



REPUBLIC OF THE PHILIPPINES
PROVINCE OF RIZAL
MUNICIPALITY OF TAYTAY



OFFICE OF THE MUNICIPAL COUNCILOR
HON. CEFERINO R. RESURRECCION JR

DRAFT ORDINANCE NO. 1907-008

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A MUNICIPALITY CODE ADOPTING AND PURSUING A PUBLIC-PRIVATE PARTNERSHIP (PPP) APPROACH TOWARDS DEVELOPMENT, A PPP REGULARITY AUTHORITY, PROVIDING FOR THE PROCEDURE FOR SELECTING THE PRIVATE SECTOR PROPONENT, ADOPTING A CONTRACT MANAGEMENT FRAMEWORK AND PROVIDING APPROPRIATIONS AND INCENTIVES THEREFOR AND FOR ORTHER 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, in furtherance of and consistent with local autonomy, fiscal autonomy, the principle of subsidiary, public good and welfare, general welfare, and full autonomy over propriety powers, the municipality is free, provided no statute is violated, to adopt its definition of a PPP undertaking, and prescribe the requirements, procedures and conditions for municipality PPPs, 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;

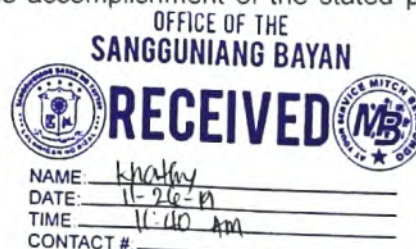
NOW, THEREFORE, be it enacted by the Municipality Council in the regular session assembled that:

CHAPTER 1. BASIC PRINCIPLES AND DEFINITIONS

SECTION 1. *Short Title.* – This Ordinance shall be known and cited as the "THE PPP CODE OF MUNICIPALITY OF TAYTAY, RIZAL".

SECTION 2. *Declaration Of Policy.* – It is hereby declared as a policy that the MUNICIPALITY OF TAYTAY ("MUNICIPALITY") shall advance the 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; and shall ensure the participation of the private sector in local governance through effective and viable Public-Private Partnership.

SECTION 3. *Operative Principles.* – The accomplishment of the stated policy shall be guided by the following principles:



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- (a) The MUNICIPALITY, pursuant to Section 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. 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 PPPs from inception to implementation.
- (b) The MUNICIPALITY exists and operates in its government and proprietary capacities thereby making the MUNICIPALITY an agent of, and is therefore accountable to, the State and its community.
- (c) The MUNICIPALITY is in a better position to address and resolve matters that are local in scope,
- (d) Under Section 18 of the Republic Act No. 7160 or 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, development, or welfare purposes.
- (e) 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 therefrom, 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.
- (f) 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.
- (g) The MUNICIPALITY, under Section 3 (1) of the 1991 LGC, is mandated to encourage the active participation of the private section in local governance.
- (h) The role of the MUNICIPALITY both as a regulator of business and as implementer of a propriety undertaking must be delineated.
- (i) 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 PPPs under Section 28, Article II of the 1987 Constitution.
- (j) 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 guarantee and empower civil groups to have effective and meaningful participation in the regulation and management of PPP -

- (k) The MUNICIPALITY, as a partner in a PPP arrangement, may provide equity or subsidy or and use local funds and that the usage thereof for a PPP project shall be considered for public use and purpose.
- (l) Under Sections 34 and 35 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, diversify 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; provide funding for local projects, provide incentives and tax exemptions to private companies.

SECTION 4. *Rationale for PPP.* – PPPs shall be promoted to provide more, better affordable and timely services to the community. In pursuing PPPs, the MUNICIPALITY shall be guided by the following reasons and drivers:

- (k) The regulation of the PPP shall be pursuant to the PPP contract and exercised by the appropriate regulatory authority. A duly executed and legal PPP 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, PPP-SC, Sangguniang Bayan pursuant to the Ordinance shall, as far as practicable, 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 PSPs as to the substance of agreements signed, certifications issued, resolutions issued and procedures undertaken.
- (l) To provide efficient public service, the MUNICIPALITY must ensure, through stronger performance management and guidance, proper implementation of PPP 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 development.

