

Republic of the Philippines  
PROVINCE OF NEGROS ORIENTAL  
City of Bayawan  
Office of the Sangguniang Panlungsod

EXCERPT FROM THE MINUTES OF THE REGULAR SESSION HELD BY THE CITY COUNCIL OF BAYAWAN, NEGROS ORIENTAL ON NOVEMBER 10, 2015 AT 2:00 PM AT THE SP SESSION HALL.

RECORD OF ATTENDANCE

HON. MARK FIDENCIO L. AURELIA	(Presiding, Vice Mayor)	Present
HON. PETER PAUL F. RENACIA		Present
HON. MARK ANTHONY A. DUQUE		Present
HON. LUIS J. SUMALPONG		Present
HON. ERNESTO T. TIJING		Present
HON. SHARLOU F. JAMIN		Present
HON. DANILO G. LAMIS		Present
HON. JONAS M. TRIAS		Present
HON. ALEX D. TIZON		Present
HON. HENRY E. CARREON, JR.		Present
HON. NARCISO N. CASIPONG	(LNMB Vice President)	On Leave

RESOLUTION NO. 817

“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, the private sector participates in infrastructure, development and social service-related projects of the State and local government units (LGUs) through what is popularly known as Public-Private Partnerships (PPPs);

“WHEREAS, the Department of Interior and Local Government (DILG) Legal Opinion No. 8, S. 2014 declared that “there is no specific statute on PPP nor guidelines on joint ventures for local governments” and that a “duly enacted local legislation (PPP Code) must be complied with in undertaking (its) PPP projects.”

“WHEREAS, according to the Department of Justice (DOJ) Opinion No. 18, S. 2012, “xxx local governments 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 LGUs’ discretion xxx is consistent with the state policy of local autonomy and is in line with the operative principle of decentralization and the national goal of propelling social and economic growth and development through the active participation of the private sector”;

“WHEREAS, in furtherance of and consistent with local autonomy, fiscal autonomy, the principle of subsidiarity, public good and welfare, general welfare, and full autonomy over proprietary powers, the City is free, provided no statute is violated, to adopt its definition of a PPP undertaking and prescribe the

requirements, procedures and conditions for City 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, on motion of Honorable Councilor Mark Anthony A. Duque and duly seconded by Honorable Councilor Luis J. Sumalpong, the Council

“RESOLVED, To enact, as it hereby enacts an ordinance, to wit:

Ordinance No. 56

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

Be it ordained that:

**Chapter 1. Basic Principles and Definitions**

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

**Sec. 2. Declaration of Policy.** – (a) It is hereby declared as a policy that the City of Bayawan shall advance the public good and general welfare, and promote the interest of the community and the City within the framework of sustainable and integrated development, and effective constructive engagement and meaningful people’s participation in local governance.

(b) PPPs shall be pursued by the City consistent with and in furtherance of the vision and mission of the City which state that:

**VISION:** By 2020, Bayawan is the top agi-tourism city in the Philippines

**MISSION:** To improve the quality of life of Bayawanons by ensuring the provision of excellent public services and programs to constituents, investors and visitors, thereby making Bayawan a competitive and livable city.

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

(a) The City, pursuant to Sections 1, 2 and 5, Article X of the 1987 Constitution, is a territorial and political subdivision which enjoys local autonomy and fiscal

autonomy. Under Section 3, Article X of the 1987 Constitution, local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities.

- (b) The general welfare and the public good shall always be promoted and that transparency, public accountability and social accountability mechanisms and approaches shall be integrated in PPPs from inception to implementation.
- (c) The City exists and operates in its governmental and proprietary capacities thereby making the City an agent of and is therefore accountable to the State and its community. The role of the City both as a regulator of a business and as implementer of a proprietary undertaking must be clearly delineated.
- (d) The City must develop into a self-reliant community, and as such, is in a better position to address and resolve matters that are local in scope. The City is under the supervision of the President and under the qualified control of Congress.
- (e) Under Section 18 of the of Republic Act No. 7160 of the Local Government Code of 1991 (1991 LGC), City may acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes.
- (f) Under Section 22 (c) of the 1991 LGC, no contract may be entered into by the City Mayor on behalf of the City without prior authorization by the Sangguniang Panlungsod. The participation of the Sanggunian is indispensable in the adoption and implementation of a PPP arrangement.
- (g) Under Section 22 (d) of the 1991 LGC, City 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.
- (h) Under Section 25 (b) of the 1991 LGC, the City may collaborate or cooperate with other local governments, national government agencies, government-owned and controlled corporations, government instrumentalities and government corporate entities for the implementation of local projects.
- (i) Under the charter of the City, Sections 16, 17, 19 and 129 of 1991 LGC and other statutes, the City has been given the responsibility and mandate to exercise devolved and delegated powers.
- (j) The City, under Section 106 of 1991 LGC, is mandated to draw up and implement a comprehensive multi-sectoral development plan. PPPs shall be pursued by the City consistent with its infrastructure, development, investment, environmental and governance framework embodied in relevant policies, plans, ordinances and codes.

- (k) The City, as a partner in a PPP arrangement, may provide equity, subsidy or guarantee and use local funds; and the usage thereof for a PPP project shall be considered for public use and purpose.
- (l) Under Sections 34, 35 and 36 of the 1991 LGC and in the exercise of its powers, the City may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations (POs and NGOs) 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 POs and NGOs for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction.
- (m) The City, under Section 3 (l) of the 1991 LGC, is duty-bound to ensure the active participation of the private sector in local governance.
- (n) The right of the people to information on matters of public concern is guaranteed under Section 7, Article III of the 1987 Constitution. Furthermore, it is the policy of the State to allow full public disclosure of all its transactions involving public interest such as PPPs under Section 28, Article II of the 1987 Constitution.
- (o) The people's right to effective and reasonable participation and public trust provision under Section 16, Article XIII and Section 1, Article XI, respectively, of the 1987 Constitution guarantee and empower civil society organizations (CSOs) to have effective and meaningful participation in the regulation and management of PPP projects.

