



Republic of the Philippines  
PROVINCE OF ORIENTAL MINDORO  
MUNICIPALITY OF PINAMALAYAN

## Office of the Sangguniang Bayan

ORDINANCE NO. 02-2018

**A MUNICIPAL CODE PURSUING A PUBLIC-PRIVATE PARTNERSHIP FOR THE PEOPLE (PPPP) APPROACH TOWARDS DEVELOPMENT, PROVIDING FOR THE PROCEDURE FOR SELECTING THE PRIVATE SECTOR PROPONENT, ADOPTING A CONTRACT MANAGEMENT FRAMEWORK, AND PROVIDING APPROPRIATIONS AND FOR OTHER PURPOSES.**

**WHEREAS**, under Section 20, Article II of the 1987 Constitution, the “State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments”;

**WHEREAS**, Section 35 of Republic Act No. 7160 otherwise known as the Local Government Code of 1991 clearly encourages the participation of the private sector in local governance, particularly in the delivery of certain basic services to ensure the viability of local autonomy as an alternative strategy for sustainable development;

**WHEREAS**, Republic Act No. 6975, otherwise as known as the “BOT Law” as amended by Republic Act No. 7718, authorizes private initiatives in infrastructure projects which allow Local Government Units (LGUs) to enter into contractual arrangements with the private sector;

**WHEREAS**, the Implementing Rules and Regulations (IRR) of RA No. 6957, as amended by RA No. 778, emphasizes the policy of the State to encourage the private sector as the nation’s main engine for growth and development to engage in or undertake the financing, construction, operation and maintenance of private sector infrastructure and development projects;

**WHEREAS**, the Department of Interior and Local Government (DILG) Legal Opinion No. 8, S. 2014 declared that “there is no specific statute on PPPP or guidelines on joint ventures for local governments” and that a “duly enacted local legislation (PPPP Code) must be complied with in undertaking (its) PPPP projects.”

**WHEREAS**, according to the Department of Justice (DOJ) Opinion No. 18, S. 2012, “xxx local governments may enact their own Public-Private Partnership (PPPP) Code or omnibus ordinance outlining, among others, all applicable modalities. xxx A local government, through an enabling ordinance, is free to act to address local concerns, even without an enabling ordinance, provided no statute will be infringed”;

**WHEREAS**, in Legal Opinion No. 10, S. 2014, the DILG affirmed the above-quoted DOJ Opinion and further said that, “the LGUs’ discretion xxx is consistent with the state policy of local autonomy and is in line with the operative principle of decentralization and the national goal of propelling social and economic growth and development through the active participation of the private sector”;

**WHEREAS**, in furtherance of and consistent with local autonomy, fiscal autonomy, the principle of subsidiarity, public good and welfare, general welfare, and full autonomy over proprietary powers, the Municipality is free, provided no statute is violated, to adopt its definition of a PPPP undertaking and prescribe the requirements, procedures and conditions for Municipal PPPPs, and incorporate these in an operative framework; and

**WHEREAS**, having a framework in ordinance form will ensure and facilitate consistency, integrity, reliability, sustainability, accountability and transparency, and enforceability;

**NOW THEREFORE**, on mass motion of all members present,

**BE IT ORDAINED**, by the Sangguniang Bayan of Pinamalayan in session assembled that:



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### Chapter 1. Basic Principles and Definitions

**Section 1. Title** – This Ordinance shall be known as A MUNICIPAL CODE PURSUING A PUBLIC-PRIVATE PARTNERSHIP (PPPP) APPROACH TOWARDS DEVELOPMENT, PROVIDING FOR THE PROCEDURE FOR SELECTING THE PRIVATE SECTOR PROPONENT, ADOPTING A CONTRACT MANAGEMENT FRAMEWORK, AND PROVIDING APPROPRIATIONS AND FOR OTHER PURPOSES and cited as the “Pinamalayan PPPP Code.”

**Section 2. Declaration of Policy** –

- (a) It is hereby declared as a policy that the Municipality of Pinamalayan shall advance the public good and general welfare, and promote the interest of the community and the Municipality within the framework of sustainable and integrated development, and effective constructive engagement and meaningful people’s participation in local governance.
- (b) PPPPs shall be pursued by the Municipality consistent with and in furtherance of the vision and mission of the Municipality which state that:

**VISION:** Pinamalayan City, the Central Trading Hub of Oriental Mindoro and the rest of MIMAROPA demonstrating a robust investor – and tourist-centered economy with diversified agro-industrial activities anchored on sustainable growth and social equity.

**MISSION:** To boost local economy by providing dynamic investment opportunities and creating a conducive climate for tourism, livelihood and growth enterprise development while ensuring a rational increase in agricultural production as well as promoting competitiveness in diversification of trading and industrial activities, sustained and governed by structures and mechanisms which allow redistributive measures.

**Section 3. Scope and Coverage** – This Pinamalayan PPPP Code shall govern all PPPP Projects of the municipality that utilize any of the modalities enumerated under section 11, items (j) to (y).

**Section 4. Operative Principles** – The accomplishment of the stated policy shall be guided by the following principles:

- (a) The Municipality, pursuant to Sections 1, 2 and 5, Article X of the 1987 Constitution, is a territorial and political subdivision which enjoys local autonomy and fiscal autonomy. Under Section 3, Article X of the 1987 Constitution, local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities.
- (b) The general welfare and the public good shall always be promoted and that transparency, public accountability and social accountability mechanisms and approaches shall be integrated in PPPPs from inception to implementation.
- (c) The Municipality exists and operates in its governmental and proprietary capacities thereby making the Municipality an agent of and is therefore accountable to the State and its community. The role of the Municipality both as a regulator of a business and as implementer of a proprietary undertaking must be clearly delineated.
- (d) The Municipality must develop into a self-reliant community, and as such, is in a better position to address and resolve matters that are local in scope. The Municipality is under the general supervision of the President and under the qualified control of Congress.



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- (e) Under Section 18 of the of Republic Act No. 7160 of the Local Government Code of 1991 (1991 LGC), the Municipality may acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes.
- (f) Under Section 22 (c) of the 1991 LGC, no contract may be entered into by the Municipal Mayor on behalf of the Municipality without prior authorization by the Sangguniang Bayan. The participation of the Sanggunian is indispensable in the adoption and implementation of a PPPP arrangement.
- (g) Under Section 22 (d) of the 1991 LGC, the Municipality enjoys full autonomy in the exercise of its proprietary functions and shall exercise the powers expressly granted, those necessarily implied there from, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, those not otherwise prohibited by law and those which are essential to the promotion of the general welfare.
- (h) Under Section 25 (b) of the 1991 LGC, the Municipality may collaborate or cooperate with other local governments, national government agencies, government-owned and controlled corporations, government instrumentalities and government corporate entities for the implementation of local projects.
- (i) Under the charter of the Municipality, Sections 16, 17, 19 and 129 of 1991 LGC and other statutes, the Municipality has been given the responsibility and mandate to exercise devolved and delegated powers.
- (j) The Municipality, under Section 106 of 1991 LGC, is mandated to draw up and implement a comprehensive multi-sectoral development plan. PPPPs shall be pursued by the Municipality consistent with its infrastructure, development, investment, environmental and governance framework embodied in relevant policies, plans, ordinances and codes.
- (k) The Municipality, as a partner in a PPPP arrangement, may provide equity, subsidy or guarantee and use local funds; and the usage thereof for a PPPP project shall be considered for public use and purpose.
- (l) Under Sections 34, 35 and 36 of the 1991 LGC and in the exercise of its powers, the Municipality may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversity agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people; provide assistance, financial or otherwise, to such people's and non-governmental organizations for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction.
- (m) The Municipality, under Section 3 (I) of the 1991 LGC, is duty-bound to ensure the active participation of the private sector in local governance.
- (n) The right of the people to information on matters of public concern is guaranteed under Section 7, Article III of the 1987 Constitution. Furthermore, it is the policy of the State to allow full public disclosure of all its transactions involving public interest such as PPPPs under Section 28, Article II of the 1987 Constitution.
- (o) The people's right to effective and reasonable participation and public trust provision under Section 16, Article XIII and Section 1, Article XI, respectively, of the 1987 Constitution

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guarantee and empower civil society groups to have effective and meaningful participation in the regulation and management of PPPP projects.

**Section 5. Rationale for PPPP** – PPPPs shall be promoted to provide more, better, affordable and timely services to the community. In pursuing PPPPs, the Municipality shall be guided by the following reasons and drivers:

- (a) PPPPs shall be undertaken in furtherance of the Municipal development and physical framework plan.
- (b) PPPP is an essential part of the overall infrastructure reform policy of the Municipality. By encouraging performance-based management of the delivery of public services applying commercial principles and incentives whenever possible, by introducing competition in and for the market, and by involving users and stakeholders in the decision-making process, infrastructure and regulatory reform shall be achieved.
- (c) PPPPs should be adopted to address a pressing and urgent or critical public need. Under the principle of "Additionality," the increased economic benefits to consumer welfare of having needed public services and infrastructure accessible now because of the PPPP, rather than having to wait until the Municipality could provide the public services much later. PPPP would also encourage the accelerated implementation of local projects.
- (d) PPPPs can be adopted to avoid costs and public borrowing. By contracting with the private sector to undertake a new infrastructure project, scarce Municipal capital budgets can be directed to other priority sectors such as social services, education, and health care.
- (e) PPPPs allow for technology transfer, and improved efficiency and quality of service. These could be valuable contribution of the private sector in local governance.
- (f) PPPPs should be feasible and affordable, demonstrating the need for the project, broad level project costs estimation, and indicative commercial viability. The assessment of affordability shall be the cornerstone for all PPPP projects, both to the Municipality and the general public.
- (g) PPPP Projects should be bankable. High participation costs, unreasonable risk transfer or lengthy and complex contract negotiations must be avoided. A cost recovery pricing policy attractive to the private sector must be in place; provided that the same will not be disadvantageous to government and public interest.
- (h) PPPP Projects should provide value-for-money and good economic value as far as practicable, including allocation of risks to the party best able to control, manage, mitigate or insure these risks, and maximization of the benefits of private sector efficiency, expertise, flexibility and innovation.
- (i) PPPP Projects must provide economic and social benefits and should be evaluated on this basis rather than on purely financial considerations. The Municipality remains responsible for services provided to the public, without necessarily being responsible for corresponding investment.
- (j) PPPP Projects must give consideration for empowerment of Filipino citizens as a strategy for economic growth and sustainability and must thus provide for the participation of local investors to the furthest extent practicable given the nature of the project. The Municipality shall also ensure the hiring and employment of local labor in the PPPP venture.