SECTION 5. *Definition of Terms.* – As used in this Code, the following term shall mean.

- (a) ***Build-Operate-Transfer Law Schemes*** – Under Republic Act No. 6957 as amended by RA No. 7718, the following are the BOT 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 in 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 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 of the asset or facility shall be subject to relevant rules of the Commission on Audit.
- (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 specific 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 favorable conditions external to 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 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 per 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** – 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.
- (d) **Competitive Selection or Bidding or Open Competition** – 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 its turnover thereof to the PSP, 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 the facility users and is allowed to charge and collect approved tolls, fees, tariffs, rentals or other 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 the rules of the Commission on Audit.
- (f) **Corporatization** – The 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 MUNICIPALITY operations; and development of a commercial orientation and managerial independence while remaining accountable to the government or electorate.

- (g) **Cost Sharing** – 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** – 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 enhancement may include but 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 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** – Projects normally financed, and operated by the public sector, but which will now be wholly or partly financed, constructed and operated by the PSP projects that will advance and promote the general welfare; and other infrastructure and development projects as may otherwise be authorized by the MUNICIPALITY.
- (j) **Direct Municipal Government Equity** – Subscription by the MUNICIPALITY of shares of stock or other securities convertible to shares of stock of the special purpose vehicle or single-purpose company, whether subscription will be paid by money or assets.
- (k) **Direct Municipal Government Guarantee** – 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.
- (l) **Direct Municipal Government Subsidy** – An agreement whereby the MUNICIPALITY shall: (a) defray, pay or shoulder a portion of the PPP 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 (*sic*) 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** – The manner or scheme of taking away depriving, withdrawing of title to a property owned by a MUNICIPALITY investing ownership thereof to a PSP.
- (n) **Feasibility or Project Study** – A study, full or pre-feasibility study or business case prepared by the MUNICIPALITY in competitive selection or a

PSP when submitting an unsolicited proposal containing a need analysis, affordability assessment, value for money assessment, preliminary risk assessment, stakeholder assessment, bankability assessment, legal viability assessment, PPP mode selection, market testing if relevant, indicative transaction implementation plan, and draft PPP 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** – A 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) **Joint Venture** – 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, asset (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 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 interest 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 starting both profits and losses, subject to agreement by the parties.

(q) **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 the 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 remaining revenue. The MUNICIPALITY may provide a purchase option at the end of the lease period subject to rules of the Commission on Audit.

(r) **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 project proponent 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 and/or performance-based management or service fee during the contract term.

(s) **Negotiated Projects** – Instances where the desired projects 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 activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding.

(t) New Technology – Refers to any of the following:

- i. 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 environmental impact or social/economic disturbances or disruptions during either the project implementation/construction phase or the operation phase; or
- ii. 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
- iii. A design, methodology or engineering concept for which the proponent or a member of the proponent consortium or association possesses intellectual property rights.

(u) Private Sector Proponent (PSP) – A 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.

(v) Public-Private Partnership (PPP) – PPP is a form of legally enforceable contract between the MUNICIPALITY and PSP, which requires new investments from the PSP and which transfer key risks to the PSP in which payments are made in exchange for performance, for the purpose of delivering a service traditionally provided by the public sector, PPP shall also include disposition of an asset, facility, project owned or entity created by the MUNICIPALITY to a PSP, assumption by a PSP of an proprietary function of the MUNICIPALITY; grant of a concession or franchise to a PSP by the MUNICIPALITY; or usage by the PSP of public property owned or possessed by the MUNICIPALITY.

Alternatively, a PPP is a legally enforceable contract where each party assumes specified functions, bear certain risks, provides contribution or renders some obligations, and earns benefits and revenues from the PPP arrangement.

(w) PPP Contract – An agreement governing Public-Private Partnerships, establishing, regulating, and whenever appropriate and possible, the PPP Contract shall contain the Pre-ambulatory Clauses or Whereas Clauses, Party Clause, Rules of Interpretation, Nature of the PPP, 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 Provision, Force Majeure, Government 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.