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

- (a) PPPs shall be undertaken in furtherance of the City development and physical framework plan.
- (b) PPP is an essential part of the overall infrastructure reform policy of the City. By encouraging performance-based management of the delivery of public services applying commercial principles and incentives whenever possible, by introducing competition in and for the market, and by involving users and stakeholders in the decision-making process, infrastructure and regulatory reform shall be achieved.
- (c) PPPs should be adopted to address a pressing and urgent or critical public need. Under the principle of "Additionality," the increased economic benefits to consumer welfare of having needed public services and infrastructure accessible now because of the PPP, rather than having to wait until the City 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 project, scarce City capital

budgets 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 shall be the cornerstone for all PPP projects, both to the City 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 City remains responsible for services provided to the public, without necessarily being responsible for corresponding investment.
- (j) PPP Projects must give consideration for empowerment of Filipino citizens as a strategy for economic growth and sustainability and must thus provide for the participation of local investors to the furthest extent practicable given the nature of the project. The City 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 not designed to injure or defraud the government. Where competitive bidding cannot be applied, a competitive process ensuring both transparency and economically efficient outcome must be employed.
- (l) The regulation of the 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 City Mayor, PPP-SC, Sangguniang Panlungsod pursuant to this Ordinance shall be continued by the successor Administration. Any amendment or revision to this Ordinance by the next Administration shall not in any way prejudice vested and contractual rights of the City and the PSPs as to the substance of agreements signed, certifications issued, resolutions issued and procedures undertaken.

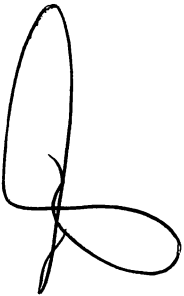
- (m) To provide efficient public service, the City must ensure, through stronger performance management and guidance, proper implementation of PPP contracts that will result in value for money, on-time delivery of quality services to the public, achievement of government policy goals, all within sustainable and integrated development.

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

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

- (i) *Build-and-Transfer (BT)* - A contractual arrangement whereby the Private Sector Proponent (PSP) undertakes the financing and construction of a given infrastructure or development facility, and after its completion, turns it over to the City, 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 City on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the City.
- (iii) *Build-Operate-and-Transfer (BOT)* - A contractual arrangement whereby the PSP undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The PSP operates the facility over a fixed term, during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid, or as negotiated and incorporated in the contract, to enable the PSP to recover its investment, and its operating and maintenance expenses in the project. The PSP transfers the facility to the City 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 City so requires, operates the facility, providing, in the process, technology transfer and training to Filipino nationals.
- (iv) *Build-Own-and-Operate (BOO)* - A contractual arrangement whereby a PSP is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the PSP is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges from facility users. Under this project, the proponent who owns the assets of the facility may assign its operation and maintenance to a facility operator. The divestiture or disposition of the asset or facility shall be subject to relevant rules of the Commission on Audit (COA).

- (v) *Build-Transfer-and-Operate (BTO)* - A contractual arrangement whereby the City contracts out the construction of an infrastructure facility to a PSP such that the contractor builds the facility on a turnkey basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the City. The PSP, however, operates the facility on behalf of the City 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 City 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 a new infrastructure project to be built by a PSP are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates, such as higher property or rent values.
- (viii) *Rehabilitate-Operate-and-Transfer (ROT)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the City.
- (ix) *Rehabilitate-Own-and-Operate (ROO)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.
- (b) *Competitive Challenge or Swiss Challenge* - An alternative selection process wherein third parties or challengers shall be invited to submit comparative proposals to an unsolicited proposal. Accordingly, the PSP who submitted the unsolicited proposal, or the original proponent, is accorded the right to match any superior offers given by a comparative PSP.
- (c) *Competitive Negotiations* - Refers to a process where the City 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* - Refers to a method of selection or procurement initiated and solicited by the City, based on a transparent criteria, which is open to participation by any interested party.
- (e) *Concession* - A contractual arrangement whereby the financing and construction of a new facility and/ or rehabilitation of an existing facility is undertaken by the PSP after turnover thereof to it, and includes the operation, maintenance, management and improvement, if any, of the facility for a fixed term during which the PSP generally provides service directly to facility users and is allowed to charge and collect the approved tolls, fees, tariffs, rentals or charges from them. The City may receive a concession or franchise fee during the term of the contract and/or other consideration for the transfer, operation



or use of any facility. There may be a transfer of ownership of the asset or facility after the concession period has ended subject to rules of the COA.

- (f) *Corporatization* - Refers to transformation of a wholly- or majority-owned subsidiary of or quasi-municipal corporation established by the City 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 City's role is clearly identified as owner; segregation of the company's assets, finances, and operations from other City operations; and development of a commercial orientation and managerial independence while remaining accountable to the government or electorate.
- (g) *Cost Sharing* - This shall refer to the City portion of capital expenses associated with the establishment of an infrastructure development facility such as the provision of access infrastructure, right-of-way, and any partial financing of the project.
- (h) *Credit Enhancement* - This shall refer to direct and indirect support to a development facility by the PSP and/or City, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the PPP contract. Credit enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved. Credit enhancements may include but are not limited to government guarantees on the performance or the obligation of the City under its contract with the PSP, subject to existing laws on indirect guarantees. Indirect Guarantees shall refer to an agreement whereby the City assumes full or partial responsibility for or assists in maintaining the financial standing of the PSP or project company in order that the PSP/ project company avoids defaulting on the project loans, subject to fulfillment of the PSP/ project company of its undertakings and obligations under the PPP contract.
- (i) *Developmental Projects* - City Projects normally financed and operated by the City, but which will now be wholly or partly financed, constructed and/ or operated by the PSP; projects that will advance and promote the general welfare and public good; projects and activities that will be responsive to the needs of the communities; projects that will raise revenues for the City; projects in furtherance of devolution, deconcentration and decentralization; and other infrastructure, social-related and developmental projects as may be authorized by the City.
- (j) *Direct City Equity* - Refers to the subscription by the City of shares of stock or other securities convertible to shares of stock of the special purpose vehicle or single-purpose project company, whether such subscription will be paid by money or assets.
- (k) *Direct City Guarantee* - Refers to an agreement whereby the City 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 City Subsidy* - Refers to an agreement whereby the City 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 to the project; (d) waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/ or (e) waive charges or fees relative to the business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the PSP or operator for such payment, contribution or support.

