Republika ng Pilipinas
LALAWIGAN NG SURIGAO DEL SUR
BAYAN NG CAGWAIT

Tanggapan ng Sangguniang Bayan

**EXCERPT FROM THE MINUTES OF THE 24th REGULAR SESSION OF THE SANGGUNIANG BAYAN OF THE MUNICIPALITY OF CAGWAIT, SURIGAO DEL SUR, HELD AT THE SESSION HALL ON JUNE 23, 2026:**

**PRESENT:**

**Hon. Melchie C. Tuscano - - - - - - - - - - - - - - Municipal Vice Mayor (Presiding Officer)**

**REGULAR SANGGUNIANG BAYAN MEMBERS:**

**Hon. Armando P. Reyes**
**Hon. Joanne Socorro L. Ubongen**
**Hon. Arthur M. Sanchez**
**Hon. Amelito E. Estrada**
**Hon. Rogen P. Tabugoc**
**Hon. Joel E. Bayogbog, CE**
**Hon. Guardiano C. Lozada**
**Hon. Angelyn P. Prado**

**EX-OFFICIO MEMBERS:**

**Hon. Bernard V. Loma - - - - - - - - - - - - - -LnB Fed. Pres./SB Member**
**Hon. Princess Chewon C. Park - - - - - - - - SK Fed. Pres./SB Member**

## ORDINANCE NO. 21-26

**AN ORDINANCE ADOPTING A PUBLIC-PRIVATE PARTNERSHIP (PPP) APPROACH TOWARDS DEVELOPMENT, CREATING A PPP REGULATORY COMMITTEE, PROVIDING APPROPRIATION AND INCENTIVES THEREFORE AND FOR OTHER PURPOSES:**

**WHEREAS,** Section 20, Article II of the 1987 Philippine Constitution, states that, "the State recognizes the indispensable role of the private sector, encourages private enterprise and provides incentives to needed investments;

**WHEREAS,** Section 3, Article X of said Constitution, provides that, local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. Fiscal Autonomy means that local government have the power to create their own sources of revenues in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate resources in accordance with their priorities;

**WHEREAS,** the local government unit exists and operates in its governmental and proprietary capacities thereby making the local government unit an agent of and is therefore accountable to the State and its community;

**WHEREAS,** the local government unit 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;

**WHEREAS,** the private sector participate infrastructure development and social service related projects of the State and local government units (LGUs), through what is popularly known as Public-Private Partnership (PPP);

**WHEREAS,** Sections 34, 35 and 36 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, the LGU, in the exercise of its power may enter into a 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 financial assistance, 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;

**WHEREAS,** the Department of Interior and Local Government (DILG) Legal Opinion No. 8, series of 2014 declared that "there is no specific stature on PPP nor Guidelines on Joint Ventures for Local Government Units "and a "duly enacted local legislation (PPP Code) must be (adapted and) complied with in undertaking (its) PPP Projects";

**WHEREAS,** according the Department of Justice (DOJ) Opinion No. 18, S. 2012, "xxx local government may enact their own Public-Private Partnership (PPP) 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 LGU's 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 Propriety Powers, the Municipality is free, provided no statute or low is violated, to adopt its definition of a PPP undertaking and prescribe the requirements, procedures and conditions for the municipality's PPP and incorporate these in an operative framework; and

**WHEREAS**, having therefore this Ordinance will ensure and facilitate consistency, integrity, reliability, sustainability, accountability and transparency and enforceability;

**NOW THEREFORE:**

**BE IT ORDAINED** by the 20th Sangguniang Bayan of the Municipality of Cagwait, Province of Surigao del Sur in session assembled, that:

## TITLE I. GENERAL PROVISIONS

**SECTION 1. Short Title.** This Ordinance shall be known as the **"CAGWAIT PPP CODE OF 2026"**

**SECTION 2. Declaration of Policy.** It is hereby declared as a policy that the Municipality of Cagwait shall advance the general welfare and promote the interest of the community and the municipality within the framework of sustainable and integrated development; and shall ensure the participation of the private sector in local governance through effective and viable Public-Private Partnerships.

**SECTION 3. Operative Principles.** The following shall be the guiding principles to accomplish the stated policy.

**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 said constitution, local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. Fiscal Autonomy means that the local government have the power to create their own sources or revenues in addition to the 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 mechanism and approaches shall be integrated in PPP from inception to implementation.

**c)** The municipality exists and operates in its governmental and proprietary capacities thereby making the municipality an agent and is therefore accountable to the State and its community. The role of the municipality both as a regular 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, in a better position to address and resolve matters that are local in space.

**e)** Under Section 18, of Republic Act No. 7160 or the Local Government Code of 1991, 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 RA 7160, 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 in indispensable in the adoption and implementation of a PPP arrangement.