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- (k) Procurement of PPPP Projects must be competitive and must be undertaken through open competitive bidding. Competition must be legitimate, fair and honest. In the field of government contract law, competition requires, not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, the same undertaking, but also that it be legitimate, fair and honest; and not designed to injure or defraud the government. Where competitive bidding cannot be applied, a competitive process ensuring both transparency and economically efficient outcome must be employed.
- (l) The regulation of the PPPP shall be pursuant to the PPPP contract and exercised by the appropriate regulatory authority. A duly executed and legal PPPP Contract shall be respected and not impaired, and shall be binding on the successor administration pursuant to the provision on corporate succession. Procedures, activities and steps duly undertaken by the Municipal Mayor, PPPP-SC, Sangguniang Bayan pursuant to this Ordinance shall be continued by the successor Administration. Any amendment or revision to this Ordinance by the next Administration shall not in any way prejudice vested and contractual rights of the Municipality and the Private Sector Proponent (PSPs) as to the substance of agreements signed, certifications issued, resolutions issued and procedures undertaken.
- (m) To provide efficient public service, the Municipality must ensure, through stronger performance management and guidance, proper implementation of PPPP contracts that will result in value for money, on-time delivery of quality services to the public, achievement of government policy goals, all within sustainable and integrated development.
- (n) The PPPP shall be undertaken with due regard to Gender and Development (GAD) concerns, the Persons with Disabilities (PWDs) and the Indigenous People (IPs).

### Section 6. Definition of Terms – As used in this Code, the following terms shall mean:

- (a) *Build-Operate-Transfer Law Scheme* - Under Republic Act No. 6957 as amended by RA No. 7718, the following are the BOT Law variants:
- (i) *Build-and-Transfer (BT)* - A contractual arrangement whereby the Private Sector Proponent (PSP) undertakes the financing and construction of a given infrastructure or development facility, and after its completion, turns it over to the Municipality, which shall pay the PSP, on an agreed schedule, its total investment expended on the project, plus a Reasonable Rate of Return thereon.
- (ii) *Build-Lease-and-Transfer (BLT)* - A contractual arrangement whereby a PSP is authorized to finance and construct an infrastructure or development facility and upon its completion, turns it over to the Municipality on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the Municipality.
- (iii) *Build-Operate-and-Transfer (BOT)* - A contractual arrangement whereby the PSP undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The PSP operates the facility over a fixed term, during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid, or as negotiated and incorporated in the contract, to enable the PSP to recover its investment, and its operating and maintenance expenses in the project. The PSP transfers the facility to the Municipality at the end of the fixed term which shall not exceed fifty (50) years. This build, operate and transfer



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contractual arrangement shall include a supply-and-operate scheme, which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Municipality so requires, operates the facility, providing, in the process, technology transfer and training to Filipino nationals.

- (iv) *Build-Own-and-Operate (BOO)* - A contractual arrangement whereby a PSP is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the PSP is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges from facility users. Under this project, the proponent who owns the assets of the facility may assign its operation and maintenance to a facility operator. The divestiture or disposition of the asset or facility shall be subject to relevant rules of the Commission on Audit (COA).
  - (v) *Build-Transfer-and-Operate (BTO)* - A contractual arrangement whereby the Municipality contracts out the construction of an infrastructure facility to a PSP such that the contractor builds the facility on a turnkey basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the Municipality. The PSP, however, operates the facility on behalf of the Municipality under an agreement.
  - (vi) *Contract-Add-and-Operate (CAO)* - A contractual arrangement whereby the PSP adds to an existing infrastructure facility which it is renting from the Municipality and operates the expanded project over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provided by the PSP.
  - (vii) *Develop-Operate-and-Transfer (DOT)* - A contractual arrangement whereby favourable conditions external to a new infrastructure project to be built by a PSP are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates, such as higher property or rent values.
  - (viii) *Rehabilitate-Operate-and-Transfer (ROT)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the Municipality.
  - (ix) *Rehabilitate-Own-and-Operate (ROO)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.
- (b) *Competitive Challenge or Swiss Challenge* - An alternative selection process wherein third parties or challengers shall be invited to submit comparative proposals to an unsolicited proposal. Accordingly, the PSP who submitted the unsolicited proposal, or the original proponent, is accorded the right to match any superior offers given by a comparative PSP.
- (c) *Competitive Negotiations* - Refers to a process where the Municipality negotiates with eligible and qualified PSPs and awards the project to that PSP which offers the best combination of quality and price.



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- (d) *Competitive Selection or Bidding or Open Competition* - Refers to a method of selection or procurement initiated and solicited by the Municipality, based on a transparent criteria, which is open to participation by any interested party.
- (e) *Concession* - A contractual arrangement whereby the financing and construction of a new facility and/or rehabilitation of an existing facility is undertaken by the PSP after turnover thereof to it, and includes the operation, maintenance, management and improvement, if any, of the facility for a fixed term during which the PSP generally provides service directly to facility users and is allowed to charge and collect the approved tolls, fees, tariffs, rentals or charges from them. The Municipality may receive a concession or franchise fee during the term of the contract and/or other consideration for the transfer, operation or use of any facility. There may be a transfer of ownership of the asset or facility after the concession period has ended subject to rules of the COA.
- (f) *Corporatization* - Refers to transformation of a public entity or quasi-municipal corporation established by the Municipality into one that has the structure and attributes of a private corporation, such as a board of directors, officers, and shareholders, and having it registered with the Securities and Exchange Commission as a stock corporation. The process involves the establishment of a distinct legal identity for the company under which the Municipality's role is clearly identified as owner; segregation of the company's assets, finances, and operations from other Municipal operations; and development of a commercial orientation and managerial independence while remaining accountable to the government or electorate.
- (g) *Cost Sharing* - This shall refer to the Municipality portion of capital expenses associated with the establishment of an infrastructure development facility such as the provision of access infrastructure, right-of-way, and any partial financing of the project.
- (h) *Credit Enhancement* - This shall refer to direct and indirect support to a development facility by the PSP and/or Municipality, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the PPP contract. Credit enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved. Credit enhancements may include but are not limited to government guarantees on the performance or the obligation of the Municipality under its contract with the PSP, subject to existing laws on indirect guarantees. Indirect Guarantees shall refer to an agreement whereby the Municipality assumes full or partial responsibility for or assists in maintaining the financial standing of the PSP or project company in order that the PSP/ project company avoids defaulting on the project loans, subject to fulfillment of the PSP/ project company of its undertakings and obligations under the PPP contract.
- (i) *Developmental Projects* - Municipal Projects normally financed and operated by the Municipality, but which will now be wholly or partly financed, constructed and/or operated by the PSP; projects that will advance and promote the general welfare and public good; projects and activities that will be responsive to the needs of the communities; projects that will raise revenues for the Municipality; projects in furtherance of devolution, deconcentration and decentralization; and other infrastructure, social-related and developmental projects as may be authorized by the Municipality.
- (j) *Direct Municipal Equity* - Refers to the subscription by the Municipality of shares of stock or other securities convertible to shares of stock of the special purpose vehicle or single-purpose project company, whether such subscription will be paid by money or assets.
- (k) *Direct Municipal Guarantee* - Refers to an agreement whereby the Municipality guarantees to assume responsibility for the repayment of debt directly incurred by the PSP in implementing the project in case of a loan default.



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- (l) *Direct Municipal Subsidy* - Refers to an agreement whereby the Municipality shall: (a) defray, pay or shoulder a portion of the PPPP project cost or the expenses and costs in operating and maintaining the project; (b) condone or postpone any payments due from the PSP; (c) contribute any property or assets to the project; (d) waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/ or (e) waive charges or fees relative to the business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the PSP or operator for such payment, contribution or support.
- (m) *Divestment or Disposition* - Refers to the manner or scheme of taking away, depriving, withdrawing of title to a property owned by the Municipality and vesting ownership thereof to a PSP.
- (n) *Feasibility or Project Study (FS)* - A study, full or pre-feasibility study or business case prepared by the Municipality in a competitive selection or a PSP when submitting an unsolicited proposal, containing or indicating a needs analysis, affordability assessment, value for money assessment, preliminary risk assessment, stakeholder assessment, human resource assessment, bankability assessment, legal viability assessment, PPPP mode selection, market testing if relevant, indicative transaction implementation plan, and draft PPPP contract. The study may be supported by the results of the appropriate "willingness-and-ability-to-pay" survey. The Project Study can be a feasibility study, pre-feasibility study or business case.
- (o) *Franchise* - Refers to the right or privilege affected with public interest which is conferred upon a PSP, under such terms and conditions as the Municipality may impose, in the interest of public welfare, security and safety.
- (p) *Gratuitous Donation* - A donation made by a PSP to Municipality whose cause is pure liberality on the part of the former and does not require from the latter any additional action other than utilizing the thing donated for the purpose agreed upon, or impose any obligation, burden, change or future services, benefits, or concessions, or other form of grant, in order to be valid.
- (q) *Joint Venture (JV)* - A contractual arrangement whereby a PSP or a group of private sector entities on one hand, and the Municipality on the other hand, contribute money/capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing. The Municipality shall be a minority equity or shareholder while the PSP shall be majority equity or shareholder. Each party shall be entitled to dividends, income and revenues and will bear the corresponding losses and obligations in proportion to its share. Parties to a JV share risks to jointly undertake an investment activity in order to accomplish a specific, limited or special goal or purpose with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transferring ownership of the investment activity to the PSP under competitive market conditions. It involves a community or pooling of interests in the performance of the service, function, business or activity, with each party having a right to direct and govern the policy in connection therewith, and with a view of sharing both profits and losses, subject to agreement by the parties.
- (r) *Lease or Affermage* - A contractual arrangement providing for operation, maintenance, and management services by the PSP, including working capital and/or improvements to an existing infrastructure or development facility leased by the PSP from the Municipality for a fixed term. Under a lease, the PSP retains revenue collected from customers and makes a specified lease payment to the Municipality. Under an affermage, the parties share revenue from customers wherein the PSP pays the contracting authority an affermage fee, which varies according to demand and customer tariffs, and retains the



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remaining revenue. The Municipality may provide a purchase option at the end of the lease period subject to rules of the COA.

