failure to pass the Performance Tests, inform the Contracting Authority of the action the Service Provider proposes to take to ensure that the Facilities pass the Performance Tests when performed again. The Performance Tests shall be performed again no later than seven (7) days (or any time that is reasonable in light of the actions to be taken) from the previous failed Performance Tests.

- 5.3.4 The Service Provider may apply by notice to the Contracting Authority for a Performance Certificate not earlier than three (3) days after it has provided the certified report evidencing that the Performance Tests have been passed to the Contracting Authority. The Contracting Authority shall, within three (3) days after the receipt of the Service Provider's application for a Performance Certificate:
- (a) issue the Performance Certificate to the Service Provider, stating the date on which the Facilities have passed the Performance Tests; or
 - (b) reject the application, stating the Contracting Authority's reasons for considering that the Facilities have not passed the Performance Tests. The Service Provider shall then proceed in accordance with Clause 5.3.3, or submit the dispute to the Dispute Resolution Procedure under Clause 21 (*Change In Law*).
- 5.3.5 If the Contracting Authority fails either to issue the Performance Certificate or to reject the Service Provider's application within three (3) days, the Performance Certificate shall be deemed to have been issued on the following day of that period and the date of issue of the Performance Certificate shall be deemed to be the date of receipt of the application.

5.4 Performance Security

- 5.4.1 In order to secure the obligations of the Service Provider under the Agreement, the Service Provider shall maintain the Performance Security in full force and effect until the date on which the Defects Notification Period expires. The Contracting Authority shall return the Performance Security to the Service Provider by the date which is 30 days after the date on which the Defects Notification Period expires.
- 5.4.2 If the Performance Security is scheduled to expire prior to the aforementioned date, then at least thirty (30) days prior to the scheduled expiry of the Performance Security, the Service Provider shall arrange for the extension or replacement of the Performance Security, failing which the Contracting Authority may draw on the Performance Security for its full amount. In such an event, the Contracting Authority shall return the proceeds of any drawing to the Service Provider upon the delivery by the Service Provider to the Contracting Authority of an extension or replacement of the Performance Security.
- 5.4.3 The Contracting Authority shall have the right to claim under the Performance Security any amounts which are or may become due under the Agreement as a result of the Service Provider's failure to comply with any of its obligations, responsibilities or commitments until the end of the Defects Notification Period (including any Liquidated Damages for Delays that the Service Provider is liable to pay under this Agreement).
- 5.4.4 If the Agreement is terminated before the Service Commencement Date for any reason, the Performance Security shall be returned to the Service Provider on the date which is 90 days after the date on which the Agreement terminates.

6. PAYMENTS

- 6.1 [Bulk Payments shall be calculated and paid in accordance with Schedule 5, subject to adjustment by reference to actual performance in accordance with Schedule 5.
- 6.2 The Service Provider shall be entitled to collect, receive and retain User Payments, calculated in accordance with Schedule 5, subject to User Payment Adjustments in accordance with Schedule 5.]³⁴
- 6.3 As between the Parties:
- (a) the Contracting Authority shall deliver a statement of account compliant with all relevant tax laws for any monies which become payable by the Service Provider to the Contracting Authority under this Agreement; and
 - (b) the Service Provider shall deliver statements of account compliant with all relevant tax laws in accordance with the provisions of Schedule 5.

³⁴ Drafting note: to be adapted depending on the remuneration mode of the Service Provider.

6.4 All payments shall be made within the Time for Payment set out in Schedule 5. In the case where a Party disputes the amount to be paid to the other, the claiming Party shall pay to the other Party the undisputed amount within the Time for Payment, and shall pay the balance agreed or determined to be due under the Disputes Resolution Procedure set under Clause 21 (*Change In Law*) together with the Default Interest on that balance calculated from the time that balance ought to have been paid had there been no dispute. All other delayed payments shall bear Default Interest from the day of expiry of the Time for Payment to the date of actual payment.

7. COMMUNITY ENGAGEMENT

7.1 User Relations

7.1.1 The Service Provider shall ensure that Users have easy access to information from the Service Provider and are able to lodge complaints with it.

7.1.2 The Service Provider shall record all complaints from Users and shall report to the Contracting Authority on a quarterly basis on the complaints received showing numbers, nature and trends as well as the steps being taken to remedy the issues raised in legitimate complaints. The Service Provider shall promptly respond to requests for information and complaints according to the Minimum Service Level Guidelines published in accordance with Schedule 3. The Service Provider will use every reasonable effort to resolve complaints from Users in connection with the Services.

7.1.3 The Service Provider shall ensure that all of its employees who have contact with Users can be easily identified.

7.2 Employment

7.2.1 The Service Provider undertakes that the Services and/or Works shall be subcontracted with equal opportunity to Country nationals and businesses Controlled by Country nationals Persons, provided those Services or Works can be carried out with competitive conditions in terms of price, quality, warranties and delivery periods equivalent to those available on the international market³⁵.

7.2.2 [•]³⁶.

8. ANTIQUITIES

8.1 If any Antiquities are discovered at the Site after the Site Handover Date, the Service Provider shall:

- (a) take all steps required by the Applicable Law and IFC Performance Standard 8: Cultural Heritage in relation to the Antiquities;
- (b) promptly notify the Contracting Authority of such discovery;
- (c) take such steps as any appropriate Government entity may legally require, which may include ceasing and not carrying out any operations which may hinder the excavation of the Antiquities or in any way interfere with the Antiquity; and
- (d) take all necessary steps to preserve the Antiquity in the same position and condition in which it was found.

8.2 All Antiquities will be the property of the Government.

8.3 The Contracting Authority, any appropriate Government entity and any person acting on behalf of either of them shall be entitled to have access to the Site for the purposes of investigating any Antiquity, drawing up a plan to deal with the Antiquity and/or any related excavation work and the Service Provider shall provide reasonable assistance to the Contracting Authority, any appropriate Government entity and/or any person acting on behalf of either of them, including making available its labor and equipment.

8.4 Actions taken by the Contracting Authority or any Government entity in relation to Antiquities in accordance with this Clause 8 shall constitute a Material Adverse Government Action³⁷, subject to and in accordance with Clause 20 (*Material Government Action*).

³⁵ Drafting note: this provision is subject to applicable laws.

³⁶ Specific community engagement undertaking to be considered.

³⁷ Drafting Note: Please note that based on the specificities of the project, in some projects contracting authorities may condition the application of this clause subject to a financial threshold.

9. REPORTING, PLANNING AND MANAGEMENT

9.1 Reporting and Management

9.1.1 The Project Officer shall be in charge of the following:

- (a) monitoring the performance of the Service Provider and ensure that the Agreement is properly implemented;
- (b) day to day supervision of the PPP Project;
- (c) acting as the liaison officer between the Service Provider and the Contracting Authority;
- (d) preparing quarterly and annual reports on the development of the PPP Project;
- (e) maintaining records on PPP Project implementation from the Commencement Date to Term; and
- (f) measuring the implementation, performance and outputs of the PPP Project under the Agreement.

9.1.2 The Service Provider shall proactively support the Project Officer in supplying information and material in order to enable the Project Officer to carry out its responsibilities under this Agreement.

10. OPERATION AND MAINTENANCE PLAN

10.1 The Service Provider shall prepare and submit within one hundred and twenty (120) days of the [Commencement Date / Services Commencement Date]³⁸ an annual operation and maintenance plan for the Facilities which shall comply with the Service Standards and Prudent Industry Practice (the "**Operation and Maintenance Plan**" or "**O&M Plan**") with sufficient detail of all critical and routine operating tasks with the objective of achieving and maintaining the technical specifications set out in Schedule 2 and the Performance Indicators.

10.2 The O&M Plan shall comprise the operating and maintenance strategy for improving the operating efficiency, methodology, organization structure, human resource plan, equipment deployment plan, environmental management measures, responsibilities for unit operations, monitoring and emergency response, related processes, systems, protocols, procedures including detailed costs for each activity of operations and maintenance etc.

10.3 Within thirty (30) days of receipt of the Operation and Maintenance Plan, the Contracting Authority shall send to the Service Provider its comments on the Operation and Maintenance Plan. If the Contracting Authority fails to provide their comments as aforesaid, the Operation and Maintenance Plan shall be deemed to be approved.

10.4 If the Contracting Authority raises any objections in respect of the Operation and Maintenance Plan, the Service Provider shall issue a revised version incorporating such amendments and/or comments, or notify the Contracting Authority within ten (10) days of receipt of the Contracting Authority's comments that it disagrees with such amendments and/or comments, together with a reasonably detailed explanation for such disagreement.

10.5 The approval (or deemed approval) by the Contracting Authority of the Operation and Maintenance Manual shall not relieve the Service Provider of any duty, obligation or liability under this Agreement, and the Contracting Authority shall not be liable to the Service Provider as a result of such approval. In the event of a failure by the Parties to agree on the appropriate amendments to the Operation and Maintenance Plan, any Party may refer the Dispute for determination by the Technical Expert in accordance with Clause 26.2 (*Mediation*).

11. RETENDERING OF THE FACILITIES

11.1 Retendering of the Facilities

The Service Provider acknowledges that the Contracting Authority may wish, to invite persons (who may, except in case of early termination of this Agreement for Service Provider Event of Default, include the Service Provider) to tender for the right to provide all or some of the services related to the PPP Project after expiry or termination of this Agreement.

³⁸ Drafting note: please note that this plan should be approved as part of a condition precedent to the Commencement Date in the event of a brownfield project.

11.2 Cooperation

11.2.1 From the date which is (i) one year prior to the expiry of the Term or (ii) one month prior to early termination (as applicable), the Service Provider shall co-operate with the Contracting Authority during the preparation for, and running of, any tender organized under Clause 11.1 for a replacement service provider and, unless otherwise stated in Schedule 1 and provided the Service Provider is not in breach of its obligations under this Agreement, the Service Provider shall have the right to participate to the bidding process.

11.3 Maintenance as Going Concern

11.3.1 The Service Provider shall maintain, operate and manage the Facilities so that:

- (a) the Contracting Authority or a successor operator will be able to take over the operation and management of the Facilities at any time; and
- (b) the Facilities may be transferred, in the manner contemplated under this Agreement, at any time.

11.4 The Service Provider shall upon reasonable notice allow the Contracting Authority or such successor service provider to have access to all the Facilities and related employees for those purposes.

11.5 Preparation for Retendering

The Service Provider shall make available during the last twelve (12) months of the Agreement to the Contracting Authority and its authorized representatives such information as the Contracting Authority shall reasonably require in connection with such preparation for tendering.

12. HANDOVER

12.1 Each Party shall comply with the provisions of Schedule 10.

12.2 Upon termination or expiration of this Agreement, the Parties shall have no further rights or obligations hereunder except for rights and obligations which arose prior to such termination or expiration and those which expressly survive termination or expiration pursuant to this Agreement.

12.3 All Facilities initially transferred from the Contracting Authority to the Service Provider pursuant to Schedule 9 (Assets Transfer Plan) (as modernized, modified or replaced in accordance with this Agreement), as well as all Facilities built, installed or delivered by the Service Providers, will be transferred to the Contracting Authority at the end of the Term (or Expiry Date) of this Agreement or in the event of an early termination of this Agreement in accordance with the provisions of Schedule 10.

12.4 All tangible assets purchased by the Service Provider for the purpose of the PPP Project will be owned by the Service Provider and transferred to the Contracting Authority subject to and in accordance with the provisions of Schedule 10³⁹.

12.5 Except in the case of early termination pursuant to Clauses 18 (*Early Termination*) or 21.3 (*Termination due to Change in Law*), the Service Provider and the Contracting Authority shall cooperate as reasonably necessary during the twelve (12) month before expiration of this Agreement in order to ensure the smooth continuation and provision of Services, including the selection of a new service provider, if relevant.

13. CHANGE NOTICE

13.1 The Contracting Authority may request in writing from the Service Provider a change in the Specification for the Facilities, the Service Standards and/or a variation in the Services (a "**Change Notice**").

13.2 Within seven (7) days from the reception of the Change Notice, the Service Provider shall provide the Contracting Authority with a written answer showing the impact of the Change Notice on the

³⁹ Drafting Note: There may be certain assets that the Service Provider will want to retain.

PPP Project both in terms of time, cost and effect on the delivery of the Services. The Contracting Authority may then:

- (a) accept the response of the Service Provider and issue a Change Confirmation;
- (b) refuse the response from the Service Provider and refer the issue to the Service provider under the Dispute Resolution Procedure set out under Clause 26 (*Dispute Resolution*) to assess what should be the proper cost and/or effect on the delivery of the Services, and then either issue a Change Confirmation or withdraw the Change Notice; or
- (c) withdraw the Change Notice.

13.3 If the Contracting Authority does not act pursuant to Clause 13.2 within five (5) days from the reception of the answer from the Service Provider, the Change Notice shall be considered as withdrawn.

14. FACILITIES' DATA AND PERSONNEL AND SAFETY

14.1 Data

14.1.1 All plans, drawings, specifications, programs, quality assurance programs designs, reports, and other documents and software prepared by the Service Provider in the course of performing its obligations under this Agreement shall remain property of the Service Provider.

14.1.2 The Service Provider hereby grants to the Contracting Authority a non-exclusive, perpetual, irrevocable, royalty free license to use for all purposes in connection with the Facilities all such plans, drawings, specifications, programs, quality assurance programs, designs, reports, and other documents and software prepared by the Service Provider together with a right to use all intellectual property rights pertaining to the same.

14.1.3 Where such plans, drawings, specifications, programs, quality assurance programs designs, reports, other documents and software prepared by the Service Provider, as well as the asset condition register, are retained on electronic storage, the Service Provider shall provide access for the Contracting Authority to such electronic storage. In any case, the Contracting Authority shall not amend any of those data as long as the Service Provider is in charge of providing the Services and operate the Facilities under this Agreement.

14.1.4 On the Expiry Date or earlier termination of this Agreement, the Service Provider shall deliver a copy of all the documents and software identified in Clauses 14.1.2 and 14.1.3 above (or an electronic version thereof) to the Contracting Authority as it may reasonably require, together with a detailed inventory thereof.

14.1.5 The Service Provider may retain in safe custody copies of such documents and software identified in Clauses 14.1.2 and 14.1.3 above.

14.2 Personnel

14.2.1 Subject to the provisions of Clause 19 (*Force Majeure*), the Service Provider shall not be relieved or excused of any responsibility, liability or obligation under this Agreement by the appointment of any Contractor. The Service Provider shall, as between itself and the Contracting Authority, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all Contractors. All references in this Agreement to any act, default, omission, breach or negligence of the Service Provider shall be construed accordingly to include any such act, default, omission, breach or negligence of a Contractor.

14.2.2 The Service Provider shall only enter into a contract with a Contractor who has either been included in the list of Contractors appearing in Schedule 2 or who has been approved in writing by the Contracting Authority;

14.2.3 If the Contracting Authority has reasonable cause to be dissatisfied with the qualification and/or performance of any Operating Staff or Contractors, the Service Provider shall, at the Contracting Authority's written request specifying the grounds thereof, provide as a replacement an Operating Staff or Contractor with qualifications and experience acceptable to the Contracting Authority.

14.2.4 The Service Provider shall have no claim for additional costs arising out of or incidental to the removal and/or replacement of Operating Staff or Contractors under Clause 14.2.3.

14.2.5 On the Expiry Date or earlier termination of this Agreement, the Operating Staff will not be transferred to the Contracting Authority unless and subject to prior agreement of the Service Provider and the Contracting Authority.

14.3 Safety

14.3.1 The Service Provider shall throughout the progress of the PPP Project have full regard for the safety of all persons using or carrying out operations on the Facilities (whether lawfully or not) and shall keep the Facilities in an orderly state, appropriate in accordance with Prudent Industry Practice, to avoid danger to such persons.

14.3.2 The Service Provider shall take such measures, including the retention of security staff where appropriate, as are reasonable in accordance with Prudent Industry Practice to prevent access to the Facilities of any persons or creatures not entitled to such access. The Contracting Authority shall use its best endeavour to provide the Service Provider with the support of the relevant security forces in order to ensure the safety of the Facilities as well as the enforcement of any Applicable Laws.

15. LIABILITY

15.1 Service Standards

15.1.1 The Service Provider shall meet the Service Standards as defined under Schedule 3 and shall be subject to the application of the Performance Incentives as defined under Schedule 1.

15.1.2 The Service Provider shall not be liable for failure to meet Service Standards to the extent such failure is caused by:

- (a) failure by the Contracting Authority to perform its obligations under this Agreement; or
- (b) Force Majeure or Material Adverse Government Action.

15.2 Duty to mitigate

15.2.1 The Parties shall be under a duty to mitigate any loss or delay it may suffer in connection with this Agreement, including any loss or delay due to a Force Majeure event, provided that the suffering Party can do so without unreasonable inconvenience or cost.

15.3 Consequential loss

No Party shall be liable to the other Parties for special, consequential, or punitive damages or indirect losses, costs or expenses or loss of actual or anticipated profits, lost opportunities (including opportunities to enter into or complete arrangements with third parties), loss or inability to use equipment, a failure to realize anticipated savings or loss of reputation, howsoever caused (including by negligence) except to the extent expressly provided herein.

15.4 Indemnity

A Party shall indemnify, defend and hold harmless the other Party and/or its contractors, subcontractors or their officers, agents or employees against any and all claims for loss, damage and expense of whatever kind and nature (including all related costs and expenses) in respect of personal injury to or death of third parties and in respect of loss of or damage to any third party property which arises out of or in consequence of the performance or non-performance by this Party of its obligations under this Agreement except and to the extent that the same arises out of any negligence, default or breach of statutory duty on the part of the Party seeking the indemnity, its subcontractors or their officers, agents or employees.

16. CONTRACTING AUTHORITY STEP-IN RIGHT

16.1 If the Contracting Authority reasonably believes that it needs to take action in connection with the supply of Services:

- (a) because a serious risk exists to the health or safety of persons or property or to the environment; and/or
- (b) to discharge a statutory duty; and/or
- (c) because the Service Provider ceases to operate the Facilities for a period of [•] ([•]) consecutive hours other than due to a (i) Force Majeure Event, (ii) Material Adverse Government Action, (iii) Change in Law, or (iv) breaches of this Agreement by the Authority;

then the Contracting Authority shall have the right to enter the Facilities and take over operation of the Facilities upon not less than twenty-four (24) hours advance notice to the Service provider (such right, the "**Contracting Authority Step-In Right**"). The Contracting Authority may continue to exercise the Contracting Authority Step-In Right until the circumstances giving rise to the Contracting Authority Step-In Right have been cured or otherwise cease to exist.

- 16.2 In the exercise of the Contracting Authority Step-In Right, the Contracting Authority shall (i) cause the Facilities to be operated by an adequate number of sufficiently qualified personnel, (ii) use commercially reasonable efforts to continue to perform all of the Service Provider's obligations under this Agreement and the PPP Project related agreements; (iii) and not do anything which would cause the Service Provider to breach this Agreement or any of the PPP Project related agreements or any of the Service Provider's insurance policies.
- 16.3 In the exercise of the Contracting Authority Step-In Right, the Service Provider shall (i) cooperate in all respects with the Contracting Authority and (ii) to the extent reasonably requested by the Contracting Authority, assign its rights under all permits, contracts and relevant documents to the Contracting Authority during the period that the Contracting Authority is exercising the Contracting Authority Step-In Right.
- 16.4 The exercise by the Contracting Authority of the Contracting Authority Step-In Right shall not affect any other right or remedy the Contracting Authority may have, nor shall the existence of the Contracting Authority Step-In Right or its exercise thereof relieve the Service Provider of any duty, obligation or liability under this Agreement.
- 16.5 The Contracting Authority shall, once the circumstances giving rise to the Contracting Authority Step-In Rights have ended, except where the Service Provider has agreed to a shorter period, give not less than twenty (21) days notice and hand over the Facilities to the Service Provider and vacate the Facilities in accordance with Prudent Industry Practice.
- 16.6 The costs, expenses, losses and liabilities reasonably incurred or suffered by the Service Provider in connection with the exercise of the Contracting Authority Step-In Right shall be borne:
- (a) by the Contracting Authority with respect to events referred to in Clause 16.1(a) (only to the extent not caused by the Service Provider's breach of its obligations under this Agreement) and (b); and
 - (b) by the Service Provider in any other cases.

17. LIQUIDITY SUPPORT MECHANISM (OPTIONAL)

17.1 Liquidity Support Balance

- 17.1.1 The Contracting Authority shall ensure that at all times until the termination or expiry of this Agreement, the Liquidity Support Balance is no less than the Required Liquidity Support Amount. The Service Provider shall promptly notify the Contracting Authority and the Government of any withdrawal from any Escrow Account or claim under any First Demand Guarantee pursuant to Clause 17.3.
- 17.1.2 If at any time before the termination or expiry of this Agreement, the Liquidity Support Balance is less than the Required Liquidity Support Amount, the Contracting Authority shall take such steps as are necessary (whether by making further deposits into any Escrow Account or procuring that the undrawn portion of the First Demand Guarantee is increased or that the First Demand Guarantee is replaced) to increase the Liquidity Support Balance to the Required Liquidity Support Amount as soon as reasonably practicable and in any event within fifteen (15) days following receipt by the Contracting Authority of any notice under Clause 17.1.

17.2 First Demand Guarantee

17.2.1 Where the Contracting Authority has procured a First Demand Guarantee in favour of the Service Provider and that such First Demand Guarantee is due to expire before the term of this Agreement, the Contracting Authority shall, by no later than 14 days prior to the expiry of a Letter of Credit:

- (a) replace the existing First Demand Guarantee with a new First Demand Guarantee; and/or
- (b) increase the balance in the Escrow Account,

in each case, in an aggregate amount necessary to ensure that, upon the expiry of the existing First Demand Guarantee, the Contracting authority will be in compliance with its obligations under Clause 17.1.1, failing which the Seller may immediately call on the existing First Demand Guarantee and require that all proceeds are deposited into the Escrow Account. If the Purchaser subsequently procures a replacement First Demand Guarantee and subject (i) to the Service Provider's right to have recourse to amounts in the Escrow Account in accordance with this Agreement, and (ii) to the requirement that the Liquidity Support Balance is no less than the Required Liquidity Support Amount, the proceeds deposited in the Escrow Account shall be repaid to the Contracting Authority immediately upon the Purchaser procuring the replacement of the Letter of Credit.

17.3 Use of funds

If at any time the Contracting Authority fails to pay the Service Provider any undisputed amount due and payable under this Agreement within three (3) days from its due date under this Agreement; then the Service Provider shall be entitled to:

- (a) withdraw an amount equal to such payment and any default interest accruing thereon in accordance with this Agreement from any Escrow Account; and/or
- (b) make a claim under the First Demand Guarantee in an amount equal to such payment and any default interest accruing thereon in accordance with this Agreement, to the extent not withdrawn under paragraph (a) above.

18. EARLY TERMINATION

18.1 Early Termination Event

This Agreement shall terminate:

- (a) due to a prolonged Force Majeure Event in accordance with Clause 19.3 (*Termination due to Prolonged Force Majeure*); or
- (b) due to a prolonged Material Adverse Government Action in accordance with Clause 20.3 (*Termination due to Prolonged Material Adverse Government Action*); or
- (c) due to a Change in Law in accordance with Clause 21.3.1; or
- (d) due to a Contracting Authority Event of Default in accordance with Clause 18.2 (*Contracting Authority Event of Default*); or
- (e) due to a Service Provider Event of Default in accordance with Clause 18.3 (*Service Provider Event of Default*); or
- (f) due to the non-occurrence of the Commencement Date in accordance with Clause 3.3 (*Commencement of Services*).

18.2 Contracting Authority Event of Default

18.2.1 The following events, provided that they are not caused by a Service Provider Event of Default or a Force Majeure Event and are not cured within five (5) days following the issuance of a notice from the other Party, shall constitute a Contracting Authority Event of Default and the Service provider shall be entitled to terminate this Agreement:

- (a) the Contracting Authority fails to pay the Service Provider any undisputed amount due and payable in excess of [•] under this Agreement within three (3) days from its due date under this Agreement; or
- (b) any representation or warranty made by the Contracting Authority in this Agreement is incorrect when made and the Service Provider's ability to perform its obligations in accordance with this Agreement is materially adversely affected; or
- (c) the Contracting Authority is in material breach of its obligations under this Agreement; or

- (d) [the Government Guarantee terminates, is revoked or otherwise ceases to be in full force and effect⁴⁰]; or
- (e) a breach by the Contracting Authority of its obligation to maintain the Liquidity Support Balance at the Required Liquidity Support Amount which has not been remedied within thirty (30) days of the Service Provider notifying that it requires such breach to be remedied.

18.3 Service Provider Event of Default

The following events, provided that they are not caused by a Contracting Authority Event of Default or a Force Majeure Event and are not cured within five (5) days following the issuance of a notice from the other Party, shall constitute a Service Provider Event of Default and the Contracting Authority shall, subject to the Lenders' Direct Agreement, be entitled to terminate this Agreement:

- (a) any representation or warranty made by the Service Provider in this Agreement is incorrect when made or repeated in accordance with Clause 22;
- (b) liquidation or insolvency of the Service Provider;
- (c) the Service Provider ceases to be Controlled by the Reference Shareholder (unless previously approved by the Contracting Authority);
- (d) transferring the Services in violation of this Agreement;
- (e) the amount identified in Schedule 2 and Schedule 3 for Liquidated Damages For Delay has been reached;
- (f) failure of the Service Provider to deliver and/or maintain the Performance Security as and when required under Clause 5.4;
- (g) the Service Provider has been convicted of any fraudulent conduct, including, but not limited to, any bribes, kick-backs, unlawful payments or promises of payment or other unlawful gifts or similar actions by any of the parties thereto or their employees, representatives, agents or similar Persons;
- (h) the Service Provider is in material breach of its obligations under this Agreement; and
- (i) [The Service Provider has, directly or indirectly, or through an agent, engaged in corrupt practices, fraudulent practices, coercive practices, or restrictive practices during the bidding process for this PPP Project]⁴¹.

18.4 Termination Procedure

18.4.1 Termination of this Agreement by the Contracting Authority

The Contracting Authority may terminate this Agreement by giving a Termination Notice to the Service Provider if, without prejudice to the Lenders' rights under the Lender's Direct Agreement, a Service Provider Event of Default has occurred and is continuing for more than thirty (30) days after the Contracting Authority has delivered notice to the Service Provider of such Service Provider Event of Default. Such a Termination Notice shall be effective from its reception by the Service Provider.

18.4.2 Termination of this Agreement by the Service Provider

The Service Provider may terminate this Agreement by giving a Termination Notice to the Contracting Authority if a Contracting Authority Event of Default has occurred and is continuing for more than thirty (30) days after the Contracting Authority has received a notice from the Service Provider mentioning the Contracting Authority Event of Default and requesting the Contracting Authority to remedy such Event of Default. Such a Termination Notice shall be effective from its reception by the Contracting Authority.

18.5 Termination Payments

In the event of Early Termination of this Agreement in accordance with Clauses 18.4.1 (*Termination of this Agreement by the Contracting Authority*) and 18.4.2 (*Termination of this Agreement by the Service Provider*) above, or Clause 20.3 (*Termination due to Prolonged Material Adverse Government Action*) and Clause 21.3 (*Termination due to Change in Law*) below, the Parties shall comply with their obligations under Clause 12 (*Handover*), and shall proceed to Termination Payments as set forth in Schedule 8

⁴⁰ If government guarantees are provided and subject to the terms of that regime.

⁴¹ Drafting note: to be inserted only if the PPP Project has been awarded following a bidding process. Please also note that under the tender documentation these corrupt practices, fraudulent practices, coercive practices, or restrictive practices will be defined.

19. FORCE MAJEURE

19.1 Definition of Force Majeure Event

- 19.1.1 In this Agreement, a "**Force Majeure Event**" means any event or circumstance or combination of events or circumstances:
- (a) beyond the reasonable control of the Party affected by such event, circumstance or combination of events or circumstances (the "**Affected Party**");
 - (b) which was not foreseeable or, if foreseeable, could not have been prevented or avoided or overcome by the Affected Party having taken all reasonable precautions and due care;
 - (c) which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Agreement; and
 - (d) which is not the direct result of a breach by the Affected Party of its obligations under this Agreement or, in respect of the Service Provider, under any other PPP Project agreement
- 19.1.2 Force Majeure Events include but are not limited to the following circumstances, provided that they meet the criteria set forth in Clause 19.1 (*Definition of Force Majeure Event*) above:
- (a) plague, epidemic and natural disaster, such as but not limited to, storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tsunami, flood, lightning, and drought;
 - (b) fire, explosion, or nuclear, biological or chemical contamination (other than caused by the negligence of the Service Provider, its contractors, or any subcontractor, supplier or vendor);
 - (c) war (whether declared or not), armed conflict (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, act of terrorism, sabotage or piracy, in each case occurring outside the Country;
 - (d) civil war, riot rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience, in each case occurring outside the Country; and
 - (e) general labor disturbance such as boycotts, strikes and lock-out, go-slow, occupation of factories and premises, excluding similar events which are unique to the PPP Project and specific to the Service Provider or to its sub-contractors, and occurring outside the Country.

19.2 Consequences of Force Majeure Event

- 19.2.1 If a Force Majeure Event has occurred, the Affected Party shall be entitled to relief from its obligations under the Agreement if it meets the requirements of Clause 19.2.2 below.
- 19.2.2 To obtain relief under Clause 19.2.1 above, the Affected Party must:
- (a) as soon as practicable, and in any event within fifteen (15) days after it became aware that the Force Majeure Event has caused or is likely to cause breach of an obligation under this Agreement, give to the other Party a notice of its claim for relief from its obligations under the Agreement, including (i) satisfactory evidence of the existence of the Force Majeure Event, (ii) full details of the nature of the Force Majeure Event, (iii) the date of occurrence; (iv) its likely duration; and (v) details of the measures taken to mitigate the effect of the Force Majeure Event.
 - (b) within seven (7) days of receipt of the notice referred to in clause (a) above, give to the other Party full details of the relief claimed, as well as information on all actions being taken by the Affected Party to mitigate the consequences of the Force Majeure Event;
 - (c) demonstrate to the other Party that:
 - (1) the Affected Party, and its contractors, could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material cost;
 - (2) the Force Majeure Event directly caused the need for the relief claimed;
 - (3) the relief claimed could not reasonably be expected to be mitigated by the Affected Party, including recourse to alternate sources of services, equipment and materials and construction equipment, without incurring material cost; and
 - (4) the Affected Party is using all reasonable endeavors to perform its affected obligations under this Agreement.
 - (d) If the Affected Party has complied with its obligations under Clause 19.2.2 above, then it

shall be subsists for a continuous period of more than one hundred and eighty (180) days under this Agreement to the extent it is prevented, hindered or delayed in such performance by reason of the Force Majeure Event.

- (e) [If information required under Clause 19.2.2 above is provided after the dates referred to in that clause, then the Affected Party shall not be entitled to any relief during the period for which the information is delayed.]⁴²
- (f) The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with the applicable obligations under Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- (g) If the Parties cannot agree the extent of the relief required, or a Party disagrees that a Force Majeure Event has occurred, the Parties shall resolve the matter in accordance with Clause 26 (*Dispute Resolution*).

19.3 Termination due to Prolonged Force Majeure

If a Force Majeure Event subsists for a continuous period of more than one hundred and eighty (180) days, either Party may in its discretion terminate this Agreement by issuing a written termination notice to the other Party which shall take effect five (5) days after its receipt. If, at the end of this five (5) day period, the Force Majeure Event continues, the Agreement shall be terminated pursuant to Clause 18 (*Early Termination*).

20. MATERIAL GOVERNMENT ACTION

20.1 Material Adverse Governmental Action - Meaning

20.1.1 For purposes of this Agreement, a Material Adverse Government Action means:

- (a) any act or omission by the Contracting Authority, or any relevant public authority, which occurs during the term of this Agreement and which:
 - (1) renders the Service Provider unable to comply with all or a material part of its obligations under this Agreement and/or
 - (2) has a material adverse effect on the cost or the profits arising from such performance.
- (b) For the purpose of Clause 20.1 (*Material Adverse Governmental Action - Meaning*) above, any act or omission shall mean and be limited to the following circumstances⁴³:
 - (1) failure of any relevant public authority to grant to the Service Provider or renew any permit or approval that is required for the purposes of the Service Provider's proper performance of its obligations and enforcement of its rights under this Agreement, in each case within the required timeframe under Applicable Law, except where such failure results from the Service Provider's non-compliance with Applicable Law;
 - (2) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution, occurring inside the Country;
 - (3) radioactive contamination or ionizing radiation, originating from a source in the Country;
 - (4) any riot, insurrection, civil commotion, act or campaign of terrorism, occurring inside the Country; expropriation, compulsory acquisition or nationalization by any relevant authority within the Country of any material asset or right of the Service Provider, including any of the shares in the Service Provider;
 - (5) any instructions of any Government entity further to the discovery of Antiquities under Clause 8 (*Antiquities*);
 - (6) [ground conditions on the Site, which are adverse and were not by the Bid Submission Date drawn to the Service Provider's attention, or within its knowledge (as is evidenced by written records), or foreseeable from the data supplied to the Service Provider by the Contracting Authority, or reasonably available to the Service Provider]⁴⁴;
 - (7) any act or omission of any relevant authority within the Country adversely affecting the legality, validity, binding nature or enforceability of this Agreement; and
 - (8) [add any other event specific to the Project]

20.2 Consequences of Material Adverse Governmental Action

20.2.1 If a Material Adverse Government Action occurs, the Service Provider:

- (a) shall be excused from the performance of its obligations under this Agreement to the extent

⁴² Drafting note: to be included within the Agreement depending on the Project. This part of Clause 18.2.2 reduces flexibility for any Affected Party to invoke a Force Majeure Event and obtain relief pursuant to such event.

⁴³ Drafting note: inclusion of Contracting Authority's default as a MAGA might be subject to discussions with bidders.

⁴⁴ Drafting note: risk allocation on Site to be allocated depending on the Project (including, as the case may be, reference to landmines).

that it is prevented, hindered or delayed in the performance of such obligations by reason of the Material Adverse Government Action; and

- (b) shall be entitled to compensation under this Agreement, in each case subject to and in accordance with the provisions of this Clause 20.2 (*Consequences of Material Adverse Governmental Action*).

20.2.2 To obtain relief pursuant to Clause 20.2.3 below, the Service Provider must:

- (a) as soon as practicable, and in any event within thirty (30) days after the Service Provider became aware that the Material Adverse Government Action has occurred, give to the Contracting Authority a notice of its claim for payment of compensation and/or relief from its obligations under this Agreement, following which the Parties shall meet and discuss in good faith to consider any option to mitigate the impact of Material Adverse Government Action;
- (b) within fourteen (14) days of receipt by the Contracting Authority of the notice referred in paragraph (a) above; give full details of (i) the Material Adverse Government Action and (ii) any Estimated Change In Project Costs and/or loss of revenue claimed and/or delay and/or any breach of the Service Provider's obligations under this Agreement;
- (c) demonstrate to the Contracting Authority that:
- (1) the Service Provider could not avoid such occurrence or consequences by actions which it might reasonably be expected to have taken without incurring material costs;
 - (2) the Material Adverse Government Action was the direct cause of the Estimated Change In Project Costs and/or loss of revenue and/or delay and/or breach of the Service Provider's obligations under this Agreement;
 - (3) time lost and/or relief from the obligations under the Agreement claimed, could not be mitigated or recovered by the Service Provider; and
 - (4) the Service Provider is using all reasonable endeavours to perform its obligations under this Agreement.

20.2.3 If the Service Provider has complied with its obligations under Clause 20.2.2, then the Contracting Authority shall:

- (a) compensate the Service Provider for the Estimated Change In Project Costs as adjusted to reflect the actual costs reasonably incurred, and without double counting, for revenue actually lost to the extent it could not reasonably have been mitigated;
- (b) give the Service Provider such relief from its obligations under this Agreement as is reasonable for such Material Adverse Government Action; and
- (c) [if the Material Adverse Governmental Action occurs during the Construction Period and causes a delay in achieving the Time for Completion, such date shall be postponed by such time as is reasonable.]⁴⁵

20.2.4 In the event that information is provided after the dates referred to in 20.2.2 above, then the Service Provider shall not be entitled to any extension of time, compensation or relief from its obligations under this Agreement in respect of the period for which the information is delayed.

20.2.5 If the Contracting Authority and the Service Provider cannot agree on the extent of any compensation, delay incurred, or relief from the Service Provider's obligations under this Agreement, as applicable, or the Contracting Authority disagrees that a Material Adverse Government Action has occurred, the Parties shall resolve the matter in accordance with Clause 26 (*Dispute Resolution*).

20.3 Termination due to Prolonged Material Adverse Government Action

20.3.1 If a Material Adverse Government Action subsists for a continuous period of more than one hundred and eighty (180) days, a Party may in its discretion terminate this Agreement by issuing a written termination notice to the other Party which shall take effect thirty (30) days after its receipt. [If, at the end of this thirty (30) day period, the Material Adverse Government Action continues,] the Agreement shall be terminated pursuant to Clause 18 (*Early Termination*) and the Service Provider shall be entitled to the compensation set out under Clause 18.5 (Termination Payments).

⁴⁵ Drafting Note: to be deleted when there is no Construction Period for the PPP Project.

21. CHANGE IN LAW

21.1 Occurrence of a Change in Law

- 21.1.1 If a Change in Law occurs or is shortly to occur, then any Party may, within five (5) days starting from the day it was aware (or should have been aware) of the Change in Law, notify the other Party to express an opinion on its likely effects, giving details of its opinion of:
- (a) any necessary change to the terms of this Agreement including any necessary Contracting Authority variation;
 - (b) whether relief from compliance with obligations is required;
 - (c) whether any deadline under the Agreement should be postponed;
 - (d) any (positive or negative) estimated change of revenue that will directly result from the relevant Change in Law;
 - (e) any (positive or negative) estimated change in the costs of the PPP Project that will directly result from the Change in Law; or
 - (f) any capital expenditure that is required or no longer required as a result of a Change in Law.
- 21.1.2 As soon as practicable and in any event within thirty (30) days after receipt of any notice from the affected Party, the Contracting Authority and the Service provider shall discuss and agree the matters referred to in Clause 21.1.1 above and any ways in which either Party can, if applicable, mitigate the effect of the Change in Law, including, in relation to the Service Provider:
- (a) providing evidence that the Service Provider has used reasonable endeavors (including (where practicable) the use of competitive quotes) to oblige its subcontractors to minimize any increase in costs and maximize any reduction in costs;
 - (b) demonstrating how any capital expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Service Provider;
 - (c) giving evidence as to how the Change in Law has affected prices charged by any similar businesses to the PPP Project; and
 - (d) demonstrating that any expenditure that has been avoided on account of the Change in Law has been taken into account in the amount which in its opinion has resulted or is required under Clauses 21.1.1 (e) or 21.1.1 (f) above, provided that if the Parties cannot agree on the effects of the Change in Law, the matter shall be referred for determination in accordance with Clause 22 (*Representations And Warranties Of The Service Provider*).

21.2 Consequences of a Change in Law

- 21.2.1 If the Parties have followed the procedure set out under Clauses 21.1.1 and 21.1.2 above, then:
- (a) the affected Party shall be excused from the performance of its obligations under the Agreement to the extent it is prevented, hindered or delayed in such performance by reason of the Change in Law;
 - (b) if the Change in Law has occurred before the Commencement Date, the scheduled Commencement Date shall be postponed to take into account the effect of such Change in Law; and
 - (c) the Parties shall agree on the amount and payment of any compensation to reflect the Estimated Change in Project Costs as adjusted to take into account the actual increase or reduction in costs reasonably incurred as a result of the Change in Law, provided that no compensation shall be made in relation to a Change in Law under this clause unless the claiming Party can demonstrate that the aggregate impact of all Changes in Law that have occurred during **[specify the relevant period in time]** exceeds **[insert amount]**.
- 21.2.2 If the notice and relevant information are not provided within the period referred to under Clause 21.1.1 above, the affected Party shall not be entitled to any compensation or relief from its obligations under the Agreement in respect of the period for which the information is delayed.

21.3 Termination due to Change in Law

21.3.1 If a Change in Law:

- (a) prevents a Party from performing its material obligations under this Agreement for a period of fifteen (15) consecutive days; or
- (b) results in performance of the Agreement being illegal and such illegality cannot be remedied by a Contracting Authority variation,

either Party may in its discretion terminate this Agreement by issuing a written termination notice which shall take effect five (5) days after receipt of such termination notice and the Service Provider shall be entitled to the compensation set out under Clause 18.5 (*Termination Payments*).

22. REPRESENTATIONS AND WARRANTIES OF THE SERVICE PROVIDER

The Service Provider hereby represents and warrants to the Contracting Authority as of the Effective Date as follows:

22.1 Power, Authority, No Contravention

22.1.1 The Service Provider is duly organized, validly existing and in good standing under the Applicable Laws of the Country and has the right, power and authority to enter into this Agreement and to perform in all material respects its obligations hereunder.

22.1.2 The execution of, delivery of and performance by the Service Provider of its obligations arising under this Agreement have been duly authorized by all necessary corporate action of the Service Provider, and this Agreement constitutes the valid, binding and enforceable obligation of the Service Provider.

22.1.3 Every approval of any Government entity or third party required with respect to the Service Provider in connection with its execution and delivery of, and performance of its obligations under, this Agreement has been obtained other than those which are not required at the time this representation is made or deemed to be repeated.

22.2 Litigation

22.2.1 There is no pending or, to the best of the Service Provider's knowledge, threatened, action, suit, investigation, arbitration or other proceeding that would impair the ability of the Service Provider to perform its obligations under this Agreement.

22.2.2 Neither the Service Provider nor any of its Affiliates has received any notice of any violation or potential violation of any Applicable Law pertaining or that would reasonably be likely to affect the Service Provider's use or occupancy of the Site, or the Service Provider's right to [design, finance, build, maintain, operate] the Facilities, or the Services Provider's provision of the Services, are in violation of any Applicable Law pertaining to and affecting the Site which violation or potential violation could have a material adverse effect on the ability of the Service Provider to perform its obligations under this Agreement or the ability of the Service Provider to use and enjoy the Site for the purposes contemplated by this Agreement.

22.2.3 The execution and delivery of this Agreement by the Service Provider and the performance by the Service Provider of its obligations under this Agreement do not violate, conflict with or result in a breach of any decree, memorandum or articles of incorporation, charter, bylaw, Applicable Law, contract or obligation to which the Service Provider is a party.

22.3 Skills and Expertise

The Service Provider, the Contractors, its employees, agents and independent contractors at all times are duly licensed to the extent required by Applicable Law, suitably qualified and experienced.