**g)** Under Section 22 (d) of RA 7160, the municipality enjoys full autonomy in the exercise of its proprietary functions and shall exercise the powers expressly.

**h)** Granted, those necessary implied therefrom, as well as powers necessary, appropriate, or incidental for the efficient and effective governance, those not otherwise prohibited by law and those which are essential to the promotion of the general welfare.

**i)** Under Sections 25 (b) of RA 7160, 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.

**j)** Under Section 16, 17, 19 and 129 of RA 7160 and other statutes, the Municipality has been given the responsibility and mandate to exercise devolved and delegated powers.

**k)** Under Section 106 of RA 7160, the Municipality is mandated to draw up and implement a comprehensive multi-sectoral development plan. PPPs shall be pursued by the Municipality consistent with its infrastructure, development, investment, environmental and governance framework embodied in relevant policies, plans, ordinances and codes.

**l)** The Municipality, as a partner in a PPP arrangement, may provide equity, subsidy or guarantee and use of local funds and the usage thereof for PPP projects shall be considered for public use and purpose.

**m)** Under Section 34, 35 and 36 of RA 7160 and in the exercise of its powers, the Municipality may enter into joint ventures and as 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 financial assistance or otherwise, to such people's and NGOs for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction.

**n)** Under Section 3 (l) of RA 7160, the Municipality is duty bound to ensure the active participation of the private sector in local governance.

**o)** 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 PPP under Section 28, Article II of the 1987 Constitution.

**p)** 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 guarantees and empower civil society groups to have effective and meaningful participation in the regulation and management of PPP projects.

**SECTION 4. Rationale for PPP**. In 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:

a) PPPs shall be undertaken in furtherance of the Municipality's development and physical framework plan;

b) PPP is an essential part of the over-all infrastructure reform policy of the Municipality. By encouraging performance-based management of the delivery of public services applying the commercial principle and incentives whenever is possible, by introducing competition in and for the market and by invoking users and stakeholders in the decision-making process, infrastructure and regulatory reform shall be achieved;

c) PPP should be adopted to address a pressing and urgent or critical public need. Under the principle of "Additionally," the increased economic benefits to consumer welfare of having needed public services and infrastructure accessible now because of the PPP, rather than having to wait until the Municipality could provide the public services much later. PPP would also encourage the accelerated implementation of local projects;

d) PPPs can be adopted to avoid costs and public borrowing. By contracting with the private sector to undertake a new infrastructure projects, scarce municipality capital budget can be directed to other priority sectors, such as social services, education, and health care;

e) PPPs allow for technology transfer and improved efficiency and quality of service. These could be valuable contribution of the private sector in local governance.

f) PPPs should be feasible and affordable, demonstrating the need for the project, broad level project costs estimation, and indicative commercial viability. The assessment of affordability should be the cornerstone for all PPP projects, both to the Municipality and the general public;

g) PPP 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) PPP 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) PPP 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 in the public, without necessarily being responsible for corresponding investment.
j) PPP Projects must give considerations 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 projects. The Municipality shall also ensure the hiring and employment of local labor in the PPP venture;
k) Procurement of PPP 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 designed to injure or defraud the government. Where competitive bidding cannot be applied, a competitive process ensuring transparency and economically efficient outcome must be employed;
l) The regulations of the PPP shall be pursuant to the PPP contract and exercised by the appropriate regulatory authority. A duly executive 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;
m) 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 and integrated development.

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

**a) Build-Operate Transfer (BOT) Law Scheme.** Under Republic Act No. 6957, otherwise known as Build-Operate-Transfer Law as amended by RA No. 7718, the following are the BOT variants:

1. **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 its complement, turns it over to the Municipality, which shall pay the PSP, plus a Reasonable Rate of Return thereon.
2. **Build-Lease and Transfer (BLT)** – a contractual arrangement whereby a PSP
3. 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.
4. **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 the bid, or as negotiated and incorporated in the contract, to enable the PSP to recover its

investment, and is 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. The BOT contractual arrangement shall not include a supple-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;

5. **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 reasonable returns 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 divesture or disposition of the asset or facility shall be subject to relevant rules of the Commission Audit (COA)
6. **Build-Transfer-and-Operate (BTO)** – a contractual arrangement whereby the Municipality contracts out the contraction of an infrastructure facility to a PSP such that the contractor builds the facility on a turn-key basis, assuming cost overruns, delays and specified performance risks. Once the facility is commissioned satisfactory, title is transferred to the Municipality. The PSP, however, operates the facility on behalf of the Municipality under an agreement;
7. **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;
8. **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 onto 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;\
9. **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;
10. **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 Selection or Bidding or Open Competition** – refers to a method of selection or procurement initiated and solicited by the Municipality, based on a transparent criterion, which is open to participation by any interested party;

