

**PRE QUALIFICATION BIDS AND AWARDS COMMITTEE**

Second Floor Olongapo City Hall , Rizal Avenue, West Bajac- Bajac, Olongapo City  
Web: [www.olongapocity.gov.ph](http://www.olongapocity.gov.ph)

**INVITATION TO BID**

**PRIVATE OPERATION OF OXYGEN/NITROGEN PLANT IN OLONGAPO CITY**

The City Government of Olongapo (CGO) received an unsolicited proposal for the Private Operation of Oxygen/Nitrogen Plant located at Barangay Old Cabalan, Olongapo City with an aggregate area of three hundred square meters (300 sq. m).

The CGO, pursuant to (Build, Operate and Transfer Law), as amended by RA 7718, and their Implementing Rules and Regulations, and their amendments, to the extent applicable and in line with the policy of the CGO for transparency, invites the public, through its Pre Qualification Bids and Awards Committee (PBAC), to submit their bids and their comparative proposals (SWISS CHALLENGE).

The schedule of activities is listed, as follows:

<b>ACTIVITIES</b>	<b>SCHEDULE</b>
Posting of invitation	June 4 -22, 2018
Deadline of Submission of Letter of Intent w/ Eligibility Requirements and Issuance/Purchasing of TOR	June 22, 2018, 8am to 5pm at General Services Office
Pre bid Conference	July 13, 2018, 2PM at 2 <sup>nd</sup> Flr General Services Office Olongapo City Hall
Opening of Bids	August 24, 2018, 2PM at 2 <sup>nd</sup> Flr General Services Office Olongapo City Hall

The bids and comparative proposals shall be subject to the terms and conditions prescribe in the Terms and Reference (TOR) prepared by the CGO. The TOR will be available only to prospective bidders upon payment of a non refundable amount of Fifty Thousand Pesos (P 50,000.00) with the General Services Office of the CGO. Only those who have paid the non-refundable fee shall be allowed to participate in the pre-bidding conference and bidding process.

The CGO reserves the right to reject any or all bids, declare failure of bidding and not to award the contract for any justifiable and reasonable ground where an award will not redound to the benefit of the city.

**(SGD) ATTY RONILA C. ROXAS**  
PBAC Secretariat  
City Legal Office

NOTED BY:

**(SGD) ARCH. TONY KAR BALDE III, EnP**  
PBAC Chairperson  
City Planning and Development Office



**CITY GOVERNMENT OF OLONGAPO**

**TERMS OF REFERENCE FOR THE  
OPERATION OF OXGEN/NITROGEN PLANT IN  
OLONGAPO CITY**

## **FOREWORD**

City Government of Olongapo (CGO) intends to open for SWISS Challenge for the Operation of Oxygen/Nitrogen Plant in the City through Build Operate and Transfer (BOT), the approximately 300 sq meters area property located at Forestry Apitong Brgy Old Cabalan, Olongapo City. As such, it intends to seek investors who shall construct, develop, operate and manage the area for a period of ten (10) years renewable for another ten (10) years under mutually agreeable terms subject to the approval of Sanggunian Panlungsod; and further develop, operate and maintain it into Oxygen/Nitrogen Plant in Central Luzon.

This Terms of Reference (TOR) describe the procedures that will be followed in connection with the bidding for the Private Operation of Oxygen/Nitrogen Plant in Olongapo City.

This TOR shall be administered by the Pre Qualification Bids and Awards Committee of CGO (PBAC).

Bidders shall submit their bids through their authorized representatives using the forms in three (3) separate sealed bid envelopes, and which shall be submitted simultaneously. The first (1st) envelope shall contain the Eligibility Documents second (2<sup>nd</sup>) the Technical Documents; and the third (3<sup>rd</sup>) shall contain the Financial Proposal.

CGO reserves the right to amend or supplement the TOR at any time prior to the submission of bids.

**SECTION I**  
**INSTRUCTION TO BIDDERS (ITB)**

**1. Scope of Bid**

- 1.1. CGO wishes to receive Bids for the Operation of Oxygen/Nitrogen Plant in Olongapo City. For this purpose, the competitive selection shall be governed by applicable provisions of laws such as but not limited to, Republic Act (RA) No. 9184 (Government Procurement Reform Act), and RA 6957 (Build, Operate and Transfer Law), as amended by RA 7718, and their Implementing Rules and Regulations, and their amendments, to the extent applicable.
- 1.2. The subject of the bid comprise of approximately 300 sq meter property with the following facilities.
  - (a) Building for Oxygen Plant
  - (b) Oxygen Machine
  - (c) Oxygen Tank
  - (d) Delivery Vehicles
  - (e) Power Generator
  - (f) Transformer
- 1.3 The principal undertaking of this Project is the development and operation of Oxygen/Nitrogen Plant in Olongapo City without prejudice to other investors intending to engage in similar facilities within the contiguous areas of the Project. Therefore, for purposes of bid evaluation the minimum required deliverables shall be limited only to Oxygen/Nitrogen Plant.

**2. Items of Bid**

- 2.1. The items of bid for the Project shall be the following:

<b>Items of Bid</b>	<b>Minimum Requirement</b>
a. Minimum Project Cost	Minimum of SIXTY MILLION PESOS (P60,000,000)
b. City Government of Olongapo (CGO) Minimum Profit Sharing Percentage	Twenty Percent (20%)

**3. Eligible Bidders**

- 3.1. The following shall be eligible to participate in this Bidding:
  - (a) Sole proprietorships; Partnerships; or Corporations duly organized under Philippine laws or in a foreign country provided that the Bidder shall register under Philippine laws within the period of the Contract, if awarded the Project;
  - (b) Sole proprietorships; Partnerships; or Corporations forming themselves into a JV/C: Provided, however, that the JV/C shall register under Philippine laws within the period of the Contract, if awarded the Project.
- 3.2 For (a) and (b) above, the following minimum qualifications are required:

- (a) With a track record of a minimum of one (1) year operations in Oxygen/Nitrogen Plant with an aggregate value of at least 50% of the Proposed Total Project Cost;
  - (b) With a minimum equity of at least 25% of the Proposed Total Project Cost. For JV/C the aggregate equity of the Joint Venture or Partners shall be considered for the evaluation of the 25% minimum equity requirement.
- 3.3 The following entities, their affiliates and subsidiaries are not and shall not be allowed to participate in this bidding process:
- (a) Those that have arrears with the City Government of Olongapo and its affiliates and subsidiaries; and
  - (b) Those that have pending court cases with the City Government of Olongapo and its affiliates and subsidiaries.

**4. Documents Establishing Bidder's Eligibility and Qualification**

- 4.1. The documentary evidence of the Bidder's qualifications to execute and perform the Contract if its Bid is accepted shall establish to CGO's satisfaction that:
- (a) the Bidder has the legal, financial, and technical capability necessary to execute and comply with the provisions of the Contract; and
  - (b) in the case of a Bidder not doing business in the Philippines or foreign Bidders eligible the Bidder shall be represented by an agent in the Philippines equipped and able to carry out the Contract and/or Technical Specifications.
- 4.2. The documentary evidence of the Bidder's eligibility to Bid shall establish to CGO's satisfaction that the Bidder, at the time of submission of its Bid, is eligible and supported by documents.

**5. Contents of the Terms of Reference (TOR)**

- 5.1. The TOR consists of Sections indicated below, and should be read in conjunction with any Addenda issued.

**Section I. Instruction to Bidders**  
**Section II. Technical Specifications**  
**Section III. Sample Forms**  
**Section IV. Draft Contract**

- 5.2. Bidders should note that CGO will only accept Bids from Bidders that have purchased the TOR from the Office of the Pre Qualification Bids and Awards PBAC located at 2<sup>nd</sup> Floor General Services Office (GSO), Brgy WBB, Olongapo City.
- 5.3. The Bidder is expected to examine all instructions, forms, terms, and specifications in the TOR including bid bulletins, if any. Failure to furnish all

information or documentation required in the TOR shall result in the rejection of the Bid and the disqualification of the Bidder.

## **6. Pre-Bid Conference**

- 6.1. To clarify and address the Bidders' questions on the requirements, terms and conditions, and specifications stipulated in the TOR, a Pre-Bid Conference shall be held on July 13, 2018 2:00 pm at the 2<sup>nd</sup> Flr General Services Office (GSO) Olongapo City Hall. The Bidders' authorized representatives are required to attend the Site Inspection to ensure that they fully understand the extent and scope of the Project. The Bidder is expected to know the changes and/or amendments to the TOR discussed during the Pre-Bid Conference. Any statement made at the Pre-Bid Conference shall not modify the terms of the TOR unless such statement is specifically identified in writing as an amendment thereto and issued as a Supplemental/Bid Bulletin.
- 6.2. A prospective Bidder requiring any clarification on the TOR shall submit their request for clarification in writing to the PBAC at the Office of the PBAC Secretariat located at 2<sup>nd</sup> Flr City Legal Office, Olongapo City Hall. The PBAC will respond in writing to any request for clarification by issuing a Supplemental/Bid Bulletin, provided that such request is received at least fifteen (15) calendar days before the deadline for submission and receipt of Bids. The PBAC shall issue its response not later than seven (7) calendar days before the deadline for the submission and receipt of Bids, to be made available to all Bidders who have acquired the TOR directly from it, including a description of the inquiry but without identifying its source. Should CGO deem it necessary to amend the TOR as a result of a clarification, it shall do so following the procedure.