- (x) **Reasonable Rate of Return (RROR)** – The rate of return that a PSP shall be entitled to, as determined by the PPP 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 MUNICIPALITY undertakings extended to the project.
- (y) **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.
- (z) **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.
- (aa) **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.
- (bb) **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.
- (cc) **Unsolicited Proposal** – A project proposal submitted by a PSP to the MUNICIPALITY to undertake a Development Projects without a formal solicitation issued by the MUNICIPALITY whereby the negotiated terms shall be subject to comparative proposals.
- (dd) **Value for Money (VfM)** – A concept that over the whole-life of a project finance-PPP project, government's total expenditure (i.e. its payment to the private sector), adjusted for the risk 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 cost; (iii) speed of implementation; and (iv) quality and reliability of service.

- (ee) **Viability Gap Funding (VGF)** 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.

SECTION 6. Rules of Interpretation – This code and the provisions hereof shall be liberally interpreted to accomplish the policy and objectives set forth in Sections 2, 3 and 4 hereof.

SECTION 7. Authorities. –

- (a) This Code is being adopted pursuant to the MUNICIPALITY's constitutional statutory authorities enumerated under Section 3 hereof, and when not inconsistent with the relevant aforementioned, shall govern the adoption and implementation of the PPP Modalities.
- (b) In pursuing BOT Law variants, the MUNICIPALITY shall comply with Republic Act No. 6957 as amended by RA No. 7718 and its Implementing Rules and Regulations.
- (c) in entering into Management and Service Contracts, the MUNICIPALITY shall comply with Republic Act No. 9184 and its Implementing Rules and Regulations.
- (d) For Dispositions, Commission on Audit 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 MUNICIPALITY funds are not used to procure the services of the contractor or consultant, the MUNICIPALITY 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
- (h) For Leases and Affermage, the Law on Leases of the Civil Code of the Philippines may be referred to
- (i) This Code shall govern the adoption and implementation of the other PPP modalities.
- (j) The authority to accept and process unsolicited proposals for joint venture project between local governments and the private sector has been affirmed by the Office of the Executive Secretary in a letter to the Province of Camarines Sur dated October 25, 2011.

CHAPTER 2. PPP PROJECT AND PPP MODES

SECTION 8. *PPP Projects.* – (a) The MUNICIPALITY, through the appropriate and viable PPP 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 service 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 building, sustainable green public buildings, sports facilities, wellness establishments, tourism such as 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.

SECTION 9. *List of Priority Projects.* – The MUNICIPALITY may identify specific priority projects, or may classify a particular project as a priority, that may undertaken under any of the PPP Modalities and defined under Sec. 10 hereof.

SECTION 10. *PPP Modalities.* –

(a) In undertaking specific PPP Projects, the MUNICIPALITY may adopt and pursue the following Modalities and may provide for other modalities not inconsistent with law:

- (i) Build-and-Transfer (BT);
- (ii) Build-Lease-and-Transfer (BLT);
- (iii) Build-Operate-and-Transfer (BOT);
- (iv) Build-Own-and-Operate (BOO);
- (v) Build-Transfer-and-Operate (BTO);
- (vi) Contract-Add-and-Operate (CAO);
- (vii) Develop-Operate-and-Transfer (DOT);
- (viii) Rehabilitate-Operate-and-Transfer (ROT);
- (ix) Rehabilitate-Own-and-Operate (ROO);
- (x) Rehabilitate-Lease-and Transfer (RLT);
- (xi) Rehabilitate-and-Transfer (RT);
- (xii) Rehabilitate-Transfer-and-Operate (RTO)
- (xiii) Concession Arrangement;
- (xiv) Joint Venture (JV)
- (xv) Lease or Affermage;
- (xvi) Management Contract;
- (xvii) Service Contract;
- (xviii) Divestment or Disposition; and
- (xix) Corporatization; and

(xx) Any other modality akin to any of the above or features thereof which falls under the alternative definition of a PPP under Section 5 hereof.