**d) 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 turn-over thereof to it and includes operation, maintenance, management and improvement, if any, of the facility for a fixed term during which the PSP generally providing service directly to facility users and is allowed to change 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 the rules of COA;

e) **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 board of directors, officer and stakeholders and having it registered with the SEC as a stock corporation. The process involves the establishment of 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;

f) **Cost Sharing** – this shall refer to the Municipality portion of capital expenses associated with the establishment of an infrastructure, right-of-way, and any partial financing of the project;

g) **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 or limited to government guarantees on the performance of the obligation of the Municipality under its contract with the PSP, subject to existing laws on indirect guarantees.

h) **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 or project company avoids defaulting on the project loans, subject to fulfilment of the PSP or project company of its undertakings and obligations under the PPP contract;

i) **Development Projects** – projects normally financed and operated by the Municipality, 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 bee authorized by the Municipality;

j) **Direct Municipality Equity** – refers to the subscription by the Municipality of shares of stock or other securities convertible to shares of stocks of the special purpose vehicles or single-purpose project company, whether such subscription will be paid by money or assets;

k) **Direct Municipality 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;

l) **Direct Municipality Subsidy –** refers to an agreement whereby the Municipality shall: (a) defray, pay or shoulder a portion of the PPP project cost of the expenses and cost 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; (d0 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) **Development 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, stakeholders assessment, human resource assessment, bankability assessment, legal viability assessment, PPP mode selection, market testing if relevant, indicative transaction implementation plan and draft PPP contract. The study maybe supported by the results of the appropriate "willingness-and-stability-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) **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 of all of the foregoing. The Municipality shall be a minority equity or stakeholder 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 JV share risks to jointly undertake and 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 posting 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 lossess, 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 the lease, the PSP retains revenue collected from customers and makes a specified lease payment the 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 COA;

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 services fee during the contract term;

s) **Negotiated projects –** refers 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;

t) **New Technology –** refers to having at least one of the following attributes:

1. **A** recognize 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, extent economic life, reduce costs of facility maintenance and operations:

2. Reduce negative environmental impact or social/economic disturbances or disruptions during either the project implementation/construction phase or the operation phase; or
3. 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
4. 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)** – 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 refutable 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)** – is a form of legally enforceable contract between the Municipality and a Private Sector Proponent (PSP), 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 of delivering a service provides or intended to be provided by the Municipality. PPP shall also include disposition of an asset, facility project owned, or entity created by the Municipality to a PSP; procurement of a service; assumption by a PSP of a proprietary function of the Municipality; grant of a concession or franchise to a PSP by the Municipality; or usage by the PSP of property owned or possessed by the Municipality.
Alternatively, a PPP is a legally enforceable contract where each party assumes specified functions, bears certain risks, provides contribution or renders some obligation, and earns benefits and revenues from the PPP arrangement.

w) **PPP Contract** – whenever appropriate, the PPP Contract shall contain the Preambulatory Clauses or Whereas Clauses, Party Clause, Rules of Interpretation, Nature of 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 Mechanisms, 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;

x) **Reasonable Rate of Return (RROR)** – refers to rate of return that a PSP shall be entitled to, as determined by the PPP Regulatory Authority (PPP-RA) 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 and contributions extended for the project;

y) **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;

z) **Unsolicited Proposal** – refers to project proposals submitted by a PSP to the Municipality to undertake a Development Projects without a formal solicitation issued by the Municipality;

**aa)** **Value of Money (VFM)** - refers to the concept that over the whole-life of a project finance PPP 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 monetary factors such as; (i) reduced whole life costs; (iii) sped of implementation; and (iv) reliability of service.

**bb)** **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 group of users; or any financial support in the form of grants or assistance, one time or deferred them commercially viable.

**SECTION 6. Rules of Interpretation.** This Code and the provisions hereof shall be liberally interpreted to accomplish the policy and objectives set forther in Section 2, 3, and 4 hereof.

**SECTION 7. 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 PPP Modalities.
b) In pursuing BOT and its variants, the Municipality shall comply with Republic Act No. 6957 as amended by Republic Act No. 7718 (BOT Law0 and its Implementing Rules and Regulations (IRR).
c) In entering into Management and Service Contracts, the Municipality shall comply with Republic Act No. 9184 or the Government Procurement and Reform Act (GPRA) and its Implementing Rules and Regulations (IRR).
d) For Dispositions, COA circular No. 89-296 (January 27, 2989) shall govern.
e) For Corporatization, the incorporation of the corporation must be done in accordance with the Corporation Code of the Philippines.
f) For Joint Ventures, the Law on partnerships of the Civil Code of the Philippines may be applicable.
g) For Leases and affermages, the Law on Leases of the Civil Code of the Philippines may be referred to.