## **7. Amendment of TOR**

Supplemental/Bid Bulletins may be issued upon CGO's initiative for purposes of clarifying or modifying any provision of the TOR not later than seven (7) calendar days before the deadline for the submission and receipt of Bids. All bidders shall be notified in writing and through posting in the website if there are amendments in the TOR. Any modification to the TOR shall be construed as an amendment. It shall be the responsibility of all Bidders who secure the TOR to ensure that they are aware of and have secured all Bid Bulletins that may be issued.

## **8. Language of Bid**

- 8.1. The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and CGO, shall be written in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation in English, in which case, for purposes of interpretation of the Bid, the English translation shall govern.
- 8.2. The translation into the English language shall be authenticated by the Philippine embassy/consulate of the bidder's country of origin.

## **9. Documents comprising the Eligibility Documents (1st Envelope)**

- 9.1 The First Envelope shall contain the following Eligibility documents:

(a) **LEGAL DOCUMENTS**

(a.1) Proof of Juridical Personality

- If a Sole Proprietorship:

Certified true copy of Certificate of Business Name Registration issued by the Department of Trade and Industry (DTI), or its equivalent in the case of a foreign bidder;

- If a Partnership:

Certified true copy of Articles of Partnership and By-Laws;  
Certified true copy of Certificate of Registration issued by the Securities and Exchange Commission (SEC), or its equivalent in case of a foreign bidder; and

If applicable, certified true copy of Certificate of Business Name Registration issued by the DTI, or its equivalent in case of a foreign bidder;

- If a Corporation:

Certified true copy of Articles of Incorporation and By-laws;  
Certified true copy of Certificate of Registration issued by the SEC, or its equivalent in case of a foreign bidder; and,

If applicable, certified true copy of Certificate of Business Name Registration issued by the DTI, or its equivalent in case of a foreign bidder;

- If a Joint Venture or Consortium:

A valid and duly notarized joint venture agreement or consortium agreement (JVA/CA) for the Project specifying and including, among others:

The juridical personality, role and extent of participation of each party in the JVA/CA;

That each party to the JVA/CA is jointly and severally responsible and liable on all their submitted proposals for the Project and future undertakings or obligations in relation thereto;

That the JV/C, if awarded, shall establish a new partnership/corporation under Philippine laws prior to the signing within the MOA period;

- (a.2) Certified true copy of a tax clearance certificate issued by the BIR, or its equivalent in case of a foreign bidder;

- (a.3) Certified true copy of valid and current Business Permit/Municipal License to do business issued by the Local

Government Unit Business Permitting Office, or its equivalent in case of a foreign bidder;

(a.4) Philgeps Registration

(a.5) Omnibus Sworn Statement.

(b) **TECHNICAL DOCUMENTS:**

(b.1) Proof of Track Record:

- Signed list of similar projects, owned, operated and/or managed with a minimum of one (1) year of operations of Oxygen/Nitrogen Plant with an aggregate value of at least 50% of the Proposed Total Project Cost. Such listing should include the description, status, investments made, and project cost involved.
- Supporting documents to prove ownership, operations or management of the above listed projects.
- Key personnel of the prospective bidder and/or its contactor(s).

(c) **FINANCIAL DOCUMENTS:**

(c.1) Minimum Equity equivalent to at least twenty-five percent (25%) of the Proposed Total Project Cost. For JV/C the aggregate equity of the Joint Venture or Partners shall be considered for the evaluation of the 25% minimum equity requirement.

(c.2) Bank Certification from universal/commercial bank/s or an international bank/s with a subsidiary branch or correspondent bank/s in the Philippines attesting that the Bidder and/or members of the JV/C are:

- banking with them;
- in good credit standing; and
- qualified to obtain a credit line equivalent to the amount specified in the financing plan (fund sources), if applicable.

In case of a foreign bank, the certification shall include a list of its Philippine correspondent bank/s.

9.2 In the case of a prospective foreign Bidder, if eligible the eligibility requirements may be substituted with the appropriate equivalent documents issued by the country of the prospective Bidder concerned. Such documents must be duly authenticated by the appropriate Philippine Consulate therein.

9.3 CGO's eligibility check will be limited to establishing the completeness of each prospective Bidder's eligibility requirement by determining the presence or absence of the documents required against a checklist of requirements using non-discretionary pass/fail criteria. The eligibility check will not examine the substance of the contents of the documents. If a prospective Bidder submits the specific eligibility document required, it shall be rated as "passed" for that particular requirement. However, failure to submit a requirement or an incomplete or patently insufficient submission shall be



considered “failed” for the particular eligibility requirement concerned.

**10. Documents Comprising the Technical Proposal (2<sup>nd</sup> Envelope)**

10.1 The Technical Proposal shall contain the following documents:

- (a) Terms of Reference (TOR) *signed on each page by the authorized representative and signatory*;
- (b) Bid security. If the Bidder opts to submit the bid security in the form of:
  - b.1 Bid Security, which shall be non-interest bearing, in an amount equivalent to **two percent (2%)** of the Proposed Bid for the Total Project Cost, in the form of certified/cashier’s/manager’s check issued by a Philippine local bank and payable to “City Government of Olongapo”;
  - b.2 a bank draft/guarantee or an irrevocable letter of credit issued by a foreign bank, it shall be accompanied by a confirmation from a Universal or Commercial Bank; or
  - b.3a surety bond, it shall be accompanied by a certification by the Insurance Commission that the surety or insurance company is authorized to issue such instruments;

Bids and bid securities shall be valid for a period of one hundred and eighty calendar days from the date of opening of bids.

- (c) Signed work plan and schedule including major development milestones and timetable;
- (d) Signed conceptual design and features;
- (e) Affidavit of site inspection;
- (f) Valid joint venture agreement, in case of a joint venture (if necessary)
- (g) All Bid Bulletins *signed on each page by the authorized representative and signatory*.

**11. Documents Comprising the Financial Proposal (3<sup>rd</sup> Envelope)**

11.1 The Financial Proposal shall contain the following:

<b>Items of Bid</b>	<b>Minimum Requirement</b>
a. Minimum Project Cost	Minimum of SIXTY MILLION PESOS (P60,000,000)
b. City Government of Olongapo (CGO) Minimum Profit Sharing Percentage	Twenty Percent (20%)

All Bids below the minimum or not complying with the required commitments

and alternative bids shall be rejected.

**12. Bid Submission: Eligibility Documents, Technical and Financial Proposals**

- 12.1 The Bidder shall submit their Bids through their authorized representative using the appropriate Bid Forms on the deadline for the Submission and Opening of Bids, and in three (3) separate sealed envelopes and addressed to the PBAC; the first envelope containing the Eligibility Documents, the Technical Proposal of the Bid and the second envelope containing the Financial Proposal of the Bid.
- 12.2 The bidder shall submit one (1) original and two (2) copies of the Eligibility Documents, Technical Proposal and Financial Proposal.
- 12.3 The Bidder shall bear all costs associated with the preparation and submission of its Bid and CGO shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**13. Alternative Bids**

Alternative Bids or bids that are not in compliance with the requirements as provided in the TOR shall be rejected outright.

**14. Financial Bid**

The Bidder shall complete the appropriate Financial Bid included herein, stating the proposed Project cost and the proposed Profit Sharing.

**15. Bid Currencies**

- 15.1 Financial Bid shall be quoted in Philippine Pesos only.
- 15.2 Payment of the Financial Bid shall be made in Philippine Pesos.

**16. Bid Validity**

- 16.1 Bids shall remain valid for a period which shall not exceed one hundred Eighty (180) calendar days from the date of the opening of Bids.
- 16.2 In exceptional circumstances, prior to the expiration of the Bid validity period, CGO may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. A Bidder may refuse the request without forfeiting its Bid Security, but the Bid shall no longer be considered for further evaluation and award. A Bidder granting the request shall not be required or permitted to modify its Bid.

