REPUBLIKA NG PILIPINAS
SANGGUNIANG PANLUNGSOD
LUNGSOD NG ORMOC

EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE FIFTEENTH SANGGUNIANG PANLUNGSOD NG ORMOC HELD AT THE SANGGUNIANG PANLUNGSOD SESSION HALL ON NOVEMBER 19, 2019

PRESENT:

Leo Carmelo L. Locsin, Jr.	City Vice Mayor & Presiding Officer
Benjamin S. Pongos, Jr.,	SP Member, Majority Floor Leader
Roiland H. Villasencio,	SP Member, 1st Asst. Majority Floor Leader
Nolito M. Quilang,	SP Member, 2nd Asst. Majority Floor Leader
Eusebio Gerardo S. Penserga,	SP Member
Jasper M. Lucero,	SP Member
Peter M. Rodriguez,	SP Member
Vincent L. Rama,	SP Member
Gregorio G. Yrastorza III,	SP Member
Lalaine A. Marcos,	SP Member
Esteban V. Laurente,	Ex-Officio SP Member, Chapter President, Liga ng mga Barangay ng Ormoc
Joan Marbie C. Simbajon,	Ex-Officio SP Member, Chapter President, Panlungsod na Pederasyon ng mga Sangguniang Kabataan ng Ormoc

ON LEAVE:

Tomas R. Serafica,	SP Member, Presiding Officer "Pro-Tempore"

PREFATORY STATEMENT

Section 20, Article II of the 1987 Constitution provides that the "State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments". Similarly, the 1991 Local Government Code also acknowledges the indispensable role of the private sector in national and local governance by authorizing the local governments to partner with the private sector in pursuing infrastructure and development projects for the benefit of the people.

The Asian Development Bank has identified the inadequacy of existing policy, legal, and regulatory frameworks as one of the gaps in taking advantage of a Public-Private Partnership (PPP) scheme and, thus, recommended the adoption by the LGUs of a PPP Code to bridge this gap. The formal adoption of PPP code will ensure private sector participation in infrastructure, development and social service-related projects of both the State and Local Government Units (LGUs).

The proposal and adoption of a PPP Code will lay down the PPP framework for the local government as it enjoys local autonomy and fiscal autonomy and exercises decentralized, devolved, and delegated powers for the general welfare of the people and to ensure that PPPs redound to the benefit of the people and the communities the LGU serves and represents. 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".

The proposed PPP Code is consistent with Department of the Interior and Local Government (DILG) Legal Opinion No. 8, S. 2014, which 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." In addition, DILG Legal Opinion No. 10, S. 2014 has affirmed the above-cited DOJ Opinion and emphasized that, "the LGU's discretion xxx is consistent with the state policy of local autonomy and is in line with the operative principle of decentralization and the national goal of propelling social and economic growth and development through the active participation of the private sector".

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 Government of Ormoc ("Ormoc City" or "CITY") may, provided that no statute is violated, freely adopt its own PPP Code, which shall provide and prescribe the definitions, requirements, procedures and conditions therefore, and to incorporate these in an operative framework through an enabling ordinance that will ensure and facilitate consistency, integrity, reliability, sustainability, accountability and transparency, and enforceability of all PPP undertakings.

FOREGOING PREMISES CONSIDERED, on motion of SP Member Benjamin S. Pongos, Jr., Chairman, Committee on Laws and Ordinances, severally seconded by SP Members Nolito M. Quilang, Roiland H. Villasencio, Eusebio Gerardo S. Penserga, Jasper M. Lucero, Peter M. Rodriguez, Vincent L. Rama, Gregorio G. Yrastorza III, Lalaine A. Marcos, Esteban V. Laurente and Joan Marbie C. Simbajon; be it

RESOLVED, to enact:

ORDINANCE NO. 010
(Series of 2019)

AN ORDINANCE ADOPTING AND PURSUING A PUBLIC-PRIVATE PARTNERSHIP (PPP) APPROACH TOWARDS ORMOC CITY'S DEVELOPMENT, CREATING A PPP SELECTION COMMITTEE THERETO, PROVIDING GUIDELINES AND INCENTIVES THEREFOR, AND FOR OTHER RELATED PURPOSES.

BE IT enacted by the Sangguniang Panlungsod ng Ormoc, in session assembled that:

SECTION 1. SHORT TITLE – This Ordinance shall be known and cited as the "THE ORMOC CITY PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE OF 2019."

CHAPTER I
BASIC PRINCIPLES AND DEFINITIONS

SECTION 2. DECLARATION OF POLICY –

(a) The City Government of Ormoc (CITY) shall advance the general welfare and promote the interest of its inhabitants, the community and the City within the framework of sustainable and integrated development; and shall ensure the active and constructive participation of the private sector in local governance through effective and viable Public-Private Partnerships.