## CHAPTER 2

## PPP[ PROJECTS AND PPP MODALITIES

**SECTION 8. PPP Projects.**

a) The Municipality through the appropriate and viable PPP mode, may undertake Development Projects, including but not limited to, energy or power, plants, renewed hydropower projects, desilting, dredging, water supply and/or distribution, water conservation such as impoundment areas and rain water harvesting, sewerage, irrigation, telecommunications, railroad and railways, transport systems, intermodal and multi-modal transport terminals, land reclamation projects, industrial estates or townships, industrial estates, convention centers, central business districts, hotels and resorts, low-cost housing, settlement/resettlements and relocation facilities, public parks, pocket public parks, sports facilities, public libraries, Heritage Conservation, residential subdivision or housing, government buildings, tourism projects, ecotourism, agri/agro tourism, public markets, slaughterhouse, warehouses, cold storage, commercial buildings, solid waste management, sanitary landfills, information technology networks and database infrastructure, education and health facilities, social services, sewerage, drainage, dredging, mining, prisons, climate change adaptation, disaster risk reduction projects and hospitals. The Municipality can also undertake PPP for any of the developed activities under Section 17 of Republic Act No. 7160 or LGC of 1991.

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.
c) Parties to PPP arrangements shall undertakes an activity in order to accomplish either an integrated or multi-use arrangement or specific goal or purpose with the end of serving the public good or generating revenues.

**SECTION 9. List of Priority Projects.** The Municipality shall identify specific priority projects that may be undertaken under any of the PPP Modalities under Section 10 hereof.

**SECTION 10. PPP Modalities.** In undertaking a specific PPP Project, this Municipality may adopt and purse any of the following Modalities and provide 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) Concession Agreement;
k) Joint Venture;
l) Lease or Affermage;
m) Management Contract;
n) Service Contract;
o) Divestment or Disposition;
p) Corporation; and
q) Any other modify akin to the above or features thereof which falls under the alternative definition of a PPP under Section 5 (u) hereof.

**SECTION 11. General Requirements.** These are the general requirements for the Municipality in entering into PPPs:

a) Undertaking a PPP 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 variants shall be submitted for confirmation to the Municipality Development council (MDC) for project costing above twenty up to Fifty Million Pesos; above Fifty Million up to Two Hundred Million Pesos to the Regional Development Council (RDC); 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 proposal any of the BOT variants, unless involving a new concept or technology; provided, that for any other PPP modalities, unsolicited proposals may be accepted even if the project is included in the list of Priority Projects or weather the same features a new concept or technology or not.

d) The prohibition for extending Direct Municipality Guarantee, Direct Municipal Subsidy and direct Municipality only applies to unsolicited proposals for BOT variants under republic Act No. 6957 as amended by Republic Act No. 7718.
e) For a BOT that will be subjected to bidding, Concession Agreements, Lease or Affermage, Management and Service Contracts and joint Ventures, the Municipality may provide Direct Municipality Guarantee, Direct Municipality Subsidy, Direct Municipality Equity or Viability Gap Funding; provided, that the Municipality can use a portion of its general fund, the development fund comprising twenty percent (20%) of its annual share in the National Tax Allotment (NTA), and/or its equitable share in the proceeds of the utilization and development of the national wealth found within the 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 Section 287 and 294 of the 1991 Local Government Code respectively.
f) For all PPP Modalities, the Municipality may provide Credit Enhancements and Cost-Sharing schemes.
g) Official Development Assistance (ODA) as defined in republic Act No. 8182, otherwise known as the ODA Act of 1996 as amended by Republic Act No. 8555, may be availed of for PPP projects where is difficulty in securing funds, provided, that ODA financing shall not exceed fifty percent (50%) of the project cost, with the balance to be provided by the PSP.
h) Any subsidy to the constituents that will be extended by the Municipality must be targeted, transparent and efficiently administered.
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 other appropriate scheme.
j) For negotiated contracts for BOT variants for public utility project which are monopolies, the rate of return on rate basis shall be determined by existing laws, which in no case shall exceed twelve per centrum (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 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. 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 Local Government Code, exercise police power, perform devolved powers, power to apply and generate resources, expropriate and reclassify and enact or integrate zoning ordinance.
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 partners 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:

1. The Municipality may allocate a portion of its NTA, 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 and special funds, if appropriate, as its contribution or share in the JV activity. This may be the actual or current funds, or future or monetized value of these funds of the Municipality.
2. The Municipality may contract a loan, avail of Official Development Assistance (ODA), secure grants, issue bonds, debentures, securities, and notes the proceeds of which can be earmarked for the JV activity.
3. On the part of the Municipality, in addition to the foregoing contributions, it may extend goodwill, free carry, grant 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 ordinance.
4. 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.
5. 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.
6. 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.
7. 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 and functions to each JV party, provided that, the agreed percentage share is maintained and that joint governances to ensured where the Municipality shall have representation in the governing structure based on in proportionate share at the minimum.
8. 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.
9. 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 risks and percentage loss than what it contributes to the JV arrangement.
10. 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.
11. 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.