22.4 Continuing Warranties

The representations and warranties in this Clause 22 (*Representations And Warranties Of The Service Provider*) shall be deemed to be repeated by the Service Provider on the Commencement

Date and thereafter as of December 31 of each year during the Term, as if made as of the Effective Date with reference to the facts and circumstances on such dates.

22.5 Information

The Service Provider shall notify the Contracting Authority in writing if any of the warranties given by it in Clauses 22.1 (*Power, Authority, No Contravention*) to 22.3 (*Skills and Expertise*) ceases to be true in any material respect as soon as practicable and in any event within five (5) days of becoming aware of the same.

23. REPRESENTATIONS AND WARRANTIES OF CONTRACTING AUTHORITY

The Contracting Authority hereby represents and warrants to the Service Provider as of the Effective Date as follows:

- 23.1 The Contracting Authority has full power and authority to enter into and perform in all material respects its obligations under this Agreement.
- 23.2 The Contracting Authority has taken all necessary action for the authorization of its entering into this Agreement and the performance of its obligations thereunder.

24. REFINANCING

- 24.1 The Service Provider shall promptly provide the Contracting Authority with full details in relation to any contemplated Refinancing, which shall include the proposed changes to the Financial Model, a justification of the assumptions on which it is based, the proposed contractual documentation and any other information that the Contracting Authority may reasonably request in relation to that Refinancing.
- 24.2 The Contracting Authority shall, at all time, have unrestricted rights to audit the Financial Model used (or proposed to be used) in relation to a Refinancing.
- 24.3 The Service Provider shall obtain the Contracting Authority's prior written consent in relation to any Qualifying Refinancing.
- 24.4 The Contracting Authority shall be entitled to receive a [fifty per cent (50%)]⁴⁶ share of any Refinancing Gain in a Qualifying Refinancing⁴⁷.
- 24.5 The Service Provider shall pay, on behalf of the Contracting Authority, all reasonable costs of external advisors appointed by the Contracting Authority in relation to a Refinancing or potential refinancing and the calculation of a Refinancing Gain.

25. GOVERNING LAW

This Agreement, and any non-contractual obligation connected with it, shall be governed by and construed in accordance with the laws of the Country.

26. DISPUTE RESOLUTION

If any dispute arises out of or in connection with this Agreement including any dispute concerning any non-contractual obligations arising out of or in connection with it (a "**Dispute**") it shall be resolved in accordance with this Clause 26 (*Dispute Resolution*).

Either Party may by notice in writing to the other Party, at the address for sending of notices under this Agreement and in a manner provided by Clause 28.11 (*Notices*), give notice that a Dispute has arisen ("**Notice**"). The Notice shall set out brief details of the nature of the Dispute.

26.1 Amicable Settlement

- 26.1.1 From the receipt of one of the Party's Notice; the Parties shall meet together promptly, in an effort to resolve the related Dispute amicably.
- 26.1.2 The representatives of both Parties shall meet to resolve such Dispute. To this end, each Party shall designate in writing to the other Parties from time to time a representative who shall be

⁴⁶ Drafting note: to be adjusted to fit the Parties negotiation on the payment structure.

⁴⁷ Drafting note: to be adapted depending on the agreed sharing mechanism.

authorized to resolve between them any Dispute and, unless otherwise expressly provided herein, to exercise the authority of such Party to reach such resolution. The representatives shall meet if and when necessary from time to time and attempt in good faith and use their best endeavors at all times to resolve the Dispute and produce written terms of settlement. The meetings of the representatives shall be conducted in **[specify language of the meetings]**.

- 26.1.3 If the Dispute is not amicably resolved, as evidenced by a written agreement, within [fifteen] (15) days of raising such Dispute, any Party may decide to submit the Dispute to Mediation, a Technical Expert or to Arbitration (as the case may be) in accordance with either Clauses 26.2 (*Mediation*), 26.3 (*Technical Expert*) and 26.4 (*Arbitration*).

26.2 Mediation⁴⁸

- 26.2.1 If the Parties are unable to negotiate the settlement of a Dispute referred to in a Notice within [fifteen] (15) days of the date of the Notice (or such further period as is agreed in writing between the Parties before the expiry of that [fifteen] (15) days period), either Party may refer the Dispute to mediation by notice in writing to the other Party at the address given for the sending of notices under this Agreement at Clause 28.11 (*Notices*), and in a manner provided for in that Clause (a "**Mediation Notice**"). If a Party refers a Dispute to mediation in accordance with this Clause both Parties to the Dispute shall be obliged to follow the procedure below.
- 26.2.2 The mediation shall be conducted by a single mediator who shall be appointed by agreement in writing between the Parties. If the Parties are unable to agree on the identity of a mediator within [five (5)] days of the date of the Mediation Notice, or if the mediator agreed by the Parties is or becomes unable or unwilling to act, the mediator shall be appointed by [the ICC] on the application of either Party.
- 26.2.3 The mediation shall be conducted in **[specify the place of mediation]** and in the **[specify language of mediation]** under the [ICC Mediation Rules]. Each Party shall be represented at the mediation by an individual with authority to settle the Dispute.
- 26.2.4 Save for the purposes of implementing and/or enforcing a written legally binding settlement agreement or as otherwise required by law, the mediation shall be conducted without prejudice to the rights of the Parties in any future proceedings.
- 26.2.5 The costs of the mediation, including the fees and expenses of the mediator (but excluding each Party's own costs, which shall be borne by the Party incurring those costs) shall be borne equally by the Parties, unless otherwise agreed in writing.

26.3 Technical Expert

- 26.3.1 Where the Parties are unable to reach an agreement on any Dispute that relates to any matters of fact of a financial, technical, engineering, operational or environmental aspect of this Agreement, including factual determination of a matter of fact of technical, engineering, operational or environmental nature relating to the existence, nature and consequences of a Force Majeure Event, of an Event of Default (but excluding any legal aspects of the same) or the remedy of defaults and termination procedures (a "**Technical Dispute**") within thirty (30) days of raising such Technical Dispute, any Party may ask for the matter to be referred to a Technical Expert.
- 26.3.2 The Parties shall agree on the appointment of the expert and shall agree with the expert the terms of his/her appointment. If the Parties are unable to agree on the identity of the expert, or if the person proposed is unable or unwilling to act, then, within [•] days of either Party serving details of a suggested expert on the other or the proposed expert declining to act, either Party shall then be entitled to request that an expert be appointed by [the ICC]⁴⁹ on the application of a Party. All costs of and associated with the request for the appointment of an expert by the [ICC] shall be borne equally between the Parties.
- 26.3.3 The expert appointed may be an individual, partnership, association or body corporate and shall be generally recognized as an expert in **[specify the field of the PPP Project]** and shall have [•] years of experience in that field.

⁴⁸ Drafting Note: as a general comment, we recommend aligning mediation rules with arbitration rules, in order for the Parties to benefit from similar and compatible processes.

⁴⁹ Drafting note: Drafting note: Parties may elect another rules for Technical Expert appointment.

- 26.3.4 The decisions of the Technical Expert shall be binding upon the Parties.
- 26.3.5 The costs of the Technical Expert and associated expenses shall be borne equally by the Parties.
- 26.3.6 If the Technical Dispute is not resolved by the Technical Expert within thirty (30) days of service of a notice raising a such Technical Dispute, or if a Party fails to implement fully the Technical Expert's decision, any Party may decide to submit the Dispute to Arbitration in accordance with Clause 26.4 (*Arbitration*).

26.4 Arbitration

- 26.4.1 If any Dispute has not been resolved between the Parties through an amicable settlement, or if any Party is unsatisfied with the decision of the Technical Expert in respect of the Technical Dispute in accordance with Article 26.2 above, such Dispute may then be referred to and finally resolved by arbitration as provided below.
- 26.4.2 The Agreement, and the rights and obligations of the Parties hereunder shall remain in full force and effect pending the award in such arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective.
- 26.4.3 All arbitration proceedings with respect to the foregoing shall be held and finally settled in **[specify place of arbitration]**, **[specify country of the seat of arbitration]**, and shall be conducted pursuant to the **[specify arbitration rules]** (the "Rules") then in force by three (3) arbitrators appointed in accordance with the said Rules. Where the Rules are silent, **[specify applicable law]** law shall apply to the arbitration proceedings.
- 26.4.4 The arbitration shall be conducted in **[specify arbitration language]** and all documents submitted in connection with such proceedings shall be in **[specify arbitration language]** or accompanied by a certified **[specify arbitration language]** translation.
- 26.4.5 The decisions of arbitrators shall be final and binding upon the Parties.

26.5 Continuing Obligations

Performance of this Agreement shall continue during arbitration proceedings or any Dispute resolution mechanism pursuant to this Clause 21 (*Change In Law*).

26.6 Waiver of Immunities

- 26.6.1 To the fullest extent permitted by law the Contracting Authority irrevocably and unconditionally:
- (a) submits to the courts of any jurisdiction in relation to the recognition of any judgment or order of the courts of [jurisdiction of arbitration seat] in support of any arbitration in relation to any Dispute and in relation to the recognition of any arbitral award and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of any court in relation to the recognition of any such judgment or court order or arbitral award and agrees to ensure that no such claim is made on its behalf.
 - (b) consents to the enforcement of any order or judgment in support of arbitration or any award made or given in connection with any Dispute and the giving of any relief in the courts of any other jurisdiction whether before or after final arbitral award including, without limitation: (i) relief by way of interim or final injunction or order for specific performance or recovery of any property; (ii) attachment of its assets; and (iii) enforcement or execution against any property revenues or other assets whatsoever (irrespective of their use or intended use) and waives and agrees not to claim any sovereign or other immunity from the courts of any other jurisdiction in relation to such enforcement and the giving of such relief (including to the extent that such immunity may be attributed to it), and agrees to ensure that no such claim is made on its behalf.

27. CONFIDENTIALITY

- 27.1 Each Party shall hold, and shall use its best efforts to cause its shareholders and Affiliates (as applicable) to hold, in strict confidence from any other person (other than any such Affiliates

or Lenders) all documents and information concerning the other Parties or any of its Affiliates furnished to it or its advisors, consultants, contractors or agents by any other Party in connection with this Agreement or the transaction contemplated hereby ("**Confidential Information**"), unless:

- (a) required to disclose any such information by any relevant stock exchange, judicial or administrative process (including in connection with obtaining from relevant authorities the necessary approvals of this Agreement and the transactions contemplated hereby) or by other requirements of Applicable Law;
- (b) disclosed in or pursuant to the offering statement provided to potential investors in the Service Provider, as the case may be, it being provided that in such event the Service Provider shall make these investors sign a non-disclosure agreement which content shall reflect the Service Provider's confidentiality undertakings as set out in this Agreement;
- (c) disclosed in an action or proceeding brought by any Party for the purpose of pursuing its rights or in the exercise of its remedies hereunder; or
- (d) disclosed by the Contracting Authority to any Person, its advisers and its lenders involved in the retendering process for the right to provide all or some of the Services, should the Contracting Authority decide to proceed with such retendering at the expiry of this Agreement or in the event of any early termination of this Agreement.

27.2 This Clause 27 (*Confidentiality*) shall not apply to such documents or information that were:

- (a) previously known by the Party receiving such documents or information;
- (b) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of such receiving Party;
- (c) later acquired by such receiving Party from another source if such receiving Party is not aware that such source is under an obligation to any other Party to keep such documents and information confidential;
- (d) disclosed by the Contracting Authority to any relevant authority;
- (e) required to be disclosed to a Lender for the purpose of negotiating and/or entering into the Lender's Documents; or
- (f) required to be disclosed to insurance providers for the purposes of obtaining and/or maintaining insurance cover.

28. MISCELLANEOUS

28.1 Survival

28.1.1 The covenants and agreements of the Parties contained in Clauses 14.1 (*Data*) 22 (*Representations And Warranties Of The Service Provider*), 15 (*Liability*), 18 (*Early Termination*), 21 (*Change In Law*), 27 (*Confidentiality*), and 28 (*Miscellaneous*), shall survive any termination of this Agreement, for a period of two (2) years after such termination or expiration of this Agreement, provided, however, that with respect to the confidentiality provisions of Clause 27 (*Confidentiality*):

- (a) each Party shall be entitled to use such information as may be reasonably required in connection with the ownership and operation of the PPP Project by such Party or such Party's assignee or transferee; and
- (b) each Party shall continue to be bound by such confidentiality provisions to the extent only that disclosure of any Confidential Information might have a material adverse effect on the other Parties' interests in the PPP Project.

28.2 Authorized Representative

28.2.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Agreement by the Contracting Authority or the Service Provider may be taken or executed by the officials specified in, or designated in accordance with, Part 1 of Schedule 1.

28.3 Insurance

28.3.1 The Service Provider shall procure and maintain, and shall cause any Contractor or sub-contractors to procure and maintain, throughout the term of this Agreement, an insurance coverage as stipulated in Schedule 7. Such insurance shall be purchased by the Service provider at its own cost at such levels as are consistent with Prudent Industry Practice. Such insurance shall be effective as of the Commencement Date and cover the persons identified in Schedule 7.

28.3.2 The Service Provider shall provide the Contracting Authority with certificates of insurance or other satisfactory evidence that the required insurance policies have been issued and are in force and shall promptly pay all insurance premiums, fees or other costs due in relation with the required insurance policies. The said insurance policies may not be cancelled or modified except with the prior written consent of the Contracting Authority obtained not less than [•] ([•]) days before the intended date of cancellation or modification.

28.3.3 To the extent that a loss or damage suffered by any of the insured under the relevant insurance policies falls within the terms of the insurance cover required under this Clause 28.3 (*Insurance*), the Service Provider shall forthwith make the appropriate claims thereunder and in the case of property insurance shall replace or repair such loss or damage.

28.4 Assignment

28.4.1 Except where required under any law passed by the **[insert the relevant Government]**, the Contracting Authority shall not assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the Service Provider, such consent not to be unreasonably withheld or delayed.

28.4.2 The Service Provider shall not without the prior written consent of the Contracting Authority, such consent not to be unreasonably withheld or delayed, transfer all or any part of its rights or obligations under this Agreement other than by way of security assignment to the Lenders for the purpose of the financing of the PPP Project.

28.5 Relations between the Parties

28.5.1 The Service Provider shall be an independent contractor in its performance of this Agreement. This Agreement does not create any agency, partnership, joint venture or other joint relationship between the Service Provider and the Contracting Authority.

28.5.2 All Operating Staff, Contractors and sub-contractors shall be under the complete control of the Service Provider and nothing contained in this Agreement or any related contract or sub-contract awarded by the Service Provider or under any Lenders Documents shall be construed to create any contractual relationship between the Service Provider's Contractors, subcontractors or Lenders and the Contracting Authority except and to the extent that such relationship shall be governed by a collateral agreement entered into between such Contractor and the Contracting Authority or by a direct agreement between the Lenders (or their agent) and the Contracting Authority as referred to in Schedule 1.

28.6 Variations in Writing

All additions, amendments and variations to this Agreement shall be binding only if in writing, and signed by duly authorized representatives of each of the Parties.

28.7 Entire Agreement

This Agreement, together with the Lease, including the Recitals and the Schedules attached hereto, represents the entire agreement between the Parties in relation to the subject matter thereof and supersedes any or all previous agreements, communications or arrangements, whether oral or written, between the Parties.

28.8 Severability

If any term or partial term of the agreement is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of the agreement or any other term or partial term of the agreement.

28.9 Non-Waiver

None of the provisions of this Agreement shall be deemed waived by either Party except when such waiver is given in writing. The failure by either Party to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

28.10 Further Assurances

Each Party agrees to execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement.

28.11 Notices

Unless otherwise agreed between the Parties, notices to be given under this Agreement shall be in **[specify language of the notice]**, in writing and shall be given by hand delivery, recognized international courier or mail and delivered to the Parties at their respective addresses set forth below:

The Contracting Authority: [•]
Attention: [•] (Authorized Representative)
Address: [•]
The Service Provider: [•]
Attention: [•] (Authorized Representative)
Address: [•]

or such other address as may be notified by that Party to the other Party from time to time.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Made in [•], on [•] in [•]([•]) originals by:

[•]

As Service Provider

[•]

As Contracting Authority

Sample Document, Adapt as Appropriate

Schedule 1 - Project Specific Information, Conditions Precedent and Financing

Part 1 - Project Specific Information

[Should indicate the Project specific information, and at least the following information:]

1.	Base Case Equity IRR	[•]
2.	Bid Submission Date	[•]
3.	Construction Period	[•]
4.	Country	[•]
5.	Default Interest Rate	[•]
6.	Escrow Account	[•]
7.	Escrow Agent	[•]
8.	Expiry Date	[•]
9.	Existing Facilities	[•]
10.	Financing Costs	[•]
11.	Land Rights ⁵⁰	[•]
12.	Liquidated Damages for Delays	[•]
13.	Performance Indicators	[•]
14.	Project Fee	[•]
15.	Regulatory Agency	[•]
16.	Related Agreements	[•]
17.	Reference Shareholder	[•]
18.	Required Liquidity Support Amount	[•]
19.	Service Period	[•]
20.	Site	[•]
21.	Site Handover Date	[•]

Sample Document, Adapt as Appropriate

⁵⁰ Drafting note: if any.

Part 2 - Conditions Precedent

1. CONDITIONS PRECEDENT UNDER SERVICE PROVIDER'S RESPONSIBILITY

- 1.1 In accordance with Clause 3.2 (*Conditions Precedent*), it shall be condition precedent to the Commencement Date that each of the following is provided by the Service Provider in form and substance satisfactory to the Contracting Authority:
- (a) Certificate of Insurance Policies to be subscribed as specified in Schedule 7;
 - (b) Copies of the certificate of incorporation and the articles of incorporation of the Service Provider;
 - (c) A certificate of good standing issued by the [relevant corporate and business registration administration to be specified] dated no more than five (5) days before the Commencement Date;
 - (d) A certificate (or equivalent) from the Lenders confirming that Financial Closing has occurred (or is conditional upon full effectiveness of the Agreement);
 - (e) the Performance Security;
 - (f) all the Approvals that are required prior to the Commencement Date;
 - (g) *[to be completed as may be necessary in the light of the specificities of the Project]*.

2. CONDITIONS PRECEDENT UNDER CONTRACTING AUTHORITY'S RESPONSIBILITY

- 2.1 In accordance with Clause 3.2 (*Conditions Precedent*), it shall be condition precedent to the Commencement Date that each of the following is provided by the Contracting Authority in form and substance satisfactory to the Service provider:
- (a) A signed copy of the Government Guarantee;
 - (b) A signed copy of the Escrow Letter and of the First Demand Guarantee, with a Liquidity Support Balance not inferior to the Required Liquidity Support Amount; (*optional*)
 - (c) *[to be completed as may be necessary in the light of the PPP Project]*

3. CONDITIONS PRECEDENT UNDER BOTH PARTIES' AUTHORITY

- 3.1 In accordance with Clause 3.2 (*Conditions Precedent*), it shall be condition precedent to the Commencement Date that each of the following is provided by both Parties:
- (a) the Asset Transfer Plan agreed between the Parties and attached in Schedule 9;
 - (b) the Assets Handover Agreement agreed between the Parties and attached in Schedule 10;
 - (c) the Lenders' Direct Agreement is in full force and effect,
 - (d) *[to be completed as may be necessary in the light of the PPP Project]*

Part 3 - Financing

[Should contain, among others, the following information. In any case, this table will have to be filled in and reviewed by financial advisors of the municipality/service provider, as applicable]

Element of Financing	Maximum Limit
Principal amount of the credit granted	[•]
Indemnities or other payments due in the event of early repayment of the credit outstanding, including the early repayment penalties, as appropriate.	[•]
Calculation methodologies of the applicable interest rate	[•]
Applicable late payment interest rate	[•]
Arrangements for amortization of the credit/amortization table	[•]
Information on the planned hedging instruments (for rates/currencies), and percentage of the debt concerned.	[•]
Maturity of the credit (and the various tranches as appropriate)	[•]
Interest Rate	[•]
Fees	[•]

Sample Document, Adapt as Appropriate

Schedule 2 - Works Specifications

[Should indicate specifications and standards to be complied with concerning the reinstatement (if any) of the Existing Facilities, and design and construction of the New Facilities. Should also indicate penalties the Service Provider may face if the Works Specifications are not met, as well as the Performances Tests to be carried out before the Contracting Authority issues the Performance Certificate]

1. GENERAL TECHNICAL REQUIREMENTS

- 1.1 The Project shall be designed, installed, commissioned, tested and operated in accordance with Prudent Industry Practice, the Applicable Law, and relevant international standards including but not limited to those listed in the table below⁵¹:

Code	Standard Title
[•]	[•]

2. WORKS DELIVERY PLAN

- 2.1 The Service Provider shall develop and maintain a Works Delivery Plan.
- 2.2 The Works Delivery Plan shall include as a minimum:
- the Design and Construction Plan; and
 - the Testing and Commissioning Plan.
- 2.3 Each plan that forms part of the Works Delivery Plan shall:
- describe how the Service Provider plans to deliver the Facilities⁵² demonstrating a clear critical path;
 - outline the order and timing of the major operations and major activities; temporary works; procurement of equipment; construction; commissioning; and Performance Tests;
 - be sufficiently detailed to enable an experienced third party, who does not have prior knowledge of the Project, to take over the Works identified in the current Works Delivery Plan without undue delay or disruption;
 - describe communications strategy and procedures for interfacing between all parties and covering inter alia: parties within the Contracting Authority; the interfaces between [designers, constructors and operators]⁵³, and other relevant Government entities and utilities;
 - describe reporting procedures; and
 - describe use of IT and software.
- 2.4 The Service Provider shall provide information on the parties undertaking each component of the Works, including:
- team structure and management;
 - employment of Contractors;
 - named persons responsible for health and safety with contact details; and
 - details of responsible persons for each site at daytime and out of hours contact details.

2.5 Design and Construction Plan

- 2.5.1 The Service Provider shall prepare the Design and Construction Plan which shall provide a comprehensive explanation of the Service Provider's approach to designing and constructing the Facilities and shall include, as a minimum:
- design codes and standards to be used;
 - security arrangements during construction;
 - procedures for supervision, quality control and reporting that will be applied to ensure quality of workmanship and that the requirements of this Agreement have been met; and
 - strategy for managing public relations.

⁵¹ Drafting Note: depending on the project, it may be necessary to specify the applicable standards for each works category (e.g. mechanical installations, electric installations, structures, etc...)

⁵² Drafting Note: drafting to be adapted depending on the delivery or not of New Facilities.

⁵³ Drafting Note: to be adapted depending on the various parties involved in the Project.

2.6 Testing and Commissioning Plan

- 2.6.1 The Service Provider shall prepare the Testing and Commissioning Plan which shall provide a comprehensive explanation of how the Service Provider intends to commission and carry out the Performance Tests on the Facilities and shall include, as a minimum:
- (a) clear explanations of how the constraints on testing and commissioning are to be complied with;
 - (b) details of testing and commissioning and Performances Tests activities;
 - (c) detailed measurement and testing regime to demonstrate compliance with the **[specify the applicable requirements]**; and
 - (d) **[specify any additional element that should be part of the Testing and Commissioning Plan]**.

3. OPERATION AND MAINTENANCE PLAN

- 3.1 The Service Provider shall, in accordance with Clause 10 (Operation And Maintenance Plan), prepare and submit to the Contracting Authority an Operation and Maintenance Plan. This Operation and Maintenance Plan shall include the following:
- (a) **[specify details of all critical and routine operating tasks to be executed with the objective of achieving and maintaining the technical specifications set out in this schedule and the Performance Indicators]**

4. SERVICE PROVIDER PENALTIES

[Should describe the penalties applicable to the Service Provider in the case where the Works do not comply with the Works Specifications. Liquidated damages that the Service Provider may have to pay to the Contracting Authority should be deduced from the bulk payment paid by the Contracting Authority (when applicable), and paid to the Contracting Authority when the Service Provider remuneration only comes from user fees]

Sample Document, Audit as Appropriate

Schedule 3 - Facilities Services and Specifications

[Should indicate specifications and standards to be complied with concerning the operation and maintenance of the Facilities by the Service Provider. Should also indicate penalties the Service Provider may face if the Facilities Services and Specifications are not met]

1. GENERAL SERVICES REQUIREMENTS

- 1.1 The Services shall be provided in accordance with Prudent Industry Practice, the Applicable Law, and relevant international standards including but not limited to those listed in the table below:

Code	Standard Title
[•]	[•]

2. ADMINISTRATIVE REQUIREMENTS

[Depending on the Project, this section may be used to describe the administrative requirements to be followed by the Service Provider in performing the Services (i.e. records to be kept, format of documents, etc.) If no administrative requirements are necessary for the Project, this section may be deleted]

3. SERVICE DELIVERY PLAN

- 3.1 The Service Provider shall develop and maintain a Service Delivery Plan describing how the Service Provider intends to deliver the Services. The Service Delivery Plan shall include, as a minimum:
- (a) Operation and Maintenance Plan (including Operation and Maintenance Manuals); and
 - (b) Environmental Management Plan
 - (c) [to be completed depending on the Project]
- 3.2 Each plan that forms part of the Service Delivery Plan shall:
- (a) be structured so as to cover the Services at the Facilities;
 - (b) be consistent with the Applicable Law standards and Prudent Industry Practice;
 - (c) be sufficiently detailed to enable an experienced service provider, who does not have previous knowledge of the Assets, to take over the delivery of the Services without undue delay or disruption; and
 - (d) ***[specify any other applicable standard. IFC Performance Standards, or standards from another IFI, may be required by such IFI].***
- 3.3 Each plan that forms part of the Service Delivery Plan shall include, as a minimum:
- (a) the relationship between that Service Delivery Plan and other plans maintained by the Service Provider;
 - (b) parties contributing to and affected by the activities covered by the Service Delivery Plan;
 - (c) employment of Contractors;
 - (d) team structure and management;
 - (e) named persons responsible for health and safety with contact details;
 - (f) details of responsible persons for the Site and day-time and out of hours contact details;
 - (g) contain communications strategy and procedures for interfacing between all parties and covering inter alia: parties within the Contracting Authority, the interfaces between designers, constructors and operators, other relevant Government entities and utilities;
 - (h) reporting procedures;
 - (i) use of IT and software;
 - (j) strategy and procedures to comply with health and safety requirements in accordance with Prudent Industry Practice;
 - (k) strategy and procedures for ensuring the minimization of environmental impact;
 - (l) quality procedures including checking and approval, document management and control, change control; and
 - (m) numbers of key human resources⁵⁴.

⁵⁴ Drafting Note: this list is to be completed depending on the Project specifications.

[Depending on the Project, the Service Provider may have to provide the Contracting Authority with other plans, such as Facilities management plan (enabling the condition and performance of the Facilities to be monitored)]

4. SERVICE PROVIDER PENALTIES

[Should describe the penalties applicable to the Service Provider in the case where the Services do not comply with the Services Specifications. Liquidated damages that the Service Provider may have to pay to the Contracting Authority should be deduced from the bulk payment paid by the Contracting Authority (when applicable), and paid to the Contracting Authority when the Service Provider remuneration only comes from user fees]

Sample Document, Adapt as Appropriate

Schedule 4 - Permits to be obtained by the Contracting Authority

[Enumerates the permits required to be obtained by the Service Provider for the project, including the deadlines for acquisition of such permits, beyond which such delay may be considered a MAGA. Permits to be obtained are generally in relation with the following topics, but will and will vary depending on the local law applicable to the project as well as the project itself:

- *Construction/urban planning permits (as the case may be, construction permits may have to be obtained at the national/municipal level);*
- *Exploitation permits (as the case may be, exploitation permits may have to be obtained at the national/municipal level);*
- *Environmental permits (generally only at the national level);*
- *Foreign exchange permits (generally only at the national level); and*
- *Foreign employees permits (generally at the national level)]*

Sample Document, Adapt as Appropriate

Schedule 5 - Bulk and User Payments

[Must contain a detailed discussion of the terms of payments, depending on whether the project is availability-based or concession/user-fee based with/without some Government support or subsidy.

The income of the Service Provider may come from:

- (a) *A bulk payment from the Contracting Authority made up of:*
 - (1) *Fixed payment for non-variable costs; and*
 - (2) *Variable payment, availability based.*

In the case of a bulk payment, any liquidated damages to be paid by the Service Provider to the Contracting Authority will be through deduction on the amount to be paid to the Service Provider by the Contracting Authority.

Bulk payment formula is to be specified in this schedule, as well as the formula related to liquidated damages imputation on bulk payments.

- (b) *A user fee made up of fees paid by users in order to benefit from the Services.*

Amount of fees to be paid will be determined within a separate agreement between the Service Provider and users, but may be subject to specific regulations depending on the local law applicable to the project]

Sample Document, Adapt as Appropriate

Schedule 6 - Reporting Requirements

[Must indicate the reports that need to be submitted by the Service Provider to the Contracting Authority, the content of these reports, as well as the deadlines and frequency of submission. The construction and service reports are to be submitted on a monthly basis, and provide for information on the Works and Services. The financial report are to be submitted on an annual basis. The following sample clause may be used]

1. MONTHLY CONSTRUCTION REPORT

- 1.1 During the Construction Period, the Service Provider shall prepare the Monthly Construction Reports.
- 1.2 Each Monthly Construction Report shall provide the Contracting Authority with information reasonably required to assess the progress of the construction and commissioning of the Works; and be structured to cover the Works as a whole.
- 1.3 Each Monthly Construction Report shall include, as a minimum:
- (a) A summary;
 - (b) Project summary data including;
 - (c) Progress update including:
 - (1) an up to date construction program;
 - (2) progress against key milestones;
 - (3) commentary on areas that are behind construction program and details of measures being taken to mitigate delays;
 - (4) a summary of testing and commissioning activities results (if any); and
 - (5) health and safety record (including accident records).

2. MONTHLY SERVICE REPORT

- 2.1 During the Service Period, the Service Provider shall prepare the Monthly Service Reports.
- 2.2 Each Monthly Service Report shall provide the Contracting Authority with information reasonably required to assess the adequacy of the delivery of the Services and be structured to cover the Project as a whole.

Each Monthly Service Report shall include, as a minimum: ***[specify content of the Monthly Service Reports]***

3. ANNUAL FINANCIAL REPORT

- 3.1 During the ***[specify the period]***, the Service Provider shall prepare the Annual Financial Report.
- 3.2 Each Annual Financial Report shall provide the [Contracting Authority/Lenders] with information reasonably required to assess the adequacy of the financial model for the delivery of Works and Services and be structured to cover the Project as a whole.
- 3.3 Each Annual Financial Report shall include, as a minimum: ***[specify content of the Annual Financial Reports]***

Schedule 7 - Insurances

[Should include a list of insurance policies to be obtained by the Service Provider in relation with the execution of Works and Services. The required insurance policies listed in this schedule are usually condition precedents to the Commencement Date. This list is generally provided by insurance experts from IFC (or any other relevant IFI). For information purpose, this list may include, but not limited to:

- *Construction insurance policy;*
- *Transportation insurance;*
- *General liability insurance;*
- *Environmental liability insurance;*
- *Workmen's compensation insurance; and*
- *Vehicle insurance;]*

Sample Document, Adapt as Appropriate

Schedule 8 - Termination Payments⁵⁵

For the purpose of this Schedule, words and terms beginning with a capital letter herein shall have the meaning ascribed to them below. Capitalized terms used and not defined herein shall have the meaning set out in the Agreement.

Adjusted Net Equity means, on and as of the Termination Date, an amount equal to the sum of:

- (a) An amount equal to the sum of the Adjusted Value of all Equity less the sum of the Adjusted Value of all Distributions, in each case in **[specify currency]** and in each case within a period of [**•**] years prior to the Termination Date (or such lesser period as may then exist between the Commencement Date and the Termination Date); and
- (b) An amount equal to the sum of all Equity less the sum of the Adjusted Value of all Distributions, in each case in **[specify currency]** and in each case made outside a period, if any, of [**•**] years prior to the Termination Date,

provided that, if any such difference in sub-clause (a) or (b) shall result in an amount that is less than zero (0), such amount shall be deemed to be zero (0).

Adjusted Value means, on and as of the Termination Date, the value of any Equity or Distribution, as the case may be, which value shall be determined by taking the amount of such Equity or Distributions (in each case in **[specify currency]**) adjusting such value for each year during the period from the date of such Equity or Distributions to the Termination Date, using as an upward adjustment factor for each such completed calendar year of **[•]** per cent. (**[•%]**).

Compensation Payment Date has the meaning given to it in Clauses 1.2.2, 2.2 and 3.2 of this Schedule (as applicable).

Connected Person means, in relation to the Service Provider:

- (a) any Shareholder of, or other provider or owner of subordinated loans or capital contributions to, the Service Provider or an Affiliate of the Service Provider, or any Affiliate of that shareholder or provider; or
- (b) any Affiliate or director of the Service Provider; or
- (c) any Person in which any one or more of the Service Provider, a Shareholder, or any Affiliate of the Service Provider, of a Shareholder, or of any other person within the description in paragraph (a) above, has any direct or indirect interest or connection (whether that interest or connection is financial, economic or of any other nature), and indirect shall include (without limitation) through a chain of any one or more Persons or interests.

Deferred Equity Amounts means, on the Compensation Payment Date, any amount of unfunded Equity that has been committed to the Service Provider as of the Financial Close.

Distribution means whether in cash or in kind:

- (a) dividend or other distribution in respect of share capital;
- (b) reduction of capital of the Service Provider, redemption or purchase of shares or any other reorganization or variation to share capital of the Service Provider;
- (c) payments under any subordinated financing agreements (whether of principal, interest, fees, charges, breakage costs or otherwise) to a Shareholder or one of its Affiliates or any Connected Person of the Service Provider;
- (d) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
- (e) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms.

⁵⁵ This schedule should be amended to take into account the risk profile of the project and jurisdiction.

Financial Close means the date which all conditions precedent to initial disbursement under the Lenders Documents have been fulfilled or waived.

Initial Equity means, as of the date of termination of the Agreement, the initial equity investment disbursed by the Shareholders plus any such other equity contributions approved by the Contracting Authority expressed in **[specify currency]**.

Insurance Proceeds means all proceeds from Insurances paid or payable to the Service Provider or the Lenders (or that should have been payable to the Service Provider or the Lenders except in the event of a failure of the Service Provider to take out or maintain such Insurance in accordance with the terms of this Agreement).

New Tender Costs means the reasonable and proper costs incurred/to be incurred and/or reasonably expected to be incurred by the Contracting Authority in carrying out a new award procedure.

Outstanding Senior Debt means the sum of:

- (a) the total amount outstanding, if any, to the Lenders under any Lenders Documents and interest (including default interest); plus
- (b) any winding-up costs, prepayment charges, costs of terminating any hedging arrangements or similar charges or costs passed through by the Lenders in accordance with the Lenders Documents;

less:

- (a) all credit balances held on any bank accounts held by or on behalf of the Service Provider on the termination date of the Agreement which are available for application in or towards discharge of the amounts referred to in (a) and (b) above on the Termination Date of the Agreement;
- (b) all amounts payable by the Lenders or the hedging counterparty to the Service Provider as a result of a repayment of amounts outstanding under the Lenders Documents; and
- (c) without double counting, all other amount received by the Lenders on or after the Term and before the date on which compensation is payable by the Contracting Authority to the Service Provider as a result of enforcing any other rights that they may have.

Redundancy Payments means the payment of all wages earned, accrued unused vacation time and any other payments required by Applicable Law.

Service Provider Default Deduction Amount meant the amount equal to the aggregate of the following:

- (a) the New Tender Costs; and
- (b) any delay contractual penalties accrued and unpaid as at the Termination Date.

1. CONTRACTING AUTHORITY TERMINATION

1.1 Service Provider Default

1.1.1 If the Contracting Authority terminates this Agreement in the event of a Service Provider Event of Default, the Contracting Authority shall, to the extent permitted under Applicable Law, pay to the Service Provider a compensation amount equal to the aggregate sum of:

- (a) **[•]** percent (**[•]**%)⁵⁶ of the Outstanding Senior Debt;

less

- (b) the Service Provider Default Deduction Amount;
- (c) the Deferred Equity Amounts; and
- (d) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

1.1.2 The Compensation Payment Date for the Termination Payment referred to in Clause 1.1 above shall be a date twelve (12) months after the Termination Date (or earlier if the Contracting Authority so chooses).

⁵⁶ To be adjusted depending on the jurisdiction. In most developing countries, haircut on debt will not be accepted by the Lenders.

1.2 Material Adverse Government Action and Change in Law

- 1.2.1** If the Contracting Authority terminates this Agreement in the event of a Material Adverse Government Action or a Change in Law, the Contracting Authority shall, to the extent permitted under Applicable Law, pay the Service Provider the amount equal to the aggregate sum of:
- (a) one hundred percent (100%) of the Outstanding Senior Debt, if any;
 - (a) one hundred percent (100%) of the Adjusted Net Equity;
 - (b) Redundancy Payments for employees of the Service Provider that have been incurred as a direct result of the termination of this Agreement; and

less

- (c) the Deferred Equity Amounts; and
- (d) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

- 1.2.2** The Compensation Payment Date for the Termination Payment referred to in Clause 1.2.1 above shall be the later of:
- (a) a date three (3) months after the Termination Date; and
 - (b) if the Contracting Authority notifies the Service Provider prior to the date referred in Clause 1.2.2(a) that it elects to defer payment of the Termination Payment, the date (being not later than a date twelve (12) months after the Termination Date) that the Contracting Authority so specifies as the Compensation Payment Date by written notice to the Service Provider.

- 1.2.3** Interest shall be payable on the unpaid Termination Payment from the Termination Date to the due date for payment, in accordance with the Default Interest Rate.

2. SERVICE PROVIDER TERMINATION

- 2.1** If the Service Provider terminates this Agreement in the event of a Contracting Authority Event of Default, a Material Adverse Government Action or a Change in Law, the Contracting Authority shall, to the extent permitted under Applicable Law, pay the Service Provider the amount equal to the aggregate sum of:
- (a) one hundred percent (100%) of Outstanding Senior Debt, if any;
 - (b) one hundred percent (100%) of the Adjusted Net Equity;
 - (c) Redundancy Payments for employees of the Service provider that have been incurred as a direct result of the termination of this Concession Agreement;

less

- (c) the Deferred Equity Amounts; and
- (d) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

- 2.2** The Compensation Payment Date for the Termination Payment referred to in Clause 2.1 above shall be the later of:
- (a) a date three (3) months after the Termination Date; and
 - (b) if the Contracting Authority notifies the Service Provider prior to the date referred in Clause (a) that it elects to defer payment of the Termination Payment, the date (being not later than a date twelve (12) months after the Termination Date) that the Contracting Authority so specifies as the Compensation Payment Date by written notice to the Service Provider.

- 2.3** Interest shall be payable on the unpaid Termination Payment from the Termination Date to the due date for payment, in accordance with the Default Interest Rate.

3. TERMINATION FOR FORCE MAJEURE EVENT

- 3.1** If this Agreement is terminated by any Party as a result of a Force Majeure Event, the Contracting Authority shall pay the Service Provider the amount equal to the aggregate of:

- (a) one hundred percent (100%) of Outstanding Senior Debt, if any;
- (b) the Initial Equity less the sum of all Distributions to Shareholders from the Commencement Date to and including the Termination Date; and
- (c) Redundancy Payments for employees of the Service Provider that have been incurred as a direct result of the termination of this Agreement;

less

- (d) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

3.2 The Compensation Payment Date for the Termination Payment referred to in Clause 3.1 shall be a date twelve (12) months after the Termination Date, or earlier if the Contracting Authority so chooses.

3.3 Interest shall be payable on the unpaid Termination Payment from the Termination Date to the due date for payment, in accordance with the Default Interest Rate.

4. TAX GROSS-UP PROVISIONS

4.1 If any Termination Payment payable by the Contracting Authority to the Service Provider in accordance with Clauses 1, 2 and 3 of this Schedule 8 is subject to Tax payable by the Service Provider to a Government entity in the Country, then the Contracting Authority shall, subject to paragraph 3, be jointly and severally liable and shall pay to the Service Provider such additional amount as will put the Service Provider in the same after Tax position as it would have been had the Termination Payment not been subject to Tax, such Tax liability to be determined for this purpose in accordance with Clause 4.2.

4.2 For the purpose of determining the additional amount referred to in paragraph 4.1 above, the liability of the Service Provider for Tax in the Country with respect to a Termination Payment for the purpose of Clause 4.1 shall be deemed to be reduced to take full account of any relief, allowance, deduction, setting-off or credit in respect of Tax which may be available to the Service Provider or any Shareholder, or any Affiliate of the Service Provider, to reduce the Tax. For the purpose of this Clause 4.2 a reduction in Tax shall be treated as including obtaining any refund of Tax paid or any credit in respect of any Tax payable.

4.3 If the Service Provider wishes to claim the additional amount referred to in paragraph 4.1 above in accordance with paragraph 4.1, the Service Provider must make that claim prior to the Compensation Payment Date. The Contracting Authority may dispute any such claim, in which case (if not agreed between the Parties) the claim will be determined in accordance with Clause 26 (*Dispute Resolution*). The Contracting Authority shall be entitled to withhold from payment to the Service Provider any additional amounts agreed or determined to be payable by the Contracting Authority pursuant to paragraph 4.1 and pay those amounts directly to the Government entity upon the date the relevant Tax becomes due and payable by the Service Provider, in which case such payment shall discharge any liability to the Service Provider in respect thereof.

5. CLAWBACK AFTER TERMINATION DATE

Any amounts paid by the Lenders to the Service Provider after the date on which the Contracting Authority pays termination compensation to the Service Provider in accordance with this Schedule 8 as a result of repayment of the amounts outstanding under the Lenders Documents shall be repaid by the Service Provider to the Contracting Authority within thirty (30) days from the date on which it is paid to the Service Provider.

Schedule 9 - Assets Transfer Plan

[Details which assets are to be transferred, as well as the procedure and schedules for the transfer. This schedule is to be proposed by the Contracting Authority, discussed between the Parties and finally integrated to the Agreement as a Condition Precedent]

Sample Document, Adapt as Appropriate

Schedule 10 - Assets Handover Agreement

[Details which assets are to be handed over from the Service Provider to the Contracting Authority at the term of the agreement. *This schedule is to be proposed by the Contracting Authority, discussed between the Parties and finally integrated to the Agreement as a Condition Precedent*]

Sample Document, Adapt as Appropriate

Schedule 11 - Government Guarantee

[Specify Government of the Country] (the “**Government**”) represented by its Ministry of Finance and Economic Planning⁵⁷; and

....., a company incorporated under the laws of, whose registered office is located in **[insert Address]**, and with registration number [.....] (the “**Service Provider**”).