(m) *Divestment or Disposition* - Refers to the manner or scheme of taking away, depriving, withdrawing of title to a property owned by the City 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 City in a competitive selection or a PSP when submitting an unsolicited proposal, containing or indicating a needs analysis, affordability assessment, value for money assessment, preliminary risk assessment, stakeholder assessment, human resource assessment, bankability assessment, legal viability assessment, 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* - Refers to the right or privilege affected with public interest which is conferred upon a PSP, under such terms and conditions as the City may impose, in the interest of public welfare, security and safety.

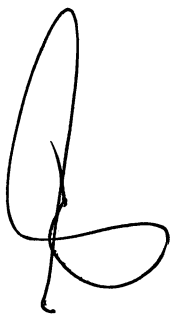
(p) *Gratuitous Donation* - A donation made by a PSP to a City whose cause is pure liberality on the part of the former and does not require from the latter any additional action other than utilizing the thing donated for the purpose agreed upon, or impose any obligation, burden, charge or future services, benefits, or concessions, or other form of grant, in order to be valid.

(q) *Joint Venture (JV)* - A contractual arrangement whereby a PSP or a group of PSPs on one hand, and the City on the other hand, contribute money/ capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing. The City shall be a minority equity or shareholder while the PSP shall be majority equity or shareholder. Each party shall be entitled to dividends, income and revenues and will bear the corresponding losses and obligations in proportion to its share. Parties to a JV share risks to jointly undertake an investment activity in order to accomplish a specific, limited or special goal or purpose with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transferring ownership of the investment activity to the PSP under competitive market conditions. It involves a community or pooling of interests in the performance of the service, function, business or activity, with each party having a right to direct and govern the policy in connection therewith, and with a view of sharing both profits and losses, subject to agreement by the parties.


(r) *Lease or Affermage* - A contractual arrangement providing for operation, maintenance, and management services by the PSP, including working capital and/or improvements to an existing infrastructure or development facility leased by the PSP from the City for a fixed term. Under a lease, the PSP retains revenue collected from customers and makes a specified lease payment to the

City. 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 City may provide a purchase option at the end of the lease period subject to rules of the COA.

- (s) *Limited Negotiations* - Refers to a process whereby the City negotiates with the PSP in instances when there is only one eligible and qualified PSP in a competitive selection process, under Stage 2 of the competitive challenge process, or when there is a prior completed competitive process.
- (t) *Management Contract* - A contractual arrangement involving the management or provision by the PSP of operation and maintenance or related services to an existing infrastructure or development facility owned or operated by the City. The PSP may be compensated by the City using the funds of the latter; or the PSP may collect tolls/ fees/ rentals and charges which shall be turned over to the City and shall be compensated in the form of a fixed fee, a share in the revenues and/or performance-based management or service fee during the contract term.
- (u) *Negotiated Projects* - Refer to instances where the desired project is the result of an unsolicited proposal from a PSP or, where the City has failed 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.
- (v) *New Technology* - Refers to having at least one of the following attributes:
  - a. A recognized process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce implementation of construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations, or reduce negative environmental impact or social/economic disturbances or disruptions during either the project implementation/construction phase or the operation phase; or
  - b. 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
  - c. A design, methodology or engineering concept for which the proponent or a member of the proponent consortium or association possesses intellectual property rights.
- (w) *Onerous Donation* - A donation made by a PSP to a City which subjects the latter to obligations, burdens, charges or future services, benefits, or concessions, or other form of grant, equal or greater in value than that of the thing donated by the donor-PSP.
- (x) *Private Sector Proponent (PSP)* - Refers to the private sector entity which shall have contractual responsibility for the project and which shall have an adequate track record in the concerned industry, as well as technical capability and financial base consisting of equity and firm commitments from reputable financial institutions, to provide, upon award, sufficient credit lines to cover the total estimated cost of the project to implement the said project.



- (y) *Public-Private Partnerships (PPP)* – 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. Specifically, it is a form of legally enforceable contract between the City and a PSP, and in certain cases, with the requiring new investments from the PSP and transferring key risks to the PSP in which payments are made in exchange for performance, for the purpose of delivering a service provided or intended to be provided by the City. PPP shall also include dispositions of an asset, facility, project owned, or entity created by the City to a PSP; procurement of a service; donations to the City; incorporation of a subsidiary with PSP equity; assumption by a PSP of a proprietary function of the City; grant of a concession or franchise to a PSP by the City; or usage by the PSP of public property owned or possessed by the City.
- (z) *PPP Contract* - Whenever appropriate, the PPP Contract shall contain the Preambulatory 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 Provisions, Force Majeure, Governmental Action, Government and Public Sector Entity (PSE) Warranties, PSP Warranties, Change in the Law, Regulatory Regime, Variations, Termination, Indemnification, Intellectual Property, Claims, Financial security, Dispute Resolution, Step-in Rights, Changes in the Composition of the PSP/ Service Provider, Partnership Management, Compliance with all Laws, Personnel, Conditions Precedent, among others.
- (aa) *Reasonable Rate of Return (RROR)* - Refers to the rate of return that a PSP shall be entitled to, as determined by the 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 City undertakings and contributions extended for the project.
- (bb) *Rehabilitate-Lease-and-Transfer (RLT)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, and upon its completion, turns it over to the City on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the City.
- (cc) *Rehabilitate-and-Transfer (RT)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, and after its completion, turns it over to the City, which shall pay the PSP, on an agreed schedule, its total investment expended on the project, plus a reasonable rate of return thereon.
- (dd) *Rehabilitate-Transfer-and-Operate (RTO)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate. Once the facility is commissioned satisfactorily, title is transferred to the City. The PSP, however, operates the facility on behalf of the City under an agreement.
- (ee) *Service Contract* - A contractual arrangement whereby the PSP shall provide a particular service to the City involving the City's proprietary authority or to entities or corporation created by the City. 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 City using the funds of the latter; or the PSP may collect tolls/ fees/ rentals and charges which shall be turned over to the City and shall be compensated in the form of a share in the revenues.