(b) The determination of the appropriateness and viability of the PPP mode shall be specified, explained and justified in the feasibility or project study weighing all the relevant value drivers and reasons for pursuing a PPP project.

SECTION 11. General Requirements. –

(a) Undertaking a PPP for Development Project must be premised on any or all of the reasons and drivers mentioned in Section 4 hereof.

(b) The list of projects or any particular project to be implemented by the MUNICIPALITY under any of the BOT variants shall be submitted for the MUNICIPALITY Development Council for projects costing up to Fifty million Pesos (Php 50,000,000.00); above Fifty Million up to Two Hundred Million Pesos (Php 50,000,000.00-Php 200,000,000.00) to regional councils; and those above Two Hundred Million Pesos (Php 200,000,000.00) to the Investment Coordination Committee of the National Economic Development Authority (NEDA).

(c) Projects included in the List Priority Projects shall not be eligible for unsolicited proposals under any of the BOT variants, unless involving a new concept or technology; provided, that for any of the other PPP 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 unsolicited proposals under Republic Act No. 6957 as amended by RA No. 7718 on providing Direct Municipality Government Subsidy and Direct Municipality Government Equity only applies to BOT variants. However, in no case shall Direct Municipality Government Guarantee be allowed even in other PPP Modalities.

(e) For BOT Law variants that will be subjected to bidding, Concession Arrangements, Leases or Affermages, Management and Service Contracts and Joint Venture, the MUNICIPALITY may provide Direct Municipality Government Subsidy and Direct Municipality Government Equity, or Viability Gap Funding provided, that the MUNICIPALITY may use a portion of its general fund, its development fund comprising 20% of its annual share in the Internal Revenue Allotment, or its equitable share in the proceeds if 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 PPP project shall be deemed for development purposes and for the direct benefits of the inhabitants pursuant to Sections 287 and 289 of the 1991 LGC respectively.

(f) For all PPP Modalities, the MUNICIPALITY may provide Credit Enhancement and Cost-Sharing schemes.

- (g) Official Development Assistance (ODA) as defined in R.A. No 8182, otherwise the ODA Act of 1996, as amended by R.A. No. 8555 may be availed of for PPP projects where there is difficulty in sourcing funds; provided, that ODA financing shall not exceed 50% of the project cost, the balance to be provided by PSP.
- (h) Any subsidy that will be extended by the MUNICIPALITY must be, transparent, efficiently administered and targeted.
- (i) Each PPP Modality adopted for a specific PPP 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.
- (j) For negotiated contracts for BOT Law variants for public utility projects which are monopolies, the rate of return shall be determined by existing laws, which in no case shall exceed twelve per centum (12%).
- (k) 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 PPP 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 Municipal 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.
- (l) 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 PPP project as may be appropriate under the chosen PPP Modality.
- (m) In participating in PPPs, the MUNICIPALITY may, subject to Sections 16, 17, 18, 19 and 20 of the 1991 LGC, exercise police power, perform devolved powers, apply and generate resources, expropriate and reclassify and provide zoning regulations.
- (n) 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.
- (o) In a JV or appropriate modality, the co-ventures 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:

- (i) 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 actual or current funds, or future or monetized value of these funds of the MUNICIPALITY.
- (ii) 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.
- (iii) On the part of the MUNICIPALITY, in addition to the foregoing contributions, it may also extent 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, expropriate and reclassify and enact or integrate zoning ordinances.
- (iv) 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.
- (v) 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.
- (vi) 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.
- (vii) 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.

- (viii) 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 proportionate share at the minimum.
- (ix) 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.
- (x) Each party shall be entitled to dividends, profits, income and revenue and will bear the corresponding risk, 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.
- (xi) 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.
- (xii) The share or equity of the MUNICIPALITY in the 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.
- (xiii) 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.
- (m) Procurement made by the MUNICIPALITY using public funds shall be subject to the GPRA and its Revised Implementing Rules and Regulations. Procurement made by the PSP using private funds shall not be covered by said statute.
- (n) The revenues, funds, expenditures and contributions of the MUNICIPALITY are not exempt from and it examination by the COA. Revenues, funds, expenditures and contributions of the PSP may be subjected to audit by a private auditing firm.