(The Government and the Service Provider are collectively referred to as the “**Parties**” and each a “**Party**”)

WHEREAS, [Contracting Authority] and the Service Provider have entered into a Public Private Partnership Agreement (“**Agreement**”) in relation to the [design, planning, financing, construction, commissioning, operation and maintenance]⁵⁸ of a **[specify the relevant Facilities]** (“**Facilities**”) located in (“**Project**”). Pursuant to the Agreement, the Contracting Authority undertakes, inter alia, to pay **[specify the relevant payments to be made by the Contracting Authority]**, starting on the Services Commencement Date, until the date which is [•] ([•]) years from the Commencement Date.

WHEREAS, in accordance with Schedule 1 of the Agreement, the provision of this guarantee (the “**Government Guarantee**”) by the Government is a Condition Precedent to the Commencement Date.

1. DEFINITIONS - INTERPRETATION

- 1.1** The terms of Articles 1 (*Definitions And Interpretation*) and 2 (*Interpretation*) of the Agreement apply mutatis mutandis to this Government Guarantee as if they were expressly stated herein.
- 1.2** Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Agreement.

NOW THEREFORE, IT IS HEREBY AGREED as follows:

2. GOVERNMENT GUARANTEE

- 2.1** In consideration of the Service Provider entering into, and performing or having agreed to perform its obligations under the Agreement (and for valuable consideration, receipt of which the Government hereby acknowledges), the Government irrevocably and unconditionally, as a continuing obligation:
- (a) guarantees to the Service Provider, the payment of any and all sums which the Contracting Authority has failed to pay when due under the Agreement; and
 - (b) undertakes, upon failure of the Contracting Authority to pay any amount now or hereafter owing, due or payable by the Contracting Authority to the Service Provider under the Agreement, to immediately on demand pay that amount, each and every liability of, and sum owing, due or payable by, the Contracting Authority referred to in this Article 2.1, the “**Liabilities**”.

- 2.2** [Without prejudice to its obligations under Article 2.1, [and to the extent permitted under Applicable Law], the Government unconditionally and irrevocably undertakes with the Service Provider as a separate, additional, continuing and primary obligation, that, should any amount not be recoverable from it or any obligation not be enforceable against it under Article 2.1 for any reason whatsoever (including, for the avoidance of doubt and without limitation, as a result of any unenforceability, invalidity or illegality of the Agreement) then, notwithstanding that such reason may have been known to the Service Provider, the Government shall, upon first written demand by the Service Provider make payment of any amount the Service Provider would otherwise have been entitled to recover from the Contracting Authority as is provided for in the Agreement.]⁵⁹

3. PRESERVATION OF RIGHTS

- 3.1** The obligations of the Government under this Government Guarantee shall be in addition, independent of and not in substitution to or derogation of, any other security which the Service Provider may at any time hold in relation to any of the Liabilities. The Service Provider may enforce this Government Guarantee notwithstanding that it may hold any other guaranty, lien, or security

⁵⁷ Drafting Note: to be adapted depending on the local law applicable to the Project[•]

⁵⁸ Drafting Note: to be adapted depending on the Project.

⁵⁹ Drafting Note: this clause may have to be adapted depending on the local law. In most civil law countries, guarantees are accessory of the guaranteed debt. Unenforceability of the initial debt may have the effect to make the guarantee unenforceable.

of or for the obligations of the Contracting Authority under the Agreement or have available to the Service Provider any other remedy at law or equity.

- 3.2** Any settlement or discharge given by the Service Provider to the Government in respect of the Government's obligations under this Government Guarantee or any other agreement reached between the Service Provider and the Government in relation to it shall be, and be deemed always to have been, void if any act on the faith of which the Service Provider gave the Government that settlement or discharge or entered into that agreement is subsequently avoided by or in pursuance of any provision of law.

4. WAIVER OF DEFENCES

- 4.1** Neither the obligations of the Government contained in this Government Guarantee nor the rights, powers and remedies conferred in respect of the Government upon the Service Provider by this Government Guarantee shall be discharged, modified, impaired or otherwise affected by the occurrence from time to time of any act, event or omission which, but for this Article, might operate to discharge, impair or otherwise affect any obligation of the Government contained in this Government Guarantee or any of the rights, powers or remedies conferred upon the Service Provider by this Government Guarantee, including, but not limited to, the following:
- (a) the privatization, winding-up, dissolution, administration, reorganization or any other legal alteration of the legal structure of the Contracting Authority, the Service Provider, the Government;
 - (b) any failure of the Contracting Authority, the Government, the Service Provider or any other person to comply with the requirements of any law, regulation or order;
 - (c) any time or other indulgence being granted or agreed to be granted to, or any composition with, the Contracting Authority or any other person in respect of any of the Liabilities or under any other security;
 - (d) any amendment to, or any variation, waiver, departure from or release of, the Agreement, or any of the Liabilities or obligations of the Contracting Authority under any other security;
 - (e) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take-up or enforce, any rights against the Contracting Authority, including under any other security, payment guarantee, letter of credit, other liquidity support or otherwise;
 - (f) [to the extent permitted under Applicable Law, any of the Liabilities or obligations of the Contracting Authority under any security relating to any of the Liabilities or obligations of the Contracting Authority being or becoming illegal, invalid, unenforceable or ineffective in any respect, or the Contracting Authority having or purporting to have any defense or counterclaim against the Service Provider]⁶⁰;
 - (g) the extension for payment of any amounts due or of time for performance of any of the covenants, terms, undertakings or obligations of the Contracting Authority set forth in the Agreement;
 - (h) the failure, omission, or delay by the Service Provider to enforce, ascertain, or exercise any right, power, or remedy under or pursuant to the terms of the Agreement;
 - (i) the failure or financial disability of the Government;
 - (j) any insolvency or similar proceedings in respect of the Contracting Authority or any other person; or
 - (k) any assignment by the Service Provider of the Agreement or this Government Guarantee in accordance with their respective terms and conditions.

5. CONTINUING SECURITY

- 5.1** The liabilities and obligations of the Government contained in this Government Guarantee shall constitute and be continuing obligations and shall not be considered satisfied by any intermediate payment or satisfaction of all or any of the obligations of the Contracting Authority in relation to the Liabilities and shall continue in full force and effect until final payment in full of all amounts owing by the Contracting Authority in respect of the Liabilities and total satisfaction of all the Contracting Authority's actual and contingent obligations in relation to the Liabilities is received and can be retained by the Service Provider. The Service Provider is entitled to enforce this Government Guarantee at any time when any of the conditions set forth in Article 6.1 has occurred. No demand made by the Service Provider hereunder shall prejudice or restrict the right of the Service Provider to make further or other demands.

⁶⁰ Drafting note: see the above drafting note in relation to civil law countries.

6. CLAIM MECHANISM

6.1 Right to make a claim

The Service Provider shall make a claim under this Government Guarantee only upon the occurrence of a [Contracting Authority Event of Default referred to under Clause 18.2.1 (a)]⁶¹ of the Agreement in respect of which the Service Provider has sent a Notice in accordance with Clause 28.11 (*Notices*) of the Agreement.

6.2 Demand - Certification

6.2.1 If the event set out in Article 6.1 has occurred, the Service Provider may send a written demand (a "**Demand**") for payment to the Government under this Government Guarantee, and the Government shall make payment of the requested sum within ninety (90) days thereafter.

6.2.2 Any Demand shall be signed by a duly authorized officer of the Service Provider in person at the Government's offices indicated below or by national or international courier sent at the below address:

[specify the relevant office]

and shall be accompanied by a certificate signed by such duly authorized officer of the Service Provider stating the following:

"We hereby certify that (1) **[the name of the Service Provider]** is making this demand on the Government of **[specify country]** (the "**Government**") in the amount of **[insert amount]** **[specify currency]** in accordance with Article 2 of the Government Guarantee dated [•], between the Government and the Service Provider; (2) the amount specified above is due and payable by **[specify name of the Contracting Authority]** under the Agreement entered into on **[specify the date]** between the Service Provider and the Contracting Authority and (3) the Government Guarantee is enforceable in accordance with its terms.

6.3 Non Business Days

If a payment under this Government Guarantee is due on a day which is not a business day in **[specify country]**, the due date for that payment shall instead be the next business day in the same calendar month (if there is one) or the preceding business day (if there is none or the next business day would fall after the expiry of the Government Guarantee).

6.4 Account - Currency

6.4.1 Any Demand shall specify the account on which the payment of any amount payable under this Government Guarantee shall be paid.

6.4.2 Any amount payable under this Government Guarantee shall be paid in the same currency in which such amount is expressed to be payable under the Agreement, and the Government waives any right it may have in any jurisdiction to pay any amount under this Government Guarantee in another currency or currency unit.

6.4.3 If any sum due from the Government under this Government Guarantee (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (a) making or filing a claim or proof against the Government, or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Government shall as an independent obligation, within three business days of demand, indemnify the Service Provider against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

⁶¹ Drafting note: add, if need be, additional Contracting Authority Event of Default entitling the Service Provider to make a claim under the Government Guarantee. The clause is limited to the event the Contracting Authority did not paid the Service Provider.

7. IMMEDIATE RECOURSE

Except as expressly provided in Article 6.2.1, the Service Provider shall not be obliged to exercise any other remedies that may be available to the Service Provider under or in respect of the Agreement or to initiate any proceedings or obtain judgment or an arbitration decision against the Contracting Authority before enforcing its rights arising under this Government Guarantee.

8. NON-COMPETITION

Until this Government Guarantee expires, the Government shall not, after a claim has been made in accordance with this Government Guarantee, be subrogated to any rights, security or money held, received or receivable by the Service Provider or be entitled to any right in respect of any payment made or money received on account of the Government's liability under this Government Guarantee.

9. NO SET-OFF

No set-off, counterclaim, reduction, or diminution of any obligation that the Government has or may have against the Service Provider shall be available to the Government against the Service Provider in connection with any obligation of the Government to the Service Provider under this Government Guarantee.

10. OBLIGATIONS ABSOLUTE

[To the extent permitted under Applicable Law,]⁶² the Government's payment obligations under this Government Guarantee are absolute and unconditional and accordingly, but without limitation, the Government shall have no right to defer, withhold or adjust any payment due to the Service Provider arising out of this Government Guarantee, nor to obtain the deferment of any judgment for any such payment or part thereof nor to obtain deferment of execution of any judgment. Should the Government default in any of its obligations in terms of this Government Guarantee, the Government hereby indemnifies and holds the Service Provider harmless on demand against all and any losses which may be incurred or sustained or claimed from or threatened against the Service Provider by reason of or pursuant to such default.

11. ARBITRATION; JURISDICTION

In the event that the Parties, notwithstanding the use of reasonable endeavors to do so, are unable to resolve a difference or dispute between them arising out of or in connection with this Government Guarantee (including, without limitation, any question regarding its existence, validity or termination), then, either Party shall be entitled to require that such matter be referred to and finally resolved by arbitration as provided in Clause 26.4 (*Arbitration*) of the Agreement.

12. SOVEREIGN IMMUNITY

- 12.1** The Government unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Government Guarantee constitute private and commercial acts. In furtherance of the foregoing, the Government irrevocably and unconditionally agrees that:
- (a) should any proceedings be brought against the Government or its assets, other than Excluded Assets, as defined below, in any jurisdiction in connection with this Government Guarantee, or any of the transactions contemplated by this Government Guarantee, no claim of immunity (sovereign or otherwise) from such proceedings will be raised by or on behalf of the Government on behalf of itself or any of its assets, other than Excluded Assets;
 - (b) it waives any right of immunity (sovereign or otherwise) which it or any of its assets, other than Excluded Assets, now has or may in the future have in any jurisdiction in connection with any such proceedings; and
 - (c) it consents generally in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings, including, without limitation, the making, enforcement or execution against, or in respect of, any of its assets, other than Excluded Assets, of any order or judgement which may be made or given in such proceedings.
- 12.2** For the purpose of this Government Guarantee, "**Excluded Assets**" means (i) [*specify assets to be excluded from the scope of the Government's waiver of right of immunity*] and (ii) property of the Government subject to the Vienna Convention on Diplomatic Relations or the Vienna

⁶² Drafting note: this clause may have to be adapted depending on the local law. In most civil law countries, guarantees are accessory of the guaranteed debt. Unenforceability of the initial debt may have the effect to make the guarantee unenforceable.

Convention on Consular Relations that is being used exclusively for diplomatic or consular purposes.

13. TAXATION

The Service Provider shall be liable for any tax levied or imposed by a Government authority or any political subdivision or authority thereof on or with regard to any payment hereunder if such payment, if made by the Contracting Authority, would have caused the Service Provider to become liable for the tax, provided for the sake of clarity that the Service Provider shall not have to pay any tax already deducted in full from sums payable by the Contracting Authority under the Agreement.

There shall be no additional taxes or fees imposed on the Service Provider in connection with a payment by the Government to the Service Provider under this Government Guarantee, provided that, if any law or regulation imposes any such additional taxes or fees such amounts will be paid by the Service Provider and subsequently reimbursed by the Government. Should the Government default in its obligations to pay such additional taxes or fees, the Government hereby indemnifies and holds the Service Provider harmless on demand against all and any losses which may be incurred or sustained or claimed from or threatened against the Service Provider by reason of or pursuant to such default.

14. DURATION

This Government Guarantee shall remain in full force and effect from and after the date hereof for so long as any amount owed to the Service Provider by the Contracting Authority is or may be outstanding and the Government and the Contracting Authority have fulfilled all their respective obligations under this Government Guarantee and the Agreement in full.

15. NO WAIVER; REMEDIES CUMULATIVE

15.1 No Waiver

15.1.1 No failure by the Service Provider to exercise, nor delay by the Service Provider in exercising, any right or remedy under this Government Guarantee shall constitute a waiver of that right or remedy or constitute an election to affirm this Government Guarantee. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver or election to affirm this Government Guarantee by the Service Provider shall be effective unless it is in writing.

15.2 Remedies Cumulative

The rights and remedies of the Service Provider provided by this Government Guarantee are cumulative and not exclusive of any rights or remedies provided by law.

16. NOTICES

16.1 Unless otherwise provided in this Government Guarantee, all notices and other communications required or permitted between the parties by this Government Guarantee shall be in writing and either hand delivered, sent by nationally or internationally reputable courier or by electronic or facsimile transmission to the address of the Party concerned as set forth below. No communication shall be effective until received and such shall be deemed to have been received:

- (a) by hand when so delivered;
- (b) on the date indicated by the courier's delivery tracking system when delivered by nationally or internationally reputable courier;
- (c) if by facsimile, when received in legible form; and
- (d) if by electronic transmission, when actually received (or made available) in readable form.

However, a notice given in accordance with the above but received on a day which is not a business day or after business hours in the place of receipt will only be deemed to be given in the next business day.

Address for notices

For the Government

[specify the Government's address]

For the Service Provider

[specify the Service Provider's address]

16.2 Either Party may change its nominated address to another address by giving at least fifteen (15) days prior written notice to the other Party.

17. ASSIGNMENT

17.1 Assignment by the Government

The Government may not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Service Provider.

17.2 Assignment by the Service Provider

The Service Provider may not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Government. Notwithstanding the provision of the immediately preceding sentence, the Service Provider may, pursuant to the terms of the Agreement, (i) assign or create a security interest over its rights and interests in and to this Government Guarantee in favour of the Lenders under the Lenders Documents, or (ii) transfer the benefit of this Guarantee to a third party to which the Service Provider rights and liabilities under the Agreement are transferred [in accordance with the Direct Agreement]⁶³.

17.3 Successors

This Government Guarantee shall be binding upon and inure to the benefit of the Government and the Service Provider and the respective lawful successors and permitted assigns of each of them.

18. GOVERNING LAW

The provisions of this Government Guarantee, including but not limited their validity, interpretation, execution, and termination, shall be governed by and construed under the **[specify the applicable law]**.

19. MISCELLANEOUS

19.1 Severability:

If one or more provisions contained in this Government Guarantee is held or found to be invalid, illegal, or unenforceable in any respect, the provision(s) shall be given effect to the extent permitted by law and the invalidity, illegality, or unenforceability of any provision shall not affect the validity of the remaining provisions of this Government Guarantee.

19.2 Representations and Warranties:

The Government represents and warrants as of the date of signing of this Government Guarantee, that:

- (a) it has the full power, authority and legal right to incur the obligations, to execute and deliver, and to perform the terms and provisions of this Government Guarantee;
- (b) this Government Guarantee constitutes legal, valid and binding obligations of the Government, enforceable against the Government in accordance with its terms;
- (c) all necessary actions have been taken and all necessary approvals and consents have been obtained under the laws of **[specify country]** to enable the Government to enter into and to perform its obligations hereunder;
- (d) the execution, delivery and performance of this Government Guarantee does not, and will not, constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, Government authority or arbitrator of competent jurisdiction applicable or relating to the Government, its assets or its business or any contract or agreement to which it is a party or by which it or its property may be bound;
- (e) the person signing this Government Guarantee for the Government is authorized to do so.

⁶³ Drafting note: to be adapted. It is however usual to have a direct agreement being signed for the project.

The Government of [specify country]
Represented by **[specify the relevant official]**

By:

Service Provider

By:

Sample Document, Adapt as Appropriate

Schedule 12 - Form Of Escrow Letter

To: **[Escrow Agent's Name]**
[Escrow Agent's address]

[Pro forma letter subject to tailoring according to jurisdiction of the Escrow Agent/Escrow Account]

Dear Sirs
Date: [•]

We are writing to confirm the terms on which funds deposited in the account [number] (the "**Escrow Account**") today and from time to time thereafter by *[Contracting Authority]*⁶⁴ (the "**Contracting Authority**") may be transferred, pursuant to the terms of the agreement dated [•] made between the Service Provider and the Contracting Authority (the "**Agreement**").

These terms are:

- (1) You shall maintain the Escrow Account as an interest-bearing account numbered [•].
- (2) Subject to paragraph 4 below, you shall hold the funds in the Escrow Account (or any part of it) in the name of the Contracting Authority.
- (3) If a payment is made from the Escrow Account to the Service Provider:
 - (a) such payment shall be made gross;
 - (b) in the event that a deduction or withholding is required by law, you shall increase the sum due to the extent necessary to ensure that, after such deduction or withholding, the Service Provider receives a sum equal to the sum it would have received had no deduction or withholding been made; and
 - (c) in the event that such payment will be or has been subject to tax, you shall pay to the Service Provider on request, from the Escrow Account, the amount (after taking into account any tax) necessary to ensure that the Service Provider receives and retains a net sum equal to the sum it would have received had the payment not been subject to tax.
- (4) If the Service Provider notifies you that it is entitled to a payment in accordance with the Agreement and provides a copy of a notice from [a director] of the Service Provider confirming such entitlement, you shall pay or hold the amount notified to or for the Service Provider or in the manner directed in the Service Provider's written instructions.
- (5) You shall provide to the Service Provider a copy of the account statement on a monthly basis.
- (6) The balance on the Escrow Account shall earn interest at such rate and on such terms as may be agreed between you and the Contracting Authority from time to time. Interest shall be paid [annually/monthly] by you into the Escrow Account.
- (7) The Contracting Authority will pay your costs in respect of your duties under or in respect of this letter and the maintenance of the Escrow Account as such costs may be agreed between you and the Contracting Authority from time to time.
- (8) You acknowledge that security over the Escrow Account may be granted in favour of any lenders to the Service Provider, and the rights of such lenders will prevail over any rights you may have over the Escrow Account or the funds standing to the credit of the Escrow Account.
- (9) This letter and any contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, **[specify the applicable law to the Escrow Letter]**.

Please countersign this letter to confirm your acceptance of the terms set out above.

[Contracting Authority]
By:

Service Provider
By:

We confirm our acceptance of the terms of this letter.

[Name of Escrow Agent]
Escrow Agent
By:

⁶⁴ Drafting note: to be adapted depending on who will deposit funds on the Escrow Account, i.e. the Contracting Authority or the Government.

Schedule 13 - Form of First Demand Guarantee

FORM OF FIRST DEMAND GUARANTEE - LETTER OF FIRST DEMAND GUARANTEE

[Specify name and address of the Service Provider]

Letter of Guarantee No.: _____

Date: _____

Since you have signed with our clients, _____ (the "**Contracting Authority**") a Public-Private Partnership Agreement for [Financing, Construction and Operation]⁶⁵ of a [briefly describe the Project infrastructure] on [•] (the "**Agreement**");

We, _____ (the "**Bank**"), hereby unconditionally and irrevocably undertake to pay you any sums up to a maximum amount of [*specify applicable currency*] _____ (the "**Maximum Amount**"), in connection with the Contracting Authority's obligations under the Agreement and in accordance with the following:

- (a) Unless otherwise defined herein, terms defined in the Agreement shall have the same meaning herein.
- (b) We shall pay you immediately upon your written demand and irrespective of any objection by the Contracting Authority or any other party such amount or amounts as you may demand up to the Maximum Amount, by transfer to your account or in any other manner acceptable to you.
- (c) All payments made based on your demand shall be free and clear of, and without any present or future deduction for payment of, any taxes, levies, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.
- (d) The undertakings contained in this guarantee constitute direct and fundamental obligations of ours and are unconditional and irrevocable. We shall not be excused from any or all of these obligations for any reason or reasons of whatever nature or source, such as change in the conditions of the Agreement or extension thereof or change in the scope or nature of work to be performed, or any omission, act or proceeding by you or by a third party which would excuse or discharge us from the obligations and liabilities stated in this guarantee.
- (e) This guarantee shall remain valid and in full force and effect up to the end of the _____ day of the month of _____ of the year _____. This guarantee shall be governed by and construed in accordance with the laws, regulations, decisions, rules and instructions of the [*specify applicable law*] and any dispute with respect to this guarantee shall be resolved exclusively by the competent authorities in the [*specify the relevant country*] and according to [*specify applicable law*].

The Bank
Authorized signatories

⁶⁵ Drafting note: to be adapted depending on the obligations to be performed by the Service Provider under the Project.

Schedule 14 - Form of Performance Security

FORM OF PERFORMANCE SECURITY - LETTER OF FIRST DEMAND GUARANTEE

[Specify name and address of the Contracting Authority]

Letter of Guarantee No.: _____

Date: _____

Since you have signed with our clients, _____ (the "**Service Provider**") a Public-Private Partnership Agreement for [Financing, Construction and Operation]⁶⁶ of a [briefly describe the Project infrastructure] on [●] (the "**Agreement**"):

We, _____ (the "**Bank**"), hereby unconditionally and irrevocably undertake to pay you any sums up to a maximum amount of [*specify applicable currency*] _____ (the "**Maximum Amount**"), in connection with the Service Provider's obligations under the Agreement and in accordance with the following:

- (f) Unless otherwise defined herein, terms defined in the Agreement shall have the same meaning herein.
- (g) We shall pay you immediately upon your written demand and irrespective of any objection by the Service Provider or any other party such amount or amounts as you may demand up to the Maximum Amount, by transfer to your account or in any other manner acceptable to you.
- (h) All payments made based on your demand shall be free and clear of, and without any present or future deduction for payment of, any taxes, levies, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.
- (i) The undertakings contained in this guarantee constitute direct and fundamental obligations of ours and are unconditional and irrevocable. We shall not be excused from any or all of these obligations for any reason or reasons of whatever nature or source, such as change in the conditions of the Agreement or extension thereof or change in the scope or nature of work to be performed, or any omission, act or proceeding by you or by a third party which would excuse or discharge us from the obligations and liabilities stated in this guarantee.
- (j) This guarantee shall remain valid and in full force and effect up to the end of the _____ day of the month of _____ of the year _____. This guarantee shall be governed by and construed in accordance with the laws, regulations, decisions, rules and instructions of the [*specify applicable law*] and any dispute with respect to this guarantee shall be resolved exclusively by the competent authorities in the [*specify the relevant country*] and according to [*specify applicable law*].

The Bank
Authorized signatories

⁶⁶ Drafting note: Drafting note: to be adapted depending on the obligations to be performed by the Service Provider under the Project.

Schedule 15 - Lender's Direct Agreement Key Principles

The Lenders' Direct Agreement shall be drafted on terms that are customarily provided in such agreements in use in the international project finance market and shall include, among others, the following provisions:

1. GENERAL SUPPORT

The [Government and the]⁶⁷ Contracting Authority (the Public Entities) shall reiterate their support to the PPP Project and undertake to perform their obligations under this Agreement and any Government guarantee (the PPP Documents) as applicable.

2. CONSENT TO SECURITY

Each Public Entity shall acknowledge and consent to the security to be listed in the Lenders' Direct Agreement over any PPP Document granted to Lenders.

3. CURE RIGHTS

A suspension period of [120] days starting on the date on which the Finance Parties receive a default notice (the Default Notice) from a Public Entity notifying that a default has occurred under a PPP Document (the Suspension Period) shall apply during which the Lenders and the Service Provider may cure any such default. During the Suspension Period, no Public Entity shall take any action against or with respect to the Service Provider or any of its assets.

4. STEP IN RIGHTS

During a Suspension Period or if an event of default has occurred under the Lenders Documents and is continuing (the Financing EoD Period), the Lenders may appoint an additional obligor to step-in and act with the Service Provider to cure the default as applicable and, if applicable, step out again. The identity of the additional obligor will be subject to objective criteria to be agreed. Where step-in rights have been exercised, an extended cure period of [210] days shall apply starting on the date on which the Lenders receive a Default Notice (and other than in relation to default for outstanding amounts due and payable to the Public Entities at the appointment date which shall be paid within 30 days after such date).

5. SUBSTITUTION RIGHTS

During a Suspension Period or a Financing EoD Period, the Lenders may appoint a substitute operator, possessing or having available to it under contract the technical and financial capacity required to build and/or operate (as applicable) the PPP Project, who may assume (by novation or otherwise) the rights and obligations of the Service Provider under the PPP Documents. Where substitution rights have been exercised, an extended cure period of [210] days starting on the date on which the Lenders receive a Default Notice (and other than in relation to default for outstanding amounts due and payable to the Public Entities at the transfer date which shall be paid within 60 days after such date).

6. INFORMATION NOTICES

The Lenders shall be entitled to (i) certain information relating to any PPP Document as requested by Lenders during a Financing EoD Period, and (ii) copies of various notices given to the Service Operator and details of related unperformed liabilities, in particular, the right to be informed of any default by the Service Provider.

7. PAYMENTS AND OTHER RIGHTS

The Public Entities agree to make payments owing to the Service Provider to specified accounts or, in the event of a default under the Lenders Documents, in the manner specified by the Lenders.

8. SET-OFF

All payments are to be made free of set-off or deductions except that, in effecting payments to the Service Provider, the Contracting Authority shall have a right of set-off for mature amounts due and owing to the Contracting Authority by the Service Provider under the Agreement.

⁶⁷ Delete if no government guarantee is issued.

9. REPRESENTATION

The representation and warranties made by each Public Entity shall include the lawful execution by the relevant Public Entity of the Lenders' Direct Agreement and the validity, enforceability, and lawful execution of each PPP Document.

10. SECURITY AND RELATED MATTERS

The Public Entities shall undertake (i) not to terminate any PPP Document or the Service Provider's rights thereunder by reason of Lenders' enforcement of security over such documents and rights, and (ii) consent to the change in control of the Service Provider through Lenders' enforcement of their security.

11. CERTAIN CONFIRMATIONS AND GENERAL ASSURANCES

The Public Entities shall make the confirmations required with respect to any PPP Document as agreed with Lenders and provide general assurances with respect to Project and its assets and, including in the event a PPP Document is terminated or expires.

12. GOVERNING LAW AND DISPUTE RESOLUTION

The Lenders' Direct Agreement shall be governed by [specify the Country law] Law and provide for international arbitration as dispute resolution forum.

13. BENEFICIARIES, TERM AND MISCELLANEOUS

The Lenders' Direct Agreement shall contain miscellaneous customary provisions satisfactory to the Lenders, including in relation to the beneficiaries, language, notices, and liability of, or in connection with, the Lenders' Direct Agreement.

Sample Document, Adapt as Appropriate



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Municipal Public-Private Partnership Framework

12

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1.0

Purpose of this Module

This module provides guidance on contract management over the PPP project life cycle—what activities and risks should be monitored and managed during various stages of project implementation. There is a tendency in PPP projects to focus efforts on the procurement process, award, and financial close. However, the real work starts during implementation, when the parties must deliver on their obligations. The municipality has a critical role to play during implementation. This module provides guidance on how the municipality can manage implementation of the PPP to improve the likelihood of success.

For further discussion of PPP contract management, see:

- World Bank. n.d. “Managing PPP Contracts”. PPP Reference Guide 3.0. Accessed July 19, 2019. <https://pppknowledgelab.org/guide/sections/73-managing-ppp-contracts>.
- Global Infrastructure Hub. 2018b. “Disputes”. PPP Contract Management Report. <https://managingppp.gihub.org/report/disputes/>.
- European PPP Expertise Centre. 2014. Managing PPPs during Their Contract Life, Guidance for Sound Management. <https://ppp.worldbank.org/public-private-partnership/library/managingppps-during-their-contract-life-guidance-soundmanagement>.
- Dombkins, David. 2019. United Nations. Public Private Partnership Contract Management Manual. <https://www.unece.org/info/ece-homepage.html>.
- Ministry of Finance of India. 2015. Guidelines for Post- Award Contract Management for PPP Concessions. <https://www.pppinindia.gov.in/documents/20181/33749/Guidelines+on+Post+Award+Contract+Management+of+PPP+Concessions/75c24213-59c6-44df-a874-8485066ef97a>.
- 4ps. 2007. *A Guide to Contract Management for PFI and PPP Projects*. London: Public-Private Partnerships Programme. <http://docplayer.net/9794015-A-guide-to-contract-management-for-pfi-and-ppp-projects.html>.

2.0

Contract Management Plan and Organizational Approach

Establishing the PPP CMU

The CMU is responsible for monitoring performance, ensuring that the parties comply with the terms and conditions of the PPP contract and that specific changes, such as adjustments in tariffs or prices, are properly analyzed and implemented. Key decisions about whether or by how much tariffs and prices should be adjusted are generally contained within specific formulas in the PPP contract.

The municipality must design the PPP project's performance monitoring plan. The staffing and operation of the CMU is the institutional responsibility of the municipality. The municipality must ensure continuity of knowledge and key staff and plan for staff turnover.

PPP CMUs require capable staff, adequate information technology systems, and the budget resources needed to gather and verify technical, operational, financial, and legal performance data, in particular the following:

- Gathering and verifying data on the technical performance of a PPP, as specified by the key performance indicators and 'outputs' required by the PPP agreement.
- Gathering and verifying financial and cost performance data of PPP projects.
- Monitoring and ensuring compliance with and enforcement of the legal terms and conditions of the PPP agreement.
- Coordinating with other relevant compliance bodies and regulators or outside monitoring specialists, such as specialized outside lawyers, engineers, environmental specialists, or other experts retained to advise on specific PPP performance issues.

For smaller, uncomplicated PPPs, the CMU could consist of just a single individual. A single contract management officer would usually be supported by qualified, part-time, outside specialists, as needed, to address specific technical, legal, or other performance issues. For larger and more complex PPPs, a CMU often requires a team of different specialists responsible for monitoring technical,

financial, legal, consumer service or other areas of performance.

CMUs need to gather specific data and information on the actual level of performance being delivered by the PSP. Examples of some of the kinds of performance data gathered by CMU staff include the following:

- The volume of services being provided or volume of end users being served.
- The percentage of time that the project is available for users.
- The proven ability of a new project or service, through commissioning tests, to operate at its intended and contracted capacity.
- The number of proven and justified complaints received from end users for inadequate service.

CMUs ensure that the contract's key payment formulas are implemented.

The CMU should be in place before the PPP contract is signed, to allow the CMU to understand the formulation of the project and enable it to start implementation processes as soon as possible. It is easy to delay setting up the CMU in the frenzy leading up to financial close.

The CMU will need to establish balance, accessing enough information to ensure the project is well implemented without impeding the ability of the PSP to perform its obligations and in view of the limited capacity of the CMU.

A contract management manual¹ will cover all relevant topics and provide a guide to the CMU staff to ensure that key issues are addressed on time. It will also help integrate CMU activities with those of other municipal staff in related areas. Constant communication is key—with municipal staff, the PSP, and any PPP unit or national authority—to ensure sharing of lessons learned and early identification and management of conflict.

¹ See: European PPP Expertise Centre. 2014. Managing PPPs during Their Contract Life, Guidance for Sound Management. <https://ppp.worldbank.org/public-private-partnership/library/managingppps-during-their-contract-life-guidance-soundmanagement> (providing an outline at page 30 for the possible content of a contract management manual).

3.0 Contract Management over the PPP Project Life Cycle

This section describes activities undertaken by the municipality and the PSP and project risks to be monitored and managed across different implementation stages of the PPP project.²

3.1 Pre-Construction Stage

During pre-construction, the CMU ensures that the municipality and the PSP comply with their contractual commitments.

Table 1 lists the activities of each party in the PPP agreement during pre-construction that need to be monitored:

Table 1: Compliance Monitoring

Aspect	Activities ³
Ensuring compliance by municipality	<ul style="list-style-type: none"> • Handover of the project site and access to the project site within the agreed schedule. • Approvals, authorizations, and permits that are the responsibility of the municipality. • Review of technical designs. • Delivery of associated infrastructure to be delivered by the municipality.
Monitoring compliance by the PSP	<ul style="list-style-type: none"> • Preparation and submission of detailed designs. • All approvals and permits (other than those which are the responsibility of the municipality). • Arrangement of the financial resources needed for the project (financial close). • Project insurance. • Arrangement of utilities (electricity connection and construction water supply). • Submission of performance/security bonds and guarantees. • Bank account and escrow arrangements.

² See: European PPP Expertise Centre. 2014. Managing PPPs during Their Contract Life, Guidance for Sound Management. <https://ppp.worldbank.org/public-private-partnership/library/managingppps-during-their-contract-life-guidance-soundmanagement> (providing a checklist of tasks involved in the operational management of the different phases of a PPP project after contract signature).

³ The responsibilities mentioned in this table and in succeeding tables relate to typical PPP projects and may vary from project to project.

The CMU should be apprised of project financing negotiations to ensure that the PSP complies with its obligations. The municipality should stand ready to respond to requests from lenders for additional information. Typically, lenders will hire their own advisers and sector experts to verify all background information.

Failure to reach financial closure is a costly experience for all parties. While private bidders risk losing their performance bond as well as writing off the value of several years of preparation and development costs, the municipality faces significant new delays in the provision of important new public facilities and services. Even lenders risk losing the value of their own time and expenses invested in due diligence and negotiating with investors. The municipality should carefully evaluate the reasons why financial closure was not reached.

These could include the following:

- Lack of prior experience in raising project-backed financing.
- The project is not sufficiently financially robust or is otherwise too risky for lenders to finance.
- The financial market has shifted in appetite or available terms
- One of the private investors dropped out of the consortium.

The CMU will require regular progress reports from the PSP. These reports help the CMU identify challenges early. The CMU should be proactive in working with the PSP to resolve challenges and identify innovative methods of overcoming obstacles.

3.2 Construction Stage

At this stage, the key objective is to ensure that construction timelines/deadlines are met based on the approved design. The activities to be monitored for this stage are described in Table 2.

Table 2: Verifying Compliance during Construction

Aspect	Activities
Ensuring compliance of municipality's responsibilities	<ul style="list-style-type: none"> • Payment of capital grants based on the contractual milestones. • Access to the site. • In-kind contributions, including materials, equipment, or existing facilities. • Approvals of tests and commissioning.
Monitoring compliance by the PSP	<ul style="list-style-type: none"> • Reports and as-built drawings. • Construction progress against milestones. • Construction implementation against approved designs. • Independent engineer (if any) reports. • Testing and results.

The main risks to be monitored and managed at this stage include the risk that:

- Approved design of the project is defective;
- Actual cost of construction is significantly higher than envisaged, creating a likelihood of default;
- The completion will be delayed beyond the targeted schedule;
- The social or environmental impacts of the project construction are more than expected and/or mitigation strategy is not effective; and
- There is widespread public opposition to the project.

During the construction stage, the CMU will monitor key performance indicators including:

- Obtaining required permits and licenses (environmental permits, zoning permits, building permits, import approvals, and so on), on schedule;

- Stakeholder consultation;
- Delivery of interconnection facilities, such as approach roads to the site or electricity, water, and sewerage interconnections, completed on schedule;
- Delivery of detailed designs and as-built drawings reviewed by the municipality;
- Financial close, including all conditions precedent to effectiveness of finance agreements;
- Delivery of performance bond (or conversion of bid bond to performance bond);
- Time for completion and milestones;
- Testing of works and materials; and
- Commissioning of works and readiness for commercial operation.

3.3 Operations Stage

This stage includes the commissioning of the PPP project until the expiry of contract or its early termination, as the case maybe. The CMU's focus during this stage is to ensure that the performance

of the municipality and the PSP meets the expected standards, and the users' rights and interests are protected. The activities of the contracting parties during the operations stage are listed in Table 3.

Table 3: Verifying Compliance during Operation

Aspect	Responsibilities
Ensuring compliance of municipality's responsibilities	<ul style="list-style-type: none"> • Payment of operation period grants, if any. • Compliance with commitments of the municipality, such as <ul style="list-style-type: none"> o Not allowing the development of competing facilities during the project tenure. o Coordinating with other government departments for connecting infrastructure facilities and services. • Continuity of services.

Aspect	Responsibilities
Monitoring compliance by the PSP	<ul style="list-style-type: none"> • Performance against defined output standards. • Project financials to ensure no looming default. • User experience/grievances. • Review of the maintenance activities. • Planned maintenance and replacement activities. • Usage and performance data and revenues reported by the PSP. • Payment of revenue share (if any).

Penalty regimes for PSP failure to achieve performance targets are best used as an incentive to improve performance rather than a punishment. The risks that need to be monitored and managed during operations include the risk that:

- The actual demand of the project facilities/ services is higher or lower than expected;
- The actual revenues of the project are lower/ higher than expected;
- The revenue leakage is higher than expected (for example, where tolls are charged but do not reach the project accounts or where bill collection falls behind expectations);
- The operating cost for the project is higher or lower than expected;
- The project may not be able to deliver the expected performance;
- The cost of financing during the operations period is higher than expected (this may or may not be available to the CMU, but the CMU should be aware of the market conditions and work with the PSP to identify any forthcoming challenges);
- Conflicts are not identified and managed early and therefore become disputes; and

- The project will not be able to service the project debt (including working with the lenders to help address any potential events of default under the financing agreements).

During the operation stage, the CMU will monitor key performance indicators including:

- Maintaining of licenses and permits;
- Performance testing of completed works;
- Monitoring of service and performance standards;
- Periodic testing of the works, to ensure quality and maintenance standards;
- Reporting by the PSP to the municipality;
- Whether demand is meeting forecasts;
- Stakeholder engagement;
- Monitoring of scope changes;
- Condition of assets against handback standards;
- Implementation of the maintenance regime;
- Tariff levels and review;
- Changes in laws and regulations and any implications for the project.

3.4 Handback Stage

Project facilities are handed back to the municipality (or to a new PSP) at the expiry of the contract or at termination of the contract (in conformity with the terms of the PPP agreement). At the handover

stage, the key focus is to ensure that project facilities are handed over in a pre-agreed condition and in a way consistent with the PPP agreement, including those listed in Table 4.

Table 4: Verifying Compliance during Handback

Aspect	Responsibilities
Ensuring compliance of municipality's responsibilities	<ul style="list-style-type: none"> • Handover payments, if required, in particular for project equipment, spares, or materials that the municipality wants to purchase. • Taking over possession of the project facilities. • Ensuring that there is no disruption in service during the handover. • Initiating the bid process to appoint a new PSP (optional).
Monitoring compliance by the PSP	<ul style="list-style-type: none"> • Performance against defined output standards. • Project financials to ensure no looming default. • User experience/grievances. • Review of the maintenance activities. • Planned maintenance and replacement activities. • Usage and performance data and revenues reported by the PSP. • Payment of revenue share (if any).

The key risks that need to be monitored and managed at this stage include the risk that:

- The project facilities at the end of the contract period do not meet the prescribed condition;
- The PSP will need to spend a higher-than-expected amount to bring the project facilities up to the required operating standards; and
- The service is disrupted during the handover.

As the project approaches handover stage, the municipality has four main options:

- (1) **The municipality takes over delivery of the project services:** The municipality will need to verify that the facilities are in good condition and assess how much additional investment will be needed to bring the facilities up to current requirements and to deliver services to standard.
- (2) **The municipality conducts an open competitive tender for a new PSP to deliver the services:** The municipality will need to gather data on the project and the facilities to inform the bidding process.

- (3) **The municipality negotiates with the current PSP to extend the contract, including new investments if needed:** This can create a moral hazard for the municipality where a reasonable arrangement cannot be achieved; the municipality may want to use this approach only where an open competition is unsuccessful.
- (4) **The PSP maintains the assets and the municipality allows the contract to expire:** Most infrastructure assets are meant to deliver services over the long term, well beyond the end of the project, but some assets may be short-term in nature, for example information, communication and technology, and therefore after the end of the period, the municipality may prefer to leave the assets in the hands of the PSP to manage their remediation.

The municipality should conduct a new feasibility analysis for the project to systematically evaluate which option provides the best value for the public's money.

4.0

Management of Contract Variations

The municipality or PSP submits a variation proposal describing the nature of the variation and an assessment of the technical, financial, contractual, and time implications of the proposed variation. Payment for the variation can be made by adjustments to tariffs, availability payments, government support payments, or other payments contemplated in the PPP agreement. The parties discuss and agree variations in accordance with the PPP agreement. A variation or amendment of the PPP agreement may respond to changes in circumstances not contemplated in the PPP agreement, or where the original project design is flawed. The CMU will need to assess any proposed amendment or variation to assess whether it complies with the agreement, and whether it will provide (1) VFM, (2) affordability, and (3) appropriate

risk-sharing between the parties. Below are some indicative procedures that can serve as a guide in proceeding with these variations:

- (1) Variations involving no additional costs: If the variation will result in a reduction in costs, the parties need to agree on a distribution of the savings. For variations proposed by the municipality net savings should accrue to the municipality, while savings from a variation proposed by the PSP should be divided between the municipality and the PSP.
- (2) Small works variations: The PSP should provide a schedule of rates for small works each year, or the parties can agree on such a schedule as and when needed. Small works can be priced according to such a schedule.