- (ff) *Subsidiary with PSP Equity* - A corporation or quasi-municipal corporation incorporated by a City and registered as a stock corporation under the Corporation Code where majority of the shares are held by a City and where a PSP is a or PSPs are minority shareholder(s) which acquire their shares through an initial public offering or other competitive means.
- (gg) *Unsolicited Proposal* - Refers to project proposals submitted by a PSP to the City to undertake Developmental Projects without a formal solicitation issued by the City whereby the negotiated terms shall be subjected to comparative proposals.
- (hh) *Value for Money (VfM)* - Refers to the concept that over the whole-life of a project finance-PPP project, government's total expenditures (i.e., its payments to the PSP), adjusted for the risks that have been transferred to the PSP, will be less, on a Net Present Value (NPV) basis, than if the government will perform the services itself. VfM considers monetary and non-monetary factors such as: (i) risk transfer; (ii) reduced whole life costs; (iii) speed of implementation; and (iv) quality and reliability of service.
- (ii) *Viability Gap Funding (VGF)* - Refers to an explicit subsidy that is performance-driven (i.e., based on private party achieving measurable outputs) and targeted to socio-economically disadvantaged users or groups of users; or any financial support in the form of grants or assistance, one time or deferred, to infrastructure projects undertaken through PPPs with a view to make them commercially viable.

**Sec. 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.

**Sec. 7. Authorities.** - (a) This Code is being adopted pursuant to the City'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 Law variants, the City shall comply with BOT Law and its Implementing Rules and Regulations.

(c) In entering into Management and Service Contracts where city funds are used, the City shall comply with Republic Act 9184 or the Government Procurement Reform Act (GPRA) and its Implementing Rules and Regulations.

(d) For Dispositions, COA Circular No. 89-296 (January 27, 1989) shall govern.

(e) For Corporatization, the incorporation of the corporation must be done in accordance with the Corporation Code of the Philippines.

(f) For Local Concessions, Leases and Affermage, Rehabilitate-and-Transfer, Rehabilitate-Lease-and-Transfer, and Rehabilitate-Transfer-and-Operate,

Management and Service Contracts where City funds are not used to procure the services of the PSP, and donations, the City ordinances policies or ordinances will be the governing instrument.

(g) For Joint Ventures, Section 35 of the 1991 LGC and Article 62 of the Implementing Rules and Regulations of the 1991 LGC shall be governing law, and Law on Partnerships of the Civil Code of the Philippines shall apply suppletorily.

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

## Chapter 2. PPP Projects and PPP Modalities

Sec. 8. *PPP Projects.* – (a) The City, 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 services such as monorail, guided bus, bus services and trams, intermodal and multi-modal transit systems, transport systems, traffic control and management, parking facilities, reclamation projects, platform settlements, industrial estates or townships, central business and industrial park development, hotels and resorts, socialized housing, non-conventional low-cost housing, settlement/ resettlement and relocation facilities, residential subdivisions, parks and open space development/ redevelopment, pocket parks, public art, libraries, heritage conservation, government buildings, sustainable/ green public buildings, sports facilities, wellness establishments, tourism such eco-tourism, wellness tourism and agri/agro-tourism, public markets, commercial buildings, slaughterhouses, storage buildings, warehouses, cold storage, solid waste management, sanitary landfills, meeting and convention centers, information technology networks and database infrastructure, education-related, classrooms, health facilities, hospitals, social services-related, prisons, agriculture-related, post-harvest facilities, environmental management and protection, climate change adaption, disaster risk reduction, among other developmental projects.

(b) The determination of the appropriateness and viability of the 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 arrangement shall undertake an activity in order to accomplish either an integrated or multi-use arrangement or specific goal or purpose with the end view of serving the public good or generating revenues.

Sec. 9. *List of Priority Projects.* – The City shall identify specific priority developmental projects that may be undertaken under any of the PPP Modalities defined under Sec. 10 hereof.

Sec. 10. *PPP Modalities.* – In undertaking a specific PPP Project, the City may adopt and pursue any of the following PPP Modalities and provide for other modalities not inconsistent with law:

1. Build-and-Transfer (BT);
2. Build-Lease-and-Transfer (BLT);
3. Build-Operate-and-Transfer (BOT);
4. Build-Own-and-Operate (BOO);
5. Build-Transfer-and-Operate (BTO);
6. Contract-Add-and-Operate (CAO);
7. Develop-Operate-and-Transfer (DOT);
8. Rehabilitate-Operate-and-Transfer (ROT);
9. Rehabilitate-Own-and-Operate (ROO);
10. Rehabilitate-Lease-and-Transfer (RLT);
11. Rehabilitate-and-Transfer (RT);
12. Rehabilitate-Transfer-and-Operate (RTO);
13. Concession Arrangement;
14. Joint Venture (JV);
15. Lease or Affermage;
16. Management Contract using City Funds;
17. Management Contract without using City Funds;
18. Service Contract using City Funds;
19. Service Contract without using City Funds;
20. Divestment or Disposition;
21. Corporatization;
22. Incorporation of a Subsidiary with PSP equity;
23. Onerous Donations;
24. Gratuitous Donations; and
25. Any other modality akin to any of the above or features thereof which falls under the alternative definition of a PPP under Section 5 (u) hereof.

**Sec. 11. General Requirements.** – These are the general requirements for the City 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 City under any of the BOT Law variants shall be submitted for confirmation to the City Development Council for projects costing above Twenty up to Fifty Million Pesos; above Fifty Million up to Two Hundred Million Pesos to the regional development councils; and those above Two Hundred Million Pesos to the Investment Coordination Committee of the National Economic and Development Authority (NEDA).

(c) Projects included in the List of Priority Projects shall not be eligible for unsolicited proposals under any of the BOT Law variants, unless involving a new concept or technology; provided, that for any of the other 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 extending Direct City Guarantee, Direct City Subsidy and Direct City Equity only applies to unsolicited proposals for BOT Law variants under the BOT Law.

(e) For BOT Law variants that will be subjected to bidding, Concession Arrangements, Leases or Affermage, Management and Service Contracts, and Joint Ventures, the City may provide Direct City Guarantee, Direct City Subsidy, Direct

City Equity, or Viability Gap Funding; provided, that the City can use a portion of its general fund, its development fund comprising 20% of its annual share in the Internal Revenue Allotment, and/or its equitable share in the proceeds of the utilization and development of the national wealth found within its territory for this purpose; provided further, that any amount used for subsidy or equity for a PPP project shall be deemed for development purposes and for the direct benefits of the inhabitants pursuant to Sections 287 and 294 of the 1991 LGC respectively.