12. 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 to the PSP of JV partner. The divestment or disposition may take place at the end of the JV period or before the term ends.

p) 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.
q) 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 not be subject to audit by a private auditing firm.
r) 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 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 PPP modality.

## CHAPTER 3
## PPP PROCEDURES AND PPP CONTRACT

**SECTION 13. PPP Procedures.** The following procedures shall apply:

a) For BOT variants, the Municipality must comply with the procedures set forth in Republic Act No. 6957 as amended by Republic Act No. 7718 and its IRR
b) For Management and Service Contracts, the Municipality shall comply with Republic Act No. 6957 as amended by Republic Act No. 7718 and its IRR;
c) For concessions, Joint Ventures and Leases or Affermage, the procedures specified herein shall govern;
d) For Divestment of Disposition of a property, COA Circular No. 89-296 (January 27, 1989) shall be applicable;
e) 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);
f) If the Municipality opts to select a PSP using either Competitive Selection or Competitive Challenges, the Municipality in the Competitive Selection 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;
g) All recommendations of the PPP Selection Committee shall be submitted to the Municipal mayor for consideration and approval;
h) All PPP contracts must be signed by the Municipal Mayor with prior authorization by the Sangguniang Bayan;

i) During the consideration of the PPP ?Contract by the Sangguniang Bayan, a public consultation shall be conducted explaining the PPP Project, PPP Contract, accountability mechanisms built into the PPP arrangements, the benefits and costs of the PPP Project, among other relevant matters.
j) After the signing of the PPP contract by the Municipal Mayor, PPC-SC shall issue the Notice of Award to the PSP.
k) While the PPP Contract is already valid, perfected and enforceable, it may be submitted for judicial, executive or administrative confirmation from the Courts or appropriate government institutions.

**SECTION 14. PPP Selection Committee. (PPP-SC).**

a) There is hereby created a PPP Selection Committee (PPP-SC) for purposes of selecting a PSP for the specific PPP Project. The PPP-SC shall be composed of the following:

    1) Chairperson – at least a third (3rd) ranking officer of the Municipality;
    2) Secretary – Municipal Administrator/Municipal Legal Officer;
    3) The Municipal Treasurer;
    4) The Municipal Planning & Development Officer;
    5) One (1) representative from the Sangguniang Bayan preferably from Committee on Laws, Rules and Ordinances;
    6) Two (2) representatives chosen by the Mayor from the Municipality's accredited CSOs, POs and NGOs;
    7) One (10 Technical Officer knowledgeable with technical aspects or requirements of the project, duly designated and appointed by the Municipal mayor on a project to project basis as non-voting member;
    8) One (1) Technical Officer knowledgeable with aspect or requirements of the project from concerned regulatory body when applicable, to be designated and appointed by the Mayor on a project basis as a non-voting member;
    9) One (1) public officer knowledgeable in finance to be appointed by the Mayor as a non-voting member;
    10) One (1) public officer knowledgeable in the management/operation of the project to be appointed by the Mayor as a non-voting member.

A quorum of the PPC-SC shall be composed of a simple majority of all voting members. The Chairperson shall vote only 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, COA, Regulatory Agencies, NEDA, DILG and the private sector to observe in the proceedings of the PPP-SC and form a support staff composed of employees and staff of the Municipality. Observers will be notified or invited to join two (2) calendar days before the following stages: pre-bid conference, opening of bids, contract award and special meetings of the Selection Committee. The absence of observers will not nullify the PPP-SC proceedings, provided they have been duly invited in writing.

b) The PPP-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 document, 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 eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge process, 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 and 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.

**SECTION 15. Competitive Selection.**

a) The Competitive Selection procedure shall consist of the following steps:

1) Advertisement;
2) Issuance of instructions and tender documents;
3) Conduct of pre-bid conferences;
4) Eligibility screening of prospective bidders;
5) Receipt and opening of bids;
6) Posting of proposal securities;
7) Evaluation of bids;
8) Post-qualification; and
9) Award and Contract.

b) The Municipal Mayor shall approve the tender documents and the draft PPP Contract before they are issued to the prospective PSPs/bidders.

**SECTION 16. Limited Negotiations.** Where the Municipality fails to identify and 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 where the desired PPP project is the subject of an unsolicited proposal and financial aspects of the PPP 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 for the Competitive Selection are complied with. The Mayor shall approve the terms of the Limited Negotiations prior to the award of the Contract to the PSP.