5.0 Management of Contingencies

PPP contracts generally provide for relief for the PSP for specified contingency events: (1) change in law, (2) force majeure events, and (3) termination.⁴

5.1 Change in Law

A change in law event is generally defined as a material change in the legal or regulatory framework that governs the project and has a material impact on the parties. The management of change in law involves the following:

- **Definition of change in law:** Typically as set out in the PPP agreement.
- **Notice of change in law:** The party that is affected by the change in law is expected to issue a written notice to the other party communicating that a change in law has occurred and also estimating the financial impact that the change in law event may cause.
- **Approval of change in law:** The CMU must, on receipt of a change in law notice, review

the change in law event from the following perspective:

- o Does the event meet the defined criteria of change in law?
- o What is the impact of the change in law event?
- o What compensation/relief does the PPP agreement award for the change in law event?

Based on the review, the CMU recommends a solution. Based on CMU advice, the municipality decides whether to recognize the change in law event and compensate the PSP. External experts may likewise be consulted. Where the parties cannot agree, this issue will be submitted to the disputes review process.

5.2 Force Majeure Events

Force majeure events are generally defined as unforeseen circumstances that materially affect the ability of the contracting parties to perform their contractual responsibilities. The management of the force majeure regime will involve the following:

- **Notice of force majeure event:**
The party becoming aware of the force majeure event prepares a written notice describing the event and the likely impact on the project. The CMU will review the notice to ensure that the event in question meets the criteria of a force majeure event.

- **End of force majeure event:** When the party affected by the force majeure event is aware that the event has concluded, it should send a notice to the other party.

The CMU advises on the liabilities of the municipality for compensation payable to the counterparty (if applicable), according to the PPP agreement. The force majeure event can trigger termination under certain circumstances.

5.3 Contract Termination

Contract termination refers to the severing of the contractual relationship before the term of the PPP agreement expires. There are several situations: where termination can be initiated by either party.

- (1) If the termination is initiated by the municipality, the CMU will provide a detailed notice, including supporting evidence and will be issued to the PSP.
- (2) If the termination is initiated by the PSP, the contract manager will review the termination notice to assess

- (a) If the reasons for termination are valid and eligible under the terms of the PPP agreement; and
- (b) If there are any alternatives to termination.

The CMU will work with the PSP to find an agreed solution, and will advise the municipality on a response to the notice.

The municipality will determine the likely value of the termination compensation, and will seek sources to finance such payments.

⁴ See the checklist of issues to manage in a dispute negotiation in: Global Infrastructure Hub. 2018b. "Disputes". PPP Contract Management Report. <https://managingppp.github.org/report/disputes/>

6.0

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CAPACITY BUILDING

Municipal Public-Private Partnership Framework

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1.0

Purpose of this Module

This module provides guidance on the skills that municipalities should possess to sustainably develop, implement, and manage municipal PPP projects.

2.0 PPP Capacity Requirements

The municipality is not required to possess all the detailed PPP skills and expertise on its own to pursue PPP projects. Instead, municipalities should be supported by experienced PPP consultants and advisers.

Consultants are more often available to municipalities for the development of feasibility studies and transaction advice.¹ This means that municipality staff will likely be on their own during the early phases of the PPP project cycle (recognizing and identifying potential PPP projects),

the procurement and management of consultants, and the understanding of the outputs of the consultants for decision making.

While PPP projects require different key approaches to service delivery (for example, output-based contracting, private finance, performance-related remuneration, longer duration, and risk transfer),² the municipality's own experience and capacities in the sector remain applicable and important in a municipal PPP.

2.1 PPP Capacity Requirements in Project Execution

In table 1, PPP project management functions during the development and implementation of municipal PPP projects are matched with the required PPP skills and capacities to perform such roles, identifying those skills that may be different from publicly procured infrastructure

project management. A municipality may also opt to assign individual staff to further 'specialize' in a particular skill (for example, PPP financial modelling, economic cost-benefit analysis, and so on).

Table 1: Required Project Execution Capacities and Skills

Phase 1: Inception		
Roles	Required Capacity	Required Knowledge/Skills
<ul style="list-style-type: none"> • Identification of potential PPP projects to be subjected to screening. • Screening of potential municipal PPP projects. • Preparation of project concept notes. 	<ul style="list-style-type: none"> • Identify the long-term infrastructure needs in the municipality and develop an annual/multi-annual master plan to address such needs. • Recognize and assess, at an early phase of the project cycle, characteristics that determine the potential viability and desirability of a project as a PPP. 	<ul style="list-style-type: none"> • Understand basic concepts and requirements of PPP. • Knowledge about the infrastructure sector, economic viability, environmental and social issues. • Understand advanced concepts about PPP requirements and options. • Knowledge of concepts and models of private involvement in the development and management of public infrastructure. • Ability to implement PPP screening methodologies. • Advanced knowledge about the infrastructure sector, economic viability, environmental and social issues. • Ability to translate and summarize specialized PPP and infrastructure issues and analyses into clear, non-technical reports for senior decision makers.

¹ See Module 5: Managing Consultants and Module 6: Sample Consultants Terms of Reference.

² See Municipal PPP Framework - Guidance Note.

Phase 2: Development and Approval

Roles	Required Capacity	Required Knowledge/Skills
<ul style="list-style-type: none"> Procurement of specialist PPP consultants. 	<ul style="list-style-type: none"> Determine the required scope and depth of the PPP feasibility study³ (and transaction advisory support) and come up with a sufficient cost and resource estimate. Translate the above in clear terms of references for the specialist consultants. 	<ul style="list-style-type: none"> Technical knowledge about the infrastructure for which the municipality is responsible. Understand the requirement of local procurement laws and regulations (for consulting services).
<ul style="list-style-type: none"> Oversight and management of specialist PPP consultants.⁴ Review of feasibility study documents, findings and recommendations. Recommendation of preferred PPP project option, including the preferred procurement option (PPP or non-PPP). 	<ul style="list-style-type: none"> Review, monitor, and challenge findings and recommendations of all PPP consultants so that the feasibility study is coherent, completed on time, and according to terms of reference. Ability to interpret and question the findings of the PPP feasibility study to determine the best technical and procurement option. 	<ul style="list-style-type: none"> Understand advanced PPP concepts about PPP feasibility, especially affordability and bankability. Understand key requirements of output standards versus input specifications in the context of PPPs. Technical knowledge about the infrastructure for which the municipality is responsible. Intermediate-level knowledge on the following (that is, enough to comprehend and discuss the methodologies utilized in the PPP feasibility study as well as interpret its findings): <ul style="list-style-type: none"> Whole life cycle costing of infrastructure VFM analysis of PPP projects PPP financial modelling Economic cost-benefit analysis Demand analysis and forecasting Risk analysis, mitigation, and management Ability to translate and summarize different specialized PPP topics and issues into clear, non-technical reports for senior decision makers.

Phase 3: Procurement and Award

Roles	Required capacity (general)	Required skills (detailed)
<ul style="list-style-type: none"> Oversight and management of PPP transaction advisers. Review of PPP tender documents for procurement of PPP project. 	<ul style="list-style-type: none"> Review, monitor, and challenge the findings and recommendations of transaction advisers so that all PPP tender documents and the draft PPP agreement are coherent, completed on time and according to terms of reference, and consistent with municipal objectives. Ability to understand and review PPP tender documents specifically the qualification requirements, technical output specifications, financial bid parameters, and draft PPP agreement. 	<ul style="list-style-type: none"> Understand advanced PPP concepts about tendering and procurement. Understand VFM analysis requirements and issues of PPP projects. Understand requirements of output-based standards for procurement of PPP contracts. Understand requirements of local procurement laws and regulations.
<ul style="list-style-type: none"> Conduct of procurement procedure, leading to selection of private partner. Supervision of winning bidder's compliance with post-award requirements. 	<ul style="list-style-type: none"> Ability to efficiently manage the procurement procedure in accordance with local legal requirements and fair competition. 	<ul style="list-style-type: none"> Ability to conduct bid consultations and negotiations with third parties. Understand requirements of local procurement laws and regulations. Administrative law. Understand project financing and the likely requirements of PPP financiers.

³ See Module 4: Feasibility Study.

⁴ See Module 5: Managing Consultants.

Phase 4: Contract Management and Monitoring

Roles	Required capacity (general)	Required skills (detailed)
<ul style="list-style-type: none"> Overseeing of specialist advisers designing the PPP contract management plan. Review and finalization of the contract management plan. 	<ul style="list-style-type: none"> Ability to update/review the contract management plan in accordance with the obligations and responsibilities of the municipality indicated in the provisions of the signed PPP agreement. 	<ul style="list-style-type: none"> Understand advanced PPP concepts on requirements for organizational design, technical performance, price/cost review, and legal management of PPP contracts. Understand requirements for drafting and reviewing PPP contracts.
<ul style="list-style-type: none"> Overseeing of contract management including monitoring of performance, managing communications, handling of claims of the PSP. Coordination and management of periodic PPP project reporting. 	<ul style="list-style-type: none"> Ability to monitor efficiently and effectively the output-based performance of the PSP. Coordinate and manage any adjustments of tariffs. Efficient processing of invoices and payments. Ability to assess and verify the validity of claims of the private partner. 	<ul style="list-style-type: none"> Verification of selected performance levels/events by the PSP. Ability to calculate and assess any requests for adjustments to tariffs. Ability to coordinate the responses to any requests to revise, update, or renegotiate PPP contracts. Implementation and management of long-term PPP contracts. Government budgeting and accounting procedures.

2.2 Capacity Requirements in Municipal Decision Making on PPPs

Decision makers in municipalities must possess intermediate-level understanding of the broad requirements of sustainable PPP preparation, implementation, and management, including

- (1) The differences between conventional procurement and PPP.
- (2) The driving factors of the costs and benefits of PPP, resulting in an understanding of the circumstances where PPP can, or cannot, create value for the municipality.
- (3) The interests and concerns of all stakeholders to a PPP project, and the key role of municipal leadership in managing and resolving stakeholder issues.⁵
- (4) Key PPP mechanisms, for example, output specifications, payment mechanisms, clear

and comprehensive risk allocation, termination provisions, and output specifications.

- (5) Characteristics of PPP financial feasibility, affordability, and bankability.
- (6) Competitive PPP procurement, and the benefits thereof.
- (7) Long-term PPP contract management and performance monitoring.⁶

The above enables decision makers to understand the reports and recommendations prepared by the municipality's staff, the consultants, and the tender committee, which will allow them to take informed, clear decisions about PPP projects review and approval.

⁵ See Module 18: Community Engagement and Module 19: Private Sector Context.

⁶ See Module 12: Contract Management.

3.0

PPP Capacity Development

There are different, complementary ways to develop the needed PPP capacities and skills within the municipality. The fastest way for the municipality to develop capacity is by recruiting staff with previous experience in the development and implementation of PPP projects, for instance, in national projects (possibly on a part-time basis, based on the volume of PPP projects or when the available resources do not warrant a full-time appointment).

In young PPP markets, nevertheless, such experts may be difficult to find and are expensive. In these cases, where temporary and specialized advice is necessary to get the PPP project or program rolling, it can be even more useful to hire a residential PPP adviser; a senior consultant who advises the municipal administration on all aspects of the establishment of the PPP program and the procurement of PPP projects (for instance, development of manuals and procedures, screening of PPP projects, procurement of consultants,⁷ financial analysis and VFM analysis, and recommendations to decision makers). The residential adviser also trains selected municipal staff members in the required PPP skills so that they can later take up the municipal responsibilities in the development and implementation of PPP projects.

Another cost-efficient way to supplement the municipality's capacity development is through exchange of experience and model documents with other municipalities or national agencies with previous experience in PPPs. For instance, if a municipality is considering establishing a PPP for water distribution, then an interview with the project manager in a neighboring municipality

already having implemented a similar project allows practical advice and sharing of the tender and contract documents used in the successful project. The municipality may also want to send staff on a temporary exchange to share PPP experience with other agencies at the local or national levels.

However, the most effective method for building capacity in the municipality is learning by doing. Staff working on projects will gain understanding and insights. The staff of the municipality can learn from the feasibility study consultants and transaction advisers who are hired to assist in the development and implementation of PPP projects. The contract with the feasibility study consultants and transaction advisers must prescribe frequent interaction with the project manager or the members of the project team,⁸ permitting the latter to learn from the consultants. One may also include explicit knowledge transfer obligations in the consultancy contract, for instance training on VFM analysis.

One useful component of PPP capacity development is formal training, such as workshops and classroom learning. The text box below presents tables of contents of training courses aimed at various levels of municipal officers and decision makers. Large municipalities with many PPP projects may organize their own training program (conducted by externally procured trainers). Municipalities may also want to send staff to follow commercial courses, or to attend training programs organized by the central government or by development partners (if available).

⁷ See Module 5: Managing Consultants and Module 6: Sample Consultants Terms of References.

⁸ See Module 6: Sample Consultant Terms or Reference.

Sample PPP Course Programs

A. Foundation Courses

1. Executive Seminar: PPPs for Municipal Senior Policy and Decision Makers

Purpose:

Raise general awareness of PPP at senior municipal government level; introduce senior executives, policy makers, and decision makers to the range of issues involved in municipal PPPs; enable informed decision making on PPP issues at the municipal level; and promote support at senior level for PPPs.

Format:

Briefings, cases, and executive workshop discussion/round tables.

Participants:

Restricted, municipal government decision makers involved in PPP; senior staff involved in supporting decision makers; and senior staff involved in policy development

Content:

- Understanding definitions and concepts around PPPs.
- Creating PPP-enabling environment and PPP-readiness at the municipal level.
- Creating conditions for a mature municipal PPP market.
- Supporting PPPs from a municipal government's perspective.
- Assessing opportunities and risks of PPPs.
- Understanding when PPP should be considered advantageous to the municipality, including how to assess VFM and how to use cost-benefit analysis for PPP projects.
- Managing fiscal risk (for example, municipal liabilities under the PPP agreement, including guarantees).

2. Introduction to Structuring, Procuring, and Managing Municipal PPPs

Purpose:

Introduce basic PPP concepts; introduce terminology and procedures; support identification of PPP projects; include PPP in investment/development planning; and

distinguish between different forms of PPP

Format:

Lectures, workshops, cases, exercises, and discussions

Participants:

Senior to mid-level municipal government staff involved in PPP project inception, development, procurement, and monitoring

Content:

- Understanding definitions and concepts around PPPs.
- Understanding the importance of having PPP legal frameworks in place.
- Assessing opportunities and risks of public sector participation in PPPs.
- Assessing PPPs as a tool to meet development objectives.
- Assessing opportunities and risks of PPPs.
- Understanding when PPP should be considered advantageous to the municipality, including how to assess VFM and how to use cost-benefit analysis for PPP projects.
- Managing fiscal risk (for example, municipal liabilities under the PPP agreement, including guarantees).
- Incentivizing promotion of PPP (for example, tax benefits and mixed-use developments).
- Recognizing the characteristics of a good PPP project from the investor's perspective.
- Assessing the importance of transparency, public disclosure, and protection of confidential information.
- Assessing different PPP structures.
- Assessing revenue-sharing options, opportunities, and risks.
- Understanding the PPP implementation and procurement process.
- Monitoring PPPs.
- Evaluating and managing USPs/ direct negotiations.
- Developing business cases: success and failure stories.

B. Intermediate Courses

1. PPP Procedures and Managing the Consultant

Purpose:

Introduce core parts of the PPP transaction process; ensure government staff have the core skills required to lead a PPP through the implementation process and are able to identify and procure the missing skills from external advisers

Format:

Lectures, workshops, cases, exercises, and discussions

Participants:

Senior to mid-level municipal government staff involved in PPP project inception, development, and procurement

Content:

- Preparing approval procedures for municipal PPPs.
- Preparing terms of reference for the recruitment of the consultant.
- Recruiting and managing a consultant.
- Managing PPP projects through their life cycle.
- Developing business cases: success and failure stories.

2. PPP Project Selection and Development

Purpose:

Ensure municipal government staff has the skills required to develop a PPP from a project concept to a full-fledged feasible and bankable project

Format:

Lectures, workshops, cases, exercises, and discussions

Participants:

Senior to mid-level municipal government staff involved in PPP project inception and development

Content:

- Reviewing identified PPP candidate projects.
- Screening and selecting suitable candidate projects for PPP.
- Preparing project concept notes.
- Preparing the work plan for completing the PPP feasibility study.
- Developing the PPP project's required output levels of service.
- Designing and managing the PPP project's stakeholders consultation plan.
- Economic appraisal of projects.
- Conducting PPP project affordability analysis and willingness to pay.
- Conducting project demand analysis, including market study.
- Conducting project technical feasibility analysis.
- Developing the PPP project financial feasibility analysis.

- Preparing PPP project legal and institutional feasibility analysis.
- Preparing project environmental and social impact assessments.
- Identifying, analyzing, and mitigating PPP project risks.
- Developing the recommended PPP risk allocation structure.
- Designing tariffs adjustment mechanisms and understanding internal rate of returns, price caps, and tariff regulation.
- Designing and writing the draft PPP agreement.
- Reviewing the final PPP feasibility analyses and approval/disapproval to proceed to tendering.
- Developing business cases: success and failure stories.

3. PPP Procurement

Purpose:

Ensure that municipal government staff has the skills required to effectively procure a PPP project

Format:

Lectures, workshops, cases, exercises, and discussions

Participants:

Senior to mid-level municipal government staff involved in PPP project procurement

Content:

- Drafting RFQ documents for PPP projects.
- Evaluating submitted PPP qualifications from interested bidders.
- Drafting RFP documents for PPP projects.
- Responding to bidders' questions and completing modifications to final RFP.
- Evaluating PPP technical bids.
- Evaluating of PPP financial bids.
- Managing the final negotiation of PPP agreements.
- Designing and establishing the PPP CMU.
- Developing business cases: success and failure stories.

4. PPP Contract Management

Purpose:

Deepen contract management skills of municipal government staff to enable them to efficiently monitor PPP projects and manage contractual relationships with the private sector partner

Format:

Lectures, workshops, cases, exercises, and discussions

Participants:

Senior to mid-level specialized municipal government staff involved in PPP project monitoring

Content:

- Designing and establishing the contract management plan.
- Establishing CMUs—powers, authority, functions, duties, training, staffing, turnover, and funding.
- Ensuring continuity of knowledge and capabilities between PPP projects or programs.
- Conducting performance monitoring.
- Ensuring compliance with PPP agreement.
- Evaluating reporting mechanisms.
- Designing intervention mechanisms including economic equilibrium.
- Hiring an independent engineer.
- Understanding renegotiation options and techniques.
- Understanding refinancing.
- Managing contractual breaches, consequences, and remedies.
- Carrying out unilateral termination or early termination.
- Understanding and using step-in rights.
- Arbitrating and resolving disputes through amicable resolution.
- Engaging project stakeholders by the municipality.
- Developing business cases: success and failure stories.



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1.0

Purpose of the Module

This module provides guidance on the preparation of a communication strategy for the implementation of municipal-level PPPs.

2.0 PPP Communication Strategy Framework

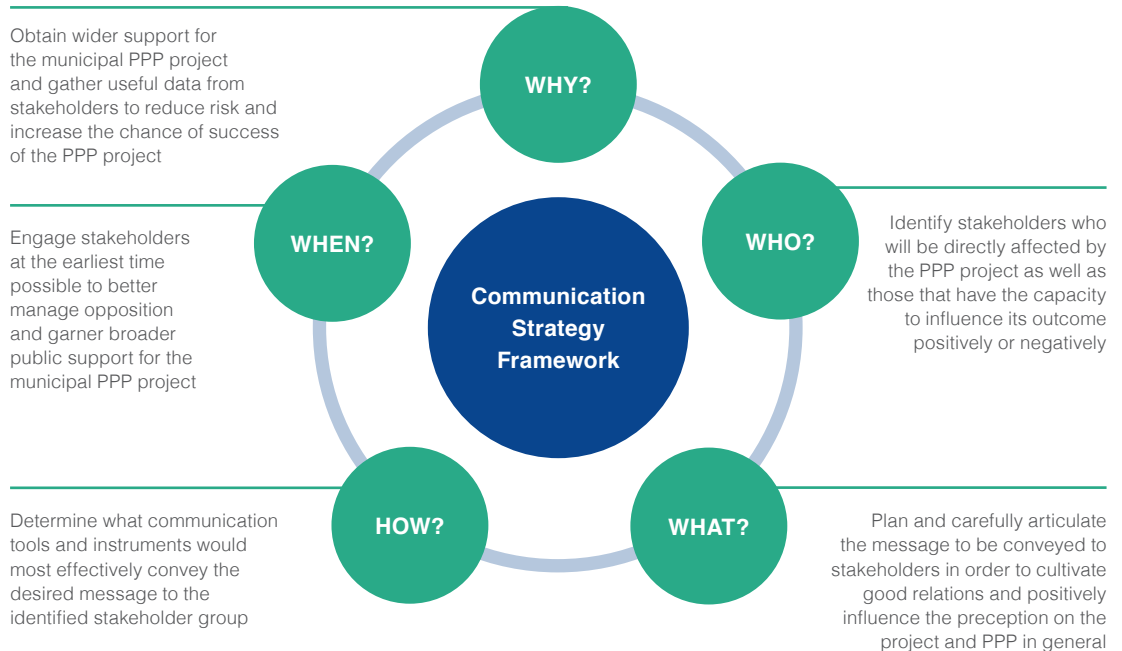
A communication strategy conveys to stakeholders the objectives, roles, safeguards, and key performance targets of the project. Devising and implementing a sound communication plan can help prevent critical misunderstandings as well as ensure mechanisms to better address the specific needs and concerns of each stakeholder within the PPP project structure.

At the same time, since PPPs are long-term contracts, communicating with stakeholders helps

identify conflicts early, manage risks, and increase the chance of success of the project. Stakeholder communication and involvement is useful to gauge public support for the project, and to identify project issues as early as possible.

The key elements of a communication strategy for the implementation of municipal PPPs involves a number of key considerations:

Figure 1: Communication Strategy



The sections below elaborate on these elements.

2.1 PPP Stakeholder Engagement

PPP stakeholder engagement helps ensure that PPP projects are prepared and implemented in an open and transparent manner by including the participation of key stakeholders such as the end users, labor, private sector, public sector, nongovernmental organizations (NGOs), civil society, and other relevant sectors.¹

The purpose of designing and implementing a stakeholders' engagement plan is to determine if there are significant policy concerns, issues, or even opposition to a potential PPP project that need to be addressed and resolved before the project can be considered viable as a PPP. International experience has shown that PPP projects have the best chance of being sustainable when they can address the important views of end users and other affected stakeholder groups within the project's structure (see project summary No. 91 - North Toronto Collegiate Institute, Canada). PPP projects that generate vocal public opposition and whose impacts on stakeholders do not get satisfactorily addressed, often risk being stopped, delayed, and especially cancelled at significant cost (see project summary No. 24 - Udaipur Waste Water Treatment Plant, India

Infrastructure projects by design have multiple stakeholders and managing all of them successfully is critical to the viability of the project. The failure to engage with the local community during PPP projects has undermined many projects, an example might be the Cochabamba water project, where water tariffs were increased several-fold on poor consumers without proper community engagement.²

Community engagement must be strategic. Poorly managed engagement can create delay, increase cost, and complicate projects. Many legal systems allow interested parties to challenge a project, and potentially request an injunction until the courts can review the claim.³ This can create significant risk for investors and delay for projects. Finding the right balance of engagement is a difficult but essential task.

Who: Establishing dialogue and building trust with a community can be a difficult task. One must first identify the community who will be affected by or have an influence over the project.⁴ A community defined too narrowly misses out important inputs and buy-in and that defined too broadly loses voice and relevance. For an infrastructure project, the community is anyone who will be affected by or have an influence over the project. This could be people receiving services from the project, those near the project but not receiving services,

community leaders, regulators, those who will be inconvenienced during construction of the project or who will be displaced by the project. Broadly, the community can be classified into two groups:

1. **User community:** The end users or customers of the infrastructure and/or services provided, for example, the people who use the highway; and consumers of the electricity being produced. While most projects prioritize the interests of the direct purchaser of the services, the ultimate user is often insufficiently engaged in project development or implementation.
2. **Affected community:** For example, communities to be resettled as their land would be used for the construction of the highway; those living near the site for a new coal-fired power station; potential employees of the companies being expanded, reformed, or replaced; and local residents who will not benefit from the new services or local government officials.

When: Stakeholder engagement should occur at each stage of a project, starting from the feasibility and concept stages right through to the operational phase. Engaging with key stakeholders from the early stages of a project assists in establishing strong relationships, ensuring project designs fit with local community needs and identifying key risks that those stakeholders may know best.

Why: The decision to engage with the local community is not just altruistic. Effective community engagement can help projects avoid cost and time overruns, enhance operational efficiencies, and mitigate other risks. A project fully engaged with stakeholders and the local community is more likely to survive changes in government and policy. An example would be a water project in Rwanda being developed by the private operator Aquavirunga with help from Smart Development Works—an NGO engaged with consumers in several districts. The campaign increased the community's understanding and acceptance of water payments and improved the relationship between consumers and community leaders. From 2009 to 2011, water loss reduced from 69 percent to 49 percent and the operational cost coverage ratio increased to 91 percent. About 75 percent of water access points were managed by water user committees and 600 water user committee members were trained in basic maintenance, conflict resolution, and financial management.

¹ See Module 18: Community Engagement.

² Special Unit for South-South Cooperation. 2012. *Cochabamba, Bolivia, Urban Water Expansion - Case Study*. https://www.esc-pau.fr/ppp/documents/featured_projects/bolivia.pdf.

³ This module seeks to provide a framework for engaging with the local community when designing, developing, and implementing a PPP project ('community engagement'). This is specifically different from the stakeholder consultation and other processes designed to engage with affected persons for resettlement where land is acquired by the government.

⁴ See Module 18: Community Engagement.

2.2 Stakeholder Identification

Figure 2 provides a quick overview of stakeholder identification.

Figure 2: Stakeholder Identification

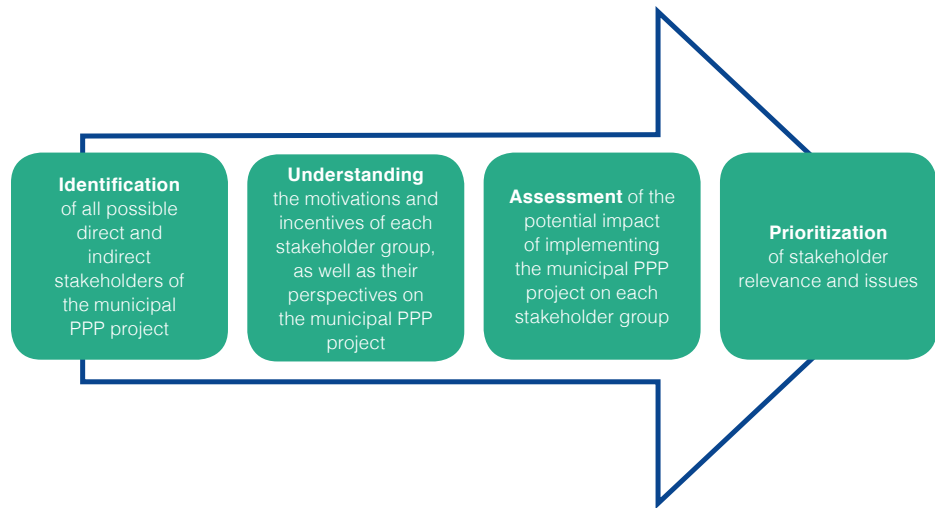


Table 1 presents an overview of the potential stakeholders in a municipal PPP project, their likely concerns and interests. The municipality will want to

create a stakeholder map to ensure it has identified all key stakeholders and has assessed their respective interests and concerns.

Table 1: Stakeholders

Stakeholder Group	Probable Interests and Concerns in the PPP Project	
Residential, commercial, and industrial users (large, medium and small), consumer associations (private and commercial)	<p>Interests</p> <ul style="list-style-type: none"> • Improved, more accessible, and reliable levels of service • Lower prices <p>Concerns</p> <ul style="list-style-type: none"> • Prices increasing • Service quality reductions over time • Changing demands for services over time and ability of PSP to adjust service delivery • Lack of influence of consumers over service delivery 	
Local landowners (in and around the project site) and affected persons	<p>Interests</p> <ul style="list-style-type: none"> • Increasing land values • New economic opportunities • Compensation for land or lost land value <p>Concerns</p> <ul style="list-style-type: none"> • Concerns about being forced to sell land • Concerns about limitations of use of land • Concern about value of land decrease 	
Current providers of services within the sector (for example, local water vendors in the case of a water treatment PPP, or waste pickers in the case of a solid waste management PPP)	<p>Interests</p> <ul style="list-style-type: none"> • New business opportunities with the new PPP, such as providing services or supplies to the new PPP company • Jobs with the PPP • Safer working conditions (for example, where waste pickers will be working in a well-organized solid waste management framework) • Compensation for lost livelihood <p>Concerns</p> <ul style="list-style-type: none"> • Reduced demand for their services • Increased cost of supplies (for example, where water vendors buy bulk water from the system and prices are likely to go up under the PPP) 	

Stakeholder Group	Probable Interests and Concerns in the PPP Project	
Labor groups	<p>Interests</p> <ul style="list-style-type: none"> • New employment opportunities with the new PPP company, its suppliers and vendors • Better employment conditions under PPP • Compensation for change in employment benefits <p>Concerns</p> <ul style="list-style-type: none"> • Retrenchments due to new competing PPP project • More restrictive terms of employment under PPP • Less attractive compensation regime under PPP employment 	
Community-Based Organizations (CBOs) and NGOs	<p>Interests</p> <ul style="list-style-type: none"> • New opportunities to improve community and social services due to new PPP • Better service delivery to the poorest and to remote communities • New economic opportunities for the community, including jobs and service contracts <p>Concerns</p> <ul style="list-style-type: none"> • Environmental impact, loss of land, loss of economic opportunities, affordability of services, and other impacts of the PPP, including influx of foreign workers taking jobs and changing the social dynamic of the community 	
Environmental groups	<p>Interests</p> <ul style="list-style-type: none"> • Improving environmental impact of services • Remediating existing environmental issues <p>Concerns</p> <ul style="list-style-type: none"> • Environmental impact of PPP, including indirect such as influx of foreign workers, increased industrial activity in the area 	
Industry or trade associations and local chambers of commerce	<p>Interests</p> <ul style="list-style-type: none"> • Expanding opportunities for local businesses to participate in supplying and contracting with the new PPP or through associated economic opportunities • Local businesses provided with improved, more reliable levels of service <p>Concerns</p> <ul style="list-style-type: none"> • Prices increasing • Service quality reduction over time • Lack of influence in PPP operation 	
Municipality/Staff	<p>Interests</p> <ul style="list-style-type: none"> • Delivery of more, higher-quality services at a better price • Mobilization of private capital for municipal investment • Capacity building for municipal staff <p>Concerns</p> <ul style="list-style-type: none"> • Labor impacts • Public response to PPP • Ability to monitor the performance of the PPP and enforce the contract 	
Government policy makers and senior officials	<p>Interests</p> <ul style="list-style-type: none"> • Providing new mechanism (PPP) to address investment needs in the municipality • Attracting support from national government where PPP is an identified priority • Better services/solutions for municipal needs • Improved transparency and access to information • Access to new and better technology and methodologies <p>Concerns</p> <ul style="list-style-type: none"> • Political opposition to the PPP • Prices increasing or becoming unaffordable • Legality of the PPP contract 	
Regulatory bodies	<p>Interests</p> <ul style="list-style-type: none"> • Better services to more users and better prices • Improved transparency and access to information • Access to new and better technology and methodologies • Improved transparency and access to information • Access to new and better technology and methodologies <p>Concerns</p> <ul style="list-style-type: none"> • Any impediment on the regulator's ability to set prices or otherwise regulate sector activities 	

Stakeholder Group	Probable Interests and Concerns in the PPP Project
The press	The press seeks to capture the imagination of all stakeholders, and therefore its interests and concerns should be a composite of all stakeholders. But the press needs to maintain maximum visibility and will therefore likely focus on those interest and concerns that attract the most attention from those most likely to appeal to the advertisers that provide the media with their revenues.

2.2.1 Municipal Government

Public sector stakeholders include mid-level municipal government staff and project managers, policy makers (for example, members of the municipal legislative council), and regulatory agencies, among others. The municipality's long-term, strategic commitment to the PPP project is indispensable. As project managers and implementers, municipal government staff need to be apprised of their responsibility to be well informed about the details of the project and be up to date about issues and recent developments regarding its progress.

The support of other municipal institutions—for example, the municipal legislative council, the finance committee, the planning agency, and municipal/national regulatory agencies—is essential before a project can proceed to implementation or even tender. The role and interest of these institutions as independent assessors should also be considered in the communication strategy. The project benefits, disadvantages, and issues must be reported comprehensively to allow these institutions to conduct an accurate assessment of the project.

2.2.2 National Government

National government institutions may also be key stakeholders in the PPP project, in particular where national government approvals are required, for example, through the Ministry of Finance or the Ministry of Home Affairs. National government interests and concerns will often differ from municipal interests and concerns, and therefore the communication strategy should treat national government as a distinct stakeholder to ensure its issues are addressed.

2.2.3 Community

At the outset, this group of stakeholders may include the constituents of the municipality that will be directly affected, whether positively or negatively, by the municipal PPP project. The interests of these stakeholders may vary considerably

depending on whether the project is perceived to be beneficial or detrimental from an economic, social, or environmental point of view.

In the case of PPP projects, concerns may relate to the quality of the service to be delivered, the cost implications of the PPP, and transparency of the procurement and implementation process.

2.2.4 Residential, Commercial, and Industrial Users

Users are key stakeholders in any PPP but represent a large spectrum of different interests and perspectives. Users may be residential, commercial, or industrial. They may be government institutions, even police or military. They may be large, medium, or small. Users may also be represented by associations or NGOs with a different perspective on user concerns. A robust communications strategy must consider each type of user, their respective concerns and interests, and may need to include different communication strategies for each of these groups.

2.2.5 Affected Persons

Municipal PPP projects will generally have significant impacts on land and activities surrounding the project. Either the municipality will need to acquire the land or certain rights over the land (for example, where the land can no longer be used for certain activities because of the presence of the project); or the land may increase in value, where the project provides new services or facilities to the occupants of the land or where new economic opportunities arise (for example, the construction of a nearby bus terminal will provide transport links to surrounding land and make that land more valuable). Where the project has an impact on activities in and around the site, for example commercial activities on land near the project, those parties affected by the project are important stakeholders and must be part of the communication strategy.

2.2.6 Service Providers

The municipality will need to engage with the current providers of services within the sector (for example, local water vendors in the case of a water treatment PPP or waste pickers in the case of a solid waste management PPP). In some cases, these service providers can be engaged as part of the project, as employees of the PPP or service providers to the PPP. In others, the alternative service providers may need to adapt their services to the context of the PPP project, or find other economic activities to replace those lost to the PPP project. These alternative service providers can be enthusiastic supporters of the PPP or may resist the project, if the communication strategy is not successful.

2.2.7 Labor Groups

A municipal PPP project is likely to have an impact on employment in the community. It may create new job opportunities, in which case a communication strategy can help the local community prepare for the kind of employment the project will need. In others, in particular where the PPP involves management of an existing facility, current employees may be concerned that some jobs may be retrenched or requirements may change such that the current employees will not have the skills or experience needed by the PPP.

A proactive communication strategy can help the community and employees prepare for the changes resulting from a PPP, identify those people whose livelihoods will be affected, and help develop a strategy to support those individuals and ideally find them alternate employment.

2.2.8 CBOs, NGOs, and Environmental Groups

Interest groups help generate dialogue and public discourse, especially on key issues (social, gender, environmental, economic, or regulatory) that are most important to its constituents (the community) and its

fundors (governments, other interest groups, and individual donors). Constructive dialogue with these groups should be pursued not only to address and clarify project-related issues but also as an opportunity to gather needed information and garner public support.

2.2.9 Local Businesses, Industry, or Trade Associations and Local Chambers of Commerce

Local business and commercial perception of the municipal PPP project can serve as a useful gauge in determining the marketability and financial viability of the project, as well as the sector's level of confidence on the municipality to implement long-term PPP contracts. Local businesses and trade associations have long experience working with the municipality and understand the sector better than most stakeholders.

The thrust of the communication strategy in this case would be to (1) reassure private sector of the municipality's capacity to implement the PPP program by providing information on relevant regulations pertaining to infrastructure procurement and implementation, taxation, and contract management, among others and (2) pursue frequent project-specific consultations with various stakeholders (that is, banks and other financial institutions, investors, and technical firms) to gather market feedback on project viability and bankability.

2.2.10 The Media

The media, which includes print and non-print, provides an important opportunity to convey information, updates, and other messages. For example, the media can serve as a powerful tool for the municipality to generate domestic and international interest in the municipal PPP project, as well as to combat any disinformation and/or misinformation.

2.3 Framing the Message to Various Stakeholder Groups

At the same time, the communication strategy should clearly convey the specific objectives of the municipal PPP project, its benefits and disadvantages, and how the interests and concerns of stakeholders will be monitored, protected, or

preserved. The particular interests and concerns of the stakeholder group to be consulted must also be considered when presenting the objectives of the project.

Table 2 provides indicative areas on which communication related to the implementation of a municipal PPP project may focus. These focus

areas can be verified and further expanded pursuant to dialogues and consultations with the various stakeholder groups:

Table 2: Stakeholder Groups

Stakeholder Group	Focus Areas for Communication
1. Municipal executive government stakeholders	<ul style="list-style-type: none"> • Objectives and long-term benefits of the overall municipal PPP program • Cost-benefit analysis • Transparency and objectivity in developing municipal PPP projects and selection of private sector partners • Global best practices • Protection of public interest • Contract management framework
2. Policy makers/Municipal legislative government	<ul style="list-style-type: none"> • Objectives and long-term benefits of the overall municipal PPP program • Transparency and objectivity in selecting private sector partners • Cost-benefit analysis • Economic benefits and value to be generated • Protection of public interest • Implementation audit
3. Regulators	<ul style="list-style-type: none"> • Transparency and objectivity in selecting PSP • Impact on service levels, costs of providing service • Compliance with regulatory rules • Provision of performance management and regulation of the PSP • Systemic risks and market impact, including proposed risk mitigation strategies
4. Community	<ul style="list-style-type: none"> • Objectives and long-term benefits of the municipal PPP project • Transparency and objectivity in selecting the PSP • Cost-benefit analysis of the PPP decision • Impact on service levels, costs of providing service • Risk mitigation (socioeconomic, environmental, and so on)
5. National governments	<ul style="list-style-type: none"> • Institutional capacity and stability in implementing PPPs • Objectives and long-term benefits • Opportunity pipeline • Transparency and objectivity in selecting the PSP • Technical and financial viability of the municipal PPP project • Expected value for community of the municipal PPP project • Support required from the government to achieve project viability (if any)
6. Alternative service providers	<ul style="list-style-type: none"> • Objectives and long-term benefits of the overall municipal PPP program • Economic benefits and value to be generated • Opportunity pipeline • Protection of public interest
7. Interest groups (NGOs, civil society organizations (CSOs), and so on)	<ul style="list-style-type: none"> • Objectives and long-term benefits of the overall municipal PPP program • Transparency and objectivity in selecting the PSP. • Cost-benefit analysis • Impact on service levels, costs of providing service • Risk mitigation (socioeconomic, environmental, and so on) • Economic benefits and value to be generated • Protection of public interest
8. Local businesses and trade associations	<ul style="list-style-type: none"> • Objectives and long-term benefits of the overall municipal PPP program • Transparency and objectivity in selecting the PSP • Global best practices • Protection of public interest • Contract management framework

2.4 Communication Instruments

Table 3 provides the different instruments that can be used to convey the desired messages:

Table 3: Communication Instruments

No	Instrument	Purpose
1.	White paper/Policy document	Communication of the overall PPP program, objectives, and its long-term benefits. It can form the basis for inviting suggestions and feedback. Such documents are targeted to all stakeholders for the widest dissemination.
2.	Project information memorandum/Project brief	Communication of the project objectives, background, and key details on the PPP structure. Targeted to all stakeholders for the widest dissemination.
3.	Brief on the municipal PPP process	Communication of the process to be followed for implementing municipal PPP projects with focus on project appraisal and tender. Targeted to all stakeholders for the widest dissemination.
4.	Conferences and symposiums	Communication of the overall municipal PPP strategy and project pipeline targeted toward dissemination to the investor community, experts, and civil society. It can also be an avenue to obtain feedback and advice on the municipal PPP program and its project pipeline.
5.	Individual meetings	Communication with strategic interest groups to obtain information and help mold perceptions of the municipal PPP program or the specific municipal PPP project.
6.	Social media, visual media	Communication with general public—explaining the socioeconomic benefits of PPP, creating a positive perception about the municipal PPP program, and addressing any specific issues that have arisen.
7.	Print media - newspapers and magazines	Directing focused articles and analysis toward all stakeholders, creating a positive perception of the PPP program, and addressing any specific issues that have arisen. Also used for transactional communication—EOI notices, RFP advertisements, and so on.
8.	TV discussions, interviews	Communication with general public—explaining the socioeconomic benefits of PPP, creating a positive perception about the municipal PPP program and municipal PPP projects, and addressing any specific issues that have arisen.
9.	Press conferences	To be held at key stages of the PPP project cycle—launch, major transaction, and progress update.

2.5 Time Frame

The timing to engage and communicate with various stakeholders is just as crucial as the message to be communicated itself. It is ideal for the municipality to involve stakeholders in the project at the earliest

time possible. Table 4 gives an indication on the ideal timing to engage and involve various stakeholder groups in the municipal PPP process:

Table 4: Engaging Stakeholder Groups

Stakeholder Group	Communication Time Frame
1. Municipal government	<ul style="list-style-type: none"> • Development (earliest stage) and implementation of the municipality's PPP program and project pipeline • All key stages of the municipal PPP project cycle (that is, inception, development and approval, procurement and award, and contract management and monitoring)

Stakeholder Group	Communication Time Frame
2. Policy makers/municipal government leadership	<ul style="list-style-type: none"> • Development and approval of the municipality's PPP program and project pipeline • Project approval for tender • Before signing of final PPP agreement • Contract implementation
3. Regulators	<ul style="list-style-type: none"> • During project development • Project approval for tender • PPP agreement drafting • Before signing of final PPP agreement • Contract implementation
4. Community	<ul style="list-style-type: none"> • Development and approval of the municipality's PPP program and project pipeline • During project development • Contract implementation
5. National government	<ul style="list-style-type: none"> • Development of municipality's PPP project pipeline (inception phase) • During project development • During tender process • Before signing of final PPP agreement • Contract implementation
6. Alternative service providers	<ul style="list-style-type: none"> • During project development (for updates and venue to respond/clarify project issues) • Upon approval of project for tender (announcement to prospective bidders) • During project tender (updates) • Upon contract award • During project implementation
7. Interest groups (for example, NGOs, CSOs)	<ul style="list-style-type: none"> • During project development • During project implementation
8. Local businesses and trade associations	<ul style="list-style-type: none"> • Development and approval of the municipality's PPP program and project pipeline • During project development • During project implementation

3.0 Communication Plan

Table 5 presents a template of a communication plan, which summarizes all the key elements of the communication strategy framework.