- (o) 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 MUNICIPALITY.

SECTION 12. Government-to-Government Joint PPP 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 instrumentalities and government corporate entities, may implement PPP Projects for projects located within the MUNICIPALITY's territory or those project that will benefit the MUNICIPALITY and its constituents 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 PPP Modality.

CHAPTER 3. PPP PROCEDURES

SECTION 13. PPP 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 MUNICIPALITY 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 challenges as defined herein may be utilized to select the PSP.
- (d) 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.
- (e) For Divestment of Disposition of a property, COA Circular No. 89-296 (January 27, 1989) shall be applicable.
- (f) For the Divestiture of a subsidiary or corporation incorporated by the Municipal 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).
- (g) If the MUNICIPALITY opts to select a PSP using either Competitive Selection or Competitive Challenge, the MUNICIPALITY in the Competitive Selection and Competitive3 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.

- (h) All recommendations of the PPP Selection Committee shall be submitted to the Municipal Mayor for the consideration and approval.
- (i) All PPP contracts must be signed by the Municipal Mayor with prior authorization by the Sangguniang Bayan.
- (j) During the consideration of the draft PPP Contract by the Sangguniang Bayan, the PPP Project Contract, accountability mechanics built into the PPP arrangement, the benefits and costs of the PPP Project among other relevant matters, must be explained in the session open to the public.
- (k) After the signing of the PPP Contract by the Municipal Mayor, the PPP-SC through its Chairperson, shall issue the Notice of Award to the PSP.

Section 14. *PPP Selection Committee.* –

- (a) There is hereby created a PPP Selection Committee or PPP-SC for purposes of selecting a PSP for a specific PPP Project. The PPP-SC, to be constituted and convened by the Municipal Mayor, shall be composed of the following:
 - (i) Chairperson – Municipal Legal Officer;
 - (ii) Secretary – Municipal Planning and Development Officer;
 - (iii) The Municipal Procurement Officer;
 - (iv) The Municipal Budget Officer; and
 - (v) One (1) representative from and selected by, the Sangguniang Bayan designated in an appropriate resolution; and
 - (vi) 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

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

The PPP-SC, with the approval of the Mayor, may invite provisional non-voting members from the national government agencies, regulatory agencies, National Economic Development Authority, Department of Interior and Local Government, private sector, to observe in the proceedings of the PPP-SC. A support staff or technical working group may also be constituted composed of employees and personnel of the Municipality.

- (b) The PPP-SC shall be responsible for all aspects of the pre-selection and selection processes, including among others, the preparation of the Feasibility Study, 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 PPP Modality; drafting or evaluation of the PPP contract; publication of the invitation to apply for the eligibility and submit proposals or comparative proposals; define 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; contract of pre-selection conferences and issuance of supplemental notices; interpretation of the rules regarding the

selection process; the 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, the appeals mechanisms; and recommendation for the acceptance of the proposal and/or for the award of the contract.

SECTION 15. *Competitive Selection.* –

- (a) The Competitive Selection procedure shall consist of the following steps: Advertisement, issuance of instructions and tender documents, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, posting of proposal securities, evaluation of bids post-qualification, and award of contract.
- (b) The Municipal Mayor shall approve the tender documents and the draft PPP Contract before they are issued to the prospective PSPs/ bidders.
- (c) The MUNICIPAL reserves the right not to proceed with the bidding, evaluation of bids or awarding of contract notwithstanding advertisement.

SECTION 16. *Limited Negotiations* – Where the Province/Municipality –

- (a) Fails to identify an eligible PSP for a desired PPP 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/officer a vested and exclusive right over that component without which, the PPP Project cannot be implemented as envisioned.
- (c) In any case, the MUNICIPALITY reserves the right not to proceed with the negotiation, or to discontinue the same, if one has taken place.