- (s) *Limited Negotiations* - Refers to a process whereby the Municipality negotiates with the PSP in instances when there is only one eligible and qualified PSP in a competitive selection process, under Stage 2 of the competitive challenge process, or when there is a prior completed competitive process.
- (t) *Management Contract* - A contractual arrangement involving the management or provision by the PSP of operation and maintenance or related services to an existing infrastructure or development facility owned or operated by the Municipality. The PSP may be compensated by the Municipality using the funds of the latter; or the PSP may collect tolls/fees/rentals and charges which shall be turned over to the Municipality and shall be compensated in the form of a fixed fee, a share in the revenues and/or performance based management or service fee during the contract term.
- (u) *Negotiated Projects* - Refer to instances where the desired project is the result of an unsolicited proposal from a PSP or, where the Municipality has failed to identify an eligible private sector partner for a desired PPP activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding.
- (v) *New Technology* - Refers to having at least one of the following attributes:
- A recognized process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce implementation of construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations, or reduce negative environmental impact or social/ economic disturbances or disruptions during either the project implementation/ construction phase or the operation phase; or
  - A process for which the project proponent or any member of the proponent joint venture/consortium possesses exclusive rights, either world-wide or regionally; or
  - A design, methodology or engineering concept for which the proponent or a member of the proponent consortium or association possesses intellectual property rights.
- (w) *Onerous Donation*- A donation made by PSP to the Municipality which subjects to the latter to obligations, burdens, charges, or future services, benefits or concessions or other form of grant, equal or greater in value than that of the thing donated by the donor-PSP.
- (x) *Private Sector Proponent (PSP)* - Refers to the private sector entity which shall have contractual responsibility for the project and which shall have an adequate track record in the concerned industry, as well as technical capability and financial base consisting of equity and firm commitments from reputable financial institutions, to provide, upon award, sufficient credit lines to cover the total estimated cost of the project to implement the said project.
- (y) *Public-Private Partnerships for the People (PPPP)* - A PPPP is a legally enforceable contract where each party assumes specified functions, bears certain risk, provides contribution or render some obligation, and earns benefits and revenues from the PPPP arrangement. Specifically, it is form of legally enforceable contract between the Municipality and a PSP, and in certain cases, with the requiring new investments from the PSP and transferring key risks to the PSP in which payments are made in exchange for performance, for the purpose



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of delivering a service provided or intended to be provided by the Municipality. PPPP shall also include dispositions of an asset, facility, project owned or entity created by the Municipality to a PSP; procurement of a service; donations to the Municipality; incorporation of a subsidiary with PSP equity; assumption by a PSP of a propriety function of the Municipality; or usage by the PSP of public property owned or possessed by the Municipality.

- (z) *PPPP Contract* - Whenever appropriate, the PPPP Contract shall contain the Preambulatory Clauses or Whereas Clauses, Party Clause, Rules of Interpretation, Nature of the PPPP, Term of the Project, Contract Objective, Performance Bonds, Key Performance Indicators, Risk Allocation, Rights, Payment to PSE or PSP, Tariff Scheme, Subsidy or Support Mechanism, Insurance Requirements, Delay Provisions, Force Majeure, Governmental Action, Government and Public Sector Entity (PSE) Warranties, PSP Warranties, Change in the Law, Regulatory Regime, Variations, Termination, Indemnification, Intellectual Property, Claims, Financial security, Dispute Resolution, Step-in Rights, Changes in the Composition of the PSP/ Service Provider, Partnership Management, Compliance with all Laws, Personnel, Conditions Precedent, among others.
- (aa) *Reasonable Rate of Return (RROR)* - Refers to the rate of return that a PSP shall be entitled to, as determined by the PPPP Regulatory Authority taking into account, among others, the prevailing cost of capital (equity and borrowings) in the domestic and international markets, risks being assumed by the PSP and the level of Municipal undertakings and contributions extended for the project.
- (bb) *Rehabilitate-Lease-and-Transfer (RLT)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, and upon its completion, turns it over to the Municipality on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the Municipality.
- (cc) *Rehabilitate-and-Transfer (RT)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, and after its completion, turns it over to the Municipality, which shall pay the PSP, on an agreed schedule, its total investment expended on the project, plus a reasonable rate of return thereon.
- (dd) *Rehabilitate-Transfer-and-Operate (RTO)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate. Once the facility is commissioned satisfactorily, title is transferred to the Municipality. The PSP, however, operates the facility on behalf of the Municipality under an agreement.
- (ee) *Service Contract* - A contractual arrangement whereby the PSP shall provide a particular service to the Municipality involving the Municipality's proprietary authority or to entities or corporation created by the Municipality. The PSP shall be entitled to be paid a fee per unit of work done during the term of the contract; or compensated by the Municipality using the funds of the latter; or the PSP may collect tolls/fees/rentals and charges which shall be turned over to the Municipality and shall be compensated in the form of a share in the revenues.
- (ff) *Subsidiary with PSP Equity* - A corporation or quasi-municipal corporation incorporated by the municipality and registered as a stock corporation under the Corporation Code where majority of the shares are held by provincial government and where a PSP is a or PSPs are minority shareholder(s) which acquire their shares through an initial public offering or other competitive means.
- (gg) *Unsolicited Proposal* - Refers to project proposals submitted by a PSP to the Municipality to undertake Developmental Projects without a formal solicitation issued by



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the Municipality whereby the negotiated terms shall be subjected to comparative proposals.

- (hh) *Value for Money (VfM)* - Refers to the concept that over the whole-life of a project finance-PPPP project, government's total expenditures (i.e., its payments to the private sector), adjusted for the risks that have been transferred to the private sector, will be less, on a Net Present Value (NPV) basis, than if the government will perform the services itself. VfM considers monetary and non-monetary factors such as: (i) risk transfer; (ii) reduced whole life costs; (iii) speed of implementation; and (iv) quality and reliability of service.
- (ii) *Viability Gap Funding (VGF)* - Refers to an explicit subsidy that is performance-driven (i.e., based on private party achieving measurable outputs) and targeted to socio-economically disadvantaged users or groups of users; or any financial support in the form of grants or assistance, one time or deferred, to infrastructure projects undertaken through PPPPs with a view to make them commercially viable.
- (jj) *Government – to government joint PPPP undertakings* – means such mutual agreement entered into by the Municipality with other local governments, national government agencies, government instrumentalities and government corporate entities, for the implementation of PPPP projects that will benefit the municipal and its community even if the project site is outside the province's territory.
- (kk) *Third ranking officer of the Municipality* – as used in this Code, a third ranking officer of the Municipality shall refer to a Department Head.

**Section 7. Rules of Interpretation** – This Code and the provisions hereof shall be liberally interpreted to accomplish the policy and objectives set forth in Sections 2, 4 and 5 hereof.

### Section 8. Authorities –

- (a) This Code is being adopted pursuant to the Municipality's constitutional and statutory authorities enumerated under Section 3 hereof; and when not inconsistent with the relevant laws aforementioned, shall govern the adoption and implementation of the PPPP Modalities.
- (b) In pursuing BOT Law variants, the Municipality shall comply with Republic Act No. 6957 as amended by RA No. 7718 (BOT Law) and its Implementing Rules and Regulations.
- (c) In entering into Management and Service Contracts where municipal funds are used, the Municipality shall comply with Republic Act 9184 or the Government Procurement Reform Act (GPRA) and its Implementing Rules and Regulations.
- (d) For Dispositions, COA Circular No. 89-296 (January 27, 1989) shall govern.
- (e) For Corporatization, the incorporation of the corporation must be done in accordance with the Corporation Code of the Philippines.
- (f) For Local Concessions, Rehabilitate-and-Transfer, Rehabilitate-Lease-and-Transfer, and Rehabilitate-Transfer-and-Operate, Management and Service Contracts where Municipal funds are not used to procure the services of the contractor or consultant, the Municipal ordinances policies or ordinances will be the governing instrument.
- (g) For Joint Ventures, Section 35 of the 1991 LGC and Article 62 of the Implementing Rules and Regulations of the 1991 LGC shall be governing law, and Law on Partnerships of the Civil Code of the Philippines shall apply supplementary.



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- (h) For Leases and Affermage, the Law on Leases of the Civil Code of Philippines may be referred to.

### Chapter 2. PPPP Projects and PPPP Modalities

#### Section 9. PPPP Projects –

- (a) The Municipality, through the appropriate and viable PPPP mode, may undertake Developmental Projects, including but not limited to, energy and power, renewable energy, waste-to-energy, roads, bridges, causeways, waterways, highways, ports, wharfs, terminals, airports, community airports, canals, dams, desilting, dredging, mining and exploration, hydropower projects, water supply and distribution, sewerage, irrigation, drainage, water conservation such as impoundment areas and rainwater harvesting, telecommunications, railroad and railways, short-haul transit services such as monorail, guided bus, bus services and trams, intermodal and multi-modal transit systems, transport systems, traffic control and management, parking facilities, reclamation projects, platform settlements, industrial estates or townships, central business and industrial park development, hotels and resorts, socialized housing, non-conventional low-cost housing, settlement/resettlement and relocation facilities, residential subdivisions, parks and open space development/redevelopment, pocket parks, public art, libraries, heritage conservation, government buildings, sustainable/green public buildings, sports facilities, wellness establishments, tourism such eco-tourism, wellness tourism and agri/agro-tourism, public markets, commercial buildings, slaughterhouses, storage buildings, warehouses, cold storage, solid waste management, sanitary landfills, meeting and convention centers, information technology networks and database infrastructure, education-related, classrooms, health facilities, hospitals, social services-related, prisons, agriculture-related, post-harvest facilities, environmental management and protection, climate change adaption, disaster risk reduction, among other developmental projects.
- (b) The determination of the appropriateness and viability of the PPPP mode shall be specified, explained and justified in the feasibility or project study weighing all the relevant value drivers and reasons for pursuing a PPPP project.
- (c) Parties to PPPP arrangement shall undertake an activity in order to accomplish either an integrated or multi-use arrangement or specific goal or purpose with the end view of serving the public good or generating revenues.