Table 5: Communication Plan

Stakeholder	Focus Areas for Communication	Communication Instruments	Time Frame
1. Municipal government staff	<ul style="list-style-type: none"> Objectives and long-term benefits of the overall municipal PPP program Cost-benefit analysis of the PPP decision Transparency and objectivity in developing municipal PPP projects and selection of PSP Global best practices Protection of public interest Contract management framework 	<ul style="list-style-type: none"> White paper/Policy document Project information memorandum/ Project brief Brief on the municipal PPP process 	<ul style="list-style-type: none"> Development (earliest stage) and implementation of the municipality's PPP program and project pipeline All key stages of the municipal PPP project cycle (that is, inception, development and approval, procurement and award, and contract management and monitoring)
2. Policy makers/ municipal legislative government	<ul style="list-style-type: none"> Objectives and long-term benefits of the overall municipal PPP program Transparency and objectivity in selecting PSP Cost-benefit analysis Economic benefits and value to be generated Protection of public interest Implementation audit 	<ul style="list-style-type: none"> White paper/Policy document Project information memorandum/ Project brief Brief on the municipal PPP process Individual meetings 	<ul style="list-style-type: none"> Development and approval of the municipality's PPP program and project pipeline Project approval for tender Before signing of final PPP agreement Contract implementation
3. Regulators	<ul style="list-style-type: none"> Transparency and objectivity in selecting PSP Impact on service levels, costs of providing service Compliance with regulatory rules Provision of performance management and regulation of the PSP Systemic risks and market impact of the municipal PPP project, proposed risk mitigation strategies 	<ul style="list-style-type: none"> Project information memorandum/ Project brief Individual meetings 	<ul style="list-style-type: none"> During project development Project approval for tender PPP agreement drafting Before signing of final PPP agreement
4. Community	<ul style="list-style-type: none"> Objectives and long-term benefits of the municipal PPP project Transparency and objectivity in selection of the PSP Cost-benefit analysis Impact on service levels, costs of providing service Risk mitigation (socioeconomic, environmental, and so on) 	<ul style="list-style-type: none"> Social media, visual media Print media - newspapers and magazines TV discussions, interviews Press conferences 	<ul style="list-style-type: none"> Development and approval of the municipality's PPP program and project pipeline During project development Contract implementation
5. National governments	<ul style="list-style-type: none"> Institutional capacity and stability of the municipal government in implementing PPPs Objectives and long-term benefits of the municipal PPP project Opportunity pipeline Transparency and objectivity in selecting PSP Technical and financial viability of the municipal PPP project Expected value for investors of the municipal PPP project Support from the government to achieve project viability (if any) 	<ul style="list-style-type: none"> Project information memorandum/ Project brief Brief on the municipal PPP process Conferences and symposiums Social media, visual media Print media - newspapers and magazines Press conferences 	<ul style="list-style-type: none"> Development of municipality's PPP project pipeline (inception phase) During project development During tender process (for bidders) Before signing of final PPP agreement (for preferred bidder) Contract implementation (for PSP)

Stakeholder	Focus Areas for Communication	Communication Instruments	Time Frame
6. Alternative service providers	<ul style="list-style-type: none"> Objectives and long-term benefits of the overall municipal PPP program Economic benefits and value to be generated Opportunity pipeline Protection of public interest 	<ul style="list-style-type: none"> Brief on the municipal PPP process Social media, visual media Print media - newspapers and magazines TV discussions, interviews Press conferences 	<ul style="list-style-type: none"> Upon finalization of the municipality's PPP program and project pipeline During project development (for updates and venue to respond/clarify project issues) Upon approval of project for tender (announcement to prospective bidders) During project tender (updates) Upon contract award During project implementation
7. Interest groups (NGOs, CSOs, and so on)	<ul style="list-style-type: none"> Objectives and long-term benefits of the overall municipal PPP program Transparency and objectivity in selecting private sector partners Cost-benefit analysis Impact on service levels, costs of providing service Risk mitigation (socioeconomic, environmental, and so on) Economic benefits and value to be generated Protection of public interest 	<ul style="list-style-type: none"> Project information memorandum/ Project brief Conferences and symposiums Individual meetings 	<ul style="list-style-type: none"> During project development During project implementation
8. Local businesses and trade associations	<ul style="list-style-type: none"> Objectives and long-term benefits of the overall municipal PPP program Transparency and objectivity in selecting PSP Global best practices Protection of public interest Contract management framework 	<ul style="list-style-type: none"> White paper/ Policy document. Project information memorandum/ Project brief Brief on the municipal PPP process Conferences and symposiums 	<ul style="list-style-type: none"> Development and approval of the municipality's PPP program and project pipeline During project development During project implementation

4.0

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Municipal Public-Private Partnership Framework

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1.0

Purpose of this Module

This module sets out some of the specific requirements of a few different sectors to help understand the different risks and issues relevant to each project type: transportation, telecommunications, power, water and sanitation, health, education, and urban services.¹

¹ For further discussion of PPP and sector issues, see Delmon, Jeffrey. 2016. *Private Sector Investment in Infrastructure: Project Finance, PPP Projects and PPP Frameworks*. Third Edition. Wolters Kluwer.

2.0

Bus/Truck Terminals

Municipalities often provide facilities to manage and coordinate transportation modes, such as buses, taxis, and trucks. These facilities help reduce congestion, centralize services for the community, and provide services to the transport sector such as petrol stations, maintenance facilities, lodging, and restaurants.

Revenues collected from buses, taxis, and trucks in these terminals are generally limited, often not enough to cover operating costs. Charging high fees for transport operators to use the terminal can create perverse incentives, causing fewer transport operators to use the facility, increasing

congestion, and depriving the municipality of other benefits to be obtained from the terminal. Bus/truck terminal projects require robust consultation processes to understand the context of bus and truck companies, their client and passengers, their business models, the local community, and the services that can or should be provided in these terminals. This consultation process ensures that design, services offerings, and construction methodologies are appropriate, minimize disruption, and avoid resistance from and conflict with key stakeholders.

2.1 Types of PPP in the Sector

Bus and truck terminal PPPs are often structured as a concession for the PSP to design and build the terminal, then to operate the terminal, and collect revenues from users and from commercial activities. Bus/truck terminals provide an excellent opportunity to deliver other services for users, which can mobilize commercial revenues. The large number of passengers using the terminals are ready customers for other services such as grocery stores, restaurants, cafes, retail shopping, and advertising. These terminals can also offer commercial services for the buses and trucks using the terminal, such as petrol, mechanics, and garages.

In the Amritsar intercity bus terminal in Punjab, India, a number of buses started operating from outside the terminal to avoid the payment of the 'Adda Fee'. Where 2,000–3,000 buses per day were forecast, only 1,100 buses were actually coming to the facility (see project summary 7). The focus was therefore adjusted, reducing fees charged to buses and leveraging more revenues from commercial activities. In a similar structure, the bus terminal and municipal market in El Danlí, El Paraíso, Honduras provide access to municipal and inter-municipal transportation and to more than 400 commercial stalls in the same location (see project summary 5).

2.2 Lessons Learned/Key Issues

Some of the key issues that need to be addressed while developing a bus/truck terminal project, include the following:

- The design of the PPP must prioritize the basic functions of the terminal with respect to transport services. The commercial activities must not take priority, even if they are the primary source of project profits. Therefore, it may be apt to specify the maximum space that
- can be used for commercial activities within a terminal, in an effort to meet the objectives of financial feasibility as well as terminal operating efficiency.
- Bus/truck terminals are already congested places. Commercial activities should ideally be targeted to the passengers/users of the terminal, and should not attract any significant incremental traffic from outside the terminal, adding to the stress on the terminal

- infrastructure, unless space and capacity are sufficient.
- The service parameters of the bus/truck terminals must be clearly and objectively defined. For example,
 - o Within how many minutes should a bus be able to drop and pick up all passengers and depart the terminal;
 - o How long should someone take to find a parking spot or exit the passenger parking; and
 - o What frequency and standard should be applied to maintenance and cleaning, for example, minimum luminosity levels, energy conservation, schedule for repainting, the quality of maintenance of the toilets.
 - The location of the bus/truck terminal must be consistent with current practices—for example, with current bus/truck routes—to facilitate transition and avoid service disruption.
 - Support infrastructure at bus/truck terminals are typically under-designed, leading to heavy congestion resulting in a drop in levels of services of terminal operations. Project design needs to follow master planning guidelines to ensure that the support infrastructure is designed to reflect the projected reality of the facility.

Table 1. Further Information on Bus/Truck Terminal PPPs

Toolkit	<p>PPIAF. 2007. The Urban Bus Toolkit. https://library.pppknowledgelab.org/PPIAF/documents/2067.</p> <p>PPIAF. 2009. "Toolkit for Public-Private Partnerships in Roads and Highways." https://ppiaf.org/sites/ppiaf.org/files/documents/toolkits/highwaytoolkit/index.html.</p> <p>Asian Development Bank and Government of India. 2011. Toolkit for Public-Private Partnerships in Urban Bus Transport - Maharashtra India. https://ppp.worldbank.org/public-private-partnership/library/toolkit-public-private-partnerships-urban-bus-transport-maharashtra-india.</p> <p>Asian Development Bank. 2008. Bus Rapid Transport: Toolkit for Feasibility Studies. https://ppp.worldbank.org/public-private-partnership/library/bus-rapid-transport-toolkit-feasibility-studies.</p>
General Information	<p>Global Infrastructure Hub. 2016d. "Transport Sector". Allocating Risks in Public-Private Partnership Contracts. https://ppp-risk.gihub.org/risk_category/transport/.</p> <p>World Bank. 2019h. "Public-Private Partnerships for Transport". Public-Private Partnership Legal Resource Center. https://ppp.worldbank.org/public-private-partnership/sector/transportation.</p> <p>World Bank. 2019k. "Transport". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/transport.</p>

3.0

Water and Sanitation

² See also Delmon, Jeffrey. 2017. *Public-Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*. Second Edition. New York: Cambridge University Press.

³ Delmon, Victoria Rigby. 2014b. *Toolkit: Structuring Private-Sector Participation (PSP) Contracts for Small Scale Water Projects*. <https://www.wsp.org/sites/wsp.org/files/publications/PPP-Contracting-Toolkit.pdf>; Marin, Philippe. 2009. *Public Private Partnerships for Urban Water Utilities: A Review of Experiences in Developing Countries*. Washington, DC: World Bank; Andres, Luis A.; Guasch, J. Luis; Haven, Thomas; Foster, Vivien. 2008. *The impact of private sector participation in infrastructure: lights, shadows, and the road ahead (English)*. Latin American development forum. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/912661468231538767/The-impact-of-private-sector-participation-in-infrastructure-lights-shadows-and-the-road-ahead>; Gassner, Katharina, Alexander Popov, and Nataliya Pushak. 2007. "An Empirical Assessment of Private Sector Participation in Electricity and Water Distribution in Developing and Transition Countries". World Bank; and Delmon, Jeffrey. 2001. *Water Projects: A Commercial and Contractual Guide*. London: Kluwer Law International.

Water distribution is characterized by the high cost of transporting water, relative ease of storage, and significant social and political sensitivity.² The high cost of transportation makes the creation of a competitive market for water and sanitation services from competing providers particularly challenging. In smaller and more remote areas, the cost of transportation can be prohibitive, as they do not benefit from the economies of scale of more heavily populated areas. For these communities, and for poor and/or informal communities, informal water vendors may be the norm.

3.1 Types of PPP in the Sector

Loss reduction is a common challenge for water supply. The PSP can be rewarded for the amount of, for example, water or energy saved by reducing leakage, which affords the utility higher revenues as it has more water to sell and defers the cost of new treatment capacity. Caution should be used in the creation of incentives to reduce leakage. In one contract, the PSP was paid a fee per leak eliminated. Of course, it is easier to eliminate small leaks, especially at meters and household connections, but these leaks have a limited impact on the system capacity. The PSP was well paid, but the utility received less-than-anticipated aggregate benefit.

The private sector often has superior billing and collection systems and methodologies than most public entities and can thereby improve revenues significantly. The municipality may require metering improvement to help monitor performance requirements, for example, standards for unaccounted-for water and efficiency of treatment

This heavily regulated sector is also one of the oldest, with key water and sanitation assets often installed long ago and located underground, making it difficult to know their condition and to forecast investment needed in such assets without time-consuming and costly investigations.³ Social risk takes on a particular prevalence for water services, where local communities are particularly sensitive to access to water services and tariffs charged. For this reason, the PSP will be concerned that the water tariffs charged often do not cover costs, much less capital expenditure, or a reasonable return on investment, and that the utility will not be able to pay the PSP fees.

of raw water. However, where the condition of the system is poor, the installation of meters may only make things worse because for each meter two new connections to the existing assets must be made, multiplying the potential for leaks and further damaging assets.

Resistance to new investments in water supply may come from staff concerned that an increase in efficiency will cause them to lose their jobs. If incentivized properly, labor productivity can increase efficiency gains and improve staff comfort and safety. Bucharest Water and Sanitation System in Romania improved the water and sanitation system while maintaining low tariffs without subsidy by tying improvements in services with tariff increases, investing in new equipment that increased employee safety and productivity while delegating more responsibility to the staff (see project summary 18).

3.2 Lessons Learned/Key Issues

- Private investors would like an accurate assessment of network assets to estimate capital expenditure requirements, whereas such an assessment is time and technical expertise intensive. Any error in this assessment can result in costly and protracted disputes.
 - o To manage this risk, the PPP agreement should provide for a robust mechanism for negotiation one to two years after commencement of the PPP agreement, that is, after the private partner has had adequate time to assess the network assets. This renegotiation can be tricky because the PSP will be in a stronger position, since it would have mobilized its resources based on the assumptions set out in the PPP agreement. Also, failed bidders might object that had they known about the actual asset conditions they might have been more competitive in the bidding process.
 - o Another approach is to start with a short-term (say, one to two years) operation and maintenance contract with a leading private operator to generate a detailed report on the condition of network assets. The operation and maintenance contract is then replaced with a PPP agreement (after an open, competitive bid) based on the updated asset register. The challenge of this approach is that the operation and maintenance contractor will be in a strong position to win the bid to be the PPP operator which may discourage other bidders. Or, under applicable law/practice, the operation and maintenance contractor may be disqualified from bidding as having an undue advantage over other bidders. The former situation undermines the bid process. The latter situation will limit interest of good firms to compete to deliver the operation and maintenance services.
- For PPP projects involving treatment plants (water or sewage), the input and output quality parameters and quantities supplied (of raw water and raw untreated sewage) need to be clearly established and monitored regularly.
- To help align incentives, tariff increases should be tied to water service improvements.
- The PPP needs to provide a robust continuous monitoring system for project services and levy penalties and offer incentives to ensure compliance.
- To protect consumers and ensure that the project is operated to a standard consistent with modern industry practice, the municipality will want to establish a progressive and reasonable regulatory structure (including economic and technical regulation). This structure should give the regulator sufficient latitude to supervise the activities of the PSP without unreasonably restricting competitiveness or the ability of the PSP to operate and finance its activities within the context of the market. Creating a regulatory structure can involve a substantial investment of resources by the municipality. It also creates risk for the PSP, to the extent that the regulator can impose obligations and standards different from the PPP agreement.
- The municipality will need to specify the management of existing municipal staff engaged in water and sanitation services. Municipalities should consider (1) reallocation of roles and responsibilities to perform other activities for the municipality, (2) absorption of staff by the private partner to leverage their knowledge and experience of the existing system (private partners often do not want to absorb all staff without an evaluation of their competence, dedication, attitude, and so on, and some municipal staff also often do not want to enter into private sector performance-oriented employment contracts); (3) offering of redundancy packages to municipal staff. When considering options, the municipality should consult with staff and relevant organizations (for example, labor unions).

Table 2. Further Information on Water and Sanitation PPPs

Toolkit	Delmon, Victoria Rigby. 2014a. "Structuring Private-Sector Participation (PSP) Contracts for Small Scale Water Projects." World Bank. https://library.pppknowledgelab.org/documents/4129?ref_site=kl .
General Information	<p>Delmon, Jeffrey. 2001. <i>Water Projects: A Commercial and Contractual Guide</i>. London: Kluwer Law International.</p> <p>Gassner, Katharina, Alexander Popov, and Nataliya Pushak. 2007. "An Empirical Assessment of Private Sector Participation in Electricity and Water Distribution in Developing and Transition Countries". World Bank.</p> <p>Global Infrastructure Hub. 2016e. "Water and Waste Sector". <i>Allocating Risks in Public-Private Partnership Contracts</i>. https://ppp-risk.gihub.org/content/uploads/2016/07/160610-GIHUB-Allocating-Risks-in-PPP-Contracts-2016-Edition.pdf.</p> <p>World Bank. 2019n. "Water and Sanitation PPPs". Public-Private Partnership Legal Resource Center. https://ppp.worldbank.org/public-private-partnership/sector/water-sanitation.</p> <p>World Bank. 2019o. "Water and Sanitation". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/water-sanitation.</p>

4.0

Information, Communication, and Technology (ICT)

The growth and investment in ICT by the private sector have been significant, in particular over the last 10 years. Public involvement has been limited primarily to issuing of licenses. However, some key activities may still need to be undertaken through PPP, for example, broadband backbone and e-government.⁴

Governments have sought to increase connectivity of their populations to access the commercial and educational opportunities that come with ICT, and to encourage economic growth. ICT PPPs can help deliver services to disadvantaged communities,

where such consumers are not yet an attractive market for private operators, at service standards sought by the municipality. ICT PPPs can also help deliver administrative services such as property registration, visa applications, voting registration, identification document issuance, and complaint management. Generally speaking, the government is best placed to provide a good investment climate and let the private sector deliver such services.

4.1 Types of PPP in the Sector

Where there is demand, the private sector is generally best placed to deliver ICT services. However, in certain limited circumstances the municipality may need to encourage private investment through PPP, for example, where the municipality wants to attract investment in higher capacity systems (that are not yet profitable) or services delivered to less developed areas.⁵ The PPP model might involve the municipality providing access to land to install the network and network operating centers. The municipality may also purchase in advance access to the system for public buildings, offices, schools, hospitals, and so on, to provide upfront funding to pay down the construction costs of the system. One of the challenges of ICT PPP projects is the need to keep up with technological changes. The payment mechanism needs to provide incentives for the PSP to adopt latest technology. Also, where the municipality supports an ICT PPP, the PSP should provide open access on the same terms for everyone to avoid creating a monopoly.

Singapore's Next Generation Nationwide Broadband Network is a wired network offering open access, competitively priced broadband through more than 12 different service providers and over 40 fiber-based broadband access plans for consumers and enterprise users.⁶ NetCo must fulfill all reasonable requests to install fiber termination points in homes, offices, and buildings. Nationwide Broadband Network has catalyzed a greater range of innovative services for end users in homes, offices, schools, and other locations and has enabled Singapore to exploit new economic opportunities (see project summary 32).

The City of Barcelona bundled the different ICT services (previously outsourced with various operators) into one contract to update, operate, and maintain the city's fiber optic and WiFi system, which led to better ICT infrastructure and easier network control, and allowed the city to provide better corporate services to its citizens; in addition, it generated a new revenue stream for the city, as the private partner pays a yearly fee for the use of the spare ICT infrastructure capacity, which it sells to its customers (see project summary 31).

⁴ See also Delmon 2017.

⁵ See World Bank. 2012. *Developing Successful Public-Private Partnerships to Foster Investment in Universal Broadband Networks*. <https://ppp.worldbank.org/public-private-partnership/library/developing-successful-public-private-partnerships-foster-investment-universal-broadband-netw>.

⁶ Infocomm Development Authority of Singapore. 2012. "Next Generation Nationwide Broadband Network". www.ida.gov.sg.

4.2 Lessons Learned/Key Issues

- PPP projects should focus on ICT services that the private sector is unlikely to offer on its own accord due to relatively lower financial returns. These projects therefore need to be evaluated closely from an economic point of view, that is, projects need to have strong economic justification.
- ICT involves technology that changes quickly, and PPPs are long-term arrangements. The project will need to consider adopting changes in technology, sharing costs and benefits of new technology.
- Where government ICT services are to be provided in parallel with commercial services earning revenues for the PSP, the municipality will need to ensure incentives on the PSP to deliver those government services and give them priority over commercial services.

Table 3. Further Information on ICT Sector PPPs

Toolkit	ICT Regulation Toolkit. n.d. "ICT Regulation Toolkit". Accessed October 03, 2019. http://www.ictregulationtoolkit.org/index .
General Information	<p>European Regulators Group. 2009. Report on Next Generation Access - Economic Analysis and Regulatory Principles. https://ppp.worldbank.org/public-private-partnership/library/report-next-generation-access-economic-analysis-and-regulatory-principles.</p> <p>Government of India. 2017. Guidance Notes for IT PPP Projects: Model RFP Templates for Public Private Partnership. https://meity.gov.in/writereaddata/files/public%20-private%20-partnerships%20.pdf.</p> <p>Um, Paul Nomba, Laurent Gille, Lucile Simon, Christophe Rudelle. 2004. A Model for Calculating Interconnection Costs in Telecommunications. Washington, DC: World Bank and the Public-Private Infrastructure Advisory Facility. https://openknowledge.worldbank.org/handle/10986/15040.</p> <p>World Bank. 2019i. "Public-Private Partnerships in E-Government". PPP Knowledge Lab. https://library.pppknowledgelab.org/documents/2938?ref_site=kl&restrict_pages=1&sector%5B%5D=ICT%20%28Information%20and%20Communications%20Technology%29&site_source%5B%5D=Handshake%20Journal&site_source%5B%5D=Knowledge%20Lab.</p> <p>World Bank. 2019d. "ICT". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/ict.</p>

5.0

Public Markets

Public markets are generally publicly owned and operated facilities that provide vendors with structured space at affordable rents to offer their products. These spaces provide economic opportunities for low-income vendors, save time and provide convenience to buyers, offer more hygienic space for trade, provide spillover

economic opportunities for supply chains and associated economic activities, provide individual empowerment, provide entrepreneurial momentum, ensure creative usage of space, and promote public health.⁷

5.1 Types of PPP in the Sector

PPP in public markets generally involves the PSP building, maintaining, and operating the public market as well as associated commercial activities, such as warehousing, logistics, cold storage, and office space. The PSP earns revenues from rental of stalls, leasing of commercial space, and delivery of commercial services. Another model of PPP for public markets involves the PSP building the entire facility, including the public market and associated commercial facilities. The PSP leases the public market to the municipality and earns the majority or all of its revenues from the remaining commercial space.

The main market in Mandaluyong, Manila, the Philippines, was destroyed by a fire in 1991. Due to lack of funds, serious traffic congestion, and sanitation problems, the city decided to rebuild the public market through PPP. To make the project commercially attractive, the project included a seven-story commercial center with street-front stores, a parking garage, commercial shops, a bowling alley, and a movie theatre to subsidize the low-cost vendor facilities (see Project Summary 38).

5.2 Lessons Learned/Key Issues

- Engagement with community and main stakeholders throughout the project cycle is particularly critical for public market PPP (see Module 18: Community Engagement). The local community can provide critical information about project design and implementation parameters. Consulting vendors during project development is crucial due to their knowledge of the market and customers.
- Where retail facilities cross-subsidize low-income vendors, the project will need to place sufficient incentives on the PSP to ensure that services to low-income vendors are prioritized, for example, by establishing clearly defined services requirements and systems to monitor them regularly.
- If the project involves redevelopment of an existing market, the PPP agreement needs to include an intensive engagement with existing lessees regarding temporary relocation to another site for the period of construction of the refurbished market, and any compensation for such relocation.

⁷ The Ford Foundation. 2003. *Public Markets as a Vehicle to Upward Mobility and Social Integration*. https://s3.amazonaws.com/aws-website-ppsimages-na05y/pdf/Ford_Report.pdf.

- It is tempting to charge lessees a higher rate for the refurbished facility, as services will be better and vendors will earn more revenues from the new facility. However, the community should be consulted on such higher rents, affordability/ willingness of lessees to pay, and the social impact of such higher rents. The municipality may want to consider a lesser increase for those less able to pay.

Table 4. Further Information on Public Market PPPs

General Information	<p>The Ford Foundation. 2003. Public Markets as a Vehicle to Upward Mobility and Social Integration. https://s3.amazonaws.com/aws-website-ppsimages-na05y/pdf/Ford_Report.pdf.</p> <p>World Bank. 2016c. "PPPs for Public Markets, Malls and Slaughter Houses / Abattoirs". Public-Private Partnership Legal Resource Center. https://ppp.worldbank.org/public-private-partnership/ppps-public-markets-malls-and-slaughter-houses-abattoirs.</p>
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6.0

Public Parking

Rapid growth has its challenges, including the proliferation of vehicles and urban congestion. Parking in major urban centers is often a key challenge for municipalities looking to reduce congestion and free up space at street level.

6.1 Types of PPP in the Sector

Public parking offers a number of commercial opportunities from parking fees and from development rights within and above the parking facility. Parking has the added advantage of not needing natural light. Underground space is ideal for parking and is often not thoroughly exploited when land is developed, in particular for public facilities. Parking fees can be fixed or variable depending on the amount of time spent in the facility. The mechanisms to collect parking fees can vary from self-payment kiosks, in-person assisted payment, and basic parking meters. Parking garages can function for public use and to support residential units at the same time.

The City of Chicago leased its metered parking system for USD 1.2 billion in February 2009.⁸

A parking garage was built in the center of Dar es Salaam, Tanzania, with office space and a commercial shopping center built above and around the parking structure. The commercial facilities earned important revenue for the project

and allowed the operator to charge only modest parking fees, which helped the municipality to reduce congestion.

A PPP parking project in Peru's capital city, Lima, reduced traffic congestion in a highly commercial area by providing parking spaces under an existing public park. The three-story underground facility will provide more than 9,000 m² for 353 vehicle spaces and about 5,200 m² for commercial areas (see project summary 46). Revenues from the project also fund the refurbishment and maintenance of the public park.

In Virginia Beach, United States, a PPP project turned a little-used 244-space surface parking lot into 147 residential apartments, a unique indoor skydiving facility, and a public parking garage with 377 slots. The residential building provides parking to its tenants through the public parking garage (see project summary 78).

6.2 Lessons Learned/Key Issues

- Integral planning, proper land/space management, and community engagement are key elements for successful PPPs in public parking.
- Innovative approaches and creative use of space is key to solve urban traffic congestion. Adding commercial activities, for example above a parking facility, helps mobilize additional revenue sources.
- The provision of commercial activities in and around a parking garage can create additional congestion and increase the number of parking spaces needed. Therefore, project design needs to achieve a balance between financial feasibility and the incremental number of cars that can fit in the facility.

⁸ For more information, see World Bank. 2016a. "Chicago Metered Parking System Concession of 2008". Public-Private Partnership Legal Resource Center. <https://ppp.worldbank.org/public-private-partnership/library/chicago-metered-parking-system-concession-of-2008>.

- Public parking facilities reduce congestion by moving vehicles out of on-street parking and into the parking facility. This will only work to the extent that vehicles are incentivized to use the parking facility. If the rates charged in the public parking garage are too high, or if the municipality does not enforce parking restrictions on the street, the parking project will not achieve its goals and may not be financially viable.

Table 5. Further Information on Public Parking PPPs

Toolkits	<p>Kittelson & Associates Inc. 2016. Portland Parking Analysis and Toolkit for Mixed-Use Centers and Corridors Parking Management Toolkit. https://www.portlandoregon.gov/transportation/article/567030.</p> <p>World Bank. 2019e. "Municipal Parking". Public-Private Partnerships Legal Resource Center. https://ppp.worldbank.org/public-private-partnership/municipal-parking.</p>
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7.0

Government Administrative Offices

Municipalities need to invest in administrative and other office space to deliver an effective public service. But property management is often not a strength of municipal staff. A PPP can be a more effective mechanism to develop office facilities with latest technology and well maintained over time. The PPP will use a carefully crafted performance regime to ensure that the municipality receives the government offices to the right standard.

PPP can help municipalities consolidate their offices in one location to provide more access to facilities and to other government departments, saving time and delivering better/coordinated services.

7.1 Types of PPP in the Sector

One potential model for PPP for government office space involves the development of a mixed-use facility, comprising government offices, private offices, commercial space, and possibly residential space. This allows government staff to work in a dynamic, mixed-use space. The revenues from commercial and other activities reduce or eliminate the cost of the government offices to the municipality. Where conditions are right (for example, the land value is high, the site is large, and the market is buoyant), the municipality may also receive a revenue share from such a project.

Many municipalities do not want government offices to share space with other users, for security or other reasons. In such cases, the PSP can build and maintain government office space against availability payments from the municipality. Or the project may involve both government offices and

commercial/residential facilities but accessed and managed separately, allowing the PSP to earn revenues from the commercial space to offset the amount of revenue mobilized through availability payments.

The Municipality of Tlajomulco, Mexico, was struggling with outdated facilities spread around the city and was in a constant state of disrepair. The Tlajomulco Administrative Center PPP project delivered an administrative building for more than 630 public servants and with a capacity to serve more than 2,000 daily visitors. The PSP also constructed a multiple-use gymnasium, outdoor sports facilities, and renovated 7 km of main roads around the center (see project summary 49).

7.2 Lessons Learned/Key Issues

- Proper use of space to maximize the benefits of a PPP administrative offices project can include 24/7 public access, such as parks and recreation areas, commercial and ancillary services. A separate entrance for the government offices may be needed for security

purposes, but access may be desirable where these ancillary services include things that benefit government staff such as grocery shopping, copy and printing services, photography labs (for example, for personal identification documents), cafes, restaurants.

- Public buildings need to be multi-functional to address changes in usage over time. A PPP agreement is long term and therefore must be able to adjust to changes in use and needs of government staff.
- The long-term nature of PPP can also create challenges where government budget changes over time. Where a municipality needs to reduce costs and looks to reduce government office costs, the PPP must be sufficiently flexible to allow such reduction of costs where the level of occupancy is reduced or where the office is left empty for a time.
- The maintenance obligation placed on the PSP must be clearly and objectively defined and regularly monitored (maintenance levels should be defined based on output parameters not on input requirements).

Table 6. Further Information on Government Administrative Offices PPPs

General Information

World Bank. 2019j. "Sub-national and Municipal PPPs". Public-Private Partnerships Legal Resource Center. <https://ppp.worldbank.org/public-private-partnership/ppp-sector/sub-national-and-municipal-ppps/sub-national-and-municipal-ppps>.

8.0

Sporting, Cultural, and Tourism Venues

Providing space to the community for sport and culture facilities can help provide a better life quality, attract more tourism, and create new revenue sources for the city, just to name a few.⁹

8.1 Types of PPP in the Sector

Tourism, sports, and cultural facilities while often not profitable by themselves, can provide commercial opportunities. Convention centers are often developed next to hotels and shopping centers, where those attending conventions can spend their money. In France, a town built an aquatic center to attract tourists to the area and, thus, create new income sources for the locals and revenue for the city (see project summary 54). In Bogotá, Colombia, a private developer renovated an old coliseum that was being underutilized; today the new venue is one of the most modern arenas in Latin America (see project summary 53). An art museum in Düsseldorf, Germany, was revitalized through a PPP for its reconstruction, operation, and maintenance (see project summary 55).

Historic and cultural sites are a key asset for government and investors alike. PPP can bring private investments to refurbish and maintain historic and cultural assets and, in the process, create an investment opportunity. An example would be PPP projects for the development of historic palaces in Rajasthan, India, that were falling to ruins due to lack of investment and maintenance. These historic properties were leased to private investors through a competitive process that allowed them to redevelop the properties for commercial purposes, in many cases resorts and hotels. The investors have clear obligations to develop the properties on time, maintain their historic properties, and provide access to the public.

Similarly, in Jaipur, India, an 18th century pleasure palace called Jal Mahal is located in the middle of a 300-acre lake. The lake was an ecological disaster, with the dumping of untreated sewage and poor upkeep. After several failed attempts at restoration through other means, the Government of Rajasthan awarded a PPP to use part of the site for private commercial development, and for the restoration and maintenance of the public space (see project summary 57). After a first phase, this project has been stalled for political reasons.

The Revolutionary Government of Zanzibar issued a concession for Chumbe Island, a 55-acre resort with marine park and forest reserve. The revenues generated from ecotourism cover operational expenses, park management, and environmental education. Chumbe Island Coral Park Ltd. (CICP) has a 33-year lease and a 10-year management contract. The concessionaire had to work with seven government departments and gain the support of area fishermen and local communities before the project was approved (see project summary 60).

⁹ See also Delmon 2017.

8.2 Lessons Learned/Key Issues

- Tourism, sports, and culture PPPs need to identify commercial activities with a strong synergy to avoid the PSP focusing entirely on the commercial activity. Ideally, commercial activities should be designed to further bolster the attractiveness of the tourism, sports, or culture. For example, in commercial activities in nature reserves or safari parks, the PSP is incentivized to maintain the natural surroundings as they are directly linked to the profits the PSP will make from the commercial facilities—if the natural beauty of the area is lost, the tourists will stop coming. Similarly a hotel next to a convention center will have fewer vacancies if the convention center is used more often.
- Community engagement is of critical importance in these types of projects. Local communities are similarly interested in maintaining local natural resources or key cultural facilities, and can be a key partner for any PPP project to help ensure its success and to resolve any conflict with the community that might arise.
- The project design and communication to the public needs to ensure that the tourism, sports, or cultural attraction is not perceived to have been sold to the private partner. It should be as easily accessible to the public and as much a part of the community as before the PPP.

Table 7. Further Information on Tourism, Sports and Culture Venue PPPs

General Information	<p>Akhmetshina, E. R., O.A. Ignatjeva, and I.M. Ablaev. 2017. "Tendencies and Prospects of Public-Private Partnership Development in the Field of Physical Culture and Sport". <i>European Research Studies Journal</i> XX (2A). https://core.ac.uk/download/pdf/155235631.pdf.</p> <p>World Bank. 2019j. "Sub-national and Municipal PPPs". Public-Private Partnerships Legal Resource Center. https://ppp.worldbank.org/public-private-partnership/ppp-sector/sub-national-and-municipal-ppps/sub-national-and-municipal-ppps.</p>
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9.0

Rooftop Solar Power Generation

The power sector is characterized by unique constraints in the delivery of electricity to public, commercial, and residential consumers.¹⁰ Electricity is relatively easy to transmit over long distances but hard to store, so it must be generated constantly and responsively, to meet demand instantaneously in its daily and seasonal variations. While electricity generation,

transmission, and distribution is generally an issue for national government or a national utility, municipalities often use PPP for power generation. Sections 9 and 10 will discuss in particular rooftop solar generation and street lighting projects.

9.1 Types of PPP in the Sector

One of the most common municipal PPP projects in the energy sector is rooftop solar. Solar panels are installed on municipal buildings and facilities, industrial/commercial sites, and possible residential properties. Power is purchased by the municipality, offsetting the power it needs to purchase from the utility. Municipal demand for power is generally greatest during the day when solar generation is most effective, reducing the need for storage (which can be expensive). Industrial/commercial purchasers can help diversify demand risk and ensure different revenue sources.

In 2010, the Government of Gujarat launched the 'Gandhinagar Rooftop Program', the first of its kind in India. The 5 MW solar rooftop program installed 4 MW solar panels on public buildings rooftops and 1 MW on private residences in Gandhinagar. Although the project faced some difficulties in its inception, it is now being replicated in more cities (see project summary 64).

9.2 Lessons Learned/Key Issues

- Rooftop solar projects generally involve the municipality paying fees for energy or efficiencies delivered. The PSP will need to be confident that the municipality will pay fees when due. The municipality may not have a good history of paying amounts due to private investors and will need to reassure investors and lenders that the municipality is a good credit risk. In some cases, this may require a guaranty, escrow arrangement, or other credit enhancement.
- Rooftop solar can be an interesting opportunity for the municipality to take more control of its power needs, in particular where the cost of power to be purchased from rooftop solar is cheaper than power purchased from the grid. In some cases, the lower price of solar is achieved through government subsidies for the use of renewable energy. The municipality will need to consider the risk that these subsidies might be withdrawn by the government.

¹⁰ For a good review of the power sector, in particular its regulation, see Hunt, Sally. 2002. *Making Competition Work in Electricity*. New York: John Wiley & Sons. See also: Delmon 2017.

- Similarly, while power tariffs for solar may be lower than power delivered over the grid, the municipality may not pay its bills to the power utility or may pay only a portion in practice. If the municipality will not be saving money, the PSP will need to understand the municipality's motivation to allay concerns that future governments might not be interested in continuing with the project.

Table 8. Further Information on Rooftop Solar PPPs

Toolkit	<p>International Finance Corporation. 2015. Utility-Scale Solar Photovoltaic Power Plants: A Project Developer's Guide. https://www.ifc.org/wps/wcm/connect/a1b3dbd3-983e-4ee3-a67b-cdc29ef900cb/IFC+Solar+Report_Web+_08+05.pdf?MOD=AJPERES&CVID=kZePDPG.</p> <p>World Bank. 2014c. Rooftop Solar Public-Private Partnerships: Lessons from Gujarat Solar. https://library.pppknowledgelab.org/attached_files/documents/2408/original/PIQ_RooftopSolar_INTERACTIVE.pdf?1438367268.</p>
General Information	<p>Global Infrastructure Hub. 2016b. "Energy Sector". Allocating Risks in Public-Private Partnership Contracts. https://ppp-risk.gihub.org/risk_category/energy/.</p> <p>World Bank. 2019b. "Energy and Power PPPs". Public-Private Partnership Legal Resource Center. https://ppp.worldbank.org/public-private-partnership/sector/energy.</p> <p>World Bank. 2019g. "Power". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/power.</p>

10.0

Street Lighting

The power sector is characterized by unique constraints in the delivery of electricity to public, commercial, and residential consumers.¹¹ Electricity is relatively easy to transmit over long distances but hard to store, so it must be generated constantly and responsively, to meet demand instantaneously in its daily and seasonal variations. While electricity generation, transmission, and distribution is generally an issue for national government or a national utility,

municipalities often use PPP for power generation. Sections 9 and 10 discuss in particular rooftop solar generation and street lighting projects.

Street lighting can be an energy intensive and expensive service for the municipality to provide. Latest technology in lightbulbs and energy management provide even more of an opportunity for PPP street lighting.

10.1 Types of PPP in the Sector

The PSP partners with the municipality to install energy-saving streetlights to improve efficiency, free of charge; the PSP recovers its investment through a shared energy-saving mechanism. With this mechanism, the savings are shared between the two partners according to percentages set out in the PPP agreement. For example, in Nasik, Maharashtra, India, the PPP contract is provided for different sharing percentages depending on the year of the contract, for the first year the sharing percentages were 70 percent for the public partner and 30 percent for the private; for the second year the percentages were 60 percent and 40 percent respectively, and so on (see project summary 67). Another PPP model mobilizes other revenues as

well, for example in Nairobi, Kenya, a street lighting project mobilized revenues from advertising installed on each streetlight. The PSP was given strict size and other parameters to avoid abuse of the advertising space allotted. The revenues generated were sufficient to cover installation of the streetlights and maintenance, with the municipality providing electricity.

10.2 Lessons Learned/Key Issues

- Street lighting PPP often results in the municipality's total cost of street lighting increasing because (1) a larger number of street lights are installed in the municipality and (2) more street lights are operational. This means that while energy cost per street light is lower, total energy usage may be higher. Project analysis should incorporate the social and economic benefits of better street lighting rather than only the financial saving in energy costs.
- The municipality may not have a good history of paying amounts due to private investors and will need to reassure investors and lenders that the municipality is a good credit risk. In some cases, this may require a guaranty, escrow arrangement, or other credit enhancement.

¹¹ For a good review of the power sector, in particular its regulation, see Hunt, Sally. 2002. *Making Competition Work in Electricity*. New York: John Wiley & Sons. See also: Delmon 2017.

Table 9. Further Information on Street Lighting PPPs

Toolkit	Energy Efficiency Services Limited. n.d. "Street Lighting National Programme". Accessed October 03, 2019. https://eesindia.org/content/raj/eesl/en/Programmes/SLNP/about-slnp.html .
General Information	Global Infrastructure Hub. 2016b. "Energy Sector". Allocating Risks in Public-Private Partnership Contracts. https://ppp-risk.gihub.org/risk_category/energy/ . World Bank. 2019b. "Energy and Power PPPs". Public-Private Partnership Legal Resource Center. https://ppp.worldbank.org/public-private-partnership/sector/energy . World Bank. 2019g. "Power". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/power .

11.0

Solid Waste Management (SWM)

Management of solid waste is one of the most important functions of a municipality.¹² Improper treatment of solid waste poses a serious challenge for the environment and the entire community. Rapidly improving technologies and a deeper understanding of the use or reuse of solid waste has created increasingly larger roles for the private sector. In many developing countries,

informal waste pickers are key players in solid waste, gathering, sorting, trading and, in some cases, recycling, either individually or grouped in microenterprises. Waste pickers represent some of the most vulnerable, low-income communities, whose interests need to be considered in any waste project.¹³

11.1 Types of PPP in the Sector

PPPs in solid waste tend to focus on treatment, for example the construction and management of sanitary landfills, incineration facilities, recycling centers, or waste-to-energy facilities. These projects might include collection from transfer stations, where local waste collection is aggregated in a few locations and the PPP collects waste from those locations and bring it to the treatment facility, using larger trucks to reduce the cost of transportation and facilitate treatment.

In the city of Poznań, Poland, the local government entered into a PPP for the design, construction, financing, management, and maintenance of a waste-to-energy production plant. About 30 percent of the city's domestic electricity is generated by this new facility (see project summary 27).

In China, the City of Wenzhou generated approximately 400,000 tons in household waste each year, with a growth rate of 8–10 percent annually. A PPP developed a waste-to-energy plant able to treat 320 tons of MSW per day and generate up to 25 million (kWh) of electricity annually (see project summary 28).

11.2 Lessons Learned/Key Issues

- SWM projects can have multiple revenue sources: the collection fee paid by households, waste collection tax, associated revenues (for example, power generation and recycling fees), and governmental budget allocations. The fees and taxes charged by the municipality for collection are usually an important part of this revenue stream, and one of the most

difficult to achieve to the levels required. People generally do not like to pay for trash collection, in particular to the levels required to pay for proper management and treatment. The municipality may need to start engaging with the community to communicate the need for charging for collection long before the PPP project is launched.