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

(g) Official Development Assistance (ODA) as defined in R.A. 8182, otherwise known as the ODA Act of 1996, as amended by R.A. 8555, may be availed of for PPP projects where there is difficulty in sourcing funds; provided, that ODA financing shall not exceed 50% of the project cost, with the balance to be provided by the PSP.

(h) Any subsidy to the constituents that will be extended by the City 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 any other appropriate scheme.

(j) For negotiated contracts for BOT Law variants for public utility projects which are monopolies, the rate of return on rate base shall be determined by existing laws, which in no case shall exceed twelve per centum [12%].

(k) In case of a project requiring a franchise or license to operate, the winning PSP shall automatically be granted by the City 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 Mayor pursuant to the authority given by the Sangguniang Panlungsod, 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 City, provided that the total franchise period shall not exceed fifty (50) years.

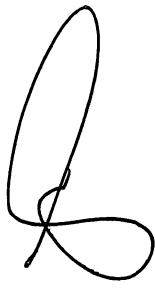
(l) The City shall have the option to form or allow the formation of a special purpose vehicle or single-purpose project company to implement the PPP project as may be appropriate under the chosen PPP Modality.

(m) In participating in PPPs, the City may, subject to Sections 16, 17, 18, 19 and 20 of the 1991 LGC, exercise police power, perform devolved powers, power to apply and generate resources, expropriate and reclassify and enact or integrate zoning ordinances.

(n) The City shall prescribe and impose Procurement Ethics to be followed by the City 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-venturers or parties to a JV shall contribute money, capital, services, personnel, assets including equipment, land, intellectual property or anything of value, or a combination of any or all of the foregoing to the JV arrangement. The contribution of the City shall be subject to third party independent valuation. Further:

- (i) The City may allocate a portion of its Internal Revenue Allotment, real property tax, development fund, regular funds, proceeds from the utilization and development of its national wealth, Special Education Fund when the JV project is education-related, Calamity Fund when the JV project is calamity- or reconstruction-related, and special funds, if appropriate, as its contribution or share in the JV activity. These may be the actual or current funds, or future or monetized value of these funds of the City.
- (ii) The City 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 City, in addition to the foregoing contributions, it may extend goodwill, free carry, grant a franchise, concession, usufruct, right-of-way, equity, subsidy or guarantee, provide cost-sharing and credit enhancement mechanisms, exercise police power, give tax incentives or tax holidays, perform devolved powers, expropriate and reclassify and enact or integrate zoning ordinances.
- (iv) The City 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 City. 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 City 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 City.
- (vi) Any cost avoidance or substantial savings that will be made by the City because of and directly attributable to the JV activity may be factored in the computation of the respective shares of the City and the PSP.
- (vii) For the utilization and development of natural resources located within its jurisdiction, the City 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 City shall have representation in the governing structure based on in proportionate share at the minimum.

- (ix) Subject to the terms of the competitive selection process and agreement of the parties, the City may be entitled to a share greater than its contribution or equity.
  - (x) 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 City 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 City 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 City.
  - (xii) The share or equity of the City 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 City 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.
- (p) Procurement made by the City 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.
- (g) The revenues, funds, expenditures and contributions of the City shall be subject to the audit examination by the COA. Revenues, funds, expenditures and contributions of the PSP shall be subject to audit by a private auditing firm.
- (h) Any subsidy, guarantee, equity or contingent liability assumed or given by the City must be reflected, disclosed and recognized in the annual appropriations of the City.



Sec. 12. *Government-to-Government Joint PPP Undertakings.* – The City 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 City's territory or those projects that will benefit the City and its community even if the project site is outside the City's territory; provided, that the collaborating or partner government entity jointly undertakes with the City the selection of the PSP using the appropriate PPP Modality.

### Chapter 3. PPP Procedures and PPP Contract

Sec. 13. *PPP Procedures.* – The following procedures shall apply: (a) For BOT Law variants, the City must comply with the procedure set forth in the BOT Law and its Implementing Rules and Regulations.

(b) For Management and Service Contracts where City funds will be used, the City 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 PSP, competitive selection, limited negotiations, competitive negotiations or competitive challenge as defined herein may be utilized to select the PSP.

(d) For onerous donations, competitive negotiations or competitive challenge as defined herein may be utilized to select the PSP. For gratuitous donations, the competitive processes mentioned herein need not be followed. However, the deed of donation must be made known to the public.

(e) For Joint Ventures, Rehabilitate-Transfer, Rehabilitate-Lease-and-Transfer and Rehabilitate-Transfer-and-Operate, competitive selection, limited negotiations or competitive challenge as defined herein may be utilized to select the PSP/ JV partner.

(f) For Divestment or Disposition of a property, COA Circular No. 89-296 (January 27, 1989) shall be applicable.

(g) For the incorporation of a subsidiary with equity from the PSP, the Corporation Code shall be followed.

(h) For the Divestiture of a subsidiary or corporation incorporated by the City under Corporatization, the sale may be pursued via a public offering or through a public auction or other relevant schemes under COA Circular No. 89-296 (January 27, 1989).

(i) If the City opts to select a PSP using either Competitive Selection or Competitive Challenge, the City in the Competitive Selection and Competitive Negotiations, and the PSP in the Competitive Challenge approach must prepare and submit a Feasibility or Project Study. The costs of preparing the Feasibility or Project Study may be reimbursed by the winning PSP to the City under the Competitive Selection mode.

(j) All recommendations of the PPP Selection Committee shall be submitted to the City Mayor for consideration and approval.

(k) All PPP contracts must be signed by the City Mayor with prior authorization by the Sangguniang Panlungsod through a resolution. The terms and provisions of the PPP contract must be approved or confirmed by the Sangguniang Panlungsod through an ordinance.

(l) During the consideration of the draft PPP Contract by the Sangguniang Panlungsod, a public consultation/ hearing shall be conducted explaining the PPP

Project, PPP Contract, accountability mechanisms built into the PPP arrangement, the benefits and costs of the PPP Project, among other relevant matters.

(m) After the signing of the PPP Contract by the City Mayor, the PPP-SC shall issue the Notice of Award to the PSP. After the required condition precedents are complied with by the winning PSP, the City Mayor, upon the recommendation of the PPP-SC, shall issue the Notice to Proceed.