**SECTION 17. Competitive Challenge.** The Competitive Challenge process shall be divided into three (3) stages, describe as follows:

a) **<u>Stage One</u>**: Unsolicited Proposal. The steps are:

1) A PSP submits an unsolicited proposal accompanied by a Feasibility of Project Study to the Municipality for a projected PPP Project.
2) The PPP-SC shall make an initial evaluation of the proposal and determination of the eligibility of the PSP.
3) Upon completion of the initial evaluation, the Mayor, upon recommendation of the PPP-SC, shall either issue a certificate of acceptance or non-acceptance of the proposal for purposes of detailed negotiations.
4) If there is more than one (10 unsolicited proposal submitted for the same PPP Project, the Municipal Mayor, upon recommendation of the PPP-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 revenue to the Municipality.

b) **Stage Two**: Detailed Negotiations. The steps are:

1) The parties shall negotiate and agree on the terms and conditions of the PPP Project concerning its technical and financial aspects.
2) Once negotiations are successful, the Parties shall issue joint certification stating that an agreement has been reached and specifying the eligibility of the PSP and the technical and financial aspects of the PPP Project as agreed upon.
3) The issuance of the certification commences the activities for the solicitation for comparative proposals.
4) However, should negotiations not result top 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 PPP Modalities or subject the PPP Project to a Competitive Selection.

c) **Stage Three**: Competitive or Swiss Challenge Proper. The steps are:

1) 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. Propriety information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents.
2) The Municipal Mayor shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.
3) The PPP-SC shall publish the invitation for comparative proposals.
4) The PSP or Original Proponent shall post the proposed 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.
5) 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 superior or more advantageous offer. Should no matching offer be received within the stated period, the PPP Project shall be awarded to the comparative PSP 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.
6) In the event that the Original Proponent is not able to match the superior offer of the challenger, the winning challenge shall reimburse, within thirty (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 PPP-SC has determined that the cost is reasonable.

**SECTION 18. Schedules and Timeliness.** The Municipality shall have the authority to adopt and prescribe the appropriate schedules and timeliness for each PSP selection process, provided, that the periods are reasonable and will not undermine free competition, transparency and accountability.

**SECTION 19. PPP Contract.**

a) The PPP Contract shall be signed by the Mayor on behalf of the Municipality with the prior authorization by the Sangguniang Bayan, and the duly authorized representative of the PSP.
b) The direct and ultimate beneficiary of any PPP contract shall be the constituents of the Municipality
c) 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 (v) hereof.
d) The other ancillary contracts may include insurance contracts; loan agreements; bonds; guarantee equipment; equity arrangements; operation and maintenance contracts; and engineering, procurement and construction (EPC) contracts.

## CHAPTER 4

## REGULATIONS AND CONTRACT MANAGEMENT

**SECTION 20. PPP Regulatory Authority's (PPP-RA) Mandate.** The PPP Regulatory Authority (PPP-RA) created under this Code shall be tasked with performing contract management functions, such as partnership agreement (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.

**SECTION 21. Composition of the PPP Regulatory Authority.**

a) The membership of the PPP-RA shall be composed of the following:

1) Chairperson – Municipal Mayor
2) Vice Chairperson – Vice Mayor or a member of the Sangguniang Bayan to be chosen by the Sangguniang Bayan;
3) Two (2) representatives of the Sangguniang Bayan preferably from the Committee on Laws, Rules and Ordinances and from the Committee on Ways & Means;
4) Municipal Administrator;
5) Municipal Treasurer;
6) Municipal Engineering Office;
7) Municipal Tourism Office;
8) Municipal Planning & Development Officer;
9) Two (2) representatives chosen and appointed by the Mayor from the Municipality's accredited CSOs, POs and NGOs; and
10) These representatives shall not be the same representatives in the PPP-SC.

b) For projects covered by government to government joint PPP undertakings, the collaborating or partner government entity shall have one (10 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 a matters directly affecting the PPP project covered by such joint PPP undertaking. For the 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 of 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 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 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. The chairperson shall vote only in case of a tie.

e) The PPP-RA shall meet at least once a month or as may be necessary and, on such day, and time as it may fix.

f) The PPP-RA with the approval of the 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, Commission on Audit, the NEDA, the PPP Center, the DIULG, other private sector, non-governmental organizations and civic groups.

g) The PPP-RA may form a support staff composed of employees and personnel of the Municipality. The PPP-RA may also engage consultants.