¹² See also Delmon 2017.

¹³ See also Delmon 2017.

- SWM projects should use technology appropriate to the local community, affordable for the community, or that reflects local demand for the services.¹⁴ For instance, where waste to energy is contemplated, the efficiency of generation of electricity from waste depends not only on the quantum of waste generated and collected per day but also on the waste mix, in particular the quantum of organic content in the waste and the calorific value of waste. The municipality should first undertake a detailed assessment of waste generated from various parts of the city to understand the composition of waste and the potential of generating electricity from the waste.
- Where the PSP is responsible for collecting waste from a transfer station or waste is delivered to the treatment facility, the municipality will typically have to guarantee a minimum quantity of waste that would be available to the PSP every day. The treatment facility is designed to cater to this minimum guaranteed waste. If the municipality delivers less waste, then municipalities may have to compensate the PSP accordingly. Therefore, a detailed and robust study of how much waste a city is actually generating, and more importantly collecting, on a daily basis, is important before bidding out SWM projects.
- If the PPP includes a treatment facility as well as a sanitary landfill, then the municipality should specify the maximum percentage or quantity of waste that can be transferred to the sanitary landfill, creating an incentive to maximize treatment efficiency and ensuring that the sanitary landfill lasts longer.
- Waste to energy plants are often not financially feasible based on selling electricity to the electricity grid and require a significant 'tipping fee' per ton of waste delivered to the treatment facility.

Table 10. Further Information on Solid Waste PPPs

Toolkit	<p>Swiss Centre for Development Cooperation in Technology and Management. 2000. Private Sector Participation in Municipal Solid Waste Management: Guidance Pack (5 Volumes). https://ppp.worldbank.org/public-private-partnership/library/private-sector-participation-municipal-solid-waste-management-guidance-pack-5-volumes.</p> <p>World Bank. 2017b. Draft Concession Agreement: Municipal Solid Waste Management, Delhi. https://ppp.worldbank.org/public-private-partnership/library/draft-concession-agreement-municipal-solid-waste-management-delhi.</p>
General Information	<p>Global Infrastructure Hub. 2016c. "Solid Waste Collection, Disposal, Landfill and Recycling". Allocating Risks in Public-Private Partnership Contracts. https://ppp-risk.github.org/risk_category/solid-waste/.</p> <p>World Bank. 2019f. "Municipal Solid Waste (MSW) PPPs". Public-Private Partnership Legal Resource Center. https://ppp.worldbank.org/public-private-partnership/sector/transportation.</p> <p>World Bank. 2019m. "Waste". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/waste.</p>

¹⁴ International Finance Corporation. 2014. "Waste PPPs". *Handshake (12)*. https://www.ifc.org/wps/wcm/connect/97a0af43-441a-4528-bf39-9a7b1af1d7c7/Handshake12_WastePPPs.pdf?MOD=AJPERES&CVID=IKbDLHE.

12.0

Urban Redevelopment

Urban redevelopment can take many shapes including street space optimization,¹⁵ heritage conservation,¹⁶ public facilities renovation,¹⁷ and neighborhood rehabilitation¹⁸ involving a wide array of expertise, long-term planning, community engagement, maintenance, and operation risks. Cities deploy a combination of internal resources (including revenues and municipal land), external funding sources (including intergovernmental transfers, grants and, in the case of sovereign

cities, borrowing), policy and regulatory tools, and strategic partnerships with the private sector, among other resources.¹⁹ The complexity and creativity of urban regeneration makes it difficult to establish standard bidding documents, revenue models, or model commercial structures. Partnering with the private sector is a key tool available to municipalities to achieve sustainable redevelopment.²⁰

12.1 Types of PPP in the Sector

PPPs in urban redevelopment can range from a master developer for an entire new city—such as a satellite city, for example the Canary Wharf development in London—to the development of a discrete portion of an urban center, where disaster, urban blight, or some other circumstance has made a large tract of land available for a significant urban redevelopment. Urban redevelopment PPP is therefore extremely difficult to define or delimit but offers extensive opportunities to deliver redevelopment through mixed-use facilities and diversification of revenues to fund much needed redevelopment.

In Washington, D.C., United States, two outdated public facilities, a library and a fire station, were refurbished with latest technology and capacity in addition to providing approximately 150 multifamily residential condominiums, 9,600 square feet for retail space, and 52 residential rental units affordable to households earning at or below 60

percent of the area median income (see project summary 73). By providing prime development rights above the library and fire station, the municipality was able to provide refurbished public facilities and affordable housing.

Where the facility is located in a dense urban area, building up or digging down may provide opportunities for commercial revenues. Washington, D.C., redeveloped an area, building over a major highway to develop new residential and retail space and to bring life to that part of the city. The platform supports a 7-acre (204,386 m²), mixed-use development space for four office buildings, one residential structure with retail facilities at the ground floor, parking facilities with four underground levels and a capacity of 1,146 vehicles, and green space. (see project summary 75).

¹⁵ See, for example, Capitol Crossing project in Washington, D.C. (project summary 75).

¹⁶ See Macdonald, Susan, and Caroline Cheong. 2014. *The Role of Public-Private Partnerships and the Third Sector in Conserving Heritage Buildings, Sites, and Historic Urban Areas*. Getty Conservation Institute.

¹⁷ See, for example, Redevelopment of Library and Fire Station in Washington DC (project summary 73), Mandaluyong City Market in Manila (project summary 38), and Campin Coliseum (Movistar Arena) in Bogota (project summary 53).

¹⁸ See, for example, Regent Park Affordable Housing Project in Toronto (project summary 80).

¹⁹ Amirtahmasebi, Rana, Mariana Orloff, Sameh Wahba, and Andrew Altman. 2016. *Regenerating Urban Land: A Practitioner's Guide to Leveraging Private Investment*. 2016. Urban Development Series. Washington, DC: World Bank. doi: 10.1596/978-1-4648-0473-1.

²⁰ Amirtahmasebi et al. 2016.

12.2 Lesson Learned

- Strong political support, community engagement, and proper planning are critical success factors for urban redevelopment PPPs. It is often the private sector that has more adequate human and technical resources to drive project development to achieve planning goals.²¹ Designing a structure that allocates risks between the municipality and the PSP in the most effective manner requires a thorough understanding of the redevelopment, the local community, and the likely economic and financial outcomes of the redevelopment.
- Redevelopment projects may offer an enticing prospect but with so many challenges and uncertainties that private sector involvement in early stages may be unattractive or uneconomic. Building momentum with initial public redevelopment projects can attract investors for future-linked/adjacent projects.²²
- Municipalities are often optimistic about the value that can be unlocked from real estate opportunities that emerge from such redevelopment projects. At the project development stage, it is important to get a realistic and maybe even worst case scenarios of unlocked real estate value from such redevelopment projects.

Table 11. Further Information on Urban Redevelopment PPPs

Guidelines	City of Liverpool. 2006. Public Private Partnership in Urban Regeneration. A Guide to Opportunities and Practice. https://urbact.eu/sites/default/files/p4a-_final_english_060906.pdf .
General Information	<p>International Finance Corporation. 2012. "Cities & PPPs". Handshake (4). https://library.pppknowledgelab.org/documents/1947?ref_site=kl.</p> <p>United Nations Habitat. 2011. Public-Private Partnership in Housing and Urban Development. https://new.unhabitat.org/sites/default/files/download-manager-files/Public-Private%20Partnership%20in%20Housing%20and%20Urban%20Development.pdf.</p> <p>World Bank. 2019I. "Urban Revitalization". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/urban-revitalization.</p>

²¹ International Finance Corporation. 2012. "Cities & PPPs". *Handshake (4)*. https://library.pppknowledgelab.org/documents/1947?ref_site=kl.

²² Reuschke, Darja. "Public-Private Partnerships in Urban Development in the United States". NEURUS Program, University of California in Irvine: 2001. <https://core.ac.uk/download/pdf/7035711.pdf>.

13.0

Affordable Housing

Private developers deliver low-cost housing where they can earn a reasonable profit.²³ Housing policies,²⁴ government support/incentives, and building codes/planning regulation can help create

the right incentives for private developers to do more. The municipality can also make affordable housing commercially attractive for private developers, including through PPPs.

13.1 Types of PPP in the Sector

Affordable housing can be achieved by the municipality providing land and allowing the PSP to develop mixed-use facilities, including high-, middle-, and low-income housing as well as retail facilities. Mixed-use facilities also create a better living experience for the low-income tenants who will prefer to be closer to economic and social opportunities, such as jobs, schools, and health care, that are available through or near such mixed-use facilities.

In Turin, Italy, two abandoned buildings were turned into temporary social housing projects to provide housing to support disadvantaged

population groups, that is, families waiting for public housing, low-income young couples, postal workers, students, and immigrants. The building consisted of 182 flats equipped with 470 beds with kitchen, and ancillary services such as restaurant, laundry, grocery store, medical clinic, employment office, after-school activity, and car/bike-sharing system. Aside from the flats which are rentable for 12 months maximum, the building is also equipped with 58 affordable hotel rooms (see project summary 81).

13.2 Lessons Learned/Key Issues

- Affordable housing PPPs are capital intensive. Unless other revenues are available, the project may demand significant financial support from the municipality. Sometimes this financial support can be accessed through national subsidies or tax incentives designed to promote affordable housing. The PPP project will need to be designed to access those funds.
- Where affordable housing is provided through a mixed-use development, there is a risk that the PSP will focus efforts and investment on the more profitable activities in the development, with less attention paid to affordable housing. Incentives should be created (and enforced) to ensure that the affordable housing is provided to the agreed specifications, quality, and livability.
- At the project development stage, the municipality will need to decide how to allocate low-cost housing, for example leased or sold, with the municipality subsidizing either the capital cost or the interest on the housing loan.
- Municipalities may want to play a role in determining the specific beneficiaries or groups of beneficiaries of the municipality supporting low-cost housing. In such cases, the municipality can either require the PSP to construct the low-cost houses and hand them over to the municipality for allocation or outline the criteria for allocation of the low-cost housing and require the PSP to implement.

²³ Owens, Kate. 2016. "Constructing housing PPPs to build trust". World Bank Blogs. <https://blogs.worldbank.org/ppps/constructing-housing-ppps-build-trust>.

²⁴ India passed a 'Housing Policy and Affordable Housing Plan' in 2015 aiming to deliver between 50,000 and 100,000 affordable houses.

- Payment for maintenance of common areas needs to be designed early, for example, should the occupants of low-cost housing pay for maintenance of the common areas or is it cross-subsidized from other project revenues. If funding for maintenance is limited,

the municipality may want the specification of the maintenance to prioritize affordability. The maintenance of the common areas may form part of the PPP arrangements for say the first 10–15 years.

Table 12. Further Information on Affordable Housing PPPs

Toolkits	SALGA. n.d. MUNICIPALITIES: Municipal Focus - Municipal Guidelines on Social & Rental Housing. https://www.salga.org.za/Municipalities%20F%20MGOSARH.html .
General Information	<p>United Nations Habitat. 2011. Public-Private Partnership in Housing and Urban Development. https://new.unhabitat.org/sites/default/files/download-manager-files/Public-Private%20Partnership%20in%20Housing%20and%20Urban%20Development.pdf.</p> <p>World Bank. 2019I. "Urban Revitalization". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/urban-revitalization.</p>

14.0

Schools

Educational facilities are often provided by national government, but municipalities may be responsible for primary or even secondary school facilities,

while teachers will generally be regulated and possibly provided by the national government.

14.1 Types of PPP in the Sector

A number of different approaches and creative commercial engagements have been developed to support the education sector through PPP. For the sake of discussion, these might be organized into the following:

- *Infrastructure Delivery*.²⁵ The PSP builds, maintains, and operates an educational facility such as a public school, university building, or hostel.²⁶ Payments under the contract are contingent upon the PSP delivering services to an agreed performance standard.²⁷
- *Under Management Services*, the PSP manages one or more facilities. The schools remain publicly owned and all non-managerial personnel continue to be public sector employees.²⁸
- *Service Delivery* involves the PSP delivering facilities and educating students, possibly a mix of private and public students. The PSP may charge fees to private students, and the municipality purchases education services for public students.

PPP arrangements can be used to make educational philanthropic support more sustainable and better coordinated with government activities. Examples abound globally.²⁹

By paying for students to enroll in existing schools, governments can quickly expand access without incurring any upfront expenditure on constructing and equipping new schools. Another variation of

this approach is for the municipality to contract out students' enrollment in specialized services that are not available in the public sector. This type of contract can be targeted to specific students and groups, such as low-income, disadvantaged, or disabled students.³⁰ These targeted beneficiaries need to be defined from the beginning to ensure that the financial structure delivers the benefits desired.

In 1993, the James F. Oyster Bilingual Elementary School was in danger of closure due to a crumbling, inadequate building and lack of public capital. A PPP was formed between DC Public Schools, the District of Columbia, and a national real estate development firm. They divided the school property in half to make room for a new school and a new residential development. The District of Columbia issued a 35-year, US\$11 million tax-exempt bond for the construction costs to be repaid entirely with the revenue generated by the private apartment building. The private partner redeveloped the school on half the site, built a new 211-unit apartment building on the other half, and agreed to pay US\$804,000 a year for 35 years to repay the bond. The school facilities included a computer lab, library, gym, and classrooms designed to accommodate the school's bilingual program and office space³¹ (see project summary 88).

²⁵ For example, in Toronto, Canada, The Toronto District School Board suffered from a shortage of funds and limited land availability and the NTCI, a public high school founded in 1912, was an aging facility with a strategic location in midtown Toronto with direct access to public transit and vibrant retail main street. After a PPP for the school redevelopment, a four-story secondary school building was delivered to accommodate 1,200 students and it includes science, art, music, and drama classrooms, a 600-seat theatre, library, and a triple gymnasium (see project summary 91).

²⁶ See also Delmon 2017.

²⁷ LaRocque, Norman. 2008. *Public-Private Partnerships in Basic Education: An International Review*. CfBT Education Trust.

²⁸ World Bank. 2011. *The Role and Impact of Public-Private Partnerships in Education*.

²⁹ LaRocque 2008.

³⁰ World Bank 2011.

³¹ ULI Development Case Studies. 2015. *James F. Oyster Bilingual Elementary School and Henry Adams House*.

14.2 Lessons Learned/Key Issues

- The municipality needs to work out its objectives for the PPP and create incentives accordingly.³² Left to its own, the PSP will prioritize the most profitable services.
- Educational facilities can also mobilize commercial revenues, for example the PSP could utilize school infrastructure such as classrooms, the computer lab, the gymnasium, or the library to deliver other services such as training programs for adults after school hours on a for-profit basis.

Table 13. Further Information on Education PPPs

General Information	<p>Hogan Lovells Lee & Lee. 2011. PPP Projects in the Education Sector - Key Principles. https://www.hoganlovells.com/~//media/hogan-lovells/pdf/publication/pppprojectsintheeducationsectorkeyprinciplessept11_pdf.pdf.</p> <p>World Bank. 2019a. "Education". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/education.</p>
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³² LaRocque 2008.

15.0

Health Clinics

The health sector is generally regulated by the national government; however, in many countries municipalities must provide local clinics and even some small hospital and specialist facilities.

PPPs in the health sector³³ have delivered important advantages, including more timely completion, delivery to cost, technological

innovation, and service improvement, but some important challenges have arisen, including labor resistance, need for better monitoring and contract management, access to experienced health care specialists, rapid technological change, and the need to introduce flexibility into the contract to accommodate change.³⁴

15.1 Types of PPP in the Sector

Health PPPs can be divided into two broad categories: facility-based PPPs and clinical PPPs.³⁵ Facility-based PPPs involve the PSP providing construction, maintenance, and operation of a hospital or clinic, but not delivery of clinical services. The United Kingdom had vastly underinvested in its National Health Service (NHS) hospitals, many of which were built in the Victorian era (during the late 1800s). Beginning in the 1990s through the Private Finance Initiative (PFI), the United Kingdom built approximately 100 new NHS hospital buildings in 12 years. Since 2003, more than 50 hospital PPPs valued at over CAD 18 billion have been developed in Canada.³⁶ This model is also common in Australia and Italy. In clinical PPPs, the PSP delivers all services, including supply of infrastructure and clinical services. This model has been adopted in, for example, Australia, Spain, Portugal, India, and Lesotho.

PPP is often used to deliver specialist services, such as cancer clinics, imaging services, and dialysis centers. The National Kidney and Transplant Institute in the Philippines specializes in the treatment of renal diseases. In 2003, it entered into a Hemodialysis Center PPP, to furnish the hospital with state-of-the-art machines for patients suffering from end-stage renal diseases, serving more than 120 outpatients a day.³⁷ The Government of Andhra Pradesh entered into a PPP in 2010 to establish and operate dialysis centers in 11 tertiary care state-run hospitals for a period of seven years³⁸ (see project summaries 97 and 98).

15.2 Lessons Learned/Key Issues

- Health service PPPs should include a thorough baseline study to capture specific performance and outcomes of the project.
- The split between clinical services and facilities

can be challenging. Many countries use PPP to deliver the facilities (the hospital building, utilities, heating, air conditioning, maybe even laundry) under simple performance-based

³³ See also Delmon 2017.

³⁴ A major issue in hospital PPPs is the need to constantly update medical equipment to reflect advances.

³⁵ UNECE, WHO, ADB. 2012. "A Preliminary Reflection on the Best Practice in PPP in Healthcare Sector: A Review of Different PPP Case Studies and Experiences". Paper prepared for the conference PPPs in Health Manila 2012: Developing Models, Ensuring Sustainability: Perspectives from Asia and Europe. https://www.unece.org/fileadmin/DAM/ceci/images/ICoE/PPPHealthcareSector_DiscPaper.pdf.

³⁶ UNECE, WHO, ADB 2012.

³⁷ UNECE, WHO, ADB 2012.

³⁸ UNECE, WHO, ADB 2012.

obligations. In such projects, the interface between facilities management and clinical services (the medical services provided - doctors, nurses, and specialist technicians) can be challenging, the clinical staff will have a certain way they want the facilities managed, but a PPP establishes a mechanism for management for a long period, say, 20–30 years. The services should be flexible enough to allow the clinical staff to get the support they need.

- Clinical services are difficult to define on a performance basis, for example if the PPP contract requires the PSP to keep fatalities below a certain level, the PSP may be incentivized not to treat the most complex patients. The incentive framework for a PPP providing both facilities and clinical services will need to establish the right balance and urgency of service delivery. An incentive scheme that compensates well for cleaning and maintenance may find itself with a beautiful clean facility, but few patients treated.

Where compensation is paid for patients that get better quickly (for example, shorter stays in the hospital), the municipality may find that the hospital has a tendency to treat only the easiest, least complicated cases.

- The regulator for the health sector will need to adjust to the presence and context of the PPP to ensure that the sector remains cohesive, within the constraints created by the PPP agreement. The regulator should be involved in PPP project design, and should develop the capacity needed to regulate both the public sector and the PPP.
- PPPs involve a long-term commitment by the PSP to operate and maintain the facility. This makes it difficult for the government to save money in times of budget shortfalls by reducing use of the facility or even closing it for a period the PPP payments must still be made and the PSP must be compensated where it is not able to earn the agreed revenues.

Table 14. Further Information on Health PPPs

General Information	
	PricewaterhouseCoopers (PwC). 2017. PPPs in Healthcare: Models, Lessons and Trends for The Future. https://www.pwc.com/gx/en/healthcare/assets/ppps-in-healthcare.pdf .
	World Bank. 2019c. "Health". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/health .
	World Bank. n.d. "Public-Private Partnerships Legal Resource Center." PPPLRC. Accessed July 19, 2019. https://ppp.worldbank.org/public-private-partnership/ .

16.0

Bus Rapid Transit (BRT) and Light Railway Transit (LRT)

Construction of high-capacity transportation systems in urban areas is usually tied to large or country-wide programs managed by the national government given their size and complexity.

However, in certain situations BRT and LRT projects are delivered through municipal PPP.

16.1 Types of PPP in the Sector

Rail is a highly regulated industry. Where work is to be done on an existing rail system, access to that rail system will be limited to those times when the track can be cleared (that is, when it is not in use or to the extent it can be closed down). Construction works will need to consider the specific requirements of existing signaling systems, rolling stock, and other issues associated with the management of services for the railway. Where the existing railway is to be modified, the signaling system design will need to be amended to consider changes in the physical infrastructure.

A number of light rail train or metro systems have been delivered through PPP, for instance in Kuala Lumpur, Malaysia or in Manila, the Philippines. The structures used range from the PSP designing, building, financing, and operating the facility to the municipality financing the infrastructure and the PSP operating and maintaining, possibly also providing network operating centers and/or rolling stock.³⁹

16.2 Lessons Learned/Key Issues

- Rail services are often unprofitable, even recovering operating costs may be difficult. In addition to public capital contributions, finding other sources of revenues will be critical, including land value capture,⁴⁰ property development,⁴¹ and, where those are insufficient, payments from government.⁴² Commercial and property development opportunities at terminal stations can be particularly important. In Hong Kong, SAR, China, the mass rapid transit system not only pays for itself through commercial revenues but it also provides a revenue stream for the Hong Kong Government (see project summary 2).
- Railway, as well as other mass transport projects need to be linked to other transport services. For example in Madrid, Spain, the Moncloa Transportation Exchanger is where urban

(metro and buses) and interurban (highways and railways) transportation modes intersect to facilitate connectivity (see project summary 1).

- The need for access to large amounts of land (or right of way) and space to build transportation facilities makes them expensive, long-term, and politically sensitive undertakings. Public reaction to new transport facilities can be challenging, no one wants a railway line or new road running through their backyard. It is best for all land to be acquired before the bid process. It may be tempting to try to accelerate the process and commence bidding assuming that the land will be acquired on time; but this has been the downfall of many projects and has created massive liabilities for governments across the globe.

³⁹ Mandri-Perrot, Cledan, and Iain Menzies. 2010. *Private Sector Participation in Light Rail - Light Train Metro, Transit Initiatives*. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/355141468323976491/Private-sector-participation-in-light-rail-light-metro-transit-initiatives>.

⁴⁰ See Module 16: Harnessing Land Value Capture.

⁴¹ See Module 17: Capturing Commercial Value.

⁴² For further information on how policy makers can best deal with the main risks involved in designing, procuring, and implementing urban rail transportation, see Mandri-Perrot and Menzies 2010.

- Transport projects are particularly vulnerable to subsurface risk, where subsurface conditions encountered differ to those anticipated requiring changes in construction methodologies and subsequent increases in cost and delays. Often, the contracting authority will bear the risk of unforeseeable subsurface conditions. The contracting authority needs to financially provide for this to assure potential bidders that they would have access to funds in case of unforeseen changes required during construction. Another common approach is to establish a baseline for anticipated ground conditions, sharing costs, and delays to the extent the baseline proves inaccurate.
- Where the PSP takes traffic risk, the toll regime for a transportation project should be based on reliable economic, technical, and financial assumptions. Lenders will generally undertake their own traffic forecasting exercises to verify those provided by the contracting authority and the project company. The inherent vulnerability of traffic forecasts to optimism bias was demonstrated more than 15 years ago in a Standard & Poors study⁴³ from 2002 of traffic forecasts in user fee-based toll road schemes. Of 32 different projects, actual traffic was on average only 70 percent of that forecast, with a large majority of projects not reaching even 90 percent of the forecast traffic. Governments therefore often provide revenue or traffic guarantees⁴⁴ to protect the project company and/or the lenders from a certain portion of traffic risk.

Table 15. Further Information on BRT and LRT PPPs

Toolkits	<p>Asian Development Bank. 2008. Bus Rapid Transport: Toolkit for Feasibility Studies. https://ppp.worldbank.org/public-private-partnership/library/bus-rapid-transport-toolkit-feasibility-studies.</p> <p>Asian Development Bank and Government of India. 2011. Toolkit for Public-Private Partnerships in Urban Bus Transport - Maharashtra India. https://ppp.worldbank.org/public-private-partnership/library/toolkit-public-private-partnerships-urban-bus-transport-maharashtra-india.</p> <p>PPIAF. 2007. The Urban Bus Toolkit. https://library.pppknowledgelab.org/PPIAF/documents/2067.</p> <p>PPIAF. 2017. Railway reform: Toolkit for improving rail sector performance (English). Washington, DC: World Bank Group. http://documents.worldbank.org/curated/en/529921469672181559/Railway-reform-Toolkit-for-improving-rail-sector-performance.</p> <p>PPIAF. 2009. "Toolkit for Public-Private Partnerships in Roads and Highways." https://ppiaf.org/sites/ppiaf.org/files/documents/toolkits/highwaystoolkit/index.html.</p> <p>Pulido, Daniel, Georges Bianco Darido, Ramon Munoz-Raskin, Joanna Charlotte Moody. 2018. The Urban Rail Development Handbook (English). Washington, DC: World Bank Group. http://documents.worldbank.org/curated/en/583011538651181032/The-Urban-Rail-Development-Handbook.</p>
General Information	<p>Global Infrastructure Hub. 2016d. "Transport Sector". Allocating Risks in Public-Private Partnership Contracts. https://ppp-risk.github.org/risk_category/transport/.</p> <p>World Bank. 2019h. "Public-Private Partnerships for Transport". Public-Private Partnership Legal Resource Center. https://ppp.worldbank.org/public-private-partnership/sector/transportation.</p> <p>World Bank. 2019k. "Transport". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/transport.</p>

⁴³ Standard and Poor's 2002.

⁴⁴ With the revised act on Private Participation in Infrastructure, the Republic of Korea introduced a PPP framework that is designed to reduce traffic forecasting risk by guaranteeing a minimum revenue. See Kim, Kang-Soo. 2013. *Valuation of the Minimum Revenue Guarantee in the Urban Railway PPP Project*. Korea Development Institute. http://www.kdi.re.kr/kdi_eng/publications/publication_view.jsp?pub_no=13482.

17.0

Ports and Airports

Ports and airports are normally national-level projects given their size, complexity, and importance to national connectivity agendas.⁴⁵ However, some port and airport investments are managed at the municipal level, such as ferry terminals and local airports, and will therefore be addressed here briefly.

Airport projects generally benefit from a diversity of revenue sources, a strong monopoly position, and access to foreign currency revenues from international traffic and duty-free shopping. Airport charges are often based on taxes that can be imposed on the use of airport services or other such fees and charges. Non-aeronautical revenues represent more than 60 percent of total international airport revenues in developed countries. Services provided by ports include cargo facilities and passenger services. A port requires space, not just for the equipment needed to deliver services and to process cargo and passengers (cranes, gantries, immigration, and customs) but

also hinterland space to allow the development of other services linked to port operations, for example industrial development, warehousing and storage for cargo, or hotels, restaurants, and retail facilities for passengers. Suape Port in Brazil was developed in 2001 under a 30-year PPP and was the first dedicated container terminal in the country. Thereafter it became one of the 12 ports with the highest number of regular routes and general cargo ships in the country.

One of the major challenges for a port is depth. The larger the ship to be received at the port, the deeper is the required draft and therefore the deeper the water required in front of the quays. Ports located at the mouth of a river or in a coastal position that suffers from long-shore currents will need to manage siltation, which will gradually reduce depth. Dredging is expensive, at construction and during operation (maintenance dredging).

17.1 Types of PPP in the Sector

Port and airport PPPs tend to involve the entire port or airport, or possibly an entire port terminal or airport terminal building. Examples abound.⁴⁶ PPPs can also be let for smaller parts of the facilities, for example terminal facilities, fueling facilities, cargo warehouses, cargo handling, catering, parking, hotels, commercial businesses, and a variety of other support services. For example, a private concession was issued for the non-aeronautical facilities in the airport in Bali, Indonesia. This private concession increased non-aeronautical revenues by 15 times (Q3 2009 versus 2014) from US\$444,000 to US\$6.8 million (see project summary 12).

Airports and ports can often mobilize foreign currency revenue from international traffic, and are generally an attractive opportunity for PPP.

⁴⁵ Kim 2013.

⁴⁶ Ricover, Andy, and Jeffrey Delmon. 2020. *Airport Public Private Partnerships: A practical guide for decision makers*. Routledge.

17.2 Lessons Learned/Key Issues

- The PSP will need sufficient flexibility to improve revenue flow and investment in infrastructure on the site, and the experience of passengers, airlines, and shipping companies.
- Airport and port demand may be heavily influenced by government policy, including locations of competing facilities, open sky policies, governance of local carriers/shippers/logistics, and low-cost carrier traffic. Clarity on these issues will help PSPs assess airport and port projects and to place a premium on asset values.

Table 16. Further Information on Port and Airport PPPs

Toolkits	World Bank. 2016f. Port Reform Toolkit PPIAF, World Bank, 2nd Edition. https://ppp.worldbank.org/public-private-partnership/library/port-reform-toolkit-ppiaf-world-bank-2nd-edition .
General Information	<p>Global Infrastructure Hub. 2016e. "Water and Waste Sector". Allocating Risks in Public-Private Partnership Contracts. https://ppp-risk.gihub.org/content/uploads/2016/07/160610-GIHub-Allocating-Risks-in-PPP-Contracts-2016-Edition.pdf.</p> <p>Ricover, Andy, and Jeffrey Delmon. 2020. Airport Public Private Partnerships: A practical guide for decision makers. Routledge.</p> <p>World Bank. 2019h. "Public-Private Partnerships for Transport". Public-Private Partnership Legal Resource Center. https://ppp.worldbank.org/public-private-partnership/sector/transportation.</p> <p>World Bank. 2019k. "Transport". PPP Knowledge Lab. https://pppknowledgelab.org/sectors/transport.</p>

18.0

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HARNESSING LAND
VALUE CAPTURE

Municipal Public-Private Partnership Framework

16

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1.0

Purpose of the Module

This module introduces concepts of land value capture and describes a few of the key instruments that municipalities can use to capture land value.¹

¹ For a more complete discussion of this topic, see Amirtahmasebi, Rana, Mariana Orloff, Sameh Wahba, and Andrew Altman. *Regenerating Urban Land: A Practitioner's Guide to Leveraging Private Investment*. 2016. Urban Development Series. Washington, DC: World Bank. doi: 10.1596/978-1-4648-0473-1; Smolka, Martin O. 2013. *Implementing Value Capture in Latin America: Policies and Tools for Urban Development*. Lincoln Institute of Land Policy.

2.0

The Importance of Land for Municipalities

Land is the most valuable asset for municipal governments. The sale or lease of land may represent a significant potential revenue stream for the municipality. The city government of Istanbul, Turkey, auctioned and sold an old municipal bus station and administrative building in 2007 for US\$1.5 billion. Comparing this with its total municipal capital spending of US\$994 million, one can see the potential of land as an asset. Similarly, in Mumbai, India, the city earned US\$1.2 billion from the sale of 13 ha of land in the city's new financial center, totaling 10 times the city's capital spending in 2005. But, land is a limited and non-renewable asset and urban land markets are extremely volatile.²

² For a more complete discussion of this topic, see Amirtahmasebi et al. 2016; Smolka et al. 2013.

3.0

Understanding Land Value Capture

The notion of 'land value capture,' is to mobilize some or all of the land value increases resulting from actions other than the landowner's, such as public investments in infrastructure or administrative changes in land use norms and regulations, for the benefit of the community at large.³ Thus, the objective of land value capture is to draw on publicly generated land value increases to enable local administrations to improve their land use management practices, and to help them fund more urban infrastructure and service provision. A simple example is property tax, which requires landowners to share a percentage of land value with the municipality. The amount of property tax paid increases as the value of the land increases (no matter the cause of the increased value).

In practice, successful implementation of land value capture demands management skills to deal with many complex factors and diverse stakeholders. In addition, it requires proper understanding of land market conditions; comprehensive property monitoring systems; a fluid dialogue among fiscal, planning, and judicial entities; and the political resolve of local government leaders.⁴ Land value increases are captured more successfully from landowners and other stakeholders who perceive they are receiving greater benefits from a public intervention than those accruing from business as usual and are more likely to succeed when used to solve a locally recognized problem.⁵

³ For example, the principle may exist at law that no citizen should accumulate wealth that does not result from his or her own efforts, known as 'unjust enrichment' in both civil and common law traditions. Smolka et al. 2013.

⁴ Smolka et al. 2013.

⁵ Smolka et al. 2013.

4.0

Instruments for Land Value Capture

Key instruments available to a municipality to implement land value capture include the following:⁶

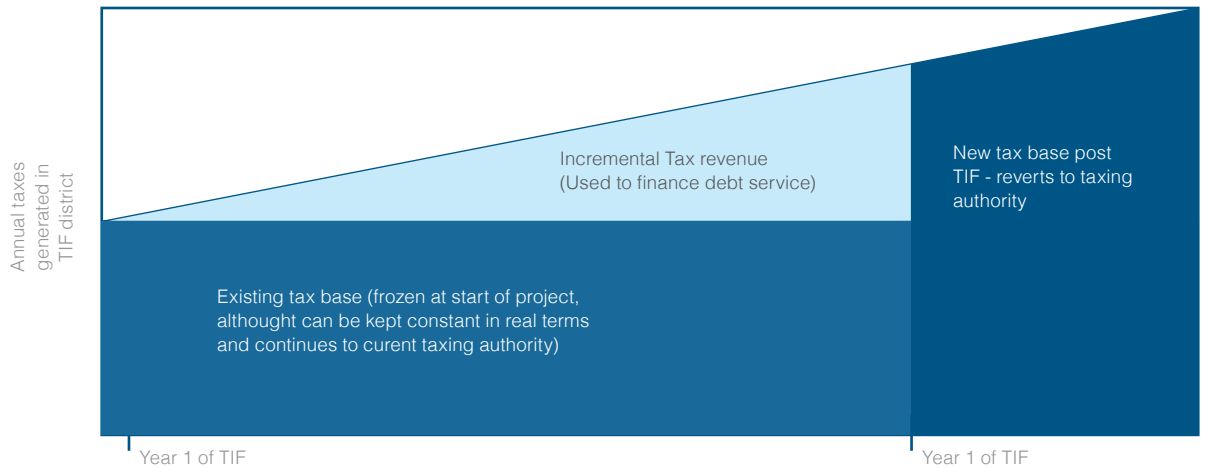
- (1) **Land as public contribution** - when a municipality uses the value of its land as an equity contribution toward a PPP. In this scenario, a public entity might enter into a partnership with a PSP for redeveloping a targeted urban area. The public sector 'invests' the value of its land assets and the PSP invests cash.
- (2) **Developer exactions and impact fees** - the developer is required to contribute to public services as a precondition to developing a plot of land, as compensation for the cost of additional public infrastructure and services. For example, developer exactions may include the following:
 - Dedication of land for public use, for example, reserving a certain percentage of land for parks, public space.
 - Construction of public improvements, for example, the developer constructs a public road to connect the proposed development with the existing public road network.
 - Funding, for example, the developer provides a financial contribution toward the cost of a new bus stop or LRT station

Among the disadvantages of this financing tool is that it can be technically cumbersome to estimate appropriate costs. Any government discretion regarding assessment amounts can create perceptions of corruption. Also, with the exception of some robust real estate markets (for example, Hong Kong, SAR, China), imposing an extra levy can at times have the effect of discouraging, rather than incentivizing, private sector investment.

- (3) **Betterment levies** - a form of tax or a fee levied on land that has gained in value because of public infrastructure investments. For example, in Johannesburg, South Africa, city improvement districts (CIDs) are defined geographic areas in which property owners agree to pay for supplementary services and improvements in their urban environment. These services can include security measures, urban area upgrades, litter collection, and design and upkeep of public spaces. A CID can be formed when a petition is filed by at least 51 percent of the property owners in the geographic area and then approved by the municipality. The CID levy is compulsory and is calculated based on the value of the individual property and applied pro rata. While it is considered one of the most direct forms of value capture, the cost of administering parcel-by-parcel betterment levies can be high compared to the collected revenue.
- (4) **Tax increment financing (TIF)** - the municipality issues a bond on the capital markets to borrow against forthcoming increases in tax receipts that accompany successful urban redevelopment. The tax revenues yielded, which exceed the taxes that would have been collected without the redevelopment, constitute the 'tax increment' and the TIF captures that gain to pay the bond holders. A TIF allows the municipality to invest in public infrastructure and other improvements by borrowing against the future anticipated increase in tax revenues generated by the project. A TIF can facilitate the self-financing of a project with minimal negative fiscal impact. This tool is less appropriate for less developed financial markets or for funding smaller projects.

⁶ Amirtahmasebi et al.
2016.

Figure 1. The Basic TIF Model



- (5) **Density bonus** - a municipality may permit a developer to increase the maximum allowable development on a site in exchange for either funds or in-kind support. For example, the municipality may allow landowners near the new infrastructure to increase the type of development allowed, permitting the developer to earn more from the land. In exchange, the landowner must pay a fee for the development rights. This fee is used to fund infrastructure. This tool works best in cities in which market demand is strong and land availability is limited, or for projects or sites in which the developer's financial incentives outweigh alternative development options.
- (6) **Up-zoning** - changing the zoning to allow for higher value (for example, from industrial to residential) or more dense use (for example, increasing allowable floor area ratio). As with density bonuses, up-zoning can be successfully deployed as a kind of financing tool for urban regeneration only when sufficient market demand exists.

5.0

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CAPTURING
COMMERCIAL VALUE

Municipal Public-Private Partnership Framework

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1.0

Purpose of this Module

Municipalities often perceive investment needs, in particular infrastructure, solely as a public service, a cost center for the municipality. In fact, such investments may also create commercial opportunities.

Commercial activities around municipal investments often result in significant profits for the private sector, in some cases creating an increase in land value adjacent to the investment (see Module 16: Harnessing Land Value Capture), in others, providing opportunities for higher value, more or new commercial activities (the term 'Commercial Value Capture' will be used in this module). For example, BRT systems result in increased land values and commercial revenues for those located near access points, such as bus stations. A share of this increased value can be captured by the government, for example through property taxes. The operator of the BRT system can be allowed to develop space in, around, and above bus stations for retail letting, office setup, or other commercial activities to generate income and improve project revenues. This module provides a brief introduction to commercial value capture by PPP projects. The project summaries provide a number of examples of innovative commercial value capture in different countries and sectors.

PPP can provide a useful mechanism to mobilize commercial revenues to fund public services.¹ To replace some or all of the public funding that would otherwise be needed to make a project viable, the project can generate commercial revenues. Such commercial revenues can be mobilized for many PPP projects, alongside or linked to public services. Some examples are the following:

- A public market project that may not be able to attract sufficient revenues to cover operating costs, much less depreciation, or initial capital investment may link other commercial

activities to the development to generate needed revenues and offer additional services, for example, residential or office space (see project summary - Mandaluyong City Market, Philippines, project summary No. 38)

- Bus or truck terminals provide an opportunity for retail activities, selling goods and services to passengers and passersby (see project summary - Modern Bus Terminal and Municipal Market, Danli Honduras, project summary No. 5).
- Government offices can be developed with commercial office space and mixed-use facilities to reduce costs to government (see project summary - Tlajomulco Administrative Center, Mexico project summary No. 49).
- Convention centers are often developed with hotels because revenues from convention centers are generally insufficient to cover costs.

When considering a municipal PPP, the municipality may want to assess the possibility of commercial value capture, by considering:

- (1) Commercial activities under, above, or around the project facilities; and
- (2) Commercial activities delivered from the project facilities; but
- (3) Should always ensure that the project focuses on the public services that form the core of the PPP.

This module will then describe commercial value capture in a few sectors, as an example of some approaches adopted globally.

¹ Delmon, Jeffrey. 2017. *Public-Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*. Second Edition. New York: Cambridge University Press.

2.0

Commercial Activities Under, Above, or Around the Project Facilities

Where property prices are high, air rights over a public asset can have significant value. For example, Washington, D.C., needed to develop low-cost housing and refurbish a library and a fire station that were almost obsolete and whose renovations would be costly. The municipality awarded a PPP to a developer to provide a state-of-the-art library, a fire station, and low-cost housing in exchange for the right to build condominiums above the public facilities (see Project Summary 73). The same approach can be used for other developments, for example, parking garages or bus terminals. Also in Washington, D.C., a stretch of highway that runs through the center of the city was built over with residential, office, retail, and parking facilities, including public spaces. This project revitalized a large area of the downtown (see project summary 75).

Space under the public facility may also provide opportunities for commercial activities. An example would be the parking area under Rivera Navarrete Avenue in San Isidro, Peru. The municipal government wanted to address the constant congestion problems of Lima's financial center and, at the same time, to reduce the estimated deficit of 10,600 parking spaces in the area. A three-story parking facility was developed underground, under the main avenue (see project summary 46).

The space around a public asset may also provide opportunities for new revenue streams. As an example, the Oyster School in Washington, D.C., suffered from out-of-date and dilapidated facilities. The cost of refurbishment far exceeded available budget. Instead, the municipality contracted with a private party to refurbish the school and develop part of the land commercially. The revenues from the commercial development (an apartment building) paid for the cost of the school refurbishment, creating one of the top schools in the city with the latest facilities and equipment (see project summary 88).

The Revolutionary Government of Zanzibar issued a concession to CICIP to develop eco-friendly bungalows and a visitors' center on a 5.9-acre island, including a marine park and a forest reserve. The revenues generated from ecotourism cover operational expenses, park management, and environmental education. CICIP has a 33-year lease and a 10-year management contract. The PSP had to work with seven government departments and gain the support of area fishermen and local communities before the project was approved (see project summary 60).

3.0

Commercial Activities Delivered From the Project Facilities

Sometimes the project facility itself can be used for commercial purposes as well as public services. For example, when redeveloping the Mandaluyong City Market in the Philippines, the usual subsidized space for low-cost vendors was blended with higher-value business and entertainment space, that is, department stores, a bowling alley, and a movie theater. The high-value space produces sufficient revenue to subsidize the low-cost vendor facilities (see project summary 38). In Danlí, Honduras, the municipality built a modern bus terminal to replace its outdated and disorganized bus terminal. The new bus terminal provided retail facilities, warehousing, and meeting rooms within the bus terminal (as well as around and above) (see project summary 5). These facilities provide additional commercial services to passengers/residents and create a new revenue stream to fund the bus terminal.

4.0

Ensure Public Service Take Priority

The focus on commercial revenues must never take the focus off the public facility. For example, a public market looking for higher-value commercial space might be tempted to reduce the space made available for low-cost vendor space. A low-cost housing project looking to mobilize commercial revenues through mixed-use space might be tempted to reduce the number of low-cost units developed. In some cases, this loss of focus results from overly ambitious municipal staff and in some cases it results from PSPs whose primary line of business is commercial profitability.