(n) 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.

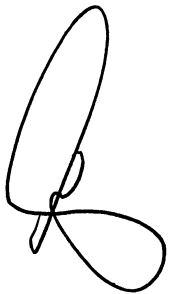
Sec. 14. *PPP Selection Committee.* – (a) There is hereby created a PPP Selection Committee (PPP-SC) for purposes of selecting a PSP for a specific PPP Project. The PPP-SC, to be constituted and convened by the City Mayor, shall be composed of the following:

- (i) Chairperson – At least a third ranking officer of the City;
- (ii) Secretary –City Legal Officer;
- (iii) The City Treasurer;
- (iv) The City Planning and Development Officer;
- (v) One (1) representative from and selected by the Sangguniang Panlungsod designated in an appropriate resolution; and
- (vi) Two (2) representatives from and chosen by the accredited CSOs, POs and NGOs who are members of the City Development Council.

A quorum of the PPP-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 City Mayor may invite provisional non-voting members from the national government agencies, regulatory agencies, NEDA, DILG, and the private sector to observe in the proceedings of the PPP-SC; and form a support staff composed of employees and staff of the City.

(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 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 eligibility and submission of proposals or comparative proposals; defining the eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge processes; pre-qualification of prospective PSPs, bidders or challengers; conduct of pre-selection conferences and issuance of supplemental notices; interpretation of the rules regarding the selection process; conduct of the selection or challenge process; evaluation of the legal, financial and technical aspects of the proposals; resolution of disputes between PSPs and challengers; defining the appeals mechanisms; and



recommendation for the acceptance of the proposal and/ or for the award of the contract.

**Sec. 15. *Competitive Selection.*** – (a) The Competitive Selection procedure shall consists of the following steps: advertisement, issuance of instructions and tender documents, conduct of pre-bid conferences, 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 City Mayor shall approve the tender documents and the draft PPP Contract before they are issued to the prospective PSPs/ bidders.

**Sec. 16. *Limited Negotiations.*** – Where the City:

(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/ offerer a vested and exclusive right over that component without which, the PPP Project cannot be implemented as envisioned,

Limited Negotiations may take place. The negotiations will cover all the technical 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 are complied with. The City Mayor shall approve the terms of the Limited Negotiations prior to the award of the contract to the PSP. Under the 2<sup>nd</sup> instance, the City shall publish a notice to the public prior to the start of the negotiations, and if pursued under Competitive Challenge, the 3<sup>rd</sup> stage as defined below may be dispensed with.

**Sec. 17. *Competitive Negotiations.*** – For concession arrangements, leases or affermage, management and service contracts where public funds are not used to procure the services of the PSP, and onerous donations and the Province/ City/ Municipality invites two or more qualified PSPs to enter into negotiations for a PPP project, unless there is only one qualified offeror with a unique specialization, informing all the qualified PSPs that there is more than one offeror 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 City. Prior to the start of the negotiations with the identified PSPs, the City shall publish the announcement.

**Sec. 18. *Competitive Challenge.*** – The Competitive Challenge process shall be divided into three (3) Stages, described as:

Stage One/ Unsolicited Proposal – The steps are:

(i) A PSP submits an unsolicited proposal accompanied by a Feasibility or Project Study and draft PPP contract to the City for a projected PPP Project.

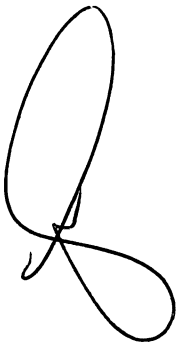
- (ii) The PPP-SC shall make a determination of the completeness of the unsolicited proposal, the eligibility of the PSP, the necessity for the proposed project, the consistency of the terms of the draft PPP contract with this Ordinance, and the appropriateness of the proposed PPP modality.
- (iii) Upon completion of the initial evaluation, the City 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. Upon the issuance of the certificate of acceptance, the PSP is *ipso facto* conferred original proponent status and no other proposal for the same project may be subjected to the competitive challenge process.
- (iv) If there is more than one unsolicited proposal submitted for the same PPP Project, the City 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 revenues to the City.

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 PPP Project as agreed upon.
- (iii) The issuance of the certification commences the activities for the solicitation for comparative proposals.
- (iv) However, should negotiations not result to an agreement acceptable to both parties, the City 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.

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 PSP 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 City 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 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 City 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 City than the original proposal, the PSP who submitted the original proposal shall be given the right to match such superior or more advantageous offer. Should no matching offer be received within the stated period, the 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 City, the PPP Project shall be immediately awarded to the original proponent.

(vi) In the event that the Original Proponent is not able to match the superior offer of the challenger, the winning challenger shall reimburse, within 30 days from issuance of the notice of award, the original proponent the cost of preparing the project study, provided, that this reimbursement arrangement and the cost of preparing of the project study are expressly stated in the terms of reference for the competitive challenge, and that the PPP-SC has determined that the cost is reasonable.

Sec. 19. *Schedules and Timelines.* – The City Mayor through an executive order, upon the recommendation of the PPP-SC, shall have the authority to adopt and prescribe the appropriate schedules and timelines for each PSP selection process: provided, that the periods are reasonable and will not undermine free competition, transparency and accountability.

Sec. 20. *PPP Contract.* – (a) The PPP Contract shall be signed by the City Mayor on behalf of the City with the prior authorization or ratification by the Sangguniang Panlungsod, and the duly authorized representative of the PSP.

(b) The direct and ultimate beneficiary of any PPP Contract shall be the constituents of the City.

(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 arrangements; equity arrangements; operations and maintenance contracts; and engineering, procurement and construction (EPC) contracts.

(e) The City 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 City or any other factors that would cause disadvantage to government and any deviation that will cause prejudice to losing PSPs.

(f) Any amendment to a 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

City Mayor with prior authorization by the Sangguniang Panlungsod. Non-compliance with the corresponding approval process stated shall render the amendment null and void. Any form of amendment may be allowed after the PPP contract has been executed, provided that, the right to amend is accorded to all bidders and challengers and specified in the tender documents, and such right is stipulated in the PPP contract. Any amendment must be approved by the Sangguniang Panlungsod through an ordinance.