**17. Bid Security**

- 17.1 The Bidder shall furnish, as part of its Bid, a Bid Security in the form and amount specified herein. CGO shall prescribe the acceptable forms of Bid Security from among the following, from which acceptable forms the Bidder may choose:
  - (a) certified check;
  - (b) cashier's check; or
  - (c) manager's check

**The check should be issued by a Philippine local bank and made payable to “City Government of Olongapo”.**

- 17.2 Any Bid not accompanied by an acceptable Bid Security shall be rejected by PBAC and shall be declared as non-complying.
- 17.3 No Bid Security shall be returned to bidders after the opening of bids, except to those that failed to comply with any of the requirements to be submitted in the eligibility envelope of the bid. Bid Securities shall be returned only after the bidder with the Highest Calculated Responsive Bid has signed the MOA and submitted the Performance Security.
- 17.4 Upon signing and execution of the MOA, the posting of the Performance security, the successful Bidder’s Bid security will be returned.
- 17.5 The Bid security will be forfeited under the following circumstances: (a)

If a Bidder:

- (a.1) withdraws its Bid during the period of Bid validity specified by the Bidder on the Bid Form;
  - (a.2) does not accept the correction of errors;
  - (a.3) submits eligibility requirements and bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the public bidding;
  - (a.4) allows the use of one’s name, or using the name of another for purposes of public bidding;
  - (a.5) withdraws its bid, or refuses to accept an award, refuses to clarify or validate in writing its Bid during post-qualification within the period of seven (7) calendar days from receipt of the request for clarification;
  - (a.6) unduly influences the outcome of the bidding in his favor by any documented unsolicited attempt;
  - (a.7) commits all other acts that tend to defeat the purpose of the competitive bidding;
  - (a.8) any member of the JV/C withdraws its participation in the joint venture/consortium during the Bid Validity period;
- (b) In the case of a successful Bidder, if the Bidder fails:
- (b.1) to sign the MOA;
  - (b.2) to furnish performance security
  - (b.3) to register under Philippine laws in the case of foreign bidder or JV/C;

## **18. Format and Signing of Bids**

18.1 Bidders shall submit their bids through their duly authorized representative using the appropriate forms. Bidding forms on or before the deadline two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements, and the second shall contain the financial component of the bid.

18.2 Forms must be completed without any alterations to their format, and no substitute forms shall be accepted. All blank spaces shall be filled in with the information requested.

18.3 The Bidder shall prepare and submit an original of the first and second envelopes. In addition, the Bidder shall submit copies of the first and second envelopes. In the event of any discrepancy between the original and the copies, the original shall prevail.

18.4 Each and every page of the Bid Form, shall be signed by the duly authorized representative/s of the Bidder. Failure to do so shall be a ground for the rejection of the bid.

18.5 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the Bidder.

## **19. Sealing and Marking of Bids**

19.1 Bidders shall enclose their original eligibility and technical documents in one sealed envelope marked “ORIGINAL - TECHNICAL COMPONENT”, and the original of their financial component in another sealed envelope marked “ORIGINAL - FINANCIAL COMPONENT”, sealing them all in an outer envelope marked “ORIGINAL BID”.

19.2 Each copy of the first and second envelopes shall be similarly sealed duly marking the inner envelopes as “COPY NO. \_\_\_ - TECHNICAL COMPONENT” and “COPY NO. \_\_\_ – FINANCIAL COMPONENT” and the outer envelope as “COPY NO. \_\_\_”, respectively. These envelopes containing the original and the copies shall then be enclosed in one single envelope.

19.3 The original and the number of copies of the Bid as indicated in the **BDS** shall be typed or written in ink and shall be signed by the Bidder or its duly authorized representative/s.

19.4 All envelopes shall:

- (a) contain the name of the contract to be bid in capital letters;
- (b) bear the name and address of the Bidder in capital letters;
- (c) be addressed to the Procuring Entity’s PBAC;
- (d) bear the specific identification of this bidding process; and
- (e) bear a warning “DO NOT OPEN BEFORE...” the date and time for the opening of bids.

19.5 Bid envelopes that are not properly sealed and marked, as required in the bidding documents, shall not be rejected, but the Bidder or its duly authorized representative shall acknowledge such condition of the bid as submitted. The PBAC or the Procuring Entity shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked bid, or for its premature opening.

## **20. Deadline for Submission of Bids**

Bids must be received by the PBAC at the GSO Office, 2<sup>nd</sup> Flr Olongapo City Hall, Brgy WBB, Olongapo City on August 24, 2018 not later than 2:00 pm.

## **21. Late Bids**

Any Bid submitted after the deadline for submission and receipt of Bids prescribed by CGO, shall be declared “Late” and shall not be accepted by CGO.

## 22. Withdrawal of Bids

- 22.1 A Bidder may express its intention not to participate in the bidding through a letter which should reach and be stamped by the PBAC before the deadline for submission and receipt of Bids. Letters of withdrawal shall be read out and recorded during Bid opening.
- 22.2 No Bid may be withdrawn between the deadline for the submission of Bids and the expiration of the period of Bid validity specified on the Bid Form. Withdrawal of a Bid during this interval shall result in the forfeiture of the Bidder's Bid Security, and the imposition of administrative, civil and criminal sanctions as prescribed by R.A. 9184 and its IRR.

## 23. Opening and Preliminary Examination of Bids

- 23.1 The PBAC will open Bid envelopes in the presence of Bidders/Bidders' representatives who choose to attend, at the time, on the date, and at the place. The Bidders' representatives who are present shall sign a register evidencing their attendance.
- 23.2 The PBAC shall first determine each Bidder's compliance with the documents required to be submitted for Eligibility. For this purpose, the PBAC shall check the submitted documents of each Bidder against a checklist of required documents to ascertain if they are all present in the Eligibility Envelope, using a **non-discretionary "pass/fail" criteria**, as stated in the Invitation To Bid and this ITB. If a prospective bidder submits the specific eligibility document required, it shall be rated "passed" for that particular requirement. In this regard, failure to submit a requirement, or an incomplete and patently insufficient submission, shall be considered "failed" for the particular eligibility requirement concerned. If a prospective bidder is rated "passed" for all eligibility requirements, it shall be considered eligible for the opening of its Technical Proposal. If a prospective bidder is rated "failed" in any of its eligibility requirements, it shall be considered ineligible to participate in the bidding. **In case one or more of the above required documents in the Eligibility envelope of a particular Bid is missing, incomplete, or patently insufficient, the PBAC shall rate the Bid concerned as "failed" and immediately return to the Bidder concerned its Technical and Financial Proposal envelopes unopened.**
- 23.3 Immediately after determining compliance with the Eligibility requirements, all eligible bidders will have their Technical Proposals (Second Envelope) opened. The PBAC shall determine each Bidder's compliance with the documents required to be submitted for the Technical Proposal of the Bid. For this purpose, the PBAC shall check the submitted documents of each Bidder against a checklist of required documents to ascertain if they are all present in the Technical proposal, using a **non- discretionary "pass/fail" criteria**, as stated in the Invitation To Bid and this ITB. If a Bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered "failed" for the particular requirement concerned. If the Technical Proposal of a bidder is rated "passed", it shall be considered eligible for the opening of its Financial Proposal. If a prospective bidder is rated "failed" in any of its eligibility requirements, it shall be considered ineligible to participate in the bidding. **In case one or more of the above required documents in the Technical Proposal envelope of a particular Bid is missing, incomplete,**

**or patently insufficient, the PBAC shall rate the Bid concerned as “failed”** and immediately return to the Bidder concerned its Financial Proposal envelope unopened.

- 23.4 Immediately after determining compliance with the requirements in the Technical Proposal envelope, the PBAC shall forthwith open the Financial Proposals of each remaining eligible bidder whose Technical Proposal envelope was rated “passed”. The PBAC shall determine each Bidder’s compliance with the documents required to be submitted for the Financial Proposal of the Bid. For this purpose, the PBAC shall check the submitted documents of each Bidder against a checklist of required documents to ascertain if they are all present in the Financial Proposal, **using a non-discretionary “pass/fail” criteria**, as stated in the Invitation To Bid and this ITB. If a Bidder submits the required document, it shall be rated “passed” for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered “failed” for the particular requirement concerned. **In case one or more of the requirements in the Financial Proposal envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price is less than the floor price of the Items of Bid, the PBAC shall rate the bid concerned as “failed.”** Only bids that are determined to contain all the bid requirements for both components shall be rated “passed” and shall immediately be considered for evaluation and comparison.
- 23.5 A Bidder determined as “failed” has three (3) calendar days upon written notice or, if present at the time of Bid opening, upon verbal notification, within which to file a request or motion for reconsideration with the PBAC: Provided, however, that the motion for reconsideration shall not be granted if it is established that the finding of failure is due to the fault of the Bidder concerned: Provided, further, that the PBAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. If a failed Bidder signifies his intent to file a motion for reconsideration, in the case of a Bidder who fails in the Eligibility envelope or Technical envelope, the PBAC shall hold the Technical and/or Financial envelope, as the case may be, of the said failed Bidder unopened and duly sealed until such time that the motion for reconsideration or protest has been resolved.
- 23.6 CGO shall prepare the minutes of the proceedings of the Bid opening that shall include, as a minimum: (a) names of Bidders, their Financial Bid, Bid security, findings of preliminary examination; and (b) attendance sheet. The PBAC members shall sign the abstract of Bids as read and the observers may witness the same. The minutes of the proceedings of the Bid opening shall be available to the public upon written request and payment of a specified fee to recover cost of materials.