In some cases, increasing commercial activities also increases requirements of the public services. For example, a parking garage with office space developed above it will need to provide additional parking to address the needs of the tenants of the office space. A bus terminal offering additional commercial services might need to be designed for a larger foot traffic, as passengers remain in the terminal longer than normal to benefit from the commercial services and other customers come to the terminal who are not otherwise bus passengers. For example, the Moncloa Transportation Exchanger in Madrid, Spain, an integrated multimodal transportation terminal equipped with commercial and office areas, was expanded and improved in 2009 to cater for the increasing number of passengers. As a result, it was able to cater for 110,000 passengers in 2011, up from only 44,000 in 1995 (see project summary 1).

5.0

Commercial Value Capture in Different Sectors

The nature of commercial value capture available from different PPP projects also reflects the project sector.

5.1 Transport-oriented Development

The movement of people through mass transit provides an opportunity to deliver commercial services to those users, improving their transport experience and earning additional revenues for the project.² Where the municipality sees passengers, the PSP sees customers. By providing commercial services to users, the project not only mobilizes new sources of revenues but also improves the user experience, by allowing users to meet their retail needs during their commute.

The municipality may want to consider what public services may also be provided in transit hubs to

further improve convenience for passengers. This 'transit-oriented development' will be relevant for a number of municipal projects, including bus and truck terminals, LRT systems, and BRT projects. The opportunity for transit-oriented development is exemplified by the Hong Kong Mass Transit Railway Corporation (MTRC) where residential and commercial properties are built above and around the railway stations and depots, improving the convenience for passengers and increasing revenues for the MTRC as well as the Hong Kong Government (see project summary 2).

5.2 Urban Services

In addition to transport, other urban services provide opportunities for commercial revenue generation. For example, public markets create an opportunity for low-income vendors to have access to retail space. But these same public markets can be used to make space available for middle- and high-income vendors, and thereby mobilize more customers for low-income vendors and more revenues for the project. Equally, the land used to develop affordable housing for low-income families can also provide mixed-use space, with middle- and high-income housing, commercial and office space, and parking. For example, the affordable temporary social housing

project in Turin, Italy, to support disadvantaged population groups also provides ancillary services for the residents and the surrounding neighborhood such as a hotel, bars, restaurants, a laundry, a grocery store, medical and dental clinics, an employment office, after-school activity center, and a car/bike-sharing system (see project summary 81). These services increase social inclusion within the neighborhood among low-, middle-, and high-income residents; provide more revenue for the project; and create economic opportunities for residents of the low-income housing.

5.3 Historic and Cultural Sites

PPP can bring private investments to refurbish and maintain historic and cultural assets and, in the process, create an investment opportunity. An example would be PPP projects for the development of historic palaces in Rajasthan, India, that were falling to ruins due to lack of investment and maintenance. These historic properties were leased to private investors through a competitive process

that allowed them to redevelop the properties for commercial purposes, in many cases resorts and hotels. The investors have clear obligations to develop the properties on time, maintain their historic properties, and provide access to the public.

Similarly, in Jaipur, India, an 18th century pleasure palace called Jal Mahal is located in the middle of a

² For further discussion of transit-oriented development, see Salat, Serge, and Gerald Paul Ollivier. 2017. *Transforming the urban space through transit-oriented development: the 3V approach* (English). Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/647351490648306084/Transforming-the-urban-space-through-transit-oriented-development-the-3V-approach>.

300-acre lake. The lake was an ecological disaster, with the dumping of untreated sewage and poor upkeep. After several failed attempts at restoration through other means, the Government of Rajasthan awarded a PPP to use part of the site for private commercial development, and for the restoration and maintenance of the public space. Unfortunately, this PPP has since been suspended for political reasons (see project summary 57).

Another example is the Akaretler Row House, a historic structure located in Istanbul, Turkey. In exchange of restoring the historic structure, the municipality awarded a PPP to the private developer to build office, retail spaces, hotel, residential units, and parking spaces above and around the site (see project summary 56).

5.4 Historic Ports

As cities grow and shipping transport increases and modernizes, ports are being moved out of city centers to areas more appropriate for industrial development. The historic port can be redeveloped to provide passenger terminal facilities (for both private craft and ferry/cruise liner traffic) surrounded by commercial space, for example hotels,

restaurants, pedestrian space, and residential space. This has been done successfully in a number of cities, including Rotterdam, the Netherlands; Sydney, Australia; Buenos Aires, Argentina; Baltimore, Maryland, USA and Cape Town, South Africa, to name but a few.³

5.5 Tourism

To attract investment, and to ensure that tourism investment benefits local communities, protects natural resources, and fits with government strategy, PPPs can help create a clear agreement and partnership between the public and private sector with incentives in-built to protect investors, enable local staff and skill development, benefit local communities, and protect natural resources.

In 2001, SANParks signed a concession with a PSP to outsource management of 11 restaurants, 2 shops, and 3 picnic sites in the Kruger National Park game reserve against a monthly concession fee of approximately 13 percent of its turnover.

The PPP has resulted in a significant increase in SANParks' profit, an upgrading of restaurants and shops, improvement in service and quality, skills development and an incentives programme for staff. The concession has not been without its challenges, including staff resistance, due to new conditions of service (improved performance and strict control of stock) (See project summary 61).

The Jozini Tiger Lodge, in South Africa, is a partnership between the community, the government, and a PSP, which is responsible for the day-to-day management of the lodge. The government funded the initial working capital to ensure 80 percent of local staff. The community made land available. Mobilization of community partnerships is key to rural tourism (see project summary 62).

PPPs can create a contractual arrangement more conducive and enforceable than would be the legal and/or regulatory system of the country. For example, in some developing countries, the tourism sector is the target of rent seeking at different levels of national and local government. Investors find themselves faced with serial requests for payment and delays linked to permits, licenses, and other bureaucratic processes, whether or not fictional, without transparency or clarity. If well designed, a PPP regime can reduce or eliminate such rent seeking and reduce the risk premium investors would normally apply.

The Turkish Government sought to refurbish the Akaretler Row Houses, originally built as housing for palace workers in the 19th century. Strict regulations for the preservation of historical buildings made this redevelopment particularly complicated. A PPP arrangement was used to coordinate different government stakeholders and enable the PSP to redevelop the site, including a luxury hotel, shops, offices, cafes, restaurants, the Atatürk Museum, and a car park. The PSP also helped market the area and assumed the management of surrounding public spaces (including a local park). It has contributed to the creation of new jobs in the area and a rising number of tourists. The PPP arrangement helped address the complex requirements of the legal and regulatory regime applicable to redevelopment of historic properties (see project summary 56).

³ Wikipedia. 2019. "Redeveloped Ports And Waterfronts". *Wikipedia*. https://en.wikipedia.org/wiki/Category:Redeveloped_ports_and_waterfronts.

6.0

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Municipal Public-Private Partnership Framework

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1.0

Purpose of this Module

This module sets out different tools to be used throughout the PPP project cycle to engage with the communities affected by and associated with the project, with a special focus on women and the poor.

2.0 Community Engagement

Community engagement provides critical information for PPP project design, to ensure services are delivered in the right way, to the right people. Community engagement can also help create local community buy-in to the project and facilitate adaptation to change. Municipal PPP projects should systematically implement community engagement programs. Engagement is a two-way process. It is

just as important to listen to and consider community input, as it is to share information or inform communities about PPP project activities—for project proponents to address issues and concerns and provide feedback to each other. This module outlines a basic approach to community engagement using a six-step process, which will need to be adapted to the specific needs of the municipality.

2.1 Why is Community Engagement Important in PPP Projects?

Municipalities should design and resource community engagement activities from the earliest phase as projects are being identified and then continue to engage the community through construction and operation of PPP projects. While this may involve initial costs for the municipality, a PPP that has good community engagement is more likely to be profitable, to survive changes

in circumstances over time, and therefore to attract private sector investment. For example, an international study indicated that PPP projects that engage with local communities have rates of economic returns that were more than twice as high as projects that did not engage the local community well.¹

Figure 1: Commonly Recognized Benefits of Community Engagement



¹ Kottak, Conrad Phillip. 1991. *Cultural Anthropology*. 5th ed. McGraw-Hill.

Figure 2



2.2 Six-Step Community Engagement Process

Step 1 - Define the purpose of engagement:

Being clear about the purpose of the engagement and key issues to address will set the context for community interactions and manage expectations of those participating in the process. To define the purpose, project proponents must first agree on what can be accomplished with the engagement. Once the purpose of engagement has been defined, municipalities should agree on what level of participation is actually being sought, which depends on the phase of the PPP and the type of project being proposed.

Step 2 - Decide the parts of the community to engage:

Create a list of ‘with whom to engage’—with individuals, groups, and organizations that could have an interest in the PPP or have some influence over the success of the PPP. The list is a living document and will evolve over time.

Step 3 - Community engagement ranking assessment:

Not all parts of the community will receive the same level of engagement. The municipality will need to rank the level of interest and influence that the different individuals, groups, and organizations have in the PPP project. This ranking process should be done at the beginning of the PPP process, and then reviewed and adjusted as necessary at each phase of the PPP project.

Step 4 - Develop engagement plan:

Different techniques and tools can be used by the municipalities to engage the community. Municipalities should develop a project-specific engagement plan which should describe proposed engagement strategies, tools, and schedule for engagement during each phase of a PPP, including transparency mechanisms (see Module 3: Sample Project Concept Note and Module 4: Feasibility Study)

Step 5 - Tracking and complaints management process:

Municipalities will need to track issues, questions, and concerns raised by the community in an organized and consistent way. An issue tracking table should be created to document ideas, concerns, or questions, including a systematic way of managing complaints and grievances.

Step 6 - Reporting and monitoring:

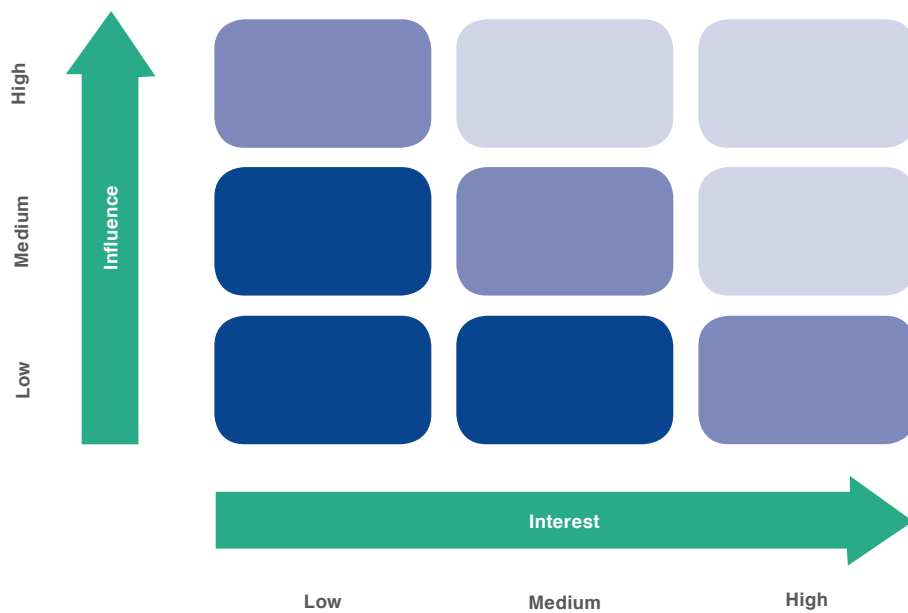
Accurately recording community feedback, sharing it with key stakeholders for planning and project design, is critical to build trust and support among participants. Monitoring the effectiveness of the engagement process is essential to ensuring a successful process (see Module 12: Contract Management).

2.3 Mapping Community Engagement

The municipality should use this six-step process for all phases of PPP project development. The PPP identification phase may rely more on the knowledge of municipal staff to begin to identify key community members and groups, but as the PPP moves into the feasibility and procurement phases, it will require more intensive engagement directly with the community, using a variety of engagement tools and techniques.

Steps 2 and 3 identify individuals, groups, and organizations ranked according to their level of interest in the project and influence on the project. Figure 3 shows a sample ranking matrix.

Figure 3: Sample Ranking Matrix



2.4 Reporting, Evaluating, and Monitoring

Municipalities should track issues, questions, and concerns raised by the community in an organized and consistent way, including a grievance and complaints management process. This process must be documented. Poor documentation of community engagement work is the biggest weakness of most municipal processes.

A municipality will need to monitor progress to ensure all sub-groups of the community are engaged, determine if the methods and tools they have selected are effective (or not), and identify where effort and resources will need to be allocated to keep the project moving forward.

3.0

Making PPPs More Pro-Poor and Gender Inclusive

PPPs often fail to recognize the issues relevant to the poor and to women. Private investors often rely on the government to consider and address issues relevant to women and to the poor. The government often relies on the private sector to address these issues as fundamental to service delivery of the project. A PPP project provides an opportunity to join public and private capacities to focus on issues relevant to women and the poor.²

This section provides a framework to help make PPP projects more pro-women and pro-poor.

A project that considers issues relevant to women and the poor has the following:

- *Reflects good governance:* Well-managed infrastructure considers the interests of the entire community.
- *Contributes to the developmental goals of the government, development partners (like the World Bank), and private investors:* Seeking to address the needs of women and the poor will help meet the government's development goals, the UN Sustainable Development Goals, and other national and regional priorities. It can also help the project access support from different sources of funding and financing, as and when needed—for example to the extent bilateral or multilateral investment is sought.

- *Is good business:* Women and the poor are consumers; they may form a key part of the labor pool, business owners, or service providers; they are key community and political stakeholders. A project that proactively seeks the interests of women and the poor is more resilient and more robust in times of change, particularly in times of political change where new policies might suggest a change in support for the project. It is harder to undermine a project when it clearly serves the needs of the local community. If the project supports the community, in times of change the community is far more likely to support the project. A pro-poor, gender-inclusive project can also avoid public relations and stakeholder conflict issues and reinforces its marketing strategy.

The project prefeasibility/feasibility study or outline/full business case should address the questions set out in this section. Equally, bidders and financiers should ask these questions in their due diligence processes to make sure they are adequately addressed. During implementation, the questions should be revisited periodically to ensure that the project is still adequately addressing relevant issues.

For further discussion of these issues, see the pro-poor and gender pages of the World Bank's Public-Private Partnership Legal Resource Center <http://ppp.worldbank.org/public-private-partnership>

² International Finance Corporation, World Bank, PPIAF, Government of Canada. 2019. *Gender Equality, Infrastructure and PPPs: A Primer*. <https://library.pppknowledgehub.org/documents/5720>.

3.1 What is the Context of Women and the Poor?

(1) Is there a practical method of identifying the poor? Do applicable laws, regulations, and practices, nationally or at the level of the state/province/county provide a definition of the poor? Is there more than one category of the poor that is relevant for these purposes?

A simple, specific definition of 'poor', based on cultural and social context, can be challenging to achieve. Some projects define the poor based on

housing, for example, anyone whose residence has a dirt floor. In others, a national database is available to identify the poor, for example, the poverty identification system and database (the Sistema Nacional de Selección de Beneficiarios or SISBEN) of Colombia. This database is used to target subsidies and other benefits designed to support the poor.

(2) Are there local cultural, social, or religious practices that could impede service provision to women or the poor, or access to economic opportunities from the project?

The cultural, social, and religious context of women and the poor will have an important influence on the issues more relevant to them. Certain members of the community may be excluded from opportunities or services or may be segregated from other aspects of the community. This may result in their poverty or may be caused by their poverty. For example, poor communities often include refugee and immigrant communities (legal or illegal), who may not benefit from the support of local political elites, tribal communities, religious groups, or social groups. They may be excluded from the protections afforded by political structures to the extent they are focused on citizens or only people from certain countries, religions, or cultural groups.

(3) Are there legal constraints that could impede women or the poor, for example, does one need to have land tenancy, a registered address, or identity card, before accessing services, seeking employment, starting a business, receiving compensation (for example, resettlement), or engaging in other activities associated with the project?

Women and the poor may not have certain legal standing; in some cases, services cannot be provided to those without a legal right to property (a registered address linked to property ownership or leasehold/rental agreement). Many live in informal settlements or as squatters and it may be difficult for the government to allow public services to be provided to illegal residents. That was the case in Côte d'Ivoire where the social water tariff and social connection of water services offered to poor households were offered only in legal settlements. As an estimated 70 percent of the unserved population was non-Ivoirian, and living in illegal settlements, they could not benefit from the policy.

Some utilities have found ways to provide services in such circumstances, for example the condominium model developed for the Manila Water Concessions, where the utility delivers bulk water to the boundary of the illegal settlement. Community organizations purchase the bulk water and manage the distribution system within the illegal settlement, collecting fees from residents to pay for the bulk water and for the distribution network.

(4) Are there power structures in local communities affecting women or the poor, or certain groups among the poor, which will influence the location or design of the project and the ability of the poor to benefit from the project?

Local power structures may be well placed to manage services or subsidies for the poor, being selected by and having key connections with poor communities. But in some cases, those local power structures are ill equipped to do so. The project design needs to understand the context of these power structures. For example, an NGO in Mexico provided boreholes for villages with mechanical pumps to reduce the time needed to draw water and therefore allow more time for education and other activities. However, the NGO failed to engage with the local power structure. As soon as the NGO had installed the pump, the local mayor removed the handle and would not allow access unless he was paid a fee by each user, eliminating the benefit for the poor.

(5) Are there factors within the communities such as high violence rates that are specific to women or the poor?

In some cases, the poor live in informal settlements and other areas with specific characteristics that limit the ability of the poor to access services. For example, some poor communities suffer from high rates of violence, in particular at night. Toilet and washing facilities designed to be available at night may be effectively inaccessible due to the level of crime and violence that will be attracted by a well-lit area at night. Women may need access to special entrances, improved lighting, or heightened security, to protect them from potential violence.

(6) Do women or the poor receive subsidies that might help access benefits from the project?

The poor may receive support from the government or other sources. The project will need to understand the nature of such support and any relevant terms and conditions to ensure that the services are designed to work well with such support. For example, the poor may receive free access to primary education, but may be required to meet certain criteria, for example, they are required to provide books or school uniforms. While the free access to education is a clear benefit, the other conditions may be unaffordable for the poor. Women may be given access to training or other learning opportunities. The project will need to understand the context of women to help them access these opportunities.

(7) To what extent can women and the poor receive and pay bills (for example, are there requirements of land tenancy, registered address, identification card, or otherwise)?

Women and the poor may not have access to the same financial services as the better off, for example, there may be some initial deposit limits, identification, registered address, or other requirements that prevent elements of the community from having bank accounts or credit cards. Therefore, they may use barter arrangements, cash, or mobile money for financial transactions. Billing may, thus, need to adopt more flexible arrangements. Some systems allow cash payments to be made locally, for example, at post offices or mobile phone outlets. The Côte d'Ivoire SODECI concession instituted quarterly billing by the operator. The poor could not meet the requirements of such infrequent billing, and many were disconnected. Local billing centers, more flexible payment methods, and schemes to pay off arrears have been established, and the situation has improved.³ In Bangalore, the Bangalore Water Supply and Sewerage Board allows consumers to pay bills through a variety of options such as water kiosks, electronic clearing service systems, and household e-banking facilities.⁴

(8) Where are the poor located as compared to the existing service network? Are there technical/cost complexities of serving poor areas? Are the poor located in areas likely to be vulnerable to disasters? How does the location/alignment of the project affect potential benefits to, and participation by women and the poor, for example travel commuting patterns, location of employment, education and social focal points?

The location of the poor can have a significant impact on the ability to provide services or to ensure that they receive specific benefits. For example, the poor may be located far from the existing facility, requiring special connections or facilities. Where a BRT line is located in a corridor that is difficult to access for the poor, other transit facilities may need to be developed to connect the poor with the BRT, for example, feeder buses, pedestrian

bridges, or tunnels. Security in such areas can be more difficult to ensure, requiring close engagement with community groups and special facilities such as women-only space on bus platforms, special entrances, lighting or security support.

The last mile connections—for example, for water, power, or telecoms—can be a particular challenge for poor neighborhoods in urban areas that are crowded, with narrow streets and with only informal utility facilities, where access may be difficult and land ownership unclear. PPP operators can be required to deliver last mile, but funding will need to be found, either through cross-subsidy from other users or from government subsidies. In many cases, last mile infrastructure for the poor is publicly funded and is a key focus for development finance institutions.

PPP projects, in particular during construction stage, often involve an influx of goods and workers into a vulnerable community (for example, rural, small, and remote), transport of materials, and other changes to the rhythm of the community that can create additional risk. An influx of outside goods and workers often brings an increased risk of squeezing out local businesses, increased demand for goods and services that raises prices and crowds out local consumers. It may result in increased traffic and road accidents. Bringing transient workers into a community can result in expansion of prostitution, increase in sexually transmitted diseases, sexual harassment, gender-based violence, sex trafficking and child abuse, hostile work environments, and exposure to health risks (such as HIV/AIDS and water-borne illnesses). To ensure project activities and guard against potential risks related to sexual exploitation and abuse and other forms of gender-based violence, the Vanuatu Aviation Investment Project stipulates contractor responsibility for the implementation, enforcement, and monitoring of a code of conduct covering gender-based violence. Contractors are also responsible for development and implementation of a complementary action plan to provide awareness and ensure that any such violation is addressed efficiently.

³ Fall, Matar, Philipp Marin, Alian Locussol, and Richard Verspyck. 2009. *Reforming Urban Water Utilities in Western and Central Africa: Experiences with Public-Private Partnerships*, Vol. 1, *Impact and Lessons Learned*. Water Sector Board Discussion Paper Series. <http://documents.worldbank.org/curated/en/356151468236368922/pdf/487300NWP0v10B1P131PPPWestAfrica1v1.pdf>.

⁴ Water and Sanitation Program. 2008. *Performance Improvement Planning: Developing Effective Billing and Collection Practices*. <http://documents.worldbank.org/curated/en/713571468138288578/pdf/441190WSP01N0P1ive0billing01PUBLIC1.pdf>

3.2 How to Design the Project for the Benefit of Women and the Poor?

(1) Are complementary arrangements/inputs needed to ensure that women and the poor can use the services optimally (for example, information/education, lighting, security, and low-cost methods to access services)? Can women and the poor provide labor or other in-kind contributions to implement the project and thereby reduce the cost of services?

The project may need to offer additional support or services to maximize benefits for women and the poor. Women may not be able to use new or upgraded infrastructure services in the same way as men due to safety and security issues:

- Better lighting (for example, at bus stops) for access during the night.
- Step-free access to public transport for women with young children and the elderly.
- Separate male and female facilities (for example, female-only cars for transit projects, female-only waiting areas, separate female public toilets/washing facilities).
- Additional facilities to ensure discretion, for example, around the entrance to female toilets.
- Selection of locations for water stand posts and electricity supply where women congregate.
- Pedestrian crossings, with speed bumps, and so on to ensure the security of pedestrians, where women with young children or the elderly may be less mobile.

Such additional support or services should form part of the project obligations and should be included in the key performance indicators to ensure the benefits are hardwired into the project. For example, services such as electricity and telecommunications only benefit communities to the extent that the community understands their use and potential benefits. The project may include training for poor communities or for women, and programs to make available the tools that will ensure benefits are made accessible.

In some cases, women and the poor can provide support, for example physical labor to deliver services at a lower cost. In some cases, communities are located in informal settlements where space is constrained, footpaths are not improved, and installing equipment can be challenging for outside contractors. The community can help install pipes, cables, or other equipment in the settlement, for example excavation services, that will reduce the cost of construction and therefore the cost of services.

(2) Do women and the poor receive services through alternative providers or systems (for example, off grid)? What are the technical and financial implications of such alternative services (for example, cost per unit, health implications)? Can/should the project be incentivized to facilitate such provision? What would be the implication if the informal supply networks were formalized? Or removed in favor of a formal system? How could any negative impact be minimized?

Part of the community may currently receive services from informal providers such as water vendors, or through localized infrastructure such as mini-grids for electricity. Providing new services may squeeze out informal services, which are themselves often delivered by the poor. This may result in lost jobs and economic opportunities for the poor.

The project may intend to replace such service providers, in which case the transition will need to be carefully planned to mitigate impact on consumers and to help the informal service providers to find other opportunities. In other cases, the project may absorb such alternative service providers, possibly by bringing them into the project to help deliver services and engage with the community using the experience they have developed as alternative providers. The latter may involve the alternative service providers becoming 'last mile' providers for the project. In Kisumu, Kenya, the utility Kisumu Water and Sewerage Company (KIWASCO) sells bulk water to service providers contracted to operate and manage parts of the network in an informal settlement. KIWASCO selects and recruits these service providers through a publicly advertised and competitive process. These service providers can either be private entrepreneurs or CBOs.

(3) How should the project be designed to enhance any subsidies that women or the poor receive, and to maximize benefits obtained through those subsidies?

There may be other externalities that can be harnessed to support women and the poor through the project such as subsidies or other benefits provided by the government, civil society, or otherwise. The project may be able to help communities utilize such benefits to greater effect and leverage greater investment and advantage. For example, the poor may have access to grants if their children attend school, or if they visit health clinics periodically. A PPP project can take such programs into consideration when providing services, helping

the poor to access such grant funds more easily or use such funds more efficiently.

(4) Can third parties (for example, the community, NGOs) help provide services to women or the poor to reduce cost of delivery, for example, through bulk supply?

Providing benefits to women and the poor may involve the project partnering with third parties, for example NGOs, who may help deliver services or may provide an additional conduit for those services. The project will need to create a protocol for working with the relevant third parties and agreements with those third parties to ensure that the solution is well designed and sustainable. Under the Bayan Tubig (Water for the Community) initiative in Manila, the Philippines, CBOs and local and international NGOs intermediate by providing financial, logistic, and technical support to the initiative, even training on hygiene and environment awareness. They also create links between the formal network that delivers water to the perimeter of the informal settlement and community groups extending connections to public taps and household connections.⁵

(5) How does the location/alignment of the project affect potential benefits to and participation by women and the poor, for example, travel commuting patterns, location of employment, education and social focal points?

The location of project assets can have a specific impact on the benefits and advantages that a project can provide to women and the poor. Assets often connect locations of importance to the wealthy and the middle class, and to the often predominately male decision makers. Transport infrastructure and the location of water points, electricity connections, and sanitation facilities needs to reflect economic opportunities, employment, education, social purposes, travel patterns, and security concerns of women and the poor.

(6) Does the project lead to displacement, resettlement, and/or livelihood loss of the poor disproportionately? What strategies can be developed to minimize or avoid these risks? Do anticipated compensation measures (for example, for loss of assets, usage rights, or crops) lead to equal results for women and the poor?

Infrastructure development often requires land acquisition, leading to involuntary resettlement or causing losses of assets or loss of access to livelihoods or assets and resources. Women and the poor are often vulnerable to the processes of allocating compensation and/or resettlement, where

they lack input into decision processes or are not able to raise their concerns. The processes need to take capacity differences into account regarding land or assets access, control and use, and the resulting losses. Compensation may be provided primarily to landowners, excluding those living on the land or relying on that land to earn their living. Failure to consider the interests of these poor, disenfranchised, and possibly informal communities can create social and civil friction which has undermined many a PPP project.

(7) To what extent will tariffs on consumers be affordable to the poor? Are the poor willing to pay such tariffs? How much subsidy/cross-subsidy will be needed by the government or other users to make tariffs affordable for the number of poor consumers that need access? Would such cross-subsidy be affordable to other users?

The government may choose to include subsidy or cross-subsidy mechanisms to make services affordable for the poor, and/or to finance connection or other large periodic payments to allow the poor to pay over time. The project may seek to leverage funding from other sources, such as government grants, donor support, or other third-party funding sources to provide access to services and to maintain their affordability over the course of their supply. The project may also be designed to work alongside other entities implementing such pro-poor funding mechanisms. In Côte d'Ivoire, the SODECI concession provides for a social tariff, coupled with a social connection fee, financed by a charge collected from water customers, in addition to the water tariff.

To preserve incentives for rational economic behavior, subsidies should only cover a proportion of the total costs of the service and should ideally be contingent on beneficiaries paying their share of the bill. Under this same logic, subsidies should not be paid for consumption beyond the subsistence level, and given for a long enough period to avoid the effects of the 'poverty trap'. The World Bank Group supported North Luzon Expressway in the Philippines. To improve access by the poor to the highway, the project designed the toll for mini passenger buses (called jeepneys) at a flat daily rate, instead of the per-entry toll used for other vehicles, to allow them to get on and off the highway and to pick up and drop off passengers at no additional cost.

(8) Is tariff setting and imposition appropriate to the context of women and the poor? What billing and payment technology would be most appropriate given location, access to payment systems, access to cash, and other context of women and the poor,

⁵ Inocencio, Arlene B., and Cristina B David. 2001. "Public-Private Community Partnerships in Management and Delivery of Water to Urban Poor: The Case of Metro Manila." Discussion Paper Series No. 2001-18. Philippine Institute for Development Studies.

for example, mobile-phone based mechanisms, payment offices located near poor neighborhoods, access for illiterate and multilingual facilities?

In some cases, the tariffs themselves are not as much of a challenge as is the method of imposition of tariffs. Those tariffs need to be set and charged in a way appropriate to women and the poor. For example, rising block tariffs involve an increase in per unit tariffs the more total units a user consumes in a given period. Thus, a consumer using a large amount of service each month (for example, industrial and other large-scale [wealthy] users) should pay a higher per unit tariff. In the energy sector, this can be an effective way to shift higher costs on larger users of services. Though, often, the inverse is true, commercial and industrial users pay lower prices to encourage industrial growth and investment in the community. In the water sector, in some communities the poor group together to pay for a water connection due to the high cost of connection; this means that several families may share a single connection. Also, the poor may use larger amounts of water for economic purposes, for instance to provide laundry services; but this means that a single connection in a poor community may have a higher total usage per month, therefore a higher block tariff will be applied with subsequently a higher tariff paid by poor families.

In addition to tariff levels and how they are calculated, the billing and payment system itself needs to be designed to meet the needs of women and the poor. Frequently, women and the poor do not have access to credit cards or bank accounts. They may receive income only gradually over time—not in weekly or monthly payments, as those formally employed. Therefore, the project may need to adapt the billing and payment mechanisms to allow consumers to pay as and when they can. In the Rural Electrification Extension Program in Thailand, respected local representatives, for example school teachers, are appointed to act as collection agents.⁶ The agent represents the community and ensures collection. The agent is paid a fair salary. The project saw collection costs drop significantly.

The project may need to develop more flexible billing and payment mechanisms, including:

- Mobile money accounts;
- Pay-as-you-go models; and
- Cash payments at local agents, for example at post offices, mobile phone outlets, local billing centers, and water kiosks.

3.3 What Additional Benefits Might the Project Provide to Women and the Poor?

A project is likely to provide a number of benefits and opportunities for the poor in addition to the services provided through the project, including jobs, economic opportunities, access to different economic resources, and attraction of investment, among others. Sometimes indirect benefits can be even more important to the poor than direct benefits.

(1) What opportunities are there for jobs to be filled and/or created for women and the poor? Are there key constraints to accessing these jobs? What support could be provided to help them access better job opportunities?

PPP projects often create jobs, an important opportunity to cement a project to the interests of the local community, but sometimes women and the poor may be at a disadvantage when trying to access jobs. This may relate to skill levels, access to information, connections needed to apply, interviewing skills, or other gaps that can be addressed through the project.

A gender-responsive project will encourage employment of women during all stages of the project, require contractors to pay equal wages to men and women for equal work, provide training on sexual harassment, provide separate sanitary and other facilities, and ensure protective clothing and safety equipment for both male and female workers. For example, the Yunnan Integrated Road Network Development Project in China, integrated gender-specific actions, including:⁷

- Recruiting women in construction and maintenance work of the subproject (during the construction, women were recruited for pit repairing; cleaning the road, ditches, and culverts; collecting wasted materials and planting trees and grass on roadsides to prevent soil erosion);
- Giving priority to people from poor families and women when employing the local people;
- Paying men and women equally according to domestic law and international conventions;
- Providing a safe working environment for all employees;

⁶ Provincial Electricity Authority. 2014. *Rural Electrification in Thailand: Policy and Implementation*. <https://www.iitk.ac.in/ime/anoops/for14/PPTs/Day%20-%2005%20Bangkok/RE%20in%20Thailand%20-Policy%20and%20Implementation%20-%20Mr.%20Reungvith%20Vechasart.pdf>.

⁷ Asian Development Bank. 2016. *Social Monitoring Report – GAP Implementation, PRC: Yunnan Integrated Road Network Development Project*. <https://www.adb.org/sites/default/files/project-document/216316/40626-013-smr-18.pdf>.

- Providing technical training on road maintenance techniques and use of equipment for female employees as well as safety training; and
- Providing safety and health training courses for workers to raise their awareness on safety and prevention of sexually transmitted diseases.

(2) What opportunities are there for local, small businesses to provide services to the project? Which of those services might be provided by businesses owned by women or the poor or employing women or the poor? What support could be provided to those companies to access these opportunities?

In addition to employment by the project, there may be opportunities for services to be provided to the project. Businesses of women or the poor may be unprepared or ill adapted to the needs of the project. For example, small businesses such as local convenience stores can serve as payment collection points. Local suppliers can provide many needs of the project during construction and implementation. In mining projects, local suppliers are often excluded from opportunities to supply goods and services to the mining operations, as they cannot guarantee to the mining company that they can provide the volume and quality of supply demanded. A large mine requires huge volumes of food, security services, housing, and so on. If local suppliers are not able to provide the required level of services, they will miss out on opportunities. Some effort could be made by the project to help poor businesses to deliver the relevant services and win bids (individually or in consortia). The project may include support to poor communities to understand and prepare for the opportunities that will be created by the project and where they are best placed to take advantage of those opportunities. The project may set performance-based indicators linked to services provided by businesses owned or operated by women or the poor.⁸

(3) What are the potential indirect economic benefits of the project for women and the poor (for example, more economic activity leading to greater supply of jobs, more employment opportunities due to higher commuting ability, more skills transfer due to access

to power and transport)? Will the project provide, directly or indirectly, new access to markets, for example, through improved transportation, information, or education? How might the design of the project further magnify these indirect benefits?

The economic benefits may not come from the project but rather may be made available by the project. For example, transport projects may provide the poor with access to new markets, new services (such as education and health care), or new opportunities (whether by improved access to transport, lower costs, higher cargo capacity, and so on). The design of the project should consider the nature of these economic benefits and should focus on maximizing these benefits and ensuring their sustainability. To improve the affordability of public transport for the poorest, Bogotá rolled out in early 2014 a 'pro-poor' public transit subsidy, through a personalized smartcard. The construction of feeder lines and bike lanes provided improved accessibility to public transport for populations living in the low-income periphery of the city.

(4) Are there facilities being developed for the project that might also provide benefits to the poor, for example, water treatment, electricity generation, solid waste management? Can the project be used to provide other services to the poor? Is there an opportunity for cross-selling or other public service delivery?

In some cases, the infrastructure developed by a project might be extended or expanded to provide services to the poor. For example, infrastructure for tourism facilities can be expanded to provide services to the local community. Tourists will want to see the local community well supported, may want to be part of an outreach to local poor communities, and may be willing to pay extra to provide such support. As another example, special economic zone (SEZ) projects also generally include the development of infrastructure to service tenants of the SEZ. These facilities may be expanded to provide services to the local community, in particular poor communities.

⁸ International Finance Corporation. 2012c. *Gender Impact of Public Private Partnerships – Literature Review Synthesis Report*. <https://ppp.worldbank.org/public-private-partnership/library/gender-impact-public-private-partnerships-%E2%80%93-literature-review-synthesis-report>.

3.4 How Can the Poor Communicate with the Project?

It is important for the project to benefit from advice and feedback from the poor.

(1) How does the political context of women and the poor allow them to communicate with the project? Does local government represent women and the poor well?

Women and the poor may have 'voice' (the ability to make one's ideas and concerns heard) through established political representatives, who may be well attuned to the interests of women and the poor, and may be able to act as a conduit for their views for the project. Local political structures may even have agencies or task forces designed to support women or poor communities, which may be well placed to provide voice where the project is concerned. However, it may be that while women and the poor are an important concern for local political structures, the capacity of such structures to engage with these communities or provide them with voice where the project is concerned might be limited. In these cases, other mechanisms may be needed to provide voice to women and the poor. For example, the project may engage with local community bodies or NGOs; or it may create a separate community engagement body, specifically for the project. Such engagement committees can be critical to project success, ensuring good communication and avoiding misunderstandings. The National Transmission Modernization Project in Pakistan showed that women are particularly vulnerable in rural areas, with no recognized role in the authority structure of the villages despite representing 46 percent of the population. Only around 2—3 percent of women participate in business activities or formal employment, and only 30 percent participate in local representation or political gatherings. Women are rarely engaged in community consultations and compensation matters.⁹

(2) How does the cultural context of women and the poor allow them to communicate with the project? Are there community groups that reflect the interests and concerns of women or the poor?

Cultural context may create challenges for the voice of the poor, for example where the poor are not allowed to express concerns or raise issues in public forums. Community groups may provide voice to the poor and may have better connection to their interests, for example village or township councils may represent the interests of the poor well and may provide an opportunity for voice. However,

the poor may not be entitled to be represented in community organizations (for example, where membership is linked to land ownership).

(3) Are there civil organizations/NGOs that reflect the interests and concerns of women and the poor? Can these groups be used as intermediaries/support mechanisms to ensure protection and communication of the interests of women and the poor?

Civil organizations such as NGOs may be able to provide voice or support to the poor to allow them to express their views and provide feedback on the project. Such organizations are often focused on the interests and context of the poor. In Tangerang, Indonesia, only 22 percent of the population had access to clean water provided by the utility. A local NGO constructed a series of centers to provide water and sanitation in these areas, maintained and operated by local families who run them as concessions. They sell water and provide toilet, shower, and washing facilities.¹⁰

(4) How do women express opinions and priorities in decision making in the family and in the community? How are men and women organized and represented in these decision-making structures?

In many cultures, social norms or laws may prevent women from standing up, speaking, and being heard during community discussions and decisions, for example, at community meetings. Staff need training to reach out effectively to local women and to create an environment that enables women to participate in community meetings, for example organizing meetings at a time and location that allows women to participate, the provision of transport or child care, or the organization of separate meetings for women and men. Women may also be more comfortable talking with other women. Culturally sensitive survey teams and community liaison staff should therefore also include female members who can conduct discussions or lead interviews, if needed. The project team for the National Transmission Modernization Project in Pakistan uncovered a lack of voice and agency of women, and proposed project staff trained in effectively reaching out to the communities, and especially women, seeking their involvement in its consultations, development, and implementation, and a conducive environment for all women through gender-sensitive consultations to assist with consultations, eligibilities, entitlements, and management of grievances in a gender-informed manner.

⁹ World Bank. 2017d. *Project Appraisal Document on a Proposed Loan in the Amount of US\$425 Million to the Islamic Republic of Pakistan for the National Transmission Modernization I Project*. <http://documents.worldbank.org/curated/en/345091513911668260/pdf/Pakistan-Transmission-PAD2036-PAD-updated2-11302017.pdf>.

¹⁰ United Nations ESCAP. 2009. *Community Toilets in Tangerang, Indonesia*. https://www.unescap.org/sites/default/files/Tangerang_ES.pdf.

3.5 How Can the Project Communicate with Women and the Poor?

Just as it is important for women and the poor to communicate with the project, it is also important for the project to be able to communicate with women and the poor.

(1) How do women and the poor access information (print media, radio, television, informal networks, meetings)? What are literacy levels? Are there established mechanisms for communicating with the illiterate population, for example, familiar access technologies? What languages are used as common communication in the community?

Communication with women and the poor can raise specific challenges, especially in the face of low levels of literacy. The languages spoken among the poor may be different from those in other parts of the community. In particular, the poor community may not be as familiar with the common language, which may disadvantage the poor when faced with economic opportunities or commercial engagements. Some mechanisms can help address language and literacy challenges. The community itself may have developed coping mechanisms, for example civil society groups may provide support for literacy and translation. In some cases, a service industry develops around these support functions. The project may need to provide local offices for support, for instance to provide written documents and services in other local languages. Mexico's Oportunidades Program (now Prospera Program of Social Inclusion) found that out of the 110 bilingual personnel working for them in 2010, 79 percent of them were not assigned to areas where they could communicate in their mother tongue. They therefore renewed efforts to hire bilingual promoters and relocate existing ones to match linguistic demands.¹¹

Women in low- and middle-income countries are, on average, 10 percent less likely to own a mobile phone than men, in South Asia this number climbs to 26 percent. Women are 26 percent less likely to use mobile Internet than men, and 70 percent less likely in South Asia. Among mobile owners, women are 18 percent less likely to use mobile Internet than men.¹² Closing this gap would create a substantial commercial opportunity for mobile operators.

(2) How can the project engage with women and the poor, in particular in designing the project, and in monitoring the project? To what extent are poor and female beneficiaries consulted when monitoring performance of the project?

As a fundamental part of the project design,¹³ a communication mechanism should provide for engagement with women and the poor.

This process will include formal communication arrangements to collect qualitative and quantitative information to address specific performance criteria and data points required for project operation. It will also include informal consultations to allow the poor community and women to raise issues, ask questions, and help the project identify gaps, needs, and changes in context.

(3) How can the project ensure that women are represented throughout the consultation process (for example, timing of meetings, women-only meetings)?

Project information must be understandable and accessible for those affected by or benefiting from the project (for example, translations into local languages, audio recordings) or involving women's representatives to provide support. For example, the Trung Son Hydropower Project in Vietnam made extra efforts to ensure that community members, in particular women, would participate in stakeholder consultations and that potential language barriers were addressed:¹⁴

- At least three weeks before the consultation meeting, information of appropriate form and in local languages was provided at district, commune, village, and household level.
- Audio recordings of the project information, frequently asked questions, and contact information, with a machine on which they could be played, were provided at the village level. Recordings were in four languages: Vietnamese, Thai, Muong, and H'Mong.
- Consideration was given to having separate meetings with any group that was reluctant to attend the village meetings to encourage women and other vulnerable groups to participate.
- A short oral summary of the project, its impacts, and proposed mitigation measures was presented in the meeting. All questions/feedback, requests, and responses were properly recorded.
- Group discussions were held if needed. In addition to Vietnamese, translation of the discussions into local languages was provided as necessary.

(4) How can the project provide expedited dispute resolution that is accessible to women and the poor, for example, complaint mechanisms, mechanisms for communications, access to the regulator, representative located on site, tele kiosks? In the event of renegotiation or modification of the project, to what extent can the project consult with women and the poor?