(g) All laws and relevant City ordinances are read or form part of the PPP Contract, Regulation and Contract Management.

#### Chapter 4. Regulation and Contract Management

Sec. 21. *PPP Regulatory Authority's Mandate.* – The PPP Regulatory Authority (PPP-RA) created under this Code shall be tasked with performing contract management functions, such as partnership management (i.e., corporate governance, communication and information sharing, and dispute resolution), performance or service delivery management (i.e., risk management and performance management), and contract administration (i.e., variation management, contract maintenance and financial administration), for all PPP arrangements entered into by the City. Aside from these, the PPP-RA shall be responsible for setting and monitoring the tariff, and administering the subsidy pursuant to the PPP contract.

Sec. 22. *Composition of the PPP Regulatory Authority.* – (a) The membership of the PPP-RA shall be composed of the following:

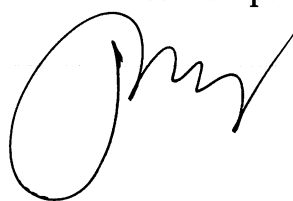
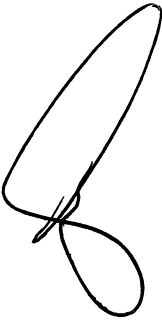
- (i) Chairperson – The City Mayor or the City Administrator if so designated by the City Mayor;
  - (ii) Vice-Chairperson – Vice-Mayor or a member of the Sangguniang Panlungsod to be chosen by the Sanggunian as evidenced by an appropriate resolution;
  - (iii) Two (2) representatives of the Sangguniang Panlungsod belonging to two (2) distinct registered political parties to which the City Mayor does not belong to chosen on the basis of proportional representation of all parties represented in the Sangguniang Panlungsod;
  - (iv) City Legal Officer;
  - (v) City Treasurer;
  - (vi) City Planning and Development Officer; and
  - (vii) Two (2) representatives from and chosen by the accredited CSOs, POs and NGOs who are members of the City Development Council. 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 (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 City 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 City and its community even if the project site is outside the City'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 City 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 with the approval of the City Mayor may invite third party experts to attend its meetings to act as advisors and observers. Such third party experts may represent national government agencies, regulatory agencies, the NEDA, the PPP Center, the DILG, private sector, CSOs, POs and NGOs.
- (f) The PPP-RA may form a support staff composed of employees and personnel of the City. The PPP-RA may also engage consultants hired pursuant to law.

Sec. 23. *Contract Management Manual.* – (a) The City Legal Officer, City Treasurer and City Planning and Development Officer and one of the CSO representatives 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 the City 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 twenty-one (21) 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 and twenty days (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 and 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 submissions of the PSP and actions taken by the PPP-RA, to the City Development Council.

Sec. 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 City 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.

Sec. 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 City 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 (5) 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 City that who 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 City personnel present.

- (d) The minutes of the conference shall be sent to each participant within five (5) days of the adjournment of the conference.

*Sec. 26. Personnel and Training Requirements.* – (a) The contract management manual shall identify the City personnel involved in contract management, the specific roles and responsibilities of each, and the skills and technical knowledge required to perform their functions.

- (b) Independent contractors may be engaged in the absence of the qualified City 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:
  - (i) have at least two (2) understudies; and
  - (ii) provide a training program for City personnel in his field of specialization, with such training being done regularly during regular office hours.
- (c) During the contract life, the City personnel shall undergo such continuous training on contract monitoring to ensure that the City is equipped to monitor reliably the PSP's performance over the entire life of the PPP contract.

*Sec. 27. Partnership Management.* – Each contract management manual shall identify processes to ensure accountability and manage the relationship between the City and the PSP, and shall describe:

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

*Sec. 28. Performance or Service Delivery.* – The contract management manual shall identify measures to ensure that the services or goods provided by the PSP are in accordance with the standards and prices agreed in the 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 or refusing to resolve them, provided that a separate risk mitigation plan shall be developed and periodically reviewed

and updated throughout the life of the contract for contracts with significant risks;

- (b) clear and demonstrable key performance indicators that demonstrate evidence of poor, satisfactory or non-performance by the PSP, taking into consideration the cost 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 City to monitor affordability, service delivery, value for money, quality, and performance improvement, which shall in all cases include:
  - (i) a timetable and start and end date for each performance component, including milestones with accompanying timeframes, dependencies, required or desired outcomes, and acceptable performance levels;
  - (ii) requirements and standards to be used to monitor PSP performance;
  - (iii) procedures and guidelines for measuring customer satisfaction and mechanisms to solicit end user feedback;
  - (iv) submission of regular, accurate and timely reports by the PSP, City 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;
  - (v) City access to PSP records to allow City personnel to verify the information that the PSP reports to them and to ensure that funds are expended properly;
  - (vi) random inspections of PSP records and on-site monitoring visits; and
  - (vii) regular meetings with the PSP to review progress, discuss problems and consider necessary changes; and
- (d) a performance review and corrective actions system that apply to non-compliance or breach of contract, and penalties for non-performance and bonuses for good performance.

*Sec. 29. Contract Administration.* – The contract management manual shall lay down a contract administration system, which shall include:

- (a) systems and procedures for variation management, the roles and responsibilities of City personnel, and reportorial requirements for each event of proposed or successful contract variation;
- (b) a system for contract maintenance, identifying key contract deliverables and schedules, as well as trigger events; and
- (c) systems and procedure for financial administration, including an estimate of the resources that the City will devote thereto, systems and procedures to

make and receive financial payments, and rules for keeping records of financial transactions in accordance with the requirements of the contract.

*Sec. 30. Closeout Procedures.* - Formal, written closeout procedures shall be included in contract management plan to ensure that all goods and services have been delivered satisfactorily, all properties are disposed accordingly, all City properties are returned, and all amounts due under the PPP contract have been paid.

*Sec. 31. Post-Contract Review.* - A post-contract review shall be conducted at the end of a contract period, which shall include a post-contract analysis, evaluation and reporting of the PPP project, the PSP's performance, and the City's contract management system. The post-contract review shall likewise include a financial audit of the entire PPP project and determination of lessons learned. City policies and procedures shall be updated where required. Notwithstanding the requirement herein, if 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.