#### **24. Process to be Confidential**

The Members of the CGO PBAC, as well as its Secretariat and TWG are prohibited from making or accepting any kind of communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award (NOA), unless otherwise allowed by this ITB.

#### **25. Contacting CGO**

- 25.1 No Bidder shall contact CGO on any matter relating to its Bid, from the time of Bid opening to the time the Contract is awarded.

- 25.2 Any effort by a bidder to influence CGO in its decision with respect to Bid evaluation, Bid comparison or contract award will result in the rejection of the Bidder's Bid.

## **26. Evaluation and Comparison of Bids**

- 26.1 The Highest result in the evaluation shall be adopted in the determination of the Highest Calculated Bid. The highest percentage of bid with the highest sum of;

- a) Minimum Total Project Cost
- b) Minimum Profit Sharing Structure

- (a) Detailed Evaluation and Comparison of Bids.

CGO will undertake the detailed evaluation and comparison of Bids which have passed the opening and preliminary examination of Bids using a non-discretionary pass or fail criteria, in order to determine the Highest Calculated Bid.

- (a.1) CGO will undertake the detailed evaluation and comparison of Bids which have passed the opening and preliminary examination of Bids using a non-discretionary pass or fail criteria, in order to determine the Highest Calculated Bid.

- (b.2) The PBAC shall immediately conduct a detailed evaluation of all Bids rated "passed," using non-discretionary pass/fail criteria, which shall include consideration of the following:

- The Bid must be complete. Bids not addressing or providing all of the required items in the Financial Bid shall be considered non-responsive and, thus, automatically disqualified.

- (b.3) CGO's evaluation of Bids shall only be based on the Financial Bid quoted.

## **27. Post-Qualification**

- 27.1 The post-qualification shall verify, validate and ascertain all statements made and documents submitted by the bidder with the Highest Calculated Bid to determine the Highest Calculated and Responsive Bid.

- 27.2 The determination shall take into account the Bidder's legal, financial and technical capabilities. It shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, as well as such other information as CGO deems necessary and appropriate.

An affirmative determination shall be a prerequisite for award of the Project to the Bidder. A negative determination shall result in rejection of the Bidder's Bid, in which event CGO shall proceed to the next Highest Calculated Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily. If the second Bidder, however, fails the post qualification, the procedure for post qualification shall be repeated for the Bidder with the next Highest Calculated Bid, and so on until the Highest Calculated Responsive Bid is determined for contract award.

**28. CGO's Right to Reject Bids, Declare a Failure of Bidding, and not to Award the Contract**

28.1 Based on the following grounds, CGO reserves the right to reject any and all Bids, declare a Failure of Bidding at any time prior to the contract award, or not to award the contract, without thereby incurring any liability, and makes no assurance that a contract shall be entered into as a result of the bidding:

- (a) If there is prima facie evidence of collusion between any of the bidders, officers or employees of CGO, or between the PBAC Members, TWG and Secretariat, or if the collusion is between or among the bidders themselves, or between a bidder and a third party/NGO, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- (b) If the PBAC is found to have failed in following the prescribed bidding procedures; or
- (c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government as follows: (i) if the physical and economic conditions have significantly changed so as to render the Project no longer economically, financially or technically feasible as determined by the head of CGO; and (ii) if the Project is no longer necessary as determined by the head of CGO.

28.2 In addition, CGO may likewise declare a Failure of Bidding when:

- (a) All bidders are declared ineligible;
- (b) All bids failed to comply with all the bid requirements;
- (c) If no bidder passes the post-qualification;
- (d) If no responsive bidder accepts the NOA or signs the MOA.

28.3 If no award is made.

**29. Award Criteria**

29.1 CGO shall issue the NOA to the Bidder whose Bid has been determined to be responsive and eventually determined to be the Highest Calculated Responsive Bid.

29.2 In case of a tie in the highest calculated bid, a tie-breaking process shall be conducted in accordance with applicable government procedures.

**30. Notice of Award**

30.1 Prior to the expiration of the period of Bid validity, CGO shall notify the successful Bidder in writing that its Bid has been accepted, through a Notice of Award (NOA) received personally or sent by registered mail or electronically, receipt of which must be confirmed in writing within five (5) days from receipt by the successful Bidder and submitted personally or sent by registered mail or electronically to CGO.

30.2 Upon the issuance of the NOA to the successful Bidder, CGO shall promptly



notify each unsuccessful Bidder of the fact of award to the successful Bidder.

**31. Signing of the Memorandum of Agreement**

- 31.1 Upon issuance of the NOA, CGO shall send the Memorandum of Agreement (MOA) to the Bidder, which has been provided in the TOR, incorporating therein the bid terms.
- 31.2 Within five (5) calendar days from receipt of the NOA, the successful Bidder shall sign and date the MOA and return it to CGO.
- 31.3 The MOA shall be effective for a period of sixty (60) calendar days from the date the last party signed the MOA. The MOA shall serve as a transit document for all the deliverables required during the period of the MOA and all other conditions precedent.
- 31.4 If the sixty-day period has expired and the preliminary terms and conditions precedent have not been complied with by the successful Bidder, the Bid Security of the successful Bidder shall be forfeited and the bidder with the second Highest Calculated Bid shall be evaluated and post-qualified .

**32. Performance Security**

- 32.1 Within the period of the MOA, the successful Bidder shall furnish CGO the required Performance Security, equivalent to the higher of:

The sum of Ten Percent (10%) of the proposed Total Project Cost The Performance Security shall be payable to “City government of Olongapo” in the form of certified/cashier’s/manager’s check issued by a Philippine local bank.

- 32.2 Failure of the successful Bidder to comply with the requirement shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security, in which event CGO shall initiate and complete the post qualification of the second Highest Calculated Bid. The procedure shall be repeated until the Highest Calculated Responsive Bid is identified and selected for contract award. However if no Bidder passed post- qualification, the PBAC shall declare the bidding a failure.

**33. Notice to Proceed**

The Memorandum of Agreement shall serve as the Notice to Proceed and shall be effective upon signing.

**34. Protests on the Decisions of the PBAC**

- 34.1 Decisions of the PBAC at any stage may be questioned by filing a request for reconsideration within the three (3) calendar days upon receipt of written notice or upon verbal notification. The PBAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof.

If a failed bidder signifies intention to file a request for reconsideration, the PBAC shall keep the bid envelopes of the said failed bidder unopened and/or duly sealed

until such time that the request for reconsideration has been resolved.

- 35.2 In the event that the request for reconsideration is denied, decisions of the PBAC may be protested in writing: Provided, however, that a prior request for reconsideration should have been filed by the party concerned, and the same has been resolved.
- 35.3 The protest must be filed within seven (7) calendar days from receipt by the bidder concerned of the resolution of the PBAC denying its request for reconsideration. A protest may be made by filing a verified position paper with the PBAC, accompanied by the payment of a non-refundable protest fee in an amount equivalent to one percent (1%) of the Total Project Cost.
- 35.4 The verified position paper shall contain the following information:
- (a) The name of the bidder;
  - (b) The office address of the bidder;
  - (c) The name of the Project;
  - (d) The implementing office/agency;
  - (e) A brief statement of facts;
  - (f) The issue to be resolved; and
  - (g) Such other matters and information pertinent and relevant to the proper resolution of the protest.
- 35.5 The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records.
- 35.6 An unverified position paper shall be considered unsigned, produces no legal effect, and results to the outright dismissal of protest.
- 35.7 In all of the foregoing circumstances, all bidders shall exhaust available administrative procedures provided herein before seeking judicial action, remedy or intervention. For this purpose, prospective bidders shall execute an undertaking to that effect and shall form part of its Technical Proposal. Violation of the foregoing will result in the dismissal of the motion for reconsideration or protest as the case may be, plus forfeiture of the bid security.