**Section 10. List of Priority Projects** – The Municipality shall identify specific priority developmental projects that may be undertaken under any of the PPPP Modalities defined under Sec. 10 hereof.

**Section 11. PPPP Modalities** – In undertaking a specific PPPP Project, the Municipality may adopt and pursue any of the following PPPP Modalities and provide for other modalities not inconsistent with law:

- (a) Build-and-Transfer (BT);  
(b) Build-Lease-and-Transfer (BLT);  
(c) Build-Operate-and-Transfer (BOT);  
(d) Build-Own-and-Operate (BOO);  
(e) Build-Transfer-and-Operate (BTO);  
(f) Contract-Add-and-Operate (CAO);  
(g) Develop-Operate-and-Transfer (DOT);  
(h) Rehabilitate-Operate-and-Transfer (ROT);  
(i) Rehabilitate-Own-and-Operate (ROO);  
(j) Rehabilitate-Lease-and-Transfer (RLT);



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- (k) Rehabilitate-and-Transfer (RT);
- (l) Rehabilitate-Transfer-and-Operate (RTO);
- (m) Concession Arrangement;
- (n) Joint Venture (JV);
- (o) Lease or Affermage;
- (p) Management Contract using Municipal Funds;
- (q) Management Contract without using Municipal Funds;
- (r) Service Contract using Municipal Funds;
- (s) Service Contract without using municipal Funds;
- (t) Divestment or Disposition;
- (u) Corporatization;
- (v) Incorporation of a subsidiary with PSP equity;
- (w) Onerous Donations;
- (x) Gratuitous Donations; and
- (y) Any other modality akin to any of the above or features thereof which falls under the alternative definition of a PPPP under Section 5 (u) hereof.

Paragraphs (a) to (i) shall be governed by the BOT Law and Implementing Rules and Regulations while paragraphs (j) to (y) shall be governed by this Code.

**Section 12. General Requirements** – These are the general requirements for the Municipality in entering into PPPPs:

- (a) Undertaking a PPPP for a Development Project must be premised on any or all of the reasons and drivers mentioned in Section 4 hereof.
- (b) The list of projects to be implemented by the Municipality under any of the BOT Law variants shall be submitted for confirmation to the Municipal Development Council for projects costing above Twenty up to Fifty Million Pesos; above Fifty Million up to Two Hundred Million Pesos to the regional development councils; and those above Two Hundred Million Pesos to the Investment Coordination Committee of the National Economic and Development Authority (NEDA).
- (c) Projects included in the List of Priority Projects shall not be eligible for unsolicited proposals under any of the BOT Law variants, unless involving a new concept or technology; provided, that for any of the other PPPP Modalities, unsolicited proposals may be accepted even if the project is included in the List of Priority Projects or whether the same features a new concept or technology or not.
- (d) The prohibition for extending Direct Municipal Guarantee, Direct Provincial/ City/ Municipal Subsidy and Direct Municipal Equity only applies to unsolicited proposals for BOT Law variants under Republic Act No. 6957 as amended by RA No. 7718.
- (e) For BOT Law variants that will be subjected to bidding, Concession Arrangements, Leases or Affermage, Management and Service Contracts, and Joint Ventures, the Municipality may provide Direct Municipal Guarantee, Direct Municipal Subsidy, Direct Municipal Equity, or Viability Gap Funding; provided, that the Municipality can use a portion of its general fund, its development fund comprising 20% of its annual share in the Internal Revenue Allotment, and/ or its equitable share in the proceeds of the utilization and development of the national wealth found within its territory for this purpose; provided further, that any amount used for subsidy or equity for a PPPP project shall be deemed for development purposes and for the direct benefits of the inhabitants pursuant to Sections 287 and 294 of the 1991 LGC respectively.



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- (f) For all PPPP Modalities, the Municipality may provide Credit Enhancements and Cost-Sharing schemes.
- (g) Official Development Assistance (ODA) as defined in R.A. 8182, otherwise known as the ODA Act of 1996, as amended by R.A. 8555, may be availed of for PPPP projects where there is difficulty in sourcing funds; provided, that ODA financing shall not exceed 50% of the project cost, with the balance to be provided by the PSP.
- (h) Each PPPP Modality adopted for a specific PPPP project must specifically provide and adopt a tariff-mechanism such as but not limited to cash-needs, price cap, revenue cap, rate of return, hybrid of the foregoing, or any other appropriate scheme.
- (i) For negotiated contracts for BOT Law variants for public utility projects which are monopolies, the rate of return on rate base shall be determined by existing laws, which in no case shall exceed twelve per centum [12%].
- (j) In case of a project requiring a franchise or license to operate, the winning PSP shall automatically be granted by the Municipality the franchise or license or permit to operate and maintain the facility, including the collection of tolls, fees, rentals, and other charges in accordance with the schedules stipulated in the approved PPPP contract. In case a JV Company is formed, the franchise, concession or license shall be automatically granted to the JV Company. Upon the signing of the JV Agreement by the Mayor pursuant to the authority given by the Sangguniang Bayan, the franchise, concession or license is deemed awarded to the winning PSP, in case of a contractual JV, or the JV Company. The original franchise period as stipulated in the contract agreement may be extended, as may be authorized by the Municipality, provided that the total franchise period shall not exceed fifty (50) years.
- (k) The Municipality shall have the option to form or allow the formation of a special purpose vehicle or single-purpose project company to implement the PPPP project as may be appropriate under the chosen PPPP Modality.
- (l) In participating in PPPPs, the Municipality may, subject to Sections 16, 17, 18, 19 and 20 of the 1991 LGC, exercise police power, perform devolved powers, power to apply and generate resources, expropriate and reclassify and enact or integrate zoning ordinances.
- (m) The Municipality shall prescribe and impose Procurement Ethics to be followed by the Municipality and all bidders based on the principles of honesty, integrity, probity, diligence, fairness, trust, respect and consistency for all PSPs and bidders.
- (n) Procurement made by the Municipality using public funds shall be subject to the GPRA and its Implementing Rules and Regulations. Procurement made by the PSP using private funds shall not be covered by said statute.
- (o) The revenues, funds, expenditures and contributions of the Municipality shall be subject to the audit examination by the COA. Revenues, funds, expenditures and contributions of the PSP shall be subject to audit by a private auditing firm.
- (p) Any subsidy, guarantee, equity or contingent liability assumed or given by the Municipality must be reflected, disclosed and recognized in the annual appropriations of the provincial government.

**Section 13. Government-to-Government Joint PPPP Undertakings.** – The Municipality by mutual agreement in a Government-to-Government arrangement with other local governments, national government agencies, government-owned and -controlled corporations, government



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instrumentalities and government corporate entities, may implement PPPP Projects for projects located within the Municipality's territory or those projects that will benefit the Municipality and its community even if the project site is outside the Municipality's territory; provided, that the collaborating or partner government entity jointly undertakes with the Municipality the selection of the PSP using the appropriate PPPP Modality.

**Section 14. Joint Venture (JV)** – In a Joint Venture, the co-venturers or parties to a JV shall contribute money, capital, services, personnel assets including equipment, land, intellectual property or anything of value, or a combination of any or all of the foregoing to the JV arrangement. The contribution of the Municipality shall be subject to third party independent valuation. Further:

- (a) The Municipality may allocate a portion of its Internal Revenue Allotment, real property tax, development fund, regular funds, proceeds from the utilization and development of its national wealth, Special Education Fund when the JV project is education-related, Calamity Fund when the JV project is calamity- or reconstruction-related, and special funds, if appropriate, as its contribution or share in the JV activity. These may be the actual or current funds, or future or monetized value of these funds of the Municipality.
- (b) The Municipality may contract a loan, avail of Official Development Assistance, secure grants, issue bonds, debentures, securities, collaterals, and notes the proceeds of which can be earmarked for the JV activity.
- (c) On the part of the Municipality, in addition to the foregoing contributions, it may extend goodwill, free carry, grant a franchise, concession, usufruct, right-of-way, equity, subsidy or guarantee, provide cost-sharing and credit enhancement mechanisms, exercise police power, give tax incentives or tax holidays, perform devolved powers, appropriate and reclassify and enact or integrate zoning ordinances.
- (d) The Municipality shall be a minority equity or shareholder while the PSP shall be majority equity or shareholder, except in the case where fifty percent (50%) of the outstanding capital stock or contribution is owned or made by the Municipality. A reasonable percentage of the equity to be provided by the PSP should come from its own resources and not borrowed.
- (e) Notwithstanding having only a minority share or equity, the written consent of the Municipality may be obtained, based on the JVA, prior to any divestment of any asset or facility, dissolution, transfer or sale of share or equity on the part of the PSP, purchases or transactions beyond prescribed thresholds, or other activities which may affect the rights and stake in the Project of the Municipality.
- (f) Any cost avoidance or substantial savings that will be made by the Municipality because of and directly attributable to the JV activity may be factored in the computation of the respective shares of the Municipality and the PSP.
- (g) For the utilization and development of natural resources located within its jurisdiction, the Municipality shall be entitled to an equitable share which may come in the form of a portion of the benefits, revenues and profits thereof.
- (h) The share of each JV party shall be set as fixed or determinable percentages or values either based on an overall or across-the-board assignment of contributions, revenues, profits, losses, risks and functions; or on specific assignment of contributions and functions to each JV party, provided that, the agreed percentage share is maintained and that joint governance is ensured where the Municipality shall have representation in the governing structure based on in proportionate share at the minimum.