(b) PPP shall be pursued by the City Government in furtherance of and consistent with the following vision and mission of the City:

VISION:

"Ormoc City as the agro-commercial and industrial gateway in Eastern Visayas and the Renewable Energy Capital of the Philippines; With a growth-inclusive economy, in a disaster resilient environment, administered by an accountable government."

MISSION:

"Optimization of the Economic Growth Potential of Ormoc City conducive to a sustainable environment; implementation of the Comprehensive Land Use Plan (CLUP) that will serve as a basis for the City in considering its investment plans and decisions; and identification of investment opportunities and formulation of phase program action."

SECTION 3. OPERATIVE PRINCIPLES – The accomplishment of the stated policies above shall be guided by any of the following principles:

(a) Under Sections 1, 2 and 5, Article X of the 1987 Constitution, the City is a territorial and political subdivision that 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 PPP 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 City is under the supervision of the President and under the qualified control of Congress.

(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.

(e) The role of the CITY both as a regulator of a business and as implementer of a proprietary undertaking must be clearly delineated.

(f) Under Section 18 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 (LGC), the City Government may acquire, develop, lease, encumber, alienate or otherwise dispose of real or personal property held by it in its proprietary capacity and to apply its resources and assets for productive, developmental, or welfare purposes.

(g) The role of the Sangguniang Panlungsod is recognized as an indispensable part in the adoption and implementation of PPP arrangements, conformably with Section 22 (c) of the LGC.

(h) Under Section 22 (d) of the LGC, the 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.

(i) Under Section 25 (b) of the LGC, the CITY may collaborate or cooperate with other Local Government Units (LGUs), national governmental agencies, government owned and controlled corporations, government instrumentalities and government corporate entities for the implementation of local projects.

(j) The CITY, under Section 106 of the LGC, is mandated to draw up and implement a comprehensive multi-sectoral development plan. While PPPs shall be consistent with the CITY's infrastructure, development, investment, environmental and governance framework in accordance with relevant policies, plans, ordinances and codes issued, PPPs shall also be adaptive to future developments, changes and needs of the CITY and community.

(k) The CITY, under Section 3(l) of the LGC, is duty bound to ensure the active participation of the private sector in local governance.

(l) The CITY, as a partner in an LGU PPP arrangement, may provide equity, subsidy or guarantee and use local funds, and the usage thereof for an LGU PPP project shall be considered for public use and purpose.

(m) PPP shall be pursued by the CITY Government consistent with its infrastructure, development, investment, environmental and governance framework embodied in relevant policies, plans, ordinances and codes. 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.

(n) PPP arrangements shall be subject to the right of the people to information on matters of public concern as guaranteed under Section 7, Article III of the 1987 Constitution and full public disclosure of all transactions involving public interest pursuant to 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 groups to have effective and meaningful participation in the regulation and management of an PPP projects.

SECTION 4. RATIONALE FOR PPP– LGU PPP shall be promoted to provide more, better, affordable and timely services to the community. In pursuing PPPs, the City Government shall be guided by any of the following reasons and drivers:

(a) PPP Projects shall be undertaken to drive and accelerate socio-economic growth and development. The taxes, revenues and income derived by the City Government from PPP Projects shall generally be devoted to support social services and environmental management programs.

(b) PPP must adapt to changes, developments and needs of the CITY and community in line with the City Government's development and physical framework plan.

(c) 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.

(d) PPP may be adopted to address a 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 LGU could provide the public services much later. PPP would also encourage the accelerated implementation of local projects.

(e) PPP 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.

(f) PPP allows for technology transfer and improve efficiency and quality of service. These could be valuable contribution of the private sector in local governance.

(g) PPP should be feasible and affordable. From the onset, the project should be feasible, demonstrating the need for the project, broad level project costs estimation, and indicative commercial viability. The assessment of affordability will need to be the cornerstone for all PPP projects, both to the CITY and the general public.

(h) PPP Projects should be bankable. Private investors will be reluctant to commit funding when a project entails high participation costs, unreasonable risk transfer or lengthy and complex contract negotiations. Attractive cost recovery pricing policy must be in place to encourage continuous private sector participation in PPPs. This is critical to ensure that the project developer/ investor is assured of steady and predictable tariffs over the life of the project in order to guarantee service delivery; provided that the same will not be disadvantageous to the City Government and public interest.

(i) PPP Projects should, as far as practicable, provide value-for-money . Providing value-for-money and good economic value to the City Government includes allocating risks to the party best able to control and manage them, and maximizing the benefits of private sector efficiency, expertise, flexibility and innovation.