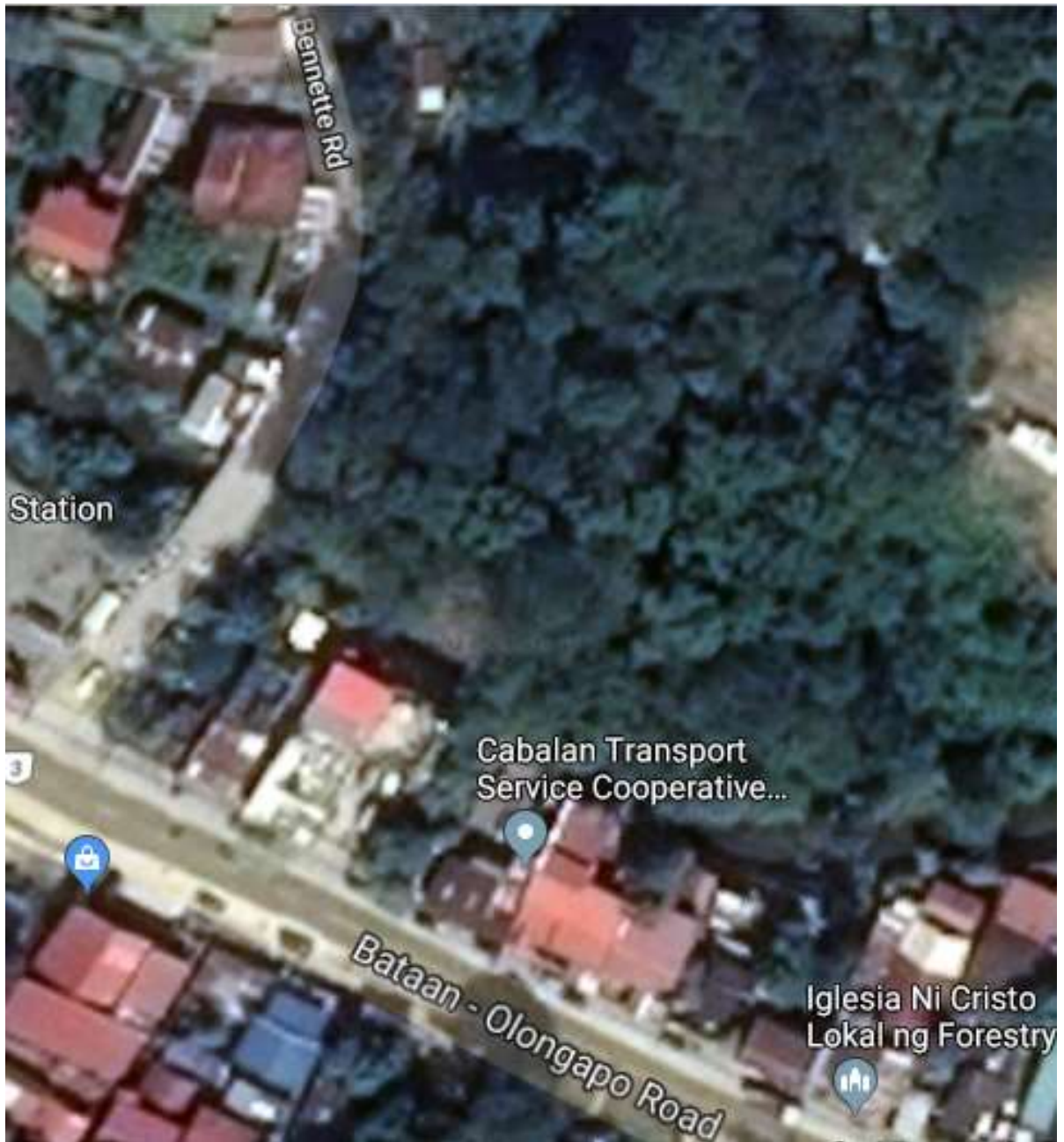
**SECTION II**  
**TECHNICAL SPECIFICATIONS**

CGO intends to seek investors who will lease, develop, operate and manage for a period of ten (10) years renewable for another ten (10) years under mutually agreeable terms the portion area of Forestry Brgy Old Cabalan, Olongapo City located with an area of approximately 300 sq meter more particularly described as follows:

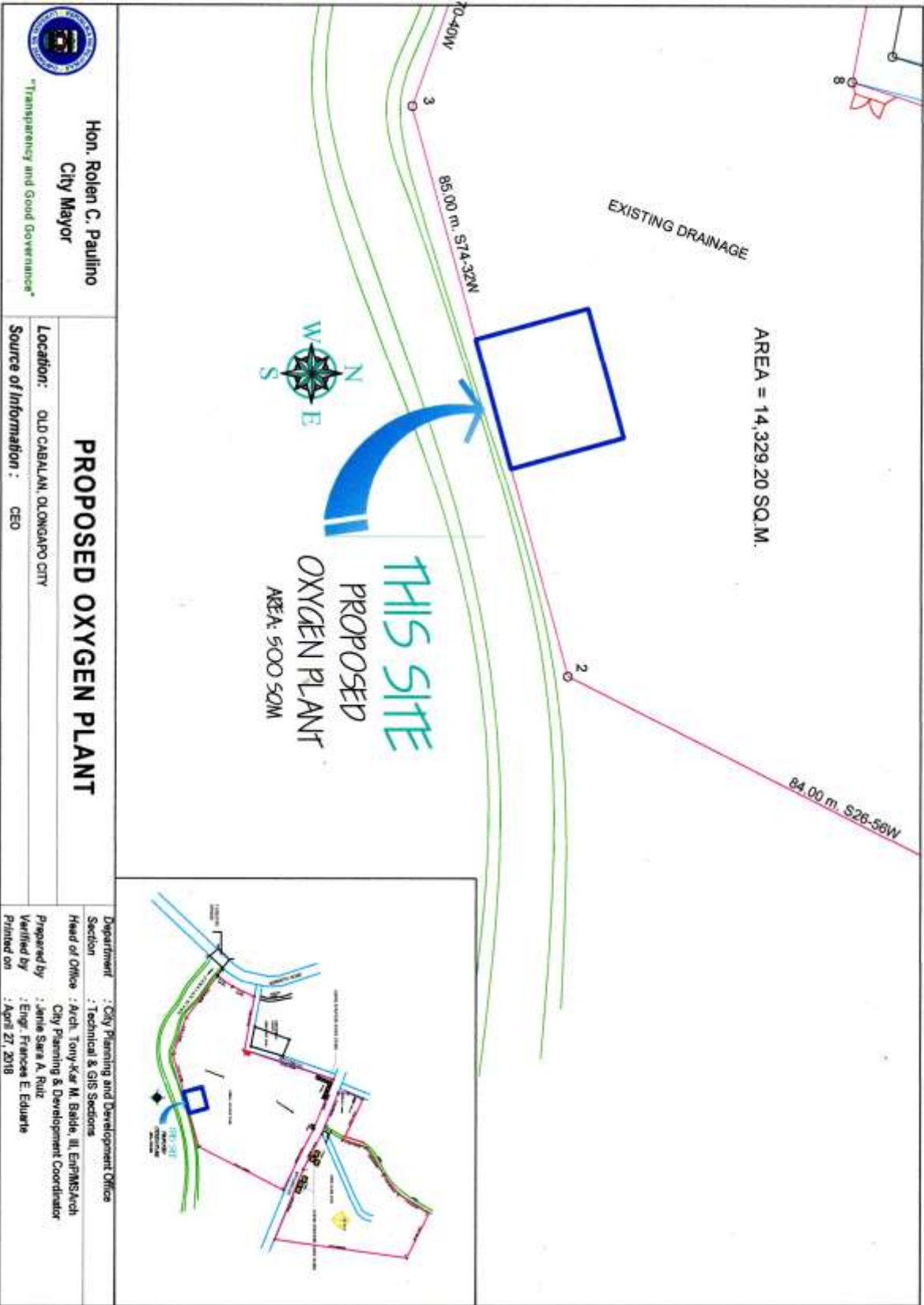
**A. THE OXYGEN/NITROGEN PLANT**

The approximately 300 sq meter land area and its facilities shall comprise the following:

1. Oxygen/Nitrogen Plant Building
  - Sales Office
  - Warehouse
2. Plant equipment
  - Oxygen Machine
  - Delivery Vehicles
  - Power Generator
  - Transformer



**GOOGLE MAP AREA**



AREA = 14,329.20 SQ.M.

**THIS SITE**  
**PROPOSED**  
**OXYGEN PLANT**  
 AREA: 500 SQM



**Hon. Rolan C. Paulino**  
**City Mayor**  
 "Transparency and Good Governance"

**PROPOSED OXYGEN PLANT**

**Location:** QLD CABALAN, OLONGAPO CITY  
**Source of Information:** CEO

**Department:** City Planning and Development Office  
**Section:** Technical & GIS Sections  
**Head of Office:** Arch. Tony-Ker M. Badle, III, EnP/MS/Arch  
**City Planning & Development Coordinator**  
**Prepared by:** Jenie Sera A. Ruiz  
**Verified by:** Engr. Frances E. Eduarte  
**Printed on:** April 27, 2018

### C. ITEMS OF BID

The floor price of the bid for the Operation of Oxygen/Nitrogen Plant in Olongapo City shall be based on the following:

Items of Bid	Minimum Requirement
a. Minimum Project Cost	Minimum of SIXTY MILLION PESOS (P60,000,000)
b. City Government of Olongapo (CGO) Minimum Profit Sharing Percentage	Twenty Percent (20%)

#### 1. OTHER PROVISIONS:

- (a) **Term of Contract:** Ten (10) years, renewable for another ten (10) years under mutually agreeable terms;
- (b) **Bid Security**, which shall be non-interest bearing, shall be in an amount equivalent to **two percent (2%)** of the Proposed Bid for the Total Project Cost

b.1 Bid Security, which shall be non-interest bearing, in an amount equivalent to **two percent (2%)** of the Proposed Bid for the Total Project Cost, in the form of certified/cashier's/manager's check issued by a Philippine local bank and payable to "City Government of Olongapo";

b.2 a bank draft/guarantee or an irrevocable letter of credit issued by a foreign bank, it shall be accompanied by a confirmation from a Universal or Commercial Bank; or

b.3a surety bond, it shall be accompanied by a certification by the Insurance Commission that the surety or insurance company is authorized to issue such instruments;

Bids and bid securities shall be valid for a period of one hundred and eighty calendar days from the date of opening of bids.