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- (i) Subject to the terms of the competitive selection process and agreement of the parties, the Municipality may be entitled to a share greater than its contribution or equity.
- (j) Each party shall be entitled to dividends, profits, income and revenues and will bear the corresponding risks, losses and obligations in proportion to its share, either based on gross or net revenues or income, unless the parties agree that the Municipality will have a greater share in the dividends, profits, income and revenues and/or bear lower risk and percentage loss than what it contributes to the JV arrangement.
- (k) For as long as the Municipality is involved in the JV undertaking, the PSP shall not sell/transfer its interest in the JV Company without the express written consent of the Municipality.
- (l) The share or equity of the Municipality in the JV arrangement may be advanced, in full or in part, by the PSP where the PSP shall be paid from the future revenues due the Municipality either by set-off or actual payment.
- (m) The JV activity may, subject to the terms of the competitive selection process, include the divestment, disposition or transfer of ownership of the JV activity, equity, asset or project to the PSP or JV partner. The divestment or disposition may take place at the end of the JV period or before the term ends.

### Chapter 3. PPPP Procedures and PPPP Contract

#### Section 15. PPPP Procedures – The following procedures shall apply:

- (a) For BOT Law variants, the Municipality must comply with the procedure set forth in Republic Act No. 6957 as amended by RA No. 7718 and its Implementing Rules and Regulations.
- (b) For Management and Service Contracts where Municipal funds will be used, the Municipality shall comply with Republic Act No. 9184 or the Government Procurement Reform Act and its Implementing Rules and Regulations.
- (c) For Concessions, Leases or Affermage, and Management and Service Contracts where public funds are not used to procure the services of the contractor or consultant, competitive selection, limited negotiations, competitive negotiations or competitive challenge as defined herein may be utilized to select the PSP.
- (d) For onerous donations, competitive negotiations or competitive negotiations or competitive challenge as defined herein may be utilized to select PSP. For gratuitous donations, the competitive processes mentioned herein need not be followed. However, the deed of donation must be made known to the public.
- (e) For Joint Ventures, Rehabilitate-Transfer, Rehabilitate-Lease-and-Transfer and Rehabilitate-Transfer-and-Operate, competitive selection, limited negotiations or competitive challenge as defined herein may be utilized to select the PSP/ JV partner.
- (f) For Divestment or Disposition of a property, COA Circular No. 89-296 (January 27, 1989) shall be applicable.
- (g) For the incorporation of a subsidiary with equity from the PSP, the Corporation Code shall be followed.



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- (h) For the Divestiture of a subsidiary or corporation incorporated by the Municipality under Corporatization, the sale may be pursued via a public offering or through a public auction or other relevant schemes under COA Circular No. 89-296 (January 27, 1989).
- (i) If the Municipality opts to select a PSP using either Competitive Selection or Competitive Challenge, the Municipality in the Competitive Selection and Competitive Negotiations, and the PSP in the Competitive Challenge approach must prepare and submit a Feasibility or Project Study. The costs of preparing the Feasibility or Project Study may be reimbursed by the winning PSP to the Municipality under the Competitive Selection mode.
- (j) All recommendations of the PPPP Selection Committee shall be submitted to the Municipal Mayor for consideration and approval.
- (k) All PPPP contracts must be signed by the Municipal Mayor with prior authorization by the Sangguniang Bayan. The terms and provisions of the PPPP contract must be approved or confirmed by the Sangguniang Bayan through an Ordinance.
- (l) During the consideration of the draft PPPP Contract by the Sangguniang Bayan, a public consultation/hearing shall be conducted explaining the PPPP Project, PPPP Contract, accountability mechanisms built into the PPPP arrangement, the benefits and costs of the PPPP Project, among other relevant matters.
- (m) After the signing of the PPPP Contract by the Municipal Mayor, the PPPP-SC shall issue the Notice of Award to the PSP. After the required condition precedents are complied with by the winning PSP, the Municipal Mayor upon the recommendation of the PPPP-SC shall issue the Notice to Proceed.
- (n) While the PPPP Contract is already valid, perfected and enforceable, it may be submitted for judicial, executive or administrative confirmation from the courts or appropriate government institutions.
- (o) For public utilities and other economic enterprises, the Manual on the Setting-Up and Operation of Local Economic Enterprises shall be used as guide/reference.

### Sec. 16. PPPP Selection Committee –

- (a) There is hereby created a PPPP Selection Committee (PPPP-SC) for purposes of selecting a PSP for a specific PPPP Project. The PPPP-SC, to be constituted and convened by the Municipal Mayor, shall be composed of the following:
  - (i) Chairperson – At least a third ranking officer of the Municipality – selected by the LCE;
  - (ii) Secretary –Municipal Legal Officer;
  - (iii) The Municipal Treasurer;
  - (iv) The Municipal Planning and Development Officer;
  - (v) The Municipal Budget Officer
  - (vi) One (1) representative from and selected by the Sangguniang Bayan designated in an appropriate resolution; and
  - (vii) Two (2) representatives from and chosen by the accredited civil society groups, people's and non-governmental organizations who are members of the Municipal Development Council.
  - (viii) One (1) third ranking officer of the Municipality – selected by the LCE.

A quorum of the PPPP-SC shall be composed of a simple majority of all voting members. The Chairperson shall vote only in case of a tie.



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In the absence of the Chairperson, the members shall elect among themselves a temporary Chairperson to act in the position.

In the absence of the Municipal Legal Officer, the LCE can designate a third ranking Officer to act as Secretary of the committee who shall be considered as a non-voting member)

The PPPP-SC with the approval of the Municipal Mayor may invite provisional non-voting members from the national government agencies, regulatory agencies, NEDA, DILG, and the private sector to observe in the proceedings of the PPPP-SC; and form a support staff composed of employees and staff of the Municipality.

- (b) The PPPP-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation of the Feasibility or Project Study and selection/tender documents; determination of the minimum designs, performance standards/specifications, economic parameters and reasonable rate of return or tariff-setting mechanism appropriate to the PPPP Modality; drafting or evaluation of the PPPP contract; publication of the invitation to apply for eligibility and submission of proposals or comparative proposals; defining the eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge processes; pre-qualification of prospective PSPs, bidders or challengers; conduct of pre-selection conferences and issuance of supplemental notices; interpretation of the rules regarding the selection process; conduct of the selection or challenge process; evaluation of the legal, financial and technical aspects of the proposals; resolution of disputes between PSPs and challengers; defining the appeals mechanisms; and recommendation for the acceptance of the proposal and/or for the award of the contract.
- (c) A Technical Working Group (TWG) shall be created by the Municipal Mayor to assist the PPPP-SC in its functions.

### Section 17. Competitive Selection –

- (a) The Local Chief Executive shall create through Executive Order the Bids and Awards Committee (BAC) with its compositions and functions provided in Section 11 and 12 under Article V of RA 9184.
- (b) The Competitive Selection Process under this Code shall follow the procedure embodied under the Implementing Rules and Regulations of RA 9184, to wit:

#### (i) Pre-procurement Conference

Prior to the advertisement or the issuance of the Invitation to BID/Request for Expression of Interest of each procurement undertaken through a competitive bidding, the BAC, through its Secretariat, shall call for a pre-procurement conference. The pre-procurement conference shall be attended by the BAC, the Secretariat, the unit or officials, including consultants hired by the Procuring Entity, who prepared the Bidding Documents and the draft invitation to Bid/Request for Expression of Interest for each procurement. During this conference, the participants, led by the BAC, shall:

- a) Confirm the description and scope of the contract, the ABC, and contract duration;
- b) Ensure that the procurement is in accordance with the PPMP and APP;
- c) Determine the readiness of the procurement at hand, including, among other aspects, the following:



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- i) Availability of appropriations and programmed budget for contract;
  - ii) Completeness of the Bidding Documents and their adherence to relevant general procurement guidelines;
  - iii) Completion of the detailed engineering according to the prescribed standards in the case of Infrastructure Projects; and
  - iv) Confirmation of the availability of right-of way site or location, and the possession of affected properties, subject to Section 17.6 of the IRR.
- d) Review, modify and agree on the criteria for eligibility screening, evaluation, and post-qualification;
  - e) Review and adopt the procurement schedule, including deadlines and timeframes, for the different activities; and
  - f) Reiterate and emphasize the importance of confidentiality, in accordance with Section 19 of the IRR, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing.

The holding of a pre-procurement conference may not be required for small procurements, xxx xxx, procurement of Infrastructure Projects costing Five Million Pesos (Php 5,000,000.00) and below, xxx xxx xxx

### (ii) Advertising and Posting of the invitation to Bid/Request for Expression of Interest

Except as otherwise provided in Section 54.2 of the IRR and for the procurement of common-use goods and supplies, the Invitation to Bid/Request for Expression of Interest shall be:

- a. Posted at any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned for seven (7) calendar days as certified by the head of the BAC secretariat at the Procuring Entity concerned.
- b. Posted continuously in the PhilGEPS website, the website of the Procuring Entity concerned, if available, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, for seven (7) calendar days starting on date of advertisement.

### (iii) Pre-bid Conference

For contracts to be bid with an ABC of One Million Pesos (Php1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference to clarify and/or explain any of the requirements, terms, conditions, and specifications stipulated in the Bidding Documents. For contracts to be bid with an ABC of less than One Million Pesos (Php1,000,000.00), pre-bid conference may be conducted at the discretion of the BAC. Subject to the approval of the BAC, a pre-bid conference may also be conducted upon written request of any prospective bidder.

The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids, but not earlier than seven (7) calendar days from the PhilGEPS posting of the invitation to Bid or Bidding Documents and in the case of Consulting Services, from the determination of the shortlisted consultants. If the Procuring Entity determines that, by reason of the method, nature, or complexity of the contract to be bid or when



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international participation will be more advantageous to the GoP, a longer period of the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids.

The pre-bid conference shall discuss, clarify and explain, among other things, the eligibility requirements and the technical and financial components of the contract to be bid including question and clarifications rose by the prospective bidders before and during the Pre-Bid Conference.