The project needs to ensure that the poor community is able to access conflict resolution

¹¹ Nieto, Daniel Ortega, and Camila Alva Estabridis. 2015. *How to Overcome Communication and Cultural Barriers to Improve Service Provision to Indigenous Populations*. Global Delivery Initiative. http://www.globaldeliveryinitiative.org/sites/default/files/case-studies/k8437_how_to_overcome_cultural_barriers_indigenous_people_cs_p8.pdf.

¹² GSMA. 2018. *The Mobile Gender Gap Report 2018*. https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2018/04/GSMA_The_Mobile_Gender_Gap_Report_2018_32pp_WEBv7.pdf.

¹³ See in Question 1 – Sub question a) for instance, the legal obligation in Paraguay of including in the prefeasibility studies of PPP projects the project's impact on the population and the inclusion of specific groups in situation of vulnerability.

¹⁴ World Bank. 2017e. *Results of Collaboration for Social Inclusion in the Trung Son Hydro Power Project, Vietnam*. Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/903511496219887678/Results-of-collaboration-for-social-inclusion-in-the-Trung-Son-Hydro-Power-Project-Vietnam>.

mechanisms where project performance does not meet expectations. These procedures will allow resolution of conflicts before they grow into disputes. Poor communities often do not have access to the resources needed to manage conflicts well with sophisticated counterparts such as the investors in the project. Gender-sensitive conflict resolution mechanisms may include community meetings, through women's representatives to ensure that women feel comfortable submitting their complaints

and concerns. For example, the Transmission Efficiency Project in Vietnam provides for dedicated staff to receive and address complaints and grievances. Local organizations, such as the Women's Union, participate actively in the process.¹⁵ Expedited conflict resolution will help raise issues with the project more quickly, and allow the project to address challenges early, when they are easier and cheaper to address.

3.6 What Incentives Should Be Placed on the Project Participants to Protect the Interests of Women and the Poor?

(1) What bidding criteria should be imposed to ensure that the successful bidder knows how to work with issues of women and the poor, and can demonstrate a history of doing so?

The bidding process should help identify a private partner that has the expertise and experience in implementing pro-poor and pro-women solutions in other projects. The bidding process can also be used to raise some of the issues identified and ask bidders for creative solutions to address the issues raised. This will test the ability of bidders to develop effective solutions for issues associated with the constraints in question, and can also evaluate the extent to which said bidders have implemented such solutions in other projects.

(2) What specific pro-poor and pro-women obligations should be placed on the project (for example, consultations, capacity building, infrastructure, and financing mechanisms for connection costs)?

The project needs to place a clear set of obligations on the government authority, on the private investor and on other project parties—things that parties must do and things that they must not do or must only do at certain times and in certain ways.

(3) What key performance indicators (KPIs) should the PPP agreement include, for example, number of poor consumers, number of female employees?

In addition to obligations placed on project parties, incentives should be designed to encourage the project parties to comply with those obligations and otherwise achieve specific outputs. These incentives are often implemented through the establishment of KPIs, which if breached can result in financial penalties and possibly project termination. Pro-poor and gender-inclusive KPIs should be included based on the issues identified above. Possible KPIs might include the following:

- Number of poor consumers using the service
- Number of new connections to the poor
- Volume of service provided to the poor
- Number, salary level, and seniority of project-related jobs awarded to women as compared to male staff
- Relative number and value of service contracts awarded to women owned or operated businesses

Depending on the risk allocation, there may be performance penalties, for example, if the financing mechanisms for poor consumers is not used enough or a bonus paid if a certain proportion of employees are female. There may be a financial penalty if complaints are not resolved within a certain time frame, or bonus payments for each poor consumer newly connected to the services.

(4) What is the best way to monitor those KPIs and ensure compliance with obligations?

Both parties should be encouraged and incentivized to monitor implementation of the contract, including compliance with obligations and fulfillment of KPIs. A robust monitoring and (preferably) third-party validation mechanism is needed to monitor the performance indicators. The poor can often be victims of collusion between private providers and government monitors. The monitoring should include project implementation related indicators, as well as outcome indicators that can help assess the net welfare gains or losses among women and the poor from the project, differentiating between direct and indirect (or second order) impacts. During implementation, the monitoring system should aim to provide timely and periodic feedback on (1) the status of implementation of the pro-poor and gender inclusive elements in the contract and (2) whether the incentives to encourage inclusion of women and the poor as project beneficiaries are working—so that course corrections can be adopted as needed.

¹⁵ World Bank. 2014b. *Project Appraisal Document on a Proposed Loan in the Amount of US\$500 Million to the Socialist Republic of Vietnam for a Transmission Efficiency Project (TEP)*. <http://documents.banque mondiale.org/curated/fr/566821468177570152/pdf/PAD7660PAD0P1300OUO0900R20140017101.pdf>.

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PRIVATE SECTOR
CONTEXT

Municipal Public-Private Partnership Framework

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1.0

Purpose of this Module

When a PSP considers a municipal PPP, it will perform due diligence and test whether the risks and investment potential merit investment of time and money for due diligence. The PSP approaches this task in a way often very different from municipal staff.

The following sets out a few issues that are critically important to the PSP to help the municipality understand the kind of issues that are important for the PSP and the due diligence it will perform. The feasibility study¹ and the PPP agreement² should address these issues. Municipalities should review their projects from the perspective of the PSP to understand better the PSP's perspective and priorities in advance of the bidding process and to prepare for the kind of questions and concerns that the PSP will likely raise.

¹ See Module 4: Feasibility Study.

² See Module 11: Sample Municipal PPP Agreement.

2.0

Private Context

The key concerns of the PSP will be discussed here around a series of key questions that potential investors will ask when considering a project. This is not an exhaustive discussion, rather it is meant to help municipalities understand some of the key issues relevant to private investors.

2.1 Is This Project Important?

PSPs know that projects that are important to the municipality and to the people have a better chance of closing, and of succeeding. Projects that are only important to a particular municipal official or political party are probably less likely to succeed. Indications of the importance of a project include the project's presence on the priority list of the

government, the assessment of economic impact that the project will have on the local community and on the country at large, and the level of engagement with the local community (in the identification and design of the project as well as its implementation).

2.2 Does the Project Have a 'Champion' within the Municipal, Provincial, or National Government?

PSPs realize that projects will require someone influential enough to coordinate different government entities and identify solutions for the project through the various obstacles that projects are bound to face through the process of development and bidding. The identity of the government champion is not generally disclosed in

the bid documents or other documents shared by the municipality; this is research that the PSP will undertake on its own. This assessment will include the context of the 'champion', including timing of the next election, and the likelihood of the champion remaining in power.

2.3 What Are the Regulatory or Legal Approvals the Project Requires?

The PSP will need to understand all of the permits and licenses that need to be obtained at different stages of the project, before implementation, during implementation, and throughout operation. Which approvals the municipality will secure and which ones the PSP has to secure, and which of these approvals are sensitive or difficult/time-consuming to secure. Even though the municipality may take on the responsibility of securing key regulatory and legal approvals, the PSP will need a solid understanding of the probability of getting all

required approvals and the likely time-frame for the same. The PSP will assess the risks and associated costs of waiting to commence construction or commence operations after construction, due to delays in securing approvals. The PPP agreements will need to explain how and under what conditions, if at all, the municipality will compensate the PSP for any delays in securing these approvals or where the approvals require different performance obligations or investments than are anticipated in the PPP agreement.

2.4 Is Demand Real, or Just Hopeful?

There is a tendency for demand assessments to suffer from optimism bias (see Guidance Note section 2.2), in particular where the assessment is performed by a party incentivized to implement the project. A municipality, for example, is likely to assume a much higher level of demand for a project than might other project parties. Studies of traffic forecasts and similar demand forecasts show a consistent overestimation of demand by governments, investors, and lenders, with lenders being the most conservative.

Potential investors will discount any demand forecast provided by the municipality (even if produced by an expert), to address the impact

of any optimism bias. Potential investors often undertake their own demand assessment. Even if they do not undertake a comprehensive assessment (for example, if the municipality has undertaken a comprehensive study through a reputable expert), PSPs would undertake a quick assessment of demand to validate the municipality's study and to determine how much they should discount it or possibly apply a more optimistic assessment than that of the municipality. More often than not, a population growth-driven assessment of demand is not adequate for PSPs; they typically need more granularity with respect to demand projections.

2.5 What is the Source of the Demand?

Potential investors need to understand the sources of demand. Are the high-demand segments located in some specific geographical areas within the municipality or is it based on some demographic parameters, such as age or income? For example, for a water supply distribution PPP, potential investors would need a detailed breakdown of demand across the service area to assess the robustness of the demand from various segments and also its likely projected growth. This information is also used to design the project better and also

plan operation of the project to fit actual needs. Potential investors take seasonal variations in demand into account because it directly affects cash flows of a project and consequently debt servicing and other payout obligations. Also, if the seasonality is high enough, PSPs also look at seasonality of labor demands and operating costs across different seasons. This can help design operating cost efficiencies.

2.6 Are Revenues Real or Just Hopeful?

Just as demand forecasts are often optimistic, so too are revenue forecasts. Potential investors would like to understand the basis for determination of the tariff for the services being provided by the project, how the tariff is regulated, any administrative or bureaucratic approvals required, and whether users/people are likely to pay the proposed tariff (affordability and willingness to pay). Investors will compare proposed tariffs with similar services offered in neighboring municipalities and countries. They will also make an assessment of how strong the municipality and the provincial/national government are, and whether they would be able to withstand any resistance against tariffs from citizens/users.

The potential investor will assess carefully all revenue forecasts and will question all assumptions and discount forecasts provided by the municipality. Just like demand forecasts, revenue forecasts are subject to optimism bias—that is, those promoting

the project will have a tendency to interpret data to show more healthy revenues than might be merited, whether this optimism is conscious or unconscious.

PSPs would like to understand how tariff revisions will take place. The PPP agreement will establish a baseline tariff and generally an agreed formula for tariff increases. Where there is a regulator (whether or not independent), the parties will need to agree how to resolve situations where the regulator sets a tariff that is inconsistent with the PPP agreement. If tariff revisions for the entire period of the PSP contract are already set by regulation, and that regulation cannot be modified, the PPP agreement will use this as its baseline. Potential investors will assess the risk that tariffs are not increased, or that those increases do not meet expectations. PSP financial models will likely test for scenarios where tariffs do not meet agreed levels and the impact this will have on project financial viability.

2.7 Is the Municipality Creditworthy?

Particularly for projects where the municipality pays for the service—for example, supply of treated bulk water to the municipality or operation and maintenance of the municipality's sanitary landfill site—investors need to understand the credit position of the municipality, its history of paying bills on time, its management of its finances, and so on. Where possible, the municipality should share whatever financial information it can to help potential

investors understand the risk involved and create confidence among potential investors. Investors will make higher provisions for working capital (assuming delayed payments) and for operating costs for any perceived risk associated with the municipality fulfilling its financial obligations.

2.8 Is the Project Configuration Best Suited to Deliver the Service Standards and Profitability of the Project?

PSPs would like to explore different project configurations to maximize revenue while still delivering the specified service levels. For example, in a bus terminal, while maintaining basic standards of making a bus bay available within, for example, two minutes of a bus arriving, the potential investor will want the flexibility to ensure maximized space for retail outlets, restaurants, office space, etc.

Use of space outside of operating hours can also provide some interesting opportunities, for example using the bus terminal as a parking facility for buses as well as other vehicles at night. Can the facilities include a hotel or other associated facilities? Any limitations on the use of the facilities will be carefully analysed by the PSP.

2.9 Is the Project Engineering Design Best Suited to Deliver the Desired Service Levels?

Potential investors would typically undertake a thorough investigation into the proposed engineering design, in particular where the design has been mandated or only some elements of the basic project engineering design are mandated by the municipality or at law. The due diligence process will assess whether the mandated elements

of the engineering design are appropriate given the specific project site conditions and service requirements. Investors also prefer to have the opportunity to propose value additions or cost reductions, to establish their competitive advantage and also maximize investor returns.

2.10 Is the Project Construction/implementation Time Line Adequate?

Potential investors are keen to complete project construction/implementation as early as possible to commence operations and start revenue flows. However, the time allowed for construction, testing, and commissioning needs to provide sufficient space for the construction to be delivered to the quality desired. The investor will also need to understand the process for approval at different stages of construction, who within the municipality

will review, test, and approve, and the likelihood of delays in approvals. Municipalities need to think through which stages are really critical from a technical point of view and how to monitor and approve in the most efficient manner possible—the 'must haves' rather than the 'good to haves'.

2.11 Are All Materials/Inputs Available and What Are the Associated Costs and Lead Times?

The potential investor will perform extensive due diligence on project construction/implementation costs and the time required for completion of construction/implementation. Potential investors will be concerned about an underestimation of construction costs and therefore undertake their own detailed assessment. Usually as part of the feasibility study, even when undertaken by reputed experts, detailed engineering design is not done and construction costs are arrived at based on quick and rough engineering design and estimation of bills of quantities. Material costs need to be based on competitive market rates, providing for inflation in material costs between estimation and

actual project implementation (which generally involve a delay of as much as three years, which makes an accurate calculation almost impossible). Lead times required for material availability will affect the inventory of materials that the construction contractor needs to carry and consequently the working capital requirement, which also add to construction cost. Some construction requires long lead items which must be ordered long before delivery (for example, specialized steel, tunnel boring machines, and turbines). The procurement process and construction milestones should provide for such time constraints.

2.12 Are Potential Employees With Requisite Skills Available?

The PSP will need access to skilled labor. It is advantageous to the municipality, and generally to the PSP, to source such labor locally. However, such skilled labor may not be available, or may be more expensive locally. Potential investors want to understand the availability and costs of relevant skilled labor in the vicinity of the project. Finding the right people for each project is absolutely critical to the PSP's ability to implement and operate projects. While potential investors typically have a centralized team for engineering and project finance

mobilization, they typically recruit project-specific implementation and operations teams and appoint a senior manager with project management and operations experience, from their headquarters, to lead that team.

The PSP will need to understand the implications of local content rules, and what local content is most appropriate to include in project planning.

2.13 What Is the Risk That Costs Go Up or Revenues Go Down?

Once costs, revenues, and demand are forecast, the potential investor will assess what might happen to cause costs to go up, revenues to go down, or otherwise undermine the financial projects for the project. The investors will assess the likelihood of such events and potential impact and apply sensitivity analysis to the project financials, to assess the impact on the project if the event or series of events occurs. For example, where will the project source cement, is the cost of cement likely

to go up? How easy is it to access labor with the requisite skills and experience? Are income taxes likely to increase? Might tariffs for project services be reduced by law? By considering these risks in advance, the municipality can address them in advance to reduce their impact on potential bids, for example the municipality may want to set up an experienced, independent regulator with the power to set tariffs and impose performance standards.

2.14 Is the Security Structure Available to Lenders Adequate?

Where the PSP needs to mobilize debt from banks or financial institutions (often 70–80 percent of the total investment), it will be critical that the project is bankable, that is, that lenders are willing to lend to the project based primarily on the project's financials and structure. Lenders will test whether the project financials are adequate to enable debt servicing (interest and repayment of principal)

comfortably, and also whether the lenders have a security structure that enables them to ensure recovery of their loan.

Because assets typically cannot be repossessed in case of default of the loan and are often immovable (such as a road or a bus terminal) or have limited value when moved away from their

location, the lenders will want security over the project cash inflows. Lenders often ask the PSP to create an escrow account where all project revenues flow. Lenders also seek, in addition to the escrow account, the creation of a debt service reserve account with cash equivalent to say three months of forecast revenues.

Lenders will also want step-in rights; where the PSP is not performing its obligations, the lender has the right to replace the PSP with another PSP with similar or better technical and financial credentials.

The municipality can offer different forms of support, for example the municipality may contribute capital to the project as a subsidy or as equity to reinforce

project financials. The municipality (or the national government) may offer guarantees or other credit enhancement to protect the lenders in the event of certain risks (such as demand shortfall) to make the project less risky.

Such security structures enhance the potential investors' and lenders' confidence in the project and result in securing competitive bids. If municipalities offer this in their bid documents, it bolsters the PSP's ability to find a good lender and loans at more competitive rates, which in turn makes bids better VFM.

2.15 How Will Foreign Exchange Risk Be Managed?

Revenues from municipal services are generally denominated in local currency. Financing available for PPPs is more often foreign sourced. In many cases, foreign financing offers longer tenor and a lower interest rate. But, if the exchange rate between the local currency and the currency of financing

changes, this may limit the ability of the project to repay debt. Local currency debt mitigates the foreign exchange risk, but generally offers a shorter tenor, a higher interest rate, and lower amounts of borrowing available.

2.16 What Are the Expected Minimum Service-Level Obligations and Are They Realistic?

PSPs are keen to understand how service levels will be monitored and measured, for example, with support from an independent engineering consulting company or by municipal staff. The identity of the monitoring official, their compensation arrangements and terms of reference will create specific incentives, which the PSP will want to understand. The bid documents need to outline the required service levels, how they will be measured, and what penalties will be imposed for non-achievement, in as much detail as possible.

The desired service levels need to be realistic given the other supporting infrastructure and in line with the typical levels of operation and maintenance in other municipal infrastructure. Finally, the penalties to be levied for non-achievement of service levels need to be specified and realistic, that is, in line with the project revenues. Overly strict penalties will result in over-designing of facilities with associated costs and maintenance inefficiencies (and less advantageous bid prices).

2.17 Will Municipality Fulfill its Obligations?

The municipality may decide not to comply with its obligations, may change rules or regulations, may impose new permits or licenses, or create other constraints, in particular in the event of a change in government or after an election. The PSP will have little power to resist such changes, even where they are fundamental to the success of the project.

Potential investors will review the municipality's history of respecting contracts, using its power to deprive investors of assets or opportunities, and the frequency and transparency of the regulatory and permitting authority wielded by the municipality.

2.18 Can the Courts Be Trusted to Be Fair and to Enforce Arbitral or Other Awards?

Even if the project provides protection to the private investor, those protections are legal and contractual in nature. Local courts may not be perceived as trustworthy. In some countries, the courts are viewed as likely to take the side of the government over the private sector, or of local investors over foreign investors. Arbitration can be perceived as a more independent way to resolve disputes.

Once the dispute is resolved, that award must be enforced. Local court decisions or local arbitration will need to be enforced based on local laws. International arbitration in many countries is enforced in accordance with international treaties, and is therefore preferred by most foreign investors.

2.19 Is the Project Part of a Larger PPP Program/Pipeline?

A large program of PPP projects offers better opportunities for potential bidders. Bids are expensive to develop. A potential bidder will assess its likelihood of winning the bid before incurring the expense of bidding. If there is a large program of PPP projects that will be let over the short to medium term by the municipality or in the country, then the potential bidder will assess whether it might

win one of the projects when deciding whether to bid. The potential bidder can justify the cost of bidding for one project against the likelihood of winning one or more of multiple projects. This will result in more and better bidders entering the market and pursuing individual projects.

2.20 Will the Bidding Process be Open, Transparent, and Fair?

The PSP will be concerned to know if the investment required to develop a bid and perform due diligence on a project will provide a fair opportunity to win the project. A bidder may not choose to bid if another bidder has an unfair advantage, including right to match or the ability to cancel the bid process and have the project awarded directly.



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SUMMARY PRACTICAL ADVICE
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1.0

Introduction

The following summarizes the key messages for policymakers and practitioners provided in this framework. They are organized around five main concepts related to PPP project delivery: selection, funding, preparation, procurement, and implementation. Where relevant, reference is made to case summaries that help to show the relevance of these messages in the context of actual municipal PPP projects.

2.0 Selection

Select projects purposefully. Understand exactly what you want from the project (more access, investment, lower prices, etc.), and select accordingly (See Module 2: Project Concept Assessment Tool).

- Caution: Planning and forecasting need to reflect benefit to the government, through cost-benefit or VfM assessments. But such assessments tend to involve incentives for

those performing them to emphasize benefits and de-emphasize costs, whether consciously or not. Be mindful of optimism bias.¹

- PPP is by nature flexible. Look first at what you need, then design your approach based on those needs. Do not look first at what others have done, as your context may be very different. That said, learn from the experiences of others.



Case Examples

- **Water and Sanitation System, Bucharest, Romania:** PPP project designed and structured specifically to accomplish the municipality's three distinct aims: (i) improving the consumer service level with minimal tariff increases; (ii) making the system as self-sufficient as possible by transferring most of the investment responsibilities to the private sector; and (iii) avoiding a private monopoly. (Project Summary No. 18)
- **Municipal Waste Thermal Treatment Plant, Poznań, Poland:** In response to new European Union regulations on waste management, municipality decides to pursue a PPP for a waste-to-energy power plant due to its lack of experience in developing this type of project and related interest in having a seasoned partner manage the operation of the plant. (Project Summary No. 27)
- **Qiaoxi District Central Heating, Zhangjiakou, China:** PPP for central heating infrastructure developed to address poor performance of state-owned heating company, including inefficiencies resulting from poor maintenance and monitoring as well as poor collection rates for installation fees and usage tariffs. Project is structured as a joint venture between the municipality and the private partner, to help ensure knowledge and technology transfer. (Project Summary No. 63)

Select good projects for PPP. Ensure there is a clear and objective rationale for using a PPP approach. Garbage-in-garbage-out; just say "no" to bad projects.

- A good selection process will maximize infrastructure development, by allocating projects with a high likelihood of success to PPP and thereby freeing up limited public resources for projects that need them. Select robust, viable projects for PPP, these are more likely to be financed on a competitive basis and are therefore more likely to provide value for money.
- A poor selection process is likely to lead to failure. A project might be selected based

on political priorities, rather than economic or commercial. Projects selected for political reasons or priorities will create a perception of increased political risk amongst investors. Or, it might be a project that could not be financed in any other way and was allocated to PPP as a last resort. Projects suffering from bad design, dubious demand, or weak fundamentals are more likely to fail and may weaken the entire PPP program in the process.

Avoid narrow focus on new build. Do not overlook opportunities for PPPs to expand, refurbish, or better manage existing assets.

¹ See Module 5: Managing Consultants, Section 2.2, box on "Optimism Bias or Bad Incentives - How Planning Goes Wrong."



Case Examples

- **Moncloa Transportation Exchanger, Madrid, Spain:** PPP used to significantly expand and renovate exchange facility that integrates different public transit systems (i.e., railway, bus, and metro), more than doubling the number of users. (Project Summary No. 1)
- **Qiaoxi District Central Heating, Zhangjiakou, China:** Responsibility for the operation, maintenance, and expansion of existing central heating infrastructure transferred to private company, resulting in significant improvements in efficiency, quality of service, collection rates, and user satisfaction, in addition to expanding the service coverage area and freeing up public capital for other projects. (Project Summary No. 63)

Consider bundling small projects. Small projects present a number of disadvantages for delivery as PPPs. Aggregating small projects (i.e., pooling or bundling them into one project), can leverage

economies of scale to reduce total cost and speed development, while also making the investment larger and more attractive for more experienced investors and lenders.



Case Examples

- **Bundled Bridge Replacement, Pennsylvania, United States:** Repair and maintenance of more than 500 bridges bundled into a single PPP project. (Project Summary No. 15).
- **IT Network Integration, Barcelona, Spain:** Bundling a variety of information technology network infrastructure and services results in viable PPP for expanded and improved connectivity. (Project Summary No. 31)
- **Bundled State Parks, California, United States:** Bundling three parks into one project results in a viable PPP for park operations. (Project Summary No. 59)
- **Varaždin County School Program, Croatia:** Construction or refurbishment and maintenance of 22 schools and 10 gymnasiums bundled into eight PPPs executed with three SPVs. (Project Summary No. 89)
- **Public School, Belo Horizonte, Minas Gerais, Brazil:** Construction and provision of non-educational services (e.g., maintenance, utility management) for 32 preschools and five primary schools bundled into one PPP project. (Project Summary No. 90)

Confirm project viability periodically to avoid losing focus. First decide you want PPP on a rational, fundamentally sound basis, then keep reminding yourself why you chose PPP, as its implementation can be challenging, and periodically verify that the project is meeting those objectives (See Module 4: Feasibility Study).

Continually ask, throughout the development process:

- Is the project a good deal for the municipality?
- Does the project provide better services, VfM, economic growth, jobs, benefits, etc. to the community?

3.0 Funding

PPPs are not 'free money'. PPP always includes a source of revenue sufficient to cover all operating costs and bank loans, and a reasonable return on the investor's equity. An adequate and predictable revenue stream is the lifeblood of a PPP project. This revenue will come from some combination of payments from (a) users of the service, (b) commercial revenues generated by the project, and (c) public sector. Understanding who will pay, and how much they must pay, is an essential step for the municipality before undertaking a PPP. Therefore, municipalities must always account for the fiscal risks arising from PPP

Consider all the possible revenue streams and focus on maximizing revenues from beneficiaries of the project – direct and indirect. This includes considering the use of space within, above, below, and around the project site for additional, revenue-generating activities (See Module 16: Harnessing Land Value Capture and Module 17: Capturing Commercial Value). Only after all options for deriving sustainable revenues from beneficiaries should the use of public money or guarantees be considered.



Case Examples

- **Hong Kong Mass Transit Railway Corporation, Hong Kong SAR, China:** Municipal-owned mass transit corporation leverages real estate developments around transit stops and lines to fund infrastructure investments. (Project Summary No. 2)
- **City Bus Terminal, Sheberghan, Afghanistan:** Private developer constructs and leases retail space adjacent to bus terminal to recover its investment in the new terminal. (Project Summary No. 4)
- **Commercial and Landside Operations of I Gusti Ngurah Rai International Airport, Bali, Indonesia:** Incentive-based fee mechanism for private operation of airport's landside facilities significantly increases non-aeronautical revenues and the quality of service delivery. (Project Summary No. 12)
- **Underground Parking and Commercial Services Center, San Borja, Peru:** Parking facility to be built below a public park includes commercial space to increase project revenues. (Project Summary No. 45)
- **Parking Area Under Rivera Navarrete Avenue, San Isidro, Peru:** Tariff for parking at facility built beneath a major thoroughfare with the municipality entitled to a share in the project's monthly gross revenue. (Project Summary No. 46)
- **Street Lighting Project, Nasik, Maharashtra, India:** Private partner is paid a share of the municipality's energy cost-savings resulting from the project. (Project Summary No. 67)
- **City Improvement Districts, Johannesburg, South Africa:** Private property owners may vote to establish City Improvement Districts, which then apportion the cost of urban improvement investments across the property owners in proportion to the value of each owner's property. (Project Summary No. 70)

- **Redevelopment of Library and Fire Station, Washington, District of Columbia, United States:**
Rights to commercially develop above properties funds private developer's construction of a fire station and public library. (Project Summary No. 73)
- **Sustainable Housing Project, Turin, Italy:** Energy efficient capital investments allow private developer to maximize rental income from affordable housing units while still keeping prices below market rates. (Project Summary No. 81)
- **James F. Oyster Bilingual Elementary School, Washington, District of Columbia, United States:**
Private developer granted right to commercially develop a portion of the project site to fund construction of a new public school. (Project Summary No. 88)

4.0 Preparation

Prepare well. Proper preparation of a PPP project requires time and money to prepare well (See Module 3: Sample Project Concept Note). This investment will reap benefits in terms of likelihood of success of the project, lower cost of private investment due to reduced project risk and attracting better, more effective private partners. A failed project costs everyone time and money; *it is generally worth the extra money and effort to make the project a bit more robust*, obtaining information, improving planning, managing risk and considering options. The municipality needs to allocate sufficient staff and resources to deliver a quality project.

- PPP is not 'easy'. PPP is expensive to prepare, requiring upfront investment of staff and money to develop projects well, in particular to pay for expensive external advisers. The benefit of this up-front investment is obtained over time, since PPP provides for management and funding for the whole life of the assets and therefore addresses project risks early. If the municipality does not set aside sufficient budget to prepare the project well, it is more likely to fail.
- Be patient. PPP is not a quick fix; it takes time to develop and implement properly. Generally, more time spent in advance of procurement to prepare the project properly will save much more time and frustration later. Think through contingencies in advance, and make sure you are happy with the project structure and specification before going to procurement.
- Be wary of succumbing to time pressures. Allow for careful selection, good preparation, and thorough market engagement. By trying to be too quick to take the project to market,

the municipality will often undermine the entire project and contribute to its failure.

- Get help. Where internal resources are limited, look to national or state-level PPP units and other government departments and entities at the local or national level with PPP experience that can provide hands-on support. National PPP or state-level PPP units may also be able to provide funding to procure external advisers, in addition to other funding sources, such as technical assistance from development partners and special funds created for such purpose at the national or state-level.

Be sure to adequately address the following questions:

- Is the project site and necessary rights of way available and free of encumbrances? If not, what is the time-frame to do so and the likelihood of success?
- Is the project likely to earn a reasonable profit for the private partner? Are the revenues sufficiently certain, the costs manageable and demand robust?
- Is the private market interested in the project? Are there enough good, experienced potential bidders showing sufficient interest in the project to suggest that the tender process will be competitive?

Be cautious of overly optimistic forecasts, particularly with regard to demand and revenue projections. If a project seems too good to be true (for the municipality or the private partner), then it is probably too good to be true.



Case Examples

- **Yongin Everline Light Rail Transit, Seoul, Republic of Korea:** During construction, an independent demand assessment determined that the estimated passenger volume was less than one-fourth of the original estimate, due to competing transit options. Actual demand on commencement of operations proved to be even lower, resulting in significant financial liabilities for the municipal authority. (Project Summary No. 3)
- **Bus Terminal-cum-Commercial Complex, Mohali, India:** Actual demand for use of the terminal fell far short of the forecasted amount, due to users and drivers continuing to use a pre-existing bus stand and thereby avoid the usage fee charged by the new terminal. (Project Summary No. 6)

Consider all stakeholders. PPP will have a direct influence on some (in particular employees and management) and may raise political or ethical concerns amongst many more (See Module 14: Communication Strategy and Module 18: Community Engagement). While absolute consensus will never be reached, the municipality needs to understand fundamental concerns and address them. Ask:

- Is there broad-based support and consensus among local, provincial, and national authorities for the project?
- Does the public believe that the project is a good deal for the community/users? Is the project information made transparent to the community? Has the community been engaged in project selection and development? Has it “bought-in” to the project?

Engage and communicate with all stakeholders, including to dispel common myths surrounding PPPs, such as:

- PPPs are not anti-labor. A PPP will provide more opportunities, better training, and a performance-based employment regime. For those with vested interests in avoiding change, a PPP can be designed to provide a special regime for these staff and their representatives.
- PPP is not privatization. The project assets either remain under government ownership or will revert to government ownership at the end of the project period.



Case Examples

- **Wastewater Treatment Plant, Udaipur, India:** Problems related to identifying a viable project site, land acquisition, and laying pipe in busy areas only overcome through continued efforts to engage closely with local communities and reach agreement on marginal modifications to technical aspects of the project. (Project Summary No. 24)
- **Marine Sanctuary and Forest Preserve, Chumbe Island, Tanzania:** Garnering support from local fishermen and communities proved instrumental in developing and delivering a marine sanctuary and forest preserve project. (Project Summary No. 60)
- **Kruger National Park, South Africa:** Government agency’s intervention to resolve conflict between private operator and workers over employment conditions is key to preserving an otherwise successful PPP. (Project Summary No. 61)
- **Jal Mahal Palace, Jaipur, India:** PPP for restoration and development of tourism site suspended due to political disagreements over a 99-year lease provided to the private partner as part of the PPP. (Project Summary No. 57)

Be flexible when considering sources of financing.

Be ready to mix public and private money, to improve value for money, especially in the early days of PPP or when private markets are weak. Public money also helps worthwhile projects, that are not necessarily financially viable, become more robust projects, increasing the opportunities for PPP.

- Efficiency of financing is key. There is no free ride, someone will have to pay (consumers and/or taxpayers), so make sure you get the best value for money.



Case Examples

- **Mandaluyong City Market, Manila, Philippines:** Blended financing, including a concessional loan from a subsidiary of the Asian Development Bank, private equity, advances from shop-owners, and commercial borrowing, used to construct a public market and adjacent commercial complex. (Project Summary No. 38)
- **Pulkovo Airport, St. Petersburg, Russian Federation:** Long-term debt financing for a major airport PPP provided by a commercial syndicate and international financial institutions, including the International Finance Corporation and European Bank for Reconstruction and Development, with debt raised in three different currencies. (Project Summary No. 11)
- **Small Scale Water Infrastructure, Busembatia, Uganda:** Performance-based grants, with phased disbursement and subject to verification of output requirements, used to leverage private financing from a local bank for water supply PPP project. (Project Summary No. 19)
- **Marine Sanctuary and Forest Preserve, Chumbe Island, Tanzania:** Mixture of private equity and environmental-minded donors provides capital investment for marine sanctuary and forest preserve development project. (Project Summary No. 60)
- **Regent Park Affordable Housing Project, Toronto, Canada:** Different financing schemes deployed at different phases of the project, permitting a phased transfer of risk from the municipal authority to the private partner. (Project Summary No. 80)

Government money can be used effectively to improve PPP projects. Government is a key partner in PPP and government support a key element in successful PPP.

- Government support can improve financial viability and make a project more attractive for investors, but should not be used to try to turn a bad project into a good one. Financial close

is not enough; the project must deliver and provide VfM.

- Use public support efficiently, in a targeted manner, to ensure government goals are achieved.
- Ensure funding mechanisms are properly resourced and incentivized to avoid political capture or inertia.



Case Examples

- **Municipal Waste Thermal Treatment Plant, Poznań, Poland:** Amount payable by the municipality to the private partner for operation of a waste-to-energy plant is reduced by the actual revenue the private operator receives from the sale of electrical power and heat. (Project Summary No. 27)
- **Municipal Solid Waste Treatment Project, Wenzhou, China:** PPP for solid waste-to-energy plant made feasible by publicly payable fee for disposal of solid waste, limited-term exemption from corporate income taxes, and permitting an immediate VAT refund. (Project Summary No. 28)
- **Administrative Center, Tlajomulco Municipality, Jalisco, Mexico:** PPP for new administrative center funded by fixed, monthly lease payments agreed to and payable by the municipality and capped in accordance with local law. Municipality improved its creditworthiness by establishing a trust account and opening a contingent line of credit for the lease payments, guaranteed by federal funds. (Project Summary No. 49)

- **Aquanova America, Saint-Dié-des-Vosges, France:** After a year of considering a basic concession model to finance the project, a performance-based availability payment scheme was designed to deliver viable PPP for an aquatic center. (Project Summary No. 54)
- **Roof-top Solar Program, Gujarat, Gandhinagar, India:** Solar power generation PPP made feasible with a very minimal public subsidy of the tariff charged to the power purchaser. (Project Summary No. 64)
- **Croydon Council Urban Regeneration Vehicle, London Borough of Croydon, United Kingdom:** Innovative joint venture that uses public land contributions to leverage private capital and expertise for urban redevelopment projects. (Project Summary No. 72)
- **Varaždin County School Program, Croatia:** Availability payments, shared by the county and municipalities, used to fund PPP for the construction and refurbishment of educational facilities. (Project Summary No. 89)
- **Inkosi Albert Luthuli Hopsital, KwaZulu-Natal, South Africa:** Mixture of public capital contribution and availability payments used to structure PPP for the provision of medical equipment and all non-clinical hospital services. (Project Summary No. 93)
- **Hemodialysis Center at the National Kidney and Transplant Institute, Quezon City, Manila, Philippines:** Increase in revenues from expansion of clinical services provides public authority with revenues in excess of lease payments owed to private partner for providing and maintaining equipment and supplies. (Project Summary No. 97)
- **Queen Elizabeth II Medical Center Car Parking Project, Western Australia:** Delays in the government's completion of construction works related to the project (in-kind contribution) negatively impacts private partner's revenues and contributes to fiscal liabilities due from the public authority under the contract. (Project Summary No. 47)

Be ready for challenges. In any long-term relationship, change happens. PPP is above all a partnership, it needs to be designed with challenges, changes and resolution in mind. Problems need to be elevated to appropriate levels of management before they become disputes or worse. As much as possible, potential challenges should be preempted and addressed in the contract. Ask:

- Is the partnership solid – are risks shared in a reasonable manner, and the parties mutually incentivized to make the project a success?
- Are municipality and private sector liabilities affordable and manageable?

Prepare for the future. Decide up front what happens later in the project, deferred decisions only become more expensive and contentious. Decisions to make changes need to be made in advance, such decisions later in the process, during implementation, can be expensive and time-consuming.

Risk transfer and risk sharing are essential elements of a PPP. An appropriate allocation of risks between the parties is key to a successful PPP project. Don't cram risk on the private sector, it usually is not efficient, is expensive and makes the project overly vulnerable to change and crises.

5.0

Procurement

Do not cut corners on procurement. It may seem easier to enter into direct negotiations instead of using competitive procurement, but it is not. In general, it takes longer and costs more money. Maximizing competition through good, transparent, public procurement is one of the most important benefits of a PPP (See Module 7: Procurement).

- Be clear to bidders about what you want. Indicate clearly what results, milestones and indicators you want the investor to achieve. Help bidders to give you what you want, don't make them guess.
- Be open to discuss your expectations, bidders might have some useful suggestions. Take the time to discuss with bidders, use the competitive dialogue to improve the project.

Be cautious when selecting the winning bid. If a bid seems too good to be true (financially, technically or otherwise), then it probably is. Look carefully at the detail, whether it is a fixed and complete bid; if anything looks unconvincing it may be wise to reject it.

- Private investors may become overly competitive. A well-run tender process can be used to get the best possible bid, and the best deal for the municipality. But an overly-competitive process can result in an unrealistic bid and a project vulnerable to changing circumstances. More generally, private bidders make mistakes, and may submit unrealistic bids. While the risk of an overly optimistic bid is

generally for the private partner, a failed project will cause significant challenges and possibly costs for the municipality. The municipality should do its own analysis, replicating a reasonable bid (these are sometimes called shadow bids) to understand better the kind of bids it is likely to receive, but also to identify any overly aggressive bids. The municipality should exclude any such overly optimistic bids.

Listen to lender concerns. Focus on the lenders' key needs and perceived risks, but don't let them drive the agenda; make sure to protect the municipality's interests. Take the time and effort to make life a little easier for the lenders. It is likely to make your life easier in the long run.

6.0

Implementation

The municipality must regulate and monitor PPP.

This must be an integral part of project design. PPP or not, the public sector is always the final authority, and will be ultimately responsible for the provision of public services (See Module 12: Contract Management).

- Put in place the right contract management team. The project will not manage itself, failure to assign a sufficiently expert team to manage project implementation (i.e. after financial close), with necessary funding, can turn the best project into a failure.



Case Examples

- **Kruger National Park, South Africa:** Public partner must intervene to address staff dissatisfaction and poor quality of customer service by instructing the private partner to find a new technical partner, produce an operation manual, improve skills development, and implement an incentive program for the staff. (Project Summary No. 61)
- **Reconstruction, Management, and Maintenance of Street Lighting and Other Public Facilities, Juvignac, France:** Municipality must monitor private partner's street lighting failure rate, which per the PPP agreement is not to exceed 0.5 percent with outages to be remedied in less than one hour. (Project Summary No. 69)
- **Amritsar Intercity Bus Terminal, Punjab, India:** Actual demand for new bus terminal falls far below the forecasted amount, due in part to municipality's failure to enforce requirement that all intercity buses use the terminal, rather than operating outside the terminal to avoid paying the usage fee. (Project Summary No. 7)
- **Urban Transport Services, Peja, Kosovo:** PPP agreement suspended after municipality failed to enforce exclusivity provision by ending the operations of informal, illegal bus and taxi services that competed with the project. (Project Summary No. 9)

Prepare for change during the project. It is not possible to anticipate or make every risk decision in advance, mechanisms will be needed to address change and other challenges. A proactive, collaborative framework must provide partners with the platform for resolution.

- Stability is the goal, prepare for every eventuality, but realize it is impossible to anticipate every eventuality.
- Ensure a practical fallback position that protects consumers. Make sure that if all else fails, the public is in the position to take

the infrastructure and services back quickly to ensure continuity.

- Keep the revenue stream as certain, foreseeable and ring fenced as possible. It is the lifeblood of the project.

Be flexible and prepare for conflict resolution. No contract can contemplate every eventuality, so expect to need to resolve challenges collaboratively - i.e. it should be managed like a partnership.

- Renegotiation should be approached carefully, to respect the spirit of the partnership, to improve the PPP arrangements and protect the most vulnerable.
- Be proactive. Establish mechanisms intended to catch disputes as early as possible. Early in the process, options are varied, relative cost is low, and the likelihood of immediate value-added resolution is higher. Later in the process, options are fewer, more costly, and less likely to work.

- Facilitation can help. Softer processes are designed to use and develop relationships as the basis for finding mutually satisfactory solutions and can work better than more formal processes.

Crisis does not change the fundamentals of PPP, and PPP is sufficiently flexible to be adjusted to market conditions. Be willing to reconsider each aspect of the PPP, to find the best solution. E.g. phase or scale down investment to fit accessible finance and reduced demand, and consider replacing some of the desired private financing with public funding (to the extent public funding is available) until such time as market conditions make private financing better value.



Case Examples

- **Moncloa Transportation Exchanger, Madrid, Spain:** In response to a new regulation that significantly increased the project cost and differences between expected and actual passenger demand, partners and stakeholders successfully worked together to modify the project's design to ensure its continued viability. (Project Summary No. 1)
- **Qiaoxi District Central Heating, Zhangjiakou, China:** Public and private partners successfully work together to overcome challenges that arose concerning the transfer of staff to the private project company and community opposition to paying new pipeline installation fees. (Project Summary No. 63)
- **Bus Terminal and Commercial Complex, Dehradun, India:** Halfway through the concession period, there were claims that the private operator had not properly maintained the facility and a protracted dispute over maintenance and lease payments has delayed the second phase of the project. The PPP agreement remains in place because the municipal authority is unwilling to assume liability for the senior debt for the first phase of the project. (Project Summary No. 8)
- **Queen Elizabeth II Medical Center Car Parking Project, Western Australia:** Government policy on parking fees results in claim for compensation by the project company, in turn prompting a public inquiry aimed at reviewing and amending the PPP agreement in relation to policy changes that may trigger compensation. (Project Summary No. 47)
- **Multi-level Car Parks, Thimphu City, Bhutan:** Private partner requested the extension of key contract dates (i.e., construction and concession periods) due to changes in the project design and increases in the scope of work, which nearly doubled the project cost. (Project Summary No. 48)
- **Drinking Water Supply, Jakarta, Indonesia:** Occurrence of the Asian Financial crisis necessitates revisions to PPP agreements. (Project Summary No. 20)