SECTION 17. *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 qualified PSPs to enter into negotiations for a PPP project, unless there is only one qualified offer or with a unique specialization, informing all the qualified PSPs that there is more than one offer or and simultaneous negotiations are being conducted and that the PPP 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 start of the negotiations with the identified PSPs, the MUNICIPAL shall notify the public of the process. The MUNICIPAL is not bound to accept any offer or to award the contract notwithstanding the invitation for negotiation.

SECTION 18. *Competitive Challenge.* –The Competitive Challenge process shall be divided into the 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 a draft PPP Contract to the MUNICIPALITY for a projected PPP Project.
- (ii) The PPP-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 PPP contract with this Ordinance, and the appropriateness of the proposed PPP modality.
- (iii) Upon completion of the initial evaluation, the Municipal Mayor, upon recommendation of the PPP-SC, shall either issue an 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 are more than one unsolicited proposal submitted for the same PPP Project, the Mayor, upon the recommendation of the PPP-SC, may reject all proposals and pursue competitive selection, or choose and 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 PPP 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 Project as agreed upon.
- (iii) The issuance of the certification commences the activities for the solicitation for the comparative proposals.
- (iv) However, should negotiations not result to an agreement not 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 PPP Modalities or subject the PPP Project to a Competitive Selection.

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

- (i) The PPP-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.

- (ii) The Municipal Mayor shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.
- (iii) The PPP-SC shall publish the invitation for the 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 from the Original Proponent within a stated period, the PPP Project shall be awarded to the comparative PSP or challenger submitting the most advantageous proposal. If a matching offer is received within the prescribed period, the PPP Project shall be awarded to the original proponent. If no comparative proposal is received by the MUNICIPALITY, the PPP Project shall be immediately awarded to the original proponent.
- (vi) The MUNICIPALITY shall have the right not to consider or process the unsolicited proposal or not to pursue with, or to award the PPP project even after the submission of a comparative proposal or matching offer, if there be any.

Section 19. Schedules and Timelines. – The Municipal Mayor, through an Executive order, upon the recommendation of the PPP-SC, shall have the authority to adopt and prescribe the appropriate schedules and timeline for each PSP selection process: provided, that the periods are reasonable and will not undermine free competition, transparency and accountability. In the absence of such executive order, the PPP-SC may fix said schedules and timeline.

SECTION 20. PPP Contract. –

- (a) The principal PPP Contract shall describe the PPP 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 (x) hereof.
- (b) 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.

- (c) 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 factors that would cause disadvantage to government and any deviation that will cause prejudice to losing PSPs.
- (d) Any amendment to a PPP Contract, which if effected will not violate the policy on competition and fairness and does not materially affect the substance of the PPP Contract, after award and signing of contract shall undergo approval by the Municipal Mayor with prior authorization by the Sangguniang Bayan. Non-compliance with the corresponding approval process stated render the amendment null and void.

CHAPTER 4. REGULATION AND CONTRACT MANAGEMENT

SECTION 20. PPP Regulatory Authority.

- (a) There shall be created a PPP Regulatory Authority (PPP-RA), to be constituted by the Municipal Mayor, composed of the following:
 - (i) Chairperson – The Mayor or the Municipal Administrator, if so designated by the Mayor;
 - (ii) Vice-Chairperson – A member of the Sangguniang Bayan to be chosen by Sanggunian in a resolution for that purpose;
 - (iii) Municipal Legal Officer;
 - (iv) The Municipal Treasurer; and
 - (v) The Municipal Engineer.
- (b) For projects covered by government-to-government joint PPP undertakings, the collaborating or partner government entity shall have one (1) representative in the PPP-RA, Provided, that such representative shall only sit in meetings of the PPP-RA, or portions thereof, and have a vote only on matters directly affecting the PPP project covered by such joint PPP undertaking. For this purpose, government-to-government joint PPP 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 PPP projects that will benefit the MUNICIPALITY and its community even if the project site is outside the MUNICIPALITY's territory.
- (c) The PPP-RA may appoint a contract manager for a PPP project depending on the PPP 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 PPP contract. The PPP-RA shall determine the manner and source of payment for the contract manager's compensation. Provided That if a regular employee of the MUNICIPALITY shall not receive additional compensation for such appointment. The contract manager shall have a vote on matters directly affecting the PPP project that he/she is managing.
- (d) A quorum of the PPP-RA shall be composed of a simple majority of all voting members.