*Sec. 32. Document Control.* - The PPP-RA shall act as the administrator of documents and correspondence relating to the PPP project and PPP contract. The contract management manual shall:

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

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

*Sec. 33. 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 legislation and regulations;
- (b) act at all times with fidelity, honesty, integrity and in the best interests of the City and its constituents;
- (c) recognize the public's right to access to information in accordance with law;
- (d) not misuse his or her position and privileges of a member of the 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 not 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 CSO, PO, NGO, 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.

Sec. 34. *Disciplinary Action.* – Violation of this Code and the Code of Conduct insofar as the City 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.

Sec. 35. *Liability.* – The City 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.

Sec. 36. *Social Accountability.* – The City shall ensure, promote and eliminate all obstacles to social accountability and allow and enhance constructive engagement between citizens' groups, academe, consumers, rate-payers, general public, City, national government agencies, regulatory agencies, and PSP.



Sec. 37. *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 posted in two conspicuous places of the City and uploaded in a dedicated website of the PPP-RA which can be freely accessed by the public. The City shall also implement a strategic communication plan addressed to all stakeholders.

Sec. 38. *Capability-Building Program.* – (a) The City shall design and implement a continuing education and capacity-building program on PPPs for its officials, and the members of the PPP-SC and PPP-RA.

(b) The City shall also undertake a comprehensive and sustained education and governance campaign aimed at informing all stakeholders and CSOs, POs and NGOs about PPPs ventures of the City and allowing them to participate in the overall PPP program of the City. The program shall include strategic and annual evaluation and planning sessions, workshops, seminars, focus-group discussions on PPPs, market opportunities, projects, management of contracts and regulation of PPPs and other PPP-related topics.

(c) The City may tap consultants to assist them in implementing PPPs and in building capability for PPPs.

Sec. 39. *Monitoring and Governance Audit Program.* – The City, in order to ensure transparency and accountability, shall encourage CSOs, POs, NGOs and civic aggrupations to establish a PPP monitoring, evaluation and governance audit body functionally and fiscally independent from the City and other government institutions.

Sec. 40. *Technical and Financial Assistance.* – The DILG, Department of Finance, Department of Budget and Management, NEDA and the PPP Center may extend technical and financial assistance to the City and such assistance may be embodied in a memorandum of understanding or agreement.

## Chapter 6. Final Provisions

Sec. 41. *Appropriations.* – To carry out the provisions of this Code, an amount shall be allocated by the Local Government Unit as may be necessary for the continuous implementation of this Code and shall be included in the succeeding annual budgets of the City.

Sec. 42. *Alternative Dispute Resolution.* – All PPP contracts of the City shall include a provision on the use of Alternative Dispute Resolution (ADR) mechanisms in resolving disputes arising from the PPP contract. All controversies in connection with PPP undertakings and projects of the City shall likewise be addressed using ADR.

Sec. 43. *Implementing Rules.* – While this Code and the provisions hereof are already operative upon the Code's effectivity, the City Mayor may issue the appropriate and relevant rules and regulation for the proper implementation of the Code or its provisions, including the issuance of relevant mechanisms to insure

competition, manuals, guidelines, sample contracts and bid documents, PPP indexes and comparators, and performance scorecards.

*Sec. 44. Confirmation of Executed PPP Contracts and Procedures Commenced.* – (a) PPP contracts entered into prior to the enactment of this PPP Code in strict compliance with the provisions hereof are hereby confirmed.

(b) PPP contracts entered into prior to the enactment of this PPP Code without strictly complying with the applicable procedures set forth herein for the selection of the PSP shall be considered as negotiated agreements under Stage Two of Section 17 which must be subjected to competitive challenge; provided that, after publication and no expression of interest is submitted by an interested qualified party at the designated time, the subject PPP contract shall be deemed perfected, and vested and contractual rights shall continue to subsist and operate.

(c) PPP contracts entered into prior to the enactment of this PPP Code may be amended; provided, that the terms of the original PPP contract allow for amendments, or the amendments do not tend to increase the financial exposure, liabilities and risks of the City or any other factors that would cause disadvantage to City and any deviation that will cause prejudice to losing PSPs; provided further, that the amendments are approved by the City Mayor with prior authorization from the Sangguniang Panlungsod, and the revised terms are approved or confirmed by the Sanggunian through the enactment of an ordinance.

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

*Sec. 45. Application of Other PPP Laws and Regulations.* – Whenever relevant and appropriate as determined by the City Mayor and in the absence of a specific provision 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 (26 July 1987), COA Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the JV Guidelines adopted by the NEDA, either the 2008 or 2013 versions, shall apply in a suppletory manner.

*Sec. 46. Authority of Component LGUs.* (a) The authority of component LGUs to enact their respective PPP ordinances, and to implement PPP projects is hereby recognized by the City Government.

(b) The City Government encourages the component LGUs on their own or in partnership with other LGUs and national government agencies, government-owned and -controlled corporations, government instrumentalities, state universities and colleges and government financial institutions to pursue PPP as a development strategy and implement PPP projects that shall serve the general welfare and the public good.

*Sec. 47. 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.



Sec. 48. *Repealing Clause.* - (a) All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

(b) This Ordinance takes precedence and thus hereby modifies the relevant procedures and approval processes outlined in other ordinances of the City relating to the implementation of PPP projects or the modalities provided herein.

Sec. 49. *Effectivity.* - This ordinance shall take effect upon the approval of the Local Chief Executive.

"Enacted."


\* \* \*

I hereby certify to the correctness of the foregoing resolution.

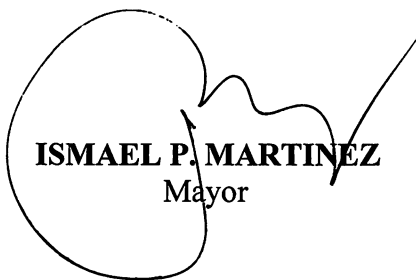
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**JULIUS T. ESPARTERO**  
Secretary to the Sangguniang Panlungsod

ATTESTED:

  
**MARK FIDENCIO L. AURELIA**  
Vice Mayor  
Presiding Officer

APPROVED: JAN 04 2016

  
**ISMAEL P. MARTINEZ**  
Mayor

Copy for:

- The Honorable Provincial Board, Dumaguete City