- (c) **Minimum Total Project Cost of at least SIXTY MILLION PESOS** (Php60,000,000) to be completed within a maximum period of one (1) year from execution of the MOA.
- (d) **Performance Security** equivalent to the higher of:
- d.1 Performance Security, which shall be non-interest bearing, in an amount equivalent to **two percent (2%)** of the Proposed Bid for the Total Project Cost, in the form of certified/cashier's/manager's check issued by a Philippine local bank and payable to "City Government of Olongapo";
- d.2 a bank draft/guarantee or an irrevocable letter of credit minimum of **five percent (5%)** of the total project cost issued by a foreign bank, it shall be accompanied by a confirmation from a Universal or Commercial Bank;

or

d.3a surety bond minimum of **ten percent (10%)** of the total project cost, it shall be accompanied by a certification by the Insurance Commission that the surety or insurance company is authorized to issue such instruments;

The performance security shall be payable to “City Government of Olongapo” in the form of certified/cashier’s/manager’s check within the period of the MOA.

The Performance security shall be valid ninety (90) calendar days after the turnover of the facility.

- (e) **Work plan** and schedule which, at the minimum, should contain the conceptual design, features and amenities, the timetable, including major development milestones and the schedule of the capital investment commitment.

**SECTION III**  
**SAMPLE FORMS**

(Country) \_\_\_\_\_ }  
City/Town/Municipality) } S.S.

**AFFIDAVIT OF SITE INSPECTION**

I, \_\_\_\_\_ (Name of Representative) \_\_\_\_\_, of legal age, married, Filipino and residing at \_\_\_\_\_ (Address) \_\_\_\_\_, under oath, hereby depose and say:

1. That I am the \_\_\_\_\_ (Designation) \_\_\_\_\_ of \_\_\_\_\_ (Name of the Bidder) \_\_\_\_\_ with corporate office at \_\_\_\_\_ (Address of Bidder) \_\_\_\_\_;
2. That on \_\_\_\_\_ (Date) \_\_\_\_\_, \_\_\_\_\_ (Name and Position of Bidders Authorized Representative during site inspection) of the \_\_\_\_\_ (Name of Bidder) made a site inspection of the Project;
3. That I am making this statement as part of the Technical Proposal for the **OPERATION OF OXYGEN/NITROGEN PLANT IN OLONGAPO CITY.**

**WHEREFORE**, I have hereunto affixed my signature this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, Philippines.

\_\_\_\_\_  
Affiant

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, affiant exhibiting to me his/her Passport No. \_\_\_\_\_ issued at \_\_\_\_\_ on \_\_\_\_\_, 20\_\_.

Notary Public

Doc. No. : \_\_\_\_\_  
Page No. : \_\_\_\_\_  
Book No. : \_\_\_\_\_  
Series of \_\_\_\_\_  
20



**PROOF OF TRACK RECORD LIST OF SIMILAR PROJECTS**

<b>Name &amp; Description of</b>	<b>Location</b>	<b>Owner &amp; Address</b>	<b>Contact Person</b>	<b>Project Cost</b>	<b>Bidder's Involvement (Owner, Contractor, etc.)</b>	<b>Value of Investment Made</b>	<b>Status of Project</b>	<b>Remarks</b>

*Note: Please use another sheet of paper if necessary, but attach immediately after this page.*

*This should be supported with documents proving above listed projects, such as but not limited to a document showing proof of ownership, operations or management contracts.*

\_\_\_\_\_  
(Name of Bidder)

\_\_\_\_\_  
(Name & Signature of Representative)

\_\_\_\_\_  
(Position)

## Omnibus Sworn Statement

REPUBLIC OF THE PHILIPPINES )  
CITY/MUNICIPALITY OF \_\_\_\_\_ ) S.S.

### AFFIDAVIT

I, *[Name of Affiant]*, of legal age, *[Civil Status]*, *[Nationality]*, and residing at *[Address of Affiant]*, after having been duly sworn in accordance with law, do hereby depose and state that:

1. **Select one, delete the other:**

*If a sole proprietorship:* I am the sole proprietor of *[Name of Bidder]* with office address at *[address of Bidder]*;

*If a partnership, corporation, cooperative, or joint venture:* I am the duly authorized and designated representative of *[Name of Bidder]* with office address at *[address of Bidder]*;

2. **Select one, delete the other:**

*If a sole proprietorship:* As the owner and sole proprietor of *[Name of Bidder]*, I have full power and authority to do, execute and perform any and all acts necessary to represent it in the bidding for *[Name of the Project]* of the *[Name of the Procuring Entity]*;

*If a partnership, corporation, cooperative, or joint venture:* I am granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the *[Name of Bidder]* in the bidding as shown in the attached *[state title of attached document showing proof of authorization (e.g., duly notarized Secretary's Certificate issued by the corporation or the members of the joint venture)]*;

3. *[Name of Bidder]* is not "blacklisted" or barred from bidding by the Government of the Philippines or any of its agencies, offices, corporations, or Local Government Units, foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the Government Procurement Policy Board;

4. Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;

5. *[Name of Bidder]* is authorizing the Head of the Procuring Entity or its duly authorized representative(s) to verify all the documents submitted;

6. **Select one, delete the rest:**

*If a sole proprietorship:* I am not related to the Head of the Procuring Entity, members of the Pre Qualification Bids and Awards Committee (PBAC), the Technical Working Group, and the PBAC Secretariat by consanguinity or affinity up to the third civil degree;

*If a partnership or cooperative:* None of the officers and members of *[Name of Bidder]* is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

*If a corporation or joint venture:* None of the officers, directors, and controlling stockholders of *[Name of Bidder]* is related to the Head of the Procuring Entity, members of the Pre Qualification

Bids and Awards Committee (PBAC), the Technical Working Group, and the PBAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

7. *[Name of Bidder]* complies with existing labor laws and standards; and
8. *[Name of Bidder]* is aware of and has undertaken the following responsibilities as a Bidder:
  - a) Carefully examine all of the Terms of Reference;
  - b) Acknowledge all conditions, local or otherwise, affecting the implementation of the Contract;
  - c) Made an estimate of the facilities available and needed for the contract to be bid, if any; and
  - d) Inquire or secure Supplemental/Bid Bulletin(s) issued for the *[Name of the Project]*.
9. *[Name of Bidder]* did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_ day of \_\_\_, 20\_\_ at \_\_\_\_\_, Philippines.

\_\_\_\_\_  
Bidder's Representative/Authorized Signatory

## **CHECKLIST OF TECHNICAL & ELIGIBILITY and FINANCIAL REQUIREMENT**

### **FIRST ENVELOPE**

#### **CLASS "A" DOCUMENTS**

##### **LEGAL DOCUMENTS**

1. Department of Trade and Industry (DTI) business name registration or SEC Registration Certificate, whichever may be appropriate under existing laws of the Philippines, supported with the necessary information using the prescribed forms. CDA for cooperatives.
2. Tax Clearance (BIR)
3. Valid and current Mayor's permit license
4. Philgeps registration
5. Omnibus sworn statement

##### **TECHNICAL DOCUMENTS**

6. Proof of track record
  - a. Statement of all contracts which are similar in nature
  - b. Proof of ownership
  - c. Key Personnel

##### **FINANCIAL DOCUMENTS**

7. Audited financial statements, stamped "received" by the BIR or its duly accredited and authorized institutions, for the immediately preceding calendar year, showing among others the total current assets and current liabilities.

### **SECOND ENVELOPE**

#### **CLASS "B" DOCUMENTS**

##### **TECHNICAL DOCUMENTS**

10. Terms of Reference (TOR) *signed on each page by the authorized representative and signatory*;
11. Bid security. If the Bidder opts to submit the bid security in the form of:
  - b.1 Bid Security, which shall be non-interest bearing, in an amount equivalent to **two percent (2%)** of the Proposed Bid for the Total Project Cost, in the form of certified/cashier's/manager's check issued by a Philippine local bank and payable to "City Government of Olongapo";
  - b.2 a bank draft/guarantee or an irrevocable letter of credit issued by a foreign bank, it shall be accompanied by a confirmation from a Universal or Commercial Bank;or

b.3 a surety bond, it shall be accompanied by a certification by the Insurance Commission that the surety or insurance company is authorized to issue such instruments;

12. Signed work plan and schedule including major development milestones, timetable and the schedule of the capital investment commitment;
13. Signed conceptual design, features and amenities of investment commitments under Items (c) and (d) above;
14. Affidavit of site inspection;
15. Valid joint venture agreement, in case of a joint venture (if necessary)

All Bid Bulletins *signed on each page by the authorized representative and signatory.*

**THIRD ENVELOPE**

**The Financial Component Envelope shall contain the following:**

<b>tems of Bid</b>	<b>Minimum Requirement</b>
a. Minimum Project Cost	Minimum of SIXTY MILLION PESOS (P60,000,000)
b. City Government of Olongapo (CGO) Minimum Profit Sharing Percentage	Twenty Percent (20%)

All Bids below the minimum or not complying with the required commitments and alternative bids shall be rejected.