A support staff or technical working group may also be constituted composed of employees and personnel of the MUNICIPALITY.

- (e) The PPP-RA with the approval of the Municipal Mayor may invite third party experts to attend the meetings to act as advisory and observers. Such third party experts may represent national government agencies, regulatory agencies, NEDA, the PPP Center, the DILG, private sector, non-governmental organizations and civic groups.

SECTION 21. *Mandate* – The PPP-RA 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 PPP arrangements entered into by the MUNICIPALITY. Aside from these, the PPP-RA shall be responsible for setting and monitoring the tariff, and administering the subsidy pursuant to the PPP contract.

CHAPTER 5. ACCOUNTABILITY, INFORMATION, EDUCATION AND MONITORING

SECTION 22. *Code of Conduct* – Before commencing their functions, each member of the PPP-SC and PPP-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 legislations 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 the information in accordance with law;
- (d) not misuse his or her position and privileges of a member of the PPP-SC and PPP-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 PPP 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 PPP 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 PPP-SC and PPP-RA;
- (i) forthwith declare any conflict of interest, insofar as the PPP Project concerned that he or she may have or will have, in which case, the official or representative shall no longer be a member of the PPP-SC and PPP-RA;
- (j) not vote or act in a particular way on any matter in consideration if 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 PPP-SC or PPP-RA as the case may be, any attempted inducement that may be construed as aimed at influencing or directing his or her acts as member of the PPP-SC and PPP-RA.

SECTION 23. *Disciplinary Action* – Violation of this Code and the Code of Contract insofar as the 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 24. *Liability* – The MUNICIPALITY and its officials, in undertaking a PPP project, selecting a PSP and implementing a PPP contract shall not be exempt from liability for death or injury to persons or damage to property.

SECTION 25. *Social Accountability* – The MUNICIPALITY shall ensure, promote, and eliminate all obstacles to social accountability and allow the enhance constructive engagement or and between citizens' groups, academe, consumers, rate-payers, general public, local government units, national government agencies, regulatory agencies, and PSP.

SECTION 26. *Transparency and Right to Information* – The PPP 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, PPP-RA, and PPP-RA-MC, and other relevant documents and instruments shall be made available to the public upon request made in good faith and for lawful purpose.

SECTION 27. *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 organizations to establish a PPP monitoring, evaluation and governance audit body

functionally and fiscally independent from the MUNICIPALITY and other government institutions.

CHAPTER 6. FINAL PROVISION

SECTION 28. *Implementing Rules* – While this Code and the provisions hereof are already operative upon the Code's effectivity, the Mayor may issue the appropriate and relevant rules and regulations 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, PPP indexes and comparators, and performance scorecards.

SECTION 29. *Venue of Related Actions*. – All actions, cases or controversies arising out of or incident to a proposal, bidding, selection, negotiation and contract itself, including its implementation or regulation, shall be filed only and exclusively in the Courts of Taytay, Rizal.

SECTION 30. *Application of Other PPP Laws and Regulations* – Whenever relevant and appropriate as determined by the mayor, and in the absence of a specific provision to the contrary upon recommendation of the PPP-SC and PPP-RA, the provision of Republic Act No. 6957 as amended by R.A. No. 7718 or the BOT Law, R.A. 9184 or the Government Procurement Reform Act, Executive Order No. 301 (26 July, 1987), Commission on Audit Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the Joint Venture Guidelines adopted by the National Economic Development Authority shall apply in a suppletory manner.

SECTION 31. *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.

SECTION 32. *Repealing Clause* – All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

SECTION 33. *Effectivity* – This Code take effect fifteen (15) days after its posting in two conspicuous places within the MUNICIPALITY.

ENACTED UNANIMOUSLY by all the members present, there being a quorum, the _____, during its Regular Session at _____, Taytay, Rizal.