### (iv) Submission and Receipt of Bids

Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in 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 under Section 23.1 of the IRR for the procurement of Goods and Infrastructure Projects, and second shall contain the financial component of the bid.

### (v) Bid Opening

The BAC shall open the bids immediately after the deadline for the submission and receipt of bids. The time, date, and place of the opening of bids shall be specified in the Bidding Documents.

In case the bids cannot opened as scheduled due to justifiable reasons, the BAC shall take custody of the bids submitted and reschedule the opening of bids on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted in the PhilGEPS website and the website of the Procuring Entity concerned.

The bidders or their duly authorized representatives may attend the opening of bids. The BAC shall ensure the integrity, security, and confidentiality of all submitted bids. The abstract of bids as read and the minutes of the opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials.

### (vi) Bid Evaluation

The BAC shall open the first bid envelopes in public to determine each bidder's compliance with the documents required to be submitted for eligibility and for the technical requirements, as prescribed in the IRR. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required document to ascertain if they are all present, using a non-discretionary "pass/fail" criterion, as stated in the instructions to Bidders. If a bidder submits the required document, it shall be rated "passed" for that particulars requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said first bid envelope as "passed".

Immediately after determining compliance with the requirements in the first envelope, the BAC shall forthwith open the second bid envelope was rated "passed". The second envelope of each complying bidder shall be opened within the same day. Except as provided under Section 33 of IRR. In case of any



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of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC 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.

### (vii) Notice and Execution of Award

#### Contract Award

The BAC shall recommend to the HoPE the award of contract to the bidder with the LCRB, HRRB, SCRB, or SRRB after the post-qualification process has been completed.

To facilitate the approval of the award, the BAC shall submit the following supporting documents to the HoPE:

- a) Resolution of the BAC recommending award;
- b) Abstract of Bids;
- c) Duly approved program of work or delivery schedule, and Cost Estimates;
- d) Document issued by appropriate entity authorizing the Procuring Entity to incur obligations for a specific amount; and
- e) Other pertinent documents required by existing laws, rules, and/or the Procuring Entity concerned.

Contract award shall be made within the bid validity period provided in Section 28 of the IRR.

The BAC, through the Secretariat, shall post, within three (3) calendar days from its issuance, the Notice of Award in the PhilGEPs, the website of the Procuring Entity, if any, and any conspicuous place in the premises of the Procuring Entity.

#### Contract Signing

The winning bidder shall post the required Performance Security and enter into contract with the Procuring Entity within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.

The Procuring Entity shall enter into contract with the winning bidder within the same ten (10) day period provided that all the documentary requirements are complied with.

The following documents shall form part of the contract:

- a) Contract Agreement;
- b) Bidding Documents;
- c) Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents/statements submitted;
- d) Performance Security
- e) Notice of Award of Contract; and



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- f) Other contract documents that may be required by existing laws and/or the Procuring Entity concerned in the Bidding Documents, such as the construction schedule and S-curve, manpower schedule, construction methods, equipment utilization schedule, construction safety and health program approved by the Department of Labor and Employment, and PERT/CPM or other acceptable tools of project scheduling for infrastructure projects.

### Notice to Proceed

The concerned Procuring Entity shall issue the Notice to Proceed together with a copy or copies of the approved contract to the successful bidder within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful bidder.

The Procuring Entity, through the BAC Secretariat, shall post a copy of the Notice to Proceed and the approved contract in the PhilGEPS and the website of Procuring Entity, if any, within fifteen (15) calendar days from the issuance of the Notice to Proceed.

Reference to the Implementing Rules and Regulations of RA 9184 shall be made in case other stages/steps of the procurement process are not discussed under this Section.

- (c) The Municipal Mayor shall approve the tender documents and the draft PPPP Contract before they are issued to the prospective PSPs/bidders.

### **Section 18. Limited Negotiations** – Where the Municipality:

- (a) fails to identify an eligible PSP for a desired PPPP activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding; or
- (b) considers a project or activity either through competitive selection or competitive challenge where an indispensable or integral component thereof has already been subjected to a competitive process by the appropriate administrative agency, government instrumentality or government-owned and -controlled corporation which gives the PSP/ offered a vested and exclusive right over that component without which, the PPPP Project cannot be implemented as envisioned, limited Negotiations may take place. The negotiations will cover all the technical and financial aspects of the PPPP project or activity; provided that the minimum designs, performance standards/specifications and economic parameters stated in the Feasibility or Project Study and Terms of Reference are complied with. The Municipal Mayor shall approve the terms of the Limited Negotiations prior to the award of the contract to the PSP. Under the 2<sup>nd</sup> instance, the Municipality shall publish a notice to the public prior to the start of the negotiations, and if pursued under Competitive Challenge, the 3<sup>rd</sup> stage as defined below may be dispensed with.

**Section 19. Competitive Negotiations** – For concession arrangements, leases or affermage, and management and service contracts where public funds are not used to procure the services of the contractor or consultant, the Municipality invites two or more qualified PSPs to enter into negotiations for a PPPP project, unless there is only one qualified offerer with a unique specialization, informing all the qualified PSPs that there is more than one offerer and simultaneous negotiations are being conducted and that the PPPP contract shall be awarded to the PSP which offers the best combination of quality and price based on the feasibility or project study prepared by the Municipality. Prior to the

*[Handwritten signatures and initials]*



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start of the negotiations with the identified PSPs, the Municipality shall notify the public of the process.

**Section 20. Competitive Challenge.** – The Competitive Challenge process shall be divided into three (3) Stages, described as:

(a) Stage One/ Unsolicited Proposal – The steps are:

- (i) A PSP submits an unsolicited proposal accompanied by a Feasibility or Project Study and draft PPPP contract to the Municipal for a projected PPPP Project.
- (ii) The PPPP-SC shall make a determination of the completeness of the unsolicited proposal, the eligibility of the PSP, the necessity for the proposed project, the consistency of the terms of the draft PPPP contract with this Ordinance, and the appropriateness of the proposed PPPP modality.
- (iii) Upon completion of the initial evaluation, the Municipal Mayor, upon recommendation of the PPPP-SC, shall either issue a certificate of acceptance or non-acceptance of the proposal for purposes of detailed negotiations. Upon the issuance of the certificate of acceptance, the PSP is *ipso facto* conferred original proponent status and no other proposal for the same project may be subjected to the competitive challenge process.
- (iv) If there is more than one unsolicited proposal submitted for the same PPPP Project, the Municipal Mayor, upon recommendation of the PPPP-SC, may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and provides the greater advantage and benefits to the community and revenues to the Municipality.

(b) Stage Two/Detailed Negotiations – The steps are:

- (i) The parties shall negotiate and agree on the terms and conditions of the PPPP Project concerning its technical and financial aspects.
- (ii) Once negotiations are successful, the Parties shall issue a joint certification stating that an agreement has been reached and specifying the eligibility of the PSP and the technical and financial aspects of the PPPP Project as agreed upon.
- (iii) The issuance of the certification commences the activities for the solicitation for comparative proposals.
- (iv) However, should negotiations not result to an agreement acceptable to both parties, the Municipality shall have the option to reject the proposal by informing the PSP in writing stating the grounds for rejection and thereafter may accept a new proposal from other PSPs, decide to pursue the proposed activity through other PPPP Modalities or subject the PPPP Project to a Competitive Selection.

(c) Stage Three/Competitive or Swiss Challenge Proper – The steps are:

- (i) The PPPP-SC shall prepare the tender documents. The eligibility criteria used in determining the eligibility of the private sector entity shall be the same as those stated in the tender documents. Proprietary information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents.



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- (ii) The Municipal Mayor shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.
- (iii) The PPPP-SC shall publish the invitation for comparative proposals.
- (iv) The PSP or Original Proponent shall post the proposal security at the date of the first day of the publication of the invitation for comparative proposals in the amount and form stated in the tender documents.
- (v) In the evaluation of proposals, the best offer shall be determined to include the original proposal of the PSP. If the Municipality determines that an offer made by a comparative PSP or challenger other than the negotiated terms with original proponent is superior or more advantageous to the Municipality than the original proposal, the PSP who submitted the original proposal shall be given the right to match such superior or more advantageous offer. Should no matching offer be received within the stated period, the PPPP Project shall be awarded to the comparative PSP submitting the most advantageous proposal. If a matching offer is received within the prescribed period, the PPPP Project shall be awarded to the original proponent. If no comparative proposal is received by the Municipality, the PPPP Project shall be immediately awarded to the original proponent.
- (vi) In the event that the Original Proponent is not able to match the superior offer of the challenger, the winning challenger shall reimburse, within 30 days from issuance of the notice of award, the original proponent the cost of preparing the project study, provided, that this reimbursement arrangement and the cost of preparing of the project study are expressly stated in the terms of reference for the competitive challenge, and that the PPPP-SC has determined that the cost is reasonable.

### Section 21. PPPP Contract –

- (a) The PPPP Contract shall be signed by the Municipal Mayor on behalf of the Municipality with the prior authorization or ratification by the Sangguniang Bayan, and the duly authorized representative of the PSP.
- (b) The direct and ultimate beneficiary of any PPPP Contract shall be the constituents of the Municipality.
- (c) The principal PPPP Contract shall describe the PPPP Project, the rights, functions, obligations and responsibilities of and risks assumed by each of the contracting party, dispute mechanisms and all other provisions enumerated under Section 5 (v) hereof.
- (d) The other ancillary contracts may include insurance contracts; loan agreements; bonds; guarantee arrangements; equity arrangements; operations and maintenance contracts; and engineering, procurement and construction (EPC) contracts.
- (e) The Municipal Mayor shall not proceed with the award and signing of the contract if there are material deviations from the parameters and terms and conditions set forth in the proposal/tender documents that tend to increase the financial exposure, liabilities and risks of the Municipality or any other factors that would cause disadvantage to government and any deviation that will cause prejudice to losing PSPs.
- (f) Any amendment to a PPPP Contract, which if effected will not violate the policy on competition and fairness and does not materially affect the substance of the PPPP Contract, after award and signing of contract shall undergo approval by the Municipal



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Mayor with prior authorization by the Sangguniang Bayan. Non-compliance with the corresponding approval process stated shall render the amendment null and void.