**Note: *Please arrange the documents in the sequence indicated above***

**SECTION IV**  
**MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement (the “MOA”) entered into this \_\_\_\_\_, 2018 by and between the following parties:

The **CITY GOVERNMENT OF OLONGAPO**, a local government unit created under the laws of the Republic of the Philippines, with office address at Olongapo City Hall, Rizal Ave., West Bajac-Bajac, Olongapo City, represented herein by its City Mayor, HON. ROLEN C. PAULINO, and hereinafter referred to as the “**CITY GOVERNMENT OF OLONGAPO**”;

- and -

CONTRACTOR, a [Type of company] and represented herein by its [Position], [REPRESENTATIVE], with office address at [Address], and hereinafter referred to as [“CONTRACTOR”].

**WITNESSETH:**

**WHEREAS**, the bidder desires to partner with the City Government of Olongapo for the purpose of design, build and operate an oxygen/nitrogen plant in Olongapo City, with the following principal duties, to wit;

1. Design and build a state of the art oxygen generating plant to be utilized by the contractor for the benefit of the City Government of Olongapo
2. Operate the oxygen generating plant to include the supply and delivery of the finished product to its medical facilities in the City Government of Olongapo.
3. Manage the financial operation of the plant to generate income for the City Government of Olongapo.

**WHEREAS**, on [Date], the Sangguniang Panlungsod of Olongapo City, passed through Resolution No. [Number] dated [Date] approved authorizing the City Mayor to accept the unsolicited proposal;

**WHEREAS**, on [Date], the Sangguniang Panlungsod of Olongapo City, passed through Resolution No. [Number] dated [Date] approved authorizing the City Mayor to negotiate with the original proponent;

**WHEREAS**, the CGO is the owner of the property located at Forestry Brgy Old Cabalan, Olongapo City;

**WHEREAS**, the winning bidder will occupy a portion of the lot approximately 300 sq meter for the purpose of this agreement;

**WHEREAS**, on [Date], the Sangguniang Panlungsod of Olongapo City, passed through Resolution No. [Number] dated [Date] approved for the Approval of the Terms of Reference (TOR);

**WHEREAS**, on [Date], the Sangguniang Panlungsod of Olongapo City, passed through Resolution No. [Number] dated [Date] approved authorizing the City Mayor to enter into contract with the winning bidder;

**WHEREAS**, an invitation was published for comparative proposals, once every week for three (3)

consecutive weeks in one newspaper of general circulation and posted also in CGO website.

**WHEREAS**, the bidder desires to partner with the City Government of Olongapo for the purpose of design, built and operate

**NOW, THEREFORE**, for and in consideration of the foregoing premises and covenants hereinafter stipulated, the parties hereby agree as follows:

## **Section 1. TERMS AND CONDITION**

### **City Government of Olongapo (CGO)**

a. Grant the contractor the exclusive rights to build, operate, maintain and manage the Oxygen/Nitrogen Plant in Olongapo City, for the period of Ten (10) years, to commence upon execution of this memorandum of agreement provided that the contractor abides by the terms and conditions contained herein. The same shall be built on a portion of 300sq m.

b. After the expiration and/or termination of this agreement, shall automatically assume possession of the oxygen plant and improvements introduced therein even without execution of the formal contract to this effect. Provided,

c. However, should the CGO deem prudent, financially advantageous and beneficial to the City that the operation of the same be performed not by the City Government Olongapo, then, the contractor shall be accorded the right of first refusal and priority to operate and manage the same; upon the expiration of its term.

d. Through its representative, shall have the right to enter the Oxygen/Nitrogen Plant at reasonable hours and as often as necessary for the purpose of inspecting the same and to determine compliance by the winning bidder with the provisions of this agreement and all local and national laws.

## **WINNING BIDDER**

a. The approximately 300 sq meter, land area and its facilities shall comprise the following but not limited to:

1. Oxygen/Nitrogen Plant Building
  - Sales Office
  - Warehouse
2. Plant equipment
  - Oxygen Machine
  - Delivery Vehicles
  - Power Generator
  - Transformer

b. Upon termination of this agreement, return and surrender the Oxygen/Nitrogen Plant to the CGO.

**Section 2. SHARING SCHEME.** Having been granted the right to construct, operate, manage and maintain the Oxygen/Nitrogen Plant, the contractor agrees to pay the CGO, the amount indicated in the following schedule of payment.

(i) Percentage income share by the CGO is 20% of the net annual income of the business

Payment shall be done on a quarterly basis, which starts on the first day of operation of the

Oxygen/Nitrogen Plant computed from the first day of operation by the proponents. All payments shall be settled at the City Treasurer's Office.

**Section 3. REPRESENTATION AND WARRANTIES.** Each party hereto represents and warrants to the other party the following:

- a. It has full power and authority to execute, deliver and perform this MOA;
- b. This MOA constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.

**Section 4. BINDING EFFECT.** This MOA shall be binding upon, and inure to the benefit of the parties and their representatives.

**Section 5. NON-WAIVER.** No waiver of any provision of this MOA shall be valid unless in writing and signed by the party against whom it is sought to be enforced. The failure of a party at any time to insist upon strict performance of any condition or agreement set forth herein shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same at a future time.

**Section 6. GOVERNING LAW.** This MOA shall be governed, construed and interpreted in accordance with Philippine Laws and the TOR.

**Section 7. CONFIDENTIALITY CLAUSE.** Except for disclosures required under the laws, rules and regulations of the Philippines or pursuant to valid and enforceable orders of courts or other governmental agencies with jurisdiction over the subject matter of this MOA, no party shall, without the prior written consent of the other party, make any disclosure to a third party of this MOA, of any of the terms contained herein, or any information, reports, or filings required under the terms of this MOA. This provision shall survive the termination of this MOA.

**Section 8. SEPARABILITY CLAUSE.** If any provision contained herein is invalid, illegal or unenforceable in any respect under any applicable law or decision, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

**Section 9. PERMIT.** Winning bidder must adhere to all permits local and national which is essential to the operation of the business including but not limited to those concerning the operation of oxygen/nitrogen plant business licensing requirements.

**Section 10. BUILDING STANDARD** - All constructions, renovations, repairs, rehabilitation and other constructions shall be undertaken in accordance with the specifications of the **National Building Code (NBC)** and its referral codes including the rules, regulations and standards promulgated by the winning bidder. No constructions shall commence without first securing a Building Permit from CGO.

**Section 11. TERM OF CONTRACT.** winning bidder shall construct, develop, operate and manage the area for a period of ten (10) years renewable subject to the approval of Sanggunian Panlungsod.

This agreement shall take effect on \_\_\_\_\_ and shall remain in full force and effect for a minimum period of ten (10) years unless earlier terminated by either party of compliance of the provisions of this agreement after ninety (90) days from written notice to the other. It is agreed that should there be any amendment increasing the inflation rate provided by law during the effectivity of this agreement, the rates herein upon shall be proportionately adjusted, without prejudice to a separate agreement which the Parties may enter into. Upon expiration of the contract, this agreement shall be deemed automatically renewed for another ten (10) years, unless the CGO serves a written notice of termination ninety (90) days prior to \_\_\_\_\_, the date of termination of this agreement. This is without prejudice to the right of the



parties to enter subsequent agreements.

## **Section 12. CONDITIONS AFTER EFFECTIVE DATE**

### **12.1 Project Scope**

The project shall comprise the planning, financing, development, design, engineering, supply, installation, testing, commissioning, management, operation, repair, maintenance and by the parties of the Oxygen Generating Plant during the operating period in accordance with the agreed Design and Technical Specifications, including their transfer upon the Termination Date, in accordance with this Agreement and all applicable laws.

### **12.2 Grant of Rights**

On the terms and subject to the conditions set forth in this Agreement, the Agency hereby grants to the Company in compliance with all Legal Requirements the sole and exclusive right and responsibility during the term of this Agreement to:

- (a) Arrange financing for the Project;
- (b) Plan, develop, design, build, supply, install, test, commission, deploy, and when applicable, rollout the Oxygen Generating Plant;
- (c) Implement the Project Milestone Schedule;
- (d) Provide, manage, use, occupy, operate, repair, maintain, and refurbish the Oxygen Generating Plant.