**SECTION 22. Contract Management Manual.**

a) The Municipal Administrator/Legal Officer, Treasurer and Municipal Planning and Development Officer and one (1) of the CSOs representative of the PPP-RA, acting as the PPP-RA Manual Committee (PPP-RA-MC), shall jointly prepare a contract management manual for each executed PPP Contract, which shall serve as a guide to Municipality and its personnel in ensuring a consistent, high quality contract monitoring process that is specific for such PPP Contract.

b) The contract management manual in (a) shall be submitted to the PPP-RA, for approval within thirty (30) days from the execution of a PPP contract, provided that, for outstanding PPP contracts concluded prior to the effectivity of this Code, the contract management manual shall be submitted to the PPP-RA within one Hundred Twenty (120) days from the effectivity of this Code and the provisions of this Code shall apply *mutatis mutandis*.

c) The PPP-RA may accept, reject, or order the revision of the contract management manual at any time during the life of the PPP project, provided that any revision subsequent to the first acceptance of the contract management manual at the inception of the PPP project shall require written notice to the PSP an opportunity to be heard.

d) If the contract management manual has not been approved by the PPP-RA within seven (7) days from its submission as provided in paragraph (b), the same shall be deemed issued and approved by the PPP-RA for all purposes.

e) The PPP-RA shall evaluate each contract management manual quarterly, which shall be amended as may be necessary. Any amendment to the contract management manual shall be effective upon the approval of the PPP-RA.
f) The PPP-RA, all throughout the life of the PPP Contract, shall present, make available and explain, before and after any material action is taken, all relevant information regarding the implementation of the PPP Contract, the submission of the PSP and actions taken by the PPP-RA, to the Municipal Development Council (MDC).

**SECTION 24. Contents of the Contract Management Manual.** Each contract management manual shall include the following information:

a) A description of the PPP project and its history;
b) A summary of the key terms of the PPP Contract;
c) Roles and responsibilities of each member of the PPP-RA, and other Municipal personnel and contractors, as applicable. Who are involved in the PPP 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 25. Post-Award Conference.**

a) Immediately after the PPP contract is awarded, the PPP-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 PPP Contract, and to determine the responsibilities of parties. Notice of the post-award conference shall be sent by the PPP-RA chairperson at least five (50 working days before the scheduled date thereof.
b) The post-award conference shall be attended by the members of the PPP-RA, such employees and contractors of the Municipality that will be involved in the management of the PPP contract, and key personnel of the PSP.
c) The PPP-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 26. PPP-RA Office and Human Resource Complement.** The PPP-RA shall have a duly designated office to be identified by the Municipal Mayor to serve as its focal point where the conduct of its affairs will be formulated including its records management by liaisoning.

There shall also be a designated Secretariat to assist the PPP-RA in all of its activities. The Municipal Mayor may provide for at least three (3) support staff to the Secretariat but the designated Chief Secretariat shall be a permanent appointee in either the first or second level to properly ascribe responsibility and date privacy.

The PPP-RA may also engage consultants hired pursuant to law.

**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 duties. The independent contractors may be engaged in the absence of a 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 PPP contract. Such contractor shall:

    1) Have at least two (2) understudies; and
    2) Provide a training program for personnel in his field of specialization, with such training being done regularly during office hours.

b) During the conduct life, the personnel shall undergo such continuous training on contract monitoring the ensure that the municipality is equipped to monitor reliability the PSPs performance over the entire life of the PPP contract.

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

a) Each party's governance structure, including the overall system of the 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 of resolving disputes between the parties, identifying, among other 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 of Service Delivery.** The contract management manual shall identify measures to ensure that the services of goods provided by the PSP are in accordance with the standards and prices agrees in the PPP contract. Such measure shall include:

a) An identification of risks under the PPP 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 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 demonstrate key performance indicators that demonstrate evidence of poor, satisfactory or non-performance by the PSP, taking into consideration the cost 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:

1) 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;
2) Requirement and standards to be used to monitor PSP performance;
3) Procedures and guidelines for measuring customer satisfaction and mechanisms to solicit end user feedback;
4) Submission of regular, accurate, and timely reports by the PSP, personnel or the contract manager, as applicable, to the PPP-RA detailing performance monitoring efforts and the types of information that should be included in such reports;
5) Municipality access to PSP records to allow personnel to verify the information that the PSP reports to them and to ensure that funds are expended properly ;
5) Random inspections of PSP records and on-site monitoring visits; and regular meetings with the PSP to review progress, discuss problems and consider necessary changes.

d) A performance review and corrective action 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 include;

a) Systems and procedures for variation management, the roles and responsibilities of municipality personnel, and reportorial requirements for each event of proposed or successful contract violation;
b) A system for contract maintenance, identifying key contract deliverables, and schedules as well as trigger events; and
c) Systems and procedures 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 requirements of the contract.

**SECTION 31. Closeout Procedures.** Formal, written closed out procedures shall be included in the contract management plan to ensure that all goods and services have been delivered satisfactorily, all properties are disposed accordingly, all properties are returned, and all amounts dues under the PPP contract have been paid.