- (g) All laws and relevant Municipal Ordinances are read or form part of the PPPP Contract, Regulation and Contract management.

### Chapter 4. Regulation and Contract Management

**Section 22. PPPP Regulatory Authority's Mandate** – The PPPP Regulatory Authority (PPPP-RA) created under this Code shall be tasked with performing contract management functions, such as partnership management (i.e., corporate governance, communication and information sharing, and dispute resolution), performance or service delivery management (i.e., risk management and performance management), and contract administration (i.e., variation management, contract maintenance and financial administration), for all PPPP arrangements entered into by the Municipality. Aside from these, the PPPP-RA shall be responsible for setting and monitoring the tariff, and administering the subsidy pursuant to the PPPP contract.

### Section 23. Composition of the PPPP Regulatory Authority –

- (a) The membership of the PPPP-RA shall be composed of the following:
- (i) Chairperson – The Municipal Mayor or the Municipal Administrator if so designated by the Municipal Mayor;
  - (ii) Vice-Chairperson – Vice-Mayor or a member of the Sangguniang Bayan to be chosen by the Sanggunian as evidenced by an appropriate resolution;
  - (iii) Two (2) representatives of the Sangguniang Bayan belonging to two (2) distinct registered political parties to which the Municipal Mayor does not belong to choose on the basis of proportional representation of all parties represented in the Sangguniang Bayan;
  - (iv) Municipal Legal Officer;
  - (v) Municipal Treasurer;
  - (vi) Municipal Planning and Development Coordinator;
  - (vii) Municipal Budget Officer;
  - (viii) Department Head of Office which functions cover investments; and
  - (ix) Two (2) representatives from and chosen by the accredited civil society groups, people's and non-governmental organizations who are members of the Municipal Development Council. These representatives shall not be the same representatives in the PPPP-SC.
- (b) For projects covered by government-to-government joint PPPP undertakings, the collaborating or partner government entity shall have one (1) representative in the PPPP-RA, provided that such representative shall only sit in meetings of the PPPP-RA, or portions thereof, and have a vote only on matters directly affecting the PPPP project covered by such joint PPPP undertaking. For this purpose, government-to-government joint PPPP undertakings means such mutual agreement entered into by the Municipality with other local governments, national government agencies, government-owned and -controlled corporations, government instrumentalities and government corporate entities, for the implementation of PPPP projects that will benefit the Municipality and its community even if the project site is outside the Municipality's territory.
- (c) The PPPP-RA may appoint a contract manager for a PPPP project depending on the PPPP contract value, complexity and associated risks. The contract manager shall have the necessary management skills and technical knowledge of the goods, services or works to be provided under the PPPP contract. The PPPP-RA shall determine the manner and source of payment for the contract manager's compensation, provided that if a regular



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employee of the Municipality is appointed as contract manager, he/she shall not receive additional compensation for such appointment. The contract manager shall have a vote on matters directly affecting the PPPP project that he/she is managing.

- (d) A quorum of the PPPP-RA shall be composed of a simple majority of all voting members. The Chairperson shall vote only in case of a tie.
- (e) The PPPP-RA with the approval of the Municipal Mayor may invite third party experts to attend its meetings to act as advisors and observers. Such third party experts may represent national government agencies, regulatory agencies, the NEDA, the PPPP Center, the DILG, private sector, non-governmental organizations and civic groups.
- (f) The PPPP-RA may form a support staff composed of employees and personnel of the Municipality. The PPPP-RA may also engage consultants hired pursuant to law.

### Section 24. Contract Management Manual –

- (a) The PPPP-RA shall prepare a contract management manual for each executed PPPP contract, which shall serve as a guide to the Municipality and its personnel in ensuring a consistent, high quality contract monitoring process that is specific for such PPPP contract.
- (b) The PPPP-RA shall evaluate each contract management manual quarterly, which shall be amended as may be necessary. Any amendment to the contract shall be effective upon the approval of the PPPP-RA.
- (c) The PPPP-RA, all throughout the life of PPPP Contract, shall present, make available and explain, before and after any material of action is taken, all relevant information regarding the implementation of the PPPP Contract, the submission of the PSP and action taken by the PPPP-RA to the Municipal Development Council.

### Section 25. Contents of the Contract Management Manual – Each contract management manual shall include the following information:

- (a) a description of the PPPP project and its history;
- (b) a summary of the key terms of the PPPP contract;
- (c) roles and responsibilities of each member of the PPPP-RA and other Municipal personnel and contractors, as applicable, who are involved in the PPPP project;
- (d) roles and responsibilities of key personnel of the PSP;
- (e) details of the post-award conference;
- (f) partnership management procedures;
- (g) performance or service delivery management;
- (h) contract administration; and
- (i) project closeout procedures.

### Section 26. Post-Award Conference –

- (a) Immediately after the PPPP contract is awarded, the PPPP-RA Chairperson shall call a post-award conference to ensure that the Municipality and PSP have a clear and mutual understanding of the terms and conditions of the PPPP contract, and to determine the responsibilities of parties. Notice of the post-award conference shall be sent by the PPPP-RA Chairperson at least five (5) working days before the scheduled date thereof.
- (b) The post-award conference shall be attended by the members of the PPPP-RA, such employees and contractors of the Municipality that who be involved in the management of the PPPP contract, and key personnel of the PSP.



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- (c) The PPPP-RA Chairperson shall preside at the post-award conference, and shall appoint a secretary of the conference from the Municipal personnel present.
- (d) The minutes of the conference shall be sent to each participant within five (5) days of the adjournment of the conference.

### Section 27. *Personnel and Training Requirements* –

- (a) The contract management manual shall identify the Municipal personnel involved in contract management, the specific roles and responsibilities of each, and the skills and technical knowledge required to perform their functions.
- (b) Independent contractors may be engaged in the absence of the qualified Municipal personnel, provided that, except in the case of contract managers engaged in accordance with Section 8(c), contractors may only be engaged for a period not exceeding three (3) years from the effective date of the PPPP contract. Such contractor shall:
  - (i) have at least two (2) understudies; and
  - (ii) provide a training program for Municipal personnel in his field of specialization, with such training being done regularly during regular office hours.
- (c) During the contract life, the Municipal personnel shall undergo such continuous training on contract monitoring to ensure that the Municipality is equipped to monitor reliably the PSP's performance over the entire life of the PPPP contract.

### Section 28. *Partnership Management* – Each contract management manual shall identify processes to ensure accountability and manage the relationship between the Municipality and the PSP, and shall describe:

- (a) each party's governance structure, including the overall system of institutional structures, operating rules, compliance mechanisms and accountability procedures;
- (b) guidelines on communication and information sharing between the Municipality and the PSP, including reporting requirements, frequency and purpose of regular meetings, record-keeping of all exchanges, and the acceptable modes of correspondence between them; and
- (c) the process for resolving disputes between the parties, identifying, among others, the different levels of dispute resolution, offices and officials involved, timetable for resolving such disputes, and possible actions to compel a party to adequately comply with contractual terms.

### Section 29. *Performance or Service Delivery* – The contract management manual shall identify measures to ensure that the services or goods provided by the PSP are in accordance with the standards and prices agreed in the PPPP contract. Such measure shall include:

- (a) an identification of risks under the PPPP contract, the timetable for resolving such risks when they arise, contingency plans that ensure immediate resumption of services in the event of an interruption of service delivery by the PSP, and penalties for failing or refusing to resolve them, provided that a separate risk mitigation plan shall be developed and periodically reviewed and updated throughout the life of the contract for contracts with significant risks;
- (b) clear and demonstrable key performance indicators that demonstrate evidence of poor, satisfactory or non-performance by the PSP, taking into consideration the cost



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and value obtained, performance and customer satisfaction, delivery improvement, delivery capability, benefits realized and relationship strength and responsiveness;

- (c) a performance management plan and performance monitoring system that will be used by the Municipality to monitor affordability, service delivery, value for money, quality, and performance improvement, which shall in all cases include:
- (i) a timetable and start and end date for each performance component, including milestones with accompanying timeframes, dependencies, required or desired outcomes, and acceptable performance levels;
  - (ii) requirements and standards to be used to monitor PSP performance;
  - (iii) procedures and guidelines for measuring customer satisfaction and mechanisms to solicit end user feedback;
  - (iv) submission of regular, accurate and timely reports by the PSP, Municipal personnel or the contract manager, as applicable, to the PPPP-RA detailing performance monitoring efforts and the types of information that should be included in such reports;
  - (v) Municipality access to PSP records to allow Municipal personnel to verify the information that the PSP reports to them and to ensure that funds are expended properly;
  - (vi) random inspections of PSP records and on-site monitoring visits; and
  - (vii) regular meetings with the PSP to review progress, discuss problems and consider necessary changes; and
- (d) a performance review and corrective actions system that apply to non-compliance or breach of contract, and penalties for non-performance and bonuses for good performance.

**Section 30. Contract Administration** – The contract management manual shall lay down a contract administration system, which shall include:

- (a) systems and procedures for variation management, the roles and responsibilities of Municipal personnel, and reportorial requirements for each event of proposed or successful contract variation;
- (b) a system for contract maintenance, identifying key contract deliverables and schedules, as well as trigger events; and
- (c) systems and procedure for financial administration, including an estimate of the resources that the Municipality will devote thereto, systems and procedures to make and receive financial payments, and rules for keeping records of financial transactions in accordance with the requirements of the contract.

**Section 31. Closeout Procedures** - Formal, written closeout procedures shall be included in contract management plan to ensure that all goods and services have been delivered satisfactorily, all properties are disposed accordingly, all Municipal properties are returned, and all amounts due under the PPPP contract have been paid.



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**Section 32. Post-Contract Review** - A post-contract review shall be conducted at the end of a contract period, which shall include a post-contract analysis, evaluation and reporting of the PPPP project, the PSP's performance, and the Municipal's contract management system. The post-contract review shall likewise include a financial audit of the entire PPPP project and determination of lessons learned. Municipal policies and procedures shall be updated where required. Notwithstanding the requirement herein, if the PPPP contract is subject to renewal or extension, the post-contract review shall be conducted within a reasonable time before the deadline for such renewal or extension.