## **Section 13. PROVISION OF SERVICES AND FACILITIES; TESTING AND COMMISSIONING**

### **General Responsibilities of the Company**

The Company shall plan, design, install, test, and commission the Oxygen Generating Plant and all other Project components, in compliance with:

- (a) The Design and Technical Specifications;
- (b) All relevant design, engineering, and construction standards and practices in the Philippines;
- (c) All applicable Legal Requirements; and
- (d) The Project Milestone Schedule.

### **Further Responsibilities Related to the Oxygen Generating Plant**

For the purpose of performing its obligations, the Company shall, among other things, have the right to and be responsible for:

- (a) Causing the preparation of the Implementation Plan and approving or rejecting the same;
- (b) Appointing and removing consultants and professional advisors;
- (c) Procuring and installing the Oxygen Generating Plant;
- (d) Hiring, organizing, removing, and directing staff to manage and supervise the Project;
- (e) Entering into contracts for the supply, purchase or lease of materials, equipment and services including the connection to all utilities needed during installation and operation;
- (f) Taking the necessary measures to protect people and property, avoid unnecessary interference caused by people and equipment, and prevent any other nuisance and unreasonable disturbance; and
- (g) Doing all other things necessary or desirable for the timely completion of the Project.

**Section 14. GENERAL WARRANTY** The Company expressly warrants that the Oxygen Generating Plant including the works to be performed by the Company and its subcontractors will conform to the Design and Technical Specifications in all respects and will be free from design, manufacturing, or other defects and deficiencies.

## **Section 15. TESTING AND COMMISSIONING**

### **15.1.1 Testing Procedure; Provisional Acceptance**

- a) The company shall, at its cost, carry out the testing and commissioning of the Oxygen Generating Plant in phases in accordance to the agreed. The company shall give the Agency not less than thirty (30) days' prior written notice before commencing any testing and commissioning of a phase.
- b) The Company shall immediately take the remedial actions should there be any discrepancies and shall notify the Agency when they have been carried out. As soon as reasonably practicable, the Company shall conduct further testing and commissioning.

## **Section 16. OPERATION AND MAINTENANCE**

### **16.1 Operation and Maintenance Responsibilities of the Company**

The Company shall be responsible for the management, operation, maintenance, safety, and repair of the Oxygen Generating Plant during the period of this contract and shall ensure during such period that the Oxygen Generating Plant operate in accordance with all Legal Requirements.

### **16.2 Company Staff**

- a) The Company shall ensure that a sufficient number of its personnel or those of its subcontractors with the necessary qualifications, expertise and experience most appropriate to operate the Oxygen Generating Plant are on duty on the Days and during the hours needed to meet the Service Level Agreements.
- b) It is understood that staff provided by the Company for the purpose of performing all services under this Agreement are the employees of the Company or its subcontractors and under no circumstances will be considered employees of the Agency.

### **16.3 Planned Downtime; Maintenance Program, Schedule and Fund**

- a) The Company shall conduct all regularly scheduled preventive and remedial maintenance of Oxygen Generating Plant, including repairs, overhauls, improvements, and replacements, in accordance with the maintenance plans and schedules.
- b) A Planned Downtime shall be confirmed by the Parties sixty (60) Days prior to such downtime and reconfirmed twenty-one (21) Days in advance. The Agency may request the Company to reschedule a Planned Downtime for any valid reason and the Company shall make reasonable efforts to accommodate the request consistent with Prudent Utility Practice. If the Company cannot accommodate the request, it shall inform the Agency in writing as early as possible, which should not be later than fifteen (15) Days after its receipt of a request for rescheduling any Planned Downtime.
- c) The Company will carry out and provide back-up and recovery procedures or facilities to ensure the continuous operation of the Project even during system downtimes or breakdowns.
- d) The Company shall set aside a special fund for the repair, maintenance and system upgrade of the Oxygen Generating Plant and to fund training and technology transfer activities under this Agreement.

### **16.4 Unplanned Downtime**

In case any Unplanned Downtime occurs or is foreseen to occur, the Company shall immediately notify the Agency in writing specifying the date and time of the commencement of the Unplanned Downtime and its expected duration. The period of time from the commencement of an Unplanned Downtime until the resumption of normal operation shall be termed as an ***“Unplanned Downtime Period”***. Any Unplanned Downtime Period with a duration of more than forty eight (48) hours shall be treated as a

Non-Political Force Majeure Event affecting the Company.

## **Section 17. DELIVERY OF SERVICES**

### **17.1 Company Services**

The Company shall, at its cost, perform and deliver the Oxygen Generating Plant for the duration of the Operating Period with the following components:

- 1) Design and Build a state of the art oxygen generating plant to be utilized by the CLIENT for the benefit of the City of Olongapo,
- 2) Operate the oxygen generating plant to include the supply and delivery of the finished product to its medical facilities in the City of Olongapo at a fee of Php 300.00 per cylinder. however, exclusivity will be granted to the Company in supplying there medical oxygen.
- 3) Manage the financial operation of the plant to generate income for the City of Olongapo. The Company shall sell the excess production to private business entities where the Agency shall have a 20% rebate for each sold goods.

### **17.2 Service Level Agreements**

The Company shall provide and operate the Oxygen Generating Plant in a manner that shall all times meet or exceed the Service Level Agreements.

### **17.3 Quality Assessment**

The Company shall implement a quality assessment and monitoring system which meets the requirements that the Oxygen Generating Plant is delivered in a way that satisfies or exceeds all SLAs.

## **Section 18. COPYRIGHTS, LICENSES AND WARRANTIES**

### **Copyrights over Work Products**

All Intellectual Property Rights in materials, products, goods, devices, inventions, works, outputs, and other tangible and intangible property developed or prepared by the Company pursuant to this Agreement are the property of the Company and all title and interest therein shall vest in the Company exclusively.

## **Section 19. PAYMENT TO CGO**

### **19.1 Company Fee Adjustment**

For providing the requirements of the CGO of supply and delivery of goods, Contractor shall be entitled shall be entitled to charge monthly base on the consumption to be paid by CGO.

**Section 20. CONTRACT TERMINATION.** The contract may be terminated/rescinded in the following events;

If the Project Proponent refuses or fails to perform any of the provisions of the approved contract with such diligence as will ensure the project' completion, operation and maintenance in accordance with the prescribed technical and performance standards or otherwise fails to satisfy any of the contract provisions including compliance with the prescribed/agreed milestone activities, or commits any substantial breach of approved contract, the CGO shall notify the Project Proponent in writing of the same and if not corrected within the time specified, the CGO concerned may rescind the contract. In such an event, the CGO may take over the facility.

**Section 21. PENALTIES AND SANCTION.** Cancellation/Revocation of contract when the winning bidder violated the provision of this contract without prejudice to other legal remedies available to enforce and protect the rights of CGO.

**Section 22. MISCELLANEOUS PROVISIONS.**

1. The winning bidder shall benefit from the provisions of the proposed business incentive program that the CGO will adapt;
2. The winning bidder shall comply with all the rules, regulations, ordinances and laws promulgated or enforced by the national and local laws as well as the provisions of this agreement regarding the use and operation of the Oxygen/Nitrogen Plant.
3. The winning bidder shall solely shoulder expenses incurred arising in the Oxygen/Nitrogen Plant from any and all injury, sickness or death to personnel employed in their official function and capacity.
4. The winning bidder shall not sub-lease any and all portion of the Oxygen/Nitrogen Plant.
5. The winning bidder shall accommodate workers from Olongapo City to be employed at the Oxygen/Nitrogen Plant, provided they comply with all the requirements of the Winning bidder.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their respective hands on the day, year and place first above-written.

On Behalf of the City of Olongapo

On Behalf of the **CONTRACTOR**

**HON. ROLEN C. PAULINO**  
City Mayor

\_\_\_\_\_

Signed in the presence of:

\_\_\_\_\_

\_\_\_\_\_

**ACKNOWLEDGEMENT**

BEFORE ME, a Notary Public for and in the City of Olongapo on this \_\_\_\_ day of \_\_\_\_\_ personally appeared the following parties with their respective Valid Identification Document, to wit:

Name	Valid ID Document	Date and Place of Issue
ROLEN C. PAULINO		

known to me and to me known to be the same persons who executed the foregoing instrument and who acknowledged to that the same is their free will and voluntary act and deed, and those of the corporations/institutions they represent.

This instrument relates to a Contract of Services and consists of \_\_\_\_\_ pages including the page on which the Acknowledgement is written, each and every page of which, on the left margin, having been signed by the Parties and their witnesses, and sealed with my notarial seal.

WITNESS MY NOTARIAL SEAL on the place and date first above-written.

Doc No. \_\_\_\_\_;

Page No. \_\_\_\_\_;

Book No. \_\_\_\_\_;

Series No. \_\_\_\_\_;