**SECTION 32. Post-Contract Review.** A post-contract review shall be conducted at the end of the contract period, which shall include a post- contract analysis, evaluation, and reporting of the PPP project, the PSPs performance, and the Municipality's contract management system. The post-contract review shall likewise include financial audit of the entire PPP project and determination of lessons learned, Municipality's policies and procedures shall be updated where requirted. Notwithstanding the requirement herein, the PPP 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 PPP shall act as the administrator of documents and correspondence relating to the PPP contract. The contract management manual shall:

a) Identify the documents and correspondence that must be retained by the PPP-RA;

b) Require that all such documents be kept in both electronic and proper format during contract life of such period as may be required under applicable lkaws; 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 PPP-SC, 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 legislation and regulations;
b) Act all times with fidelity, honesty, integrity and in the best interest of the Municipality and its constituents;
c) Recognize the public's right to access to information in accordance with the law;
d) Not misuse his/her position and previleges 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 the 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 judgement;
g) Forthwith report to the appropriate authorities any act of negligence, gfraud, 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 (4th) 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 potential conflict of interest, in so ar as the PPP Project is 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 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 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 a member of the PPP-SC and PPP-RA

**SECTION 35. Disciplinary Action.** Violation of this Code and the Code of Conduct, insofar as municipal elective officials are concerned, shall constitute a ground for disciplinary action or amount to loss of confidence under the 1991 Local Government Code, and with regard to 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, 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 damages 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, the general public, the Municipality, national government agencies, regulatory agencies, and the PSP

**SECTION 38. Transparency and Right to Information.** The PPP Contract, bidding documents, terms of reference, results of the PSP Selection Process, and other relevant documents shall be posted in conspicuous places of the Municipality and uploaded on a dedicated website of the PPP-RA, which can be freely accessed by the public. The Municipality shall also implement and maintain a strategic communication and media plan addressed to all stakeholders.

**SECTION 39. Capacity - Building Program.**

a) The Municipality shall design and implement a continuing education and capacity-building program on PPP's for ots officials and members of the PPP-SC and PPP-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 PPP ventures of the Municipality and allowing them to participate in the overall PPP program of the Municipality;
c) The Municipality may tap consultant6s to assist them in implementing PP's and in building capability fo PPP's.

**SECTION 40. Monitoring and Governance Audit Program.** The Municipality, in order to ensure transparency and accountability, shall encourage CSOs, POs, NGOs, and civic groups to establish a PPP monitoring, evaluation, and governance audit body that is 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 PPP Center shall extend technical and financial assistance to the Municipality, and such assistance shall be embodied in a memorandum of understanding or agreement

**SECTION 42. Appropriations.** To carry out the provisions of the Code and for the continuous implementation of the Code, a certain amount shall be included in the Annual Budget of the Municipality to include, but not limited to, the provision of the funding appropriation for all personnel hired for the purpose and other complementary benefits and remunerations, subject to prevailing accounting rules and regulations.

**SECTION 43. Alternative Dispute Resolutions.** All PPP contracts of the Municipality shall include a provision on the use of an Alternative Dispute Resolution (ADR) mechanism in resolving disputes arising from the PPP contract. All controversies in connection with PPP 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 appropriate and relevant rules and regulations for the implementation of the Code or this provision, including the issuance of relevant mechanisms to ensure competition, manuals, guidelines, sample contracts and bid documents, PPP indexes and comparators, and performance scorecards.

**SECTION 45. Application of Other PPP Laws and Regulations.** Whenever appropriate, as determined by the Municipal Mayor, and in the absence of specific provisions to the contrary, upon recommendation of the PPP-SC and PPP-RA, as the case may be, the BOT Law, the GPRA, Executive Order No. 301 (July 26, 1987), COA Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the JV guidelines adopted by NEDA, shall apply in a supplementary manner.

**SECTION 46. Separability Clause.** If for any reason, any section or provision of this Code or any part thereof, or the application of such section or provision or portion, is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

**SECTION 47. Repealing Clause.** All ordinances and resolutions, or parts thereof, inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

**SECTION 48. Effectivity.** This Ordinance shall take effect upon the approval of the Municipal Mayor.

Adopted and approved this 23rd day of June 2026 authored by Hon. Guardiano C. Lozada and co-authored by Hon. Joanne Socorro L. Ubongen.

Unanimously Approved

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I HEREBY CERTIFY to the correctness of the above-quoted ordinance.

**ALAN A. CABRERA**
Secretary to the Sanggunian

ATTESTED:

**MELCHIE C. TUSCANO**
Municipal Vice Mayor
Presiding Officer

APPROVED:

**GLENN G. BATIANCILA, REE**
Municipal Mayor

Date of Approval: 7/17/2025