**Section 33. Document Control** - The PPPP-RA shall act as the administrator of documents and correspondence relating to the PPPP project and PPPP contract. The contract management manual shall:

- (a) identify the documents and correspondences that must be retained by the PPPP-RA;
- (b) require that all such documents be kept in both electronic and paper format during contract life or such longer period as may be required under applicable law; and
- (c) lay down the protocol for document storage, logging, accountability, disclosure and access by the parties and the public.

### Chapter 5. Accountability, Information, Education and Monitoring

**Section 34. Code of Conduct** - Before commencing their functions, each member of the PPPP-SC and PPPP-RA and the contract manager shall sign a Code of Conduct, which shall guide each member in the performance of their duties as such.

Such Code of Conduct shall require each member to, among others:

- (a) act at all times in accordance with relevant legislation and regulations;
- (b) act at all times with fidelity, honesty, integrity and in the best interests of the Municipality and its constituents;
- (c) recognize the public's right to access to information in accordance with law;
- (d) not misuse his or her position and privileges of a member of the PPPP-SC and PPPP-RA, whether or not such will prejudice the interest of the public, the PSP, or any third person;
- (e) to take the utmost care in ensuring reasonable protection of the records of each PPPP project, and to not disclose any confidential and proprietary information to persons without a need to know such information, or in violation of any non-disclosure requirements under law or contract;
- (f) carry out his or her duties with the skill and care expected from a person of knowledge and experience, and to exercise prudent judgment;
- (g) forthwith report to the appropriate authorities any act of negligence, fraud, corruption, misuse of government funds, failure or refusal to perform duties, or any other act which may constitute a crime or offense, or which is prejudicial to the public interest, in the selection of the PSP and implementation of a PPPP contract;
- (h) forthwith declare any personal or business interest that he or she, or any of his or her relatives within the fourth degree of affinity or consanguinity, may have in any business of a PSP, in which case, the official or representative shall no longer be a member of the PPPP-SC and PPPP-RA;



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- (i) forthwith declare any conflict of interest, insofar as the PPPP Project concerned, that he or she may have or will have, in which case, the official or representative shall not longer be a member of the PPPP-SC and PPPP-RA;
- (j) not vote or act in a particular way on any matter in consideration of any offer, promise, gift or present, from a member of the public, government, a political party, social group or non-governmental organization, or any stakeholder or potential stakeholder;
- (k) not receive any gift or anything else of value which is or may be viewed as aimed at influencing or directing his or her vote or actions; and
- (l) to disclose immediately to the PPPP-SC or PPPP-RA as the case may be, any attempted inducement that may be construed as aimed at influencing or directing his or her acts as a member of the PPPP-SC and PPPP-RA.

**Section 35. Disciplinary Action** – Violation of this Code and the Code of Conduct insofar as the Municipal elective officials are concerned shall constitute a ground for disciplinary action or amount to loss of confidence under the 1991 LGC and relevant laws, and with regards local appointive officials, such violation shall render them administratively liable. Officials may also be rendered criminally liable under applicable laws and ordinances. Representatives of the PSP shall be held liable for damages, offenses and crimes depending on the nature of their participation and involvement in the unlawful act or omission.

**Section 36. Liability** – The Municipality and its officials, in undertaking a PPPP project, selecting a PSP and implementing a PPPP contract, shall not be exempt from liability for death or injury to persons or damage to property.

**Section 37. Social Accountability** – The Municipality shall ensure, promote and eliminate all obstacles to social accountability and allow and enhance constructive engagement between citizens' groups, academe, consumers, rate-payers, general public, Municipality, national government agencies, regulatory agencies, and PSP.

**Section 38. Transparency and Right to Information** – The PPPP Contract, feasibility or project studies, bidding documents, terms of reference, results of the PSP selection process, Code of Conduct, Contract Management Manual, minutes of the post-award conference, PPPP-RA, and PPPP-RA-MC, and other relevant documents and instruments shall be posted in two conspicuous places of the Municipality and uploaded in a dedicated website of the PPPP-RA which can be freely accessed by the public. The Municipality shall also implement a strategic communication plan addressed to all stakeholders.

**Section 39. Capability-Building Program** –

- (a) The Municipality shall design and implement a continuing education and capacity-building program on PPPPs for its officials, and the members of the PPPP-SC and PPPP-RA.
- (b) The Municipality shall also undertake a comprehensive and sustained education and governance campaign aimed at informing all stakeholders and civil society organizations about PPPPs ventures of the Municipality and allowing them to participate in the overall PPPP program of the Municipality. The program shall include strategic and annual evaluation and planning sessions, workshops, seminars, focus-group discussions on PPPPs, market opportunities, projects, management of contracts and regulation of PPPPs and other PPPP-related topics.



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- (c) The Municipality may tap consultants to assist them in implementing PPPPs and in building capability for PPPPs.

**Section 40. Monitoring and Governance Audit Program** – The Municipality, in order to ensure transparency and accountability, shall encourage civil society organizations, people’s and non-governmental organization and civic aggrupation to establish a PPPP monitoring, evaluation and governance audit body functionally and fiscally independent from the Municipality and other government institutions.

**Section 41. Technical and Financial Assistance** – The DILG, Department of Finance, Department of Budget and Management, NEDA and the PPPP Center may extend technical and financial assistance to the Municipality and such assistance may be embodied in a memorandum of understanding or agreement.

### Chapter 6. Final Provisions

**Section 42. Appropriations** – To carry out the provisions of this Code, the amount to be determined by the PPPP-RA shall be appropriated. Thereafter, such appropriation as may be necessary for the continuous implementation of this Code shall be included in the annual budget of the Municipality.

**Section 43. Alternative Dispute Resolution** – All PPPP contracts of the Municipality shall include a provision on the use of Alternative Dispute Resolution (ADR) mechanisms in resolving disputes arising from the PPPP contract. All controversies in connection with PPPP undertakings and projects of the Municipality shall likewise be addressed using ADR.

**Section 44. Implementing Rules** – While this Code and the provisions hereof are already operative upon the Code’s effectivity, the Municipal Mayor may issue the appropriate and relevant rules and regulation for the proper implementation of the Code or its provisions, including the issuance of relevant mechanisms to insure competition, manuals, guidelines, sample contracts and bid documents, PPPP indexes and comparators, and performance scorecards.

### Section 45. Confirmation of Executed PPPP Contracts and Procedures Commenced -

- (a) PPPP Contracts entered into prior to the enactment of this PPPP Code in strict compliance with the provisions hereof are hereby confirmed.
- (b) PPPP Contracts entered into prior to the enactment of this PPPP Code without strictly complying with the applicable procedures set forth herein for the selection of the PSP shall be considered as negotiated agreements under Stage Two of Section 20 which must be subjected to competitive challenge; provided that, after publication and no expression of interest is submitted by an interested qualified party at the designated time, the subject PPPP contract shall be deemed perfected, and vested and contractual rights shall continue to subsist and operate.
- (c) PPPP Contracts entered into prior to the enactment of this PPPP Code may be amended, provided, that the terms of the original PPPP Contract allow for amendments do not tend to increase the financial exposure, liabilities and risk of the Municipality or any other factors that would cause disadvantage to the municipal and any deviation that will cause prejudice to losing PSPs; provided further, that the amendments are approved by the Municipal Mayor with prior authorization from the Sangguniang Bayan, and the revised terms are approved and confirmed by the Sanggunian through the enactment of an Ordinance.



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- (d) Procedures and steps commenced and undertaken for the selection of, and statuses and rights conferred on a PSP prior to the effectivity of this Ordinance shall be operative, confirmed and recognized, and shall henceforth be continued under this Code.

**Section 46. Application of Other PPPP Laws and Regulations** – Whenever relevant and appropriate as determined by the Municipal Mayor and in the absence of a specific provision to the contrary, upon recommendation of the PPPP-SC and PPPP-RA as the case may be, the BOT Law, the GPRA, Executive Order No. 301 (26 July 1987), COA Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the JV Guidelines adopted by the NEDA, either the 2008 or 2013 versions, shall apply in a suppletory manner.

**Section 47. Authority of Component LGUs -**

- (a) The authority of component LGUs to enact their respective PPPP Ordinances, and to implement PPPP Projects is hereby recognized by the Provincial Government.
- (b) The Provincial Government encourages the component LGUs on their own or in partnership with other LGUs and national government agencies, government-owned and controlled corporations, government instrumentalities, state universities and colleges and government financial institutions to pursue PPPP as a development strategy and implement PPPP projects that shall serve the general welfare and the public good.

**Section 48. Separability Clause** – If, for any reason, any section or provision of this Code or any part thereof, or the application of such section, provision or portion is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

- (a) All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.
- (b) This Ordinance takes precedence and thus hereby modifies the relevant procedures and approval processes outlined in other ordinances of the province relating to the implementation of PPPP projects or the modalities provided herein.

**Section 49. Repealing Clause** – All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

**Section 50. Effectivity** – This Code shall take effect upon its approval. The gist of this Code shall also be published in a newspaper or general circulation in the municipality.

UNANIMOUSLY ENACTED this 19<sup>th</sup> day of March 2018.

  
HON. MA. THERESA H. TESNADO  
SB Member

  
HON. ARNOLDO M. MADRID  
SB Member

  
HON. RIO S. MERCENE  
SB Member

HON. JOSEPH T. RODIL  
SB Member



# Office of the Sangguniang Bayan

HON. SEVERINO J. NARITO  
SB Member

HON. NAPOLEON M. MANGARING  
SB Member

HON. JEOFFREY PAUL A. UMBAO  
SB Member

HON. LEONARDO L. PEDRAZA  
SB Member

HON. ANJUNE A. ZAMORA  
ABC Pres./SB Member

Attested :

ARNEL G. ABRENICA  
Secretary to the Sanggunian

Certified Correct :

HON. RODOLFO M. MAGSINO  
Vice Mayor, Presiding Officer

Approved :

HON. ARISTEO A. BALDOS, JR.  
Municipal Mayor

APR 02 2018