(j) Risk allocation must be based on the party most capable to manage, control, mitigate and/or insure the risk. PPPs always comprise a higher level of risk due to the magnitude of the financial stakes involved, uncertainties over construction and operating costs, and revenue related uncertainties. PPPs rely on balancing the allocation of risk. This enables the transfer of the risk to the private sector, whenever the mitigation and/or management thereof are best handled by the private sector instead of the public authority. In return, the public party significantly reduces its risk exposure while overseeing project optimization efforts. The private sector, thus, expects a return that is in line with the risks it shall undertake.

(k) PPP Projects must provide economic and social benefits and should be evaluated on this basis rather than on purely financial considerations. The public authority remains responsible for services provided to the public, without necessarily being responsible for corresponding investment.

(l) The empowerment of Filipino citizens as a strategy for economic growth and sustainability should be considered. Thus, the CITY shall ensure the participation of local investors to the furthest extent practicable given the nature of the project or undertaking.

(m) 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.

(n) The regulation of PPPs shall be based on the PPP contract and exercised by the appropriate regulatory authority. A duly executed 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-Selection Committee (PPP-SC), and the Sanggunian 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 Private Sector Proponents (PSPs) as to the substance of agreements signed, certifications issued, resolutions issued and procedures undertaken.

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

SECTION 5. DEFINITION OF TERMS. – As used in this Code, the following terms shall mean:

(a) **Build-Operate-Transfer (BOT) Law Scheme** – Under Republic Act No. 6967, as amended by R.A. No. 7718, the following are the BOT variants:

i. **Build-and-Transfer (BT)** – A contractual arrangement whereby the PSP undertakes the financing and construction of a given infrastructure or development facility and after its completion, turns it over to the City Government, which shall pay the PSP, on an agreed schedule, its total investment expended on the project, plus a Reasonable Rate of Return thereon. This arrangement may be employed in the construction of any infrastructure or development projects including critical facilities which, for security or strategic reasons, must be operated directly by the City Government.

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 the completion, turns it over to the City Government on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the City Government.

iii. **Build-Operate-and-Transfer (BOT)** – A contractual arrangement whereby the PSP undertakes the construction, including the 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 Government at the end of the fixed term which shall not exceed fifty (50) years: Provided, that in the case of an infrastructure or development facility whose operation requires a public utility franchise, the PSP must be Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos. 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 Government so requires, operates the facility providing in the process technology transfer and training to the transferee.

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 operations 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 Government contracts out the construction of an infrastructure or development 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 Government. The PSP, however, operates the facility on behalf of the City Government 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 Government 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 management by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates, such as higher property 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 Government.

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 Selection or Bidding or Open Competition** – Refers to a method of selection or procurement initiated and solicited by the City Government, based on transparent criteria, which is open to participation by any interested party.

(d) **Cost-Sharing** –Refers to the City Government concerned bearing a portion of the capital expenses associated with the establishment of an infrastructure or development facility such as the provision of access infrastructure right-of-way; and any partial financing of the project which in no case shall not exceed fifty percent (50%) of the project cost.

(e) **Credit Enhancement** – This shall refer to direct and indirect support to a development facility by the PSP and/or City Government, 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 Government under its contract with the PSP, subject to existing laws on indirect guarantees. Indirect Guarantees shall refer to an agreement whereby the City Government 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 fulfilment of the PSP/Project Company of its undertakings and obligations under the PPP contract.

(f) **Development Projects** – Projects normally financed and operated by the City Government, but which will now be wholly or partly financed, constructed and operated by the PSP; projects that will advance and promote the general welfare; and other infrastructure and development projects as may be authorized by the City Government.

(g) **Direct LGU Equity** – Refers to the subscription by the City Government of shares of stocks or other securities convertible to shares of stock of the special purpose vehicle or single purpose Project Company, whether the subscription will be paid by money or assets.

(h) **Direct LGU Guarantee** – Refers to an agreement whereby the City Government guarantees to assume responsibility for the repayment of debt directly incurred by the PSP in implementing the project in case of a loan default.

(i) **Direct LGU Subsidy** – Refers to an agreement whereby the City Government 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) contribute any property or assets to the project; (c) waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/or (d) 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, which in no case shall exceed fifty percent (50%) of the project cost.

(j) **Feasibility Study (FS)** – A study prepared by the City Government in a competitive selection or by a PSP when submitting an unsolicited proposal, containing a project background/description of the Project, technical study, financial viability assessment, economic viability assessment, environmental impact analysis, needs analysis, affordability assessment, value for money assessment, preliminary risk assessment and allocation, stakeholder assessment, human resource assessment, bankability assessment, PPP mode assessment, market testing if relevant, indicative transaction implementation plan, and draft PPP contract. The study shall be supported by the results of the appropriate "willingness and ability to pay" survey, whenever applicable, such as in cases where the general public shall be required to pay fees or charges.

(k) **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 Government may impose, in the interest of public welfare, security and safety.

(l) **Joint Venture (JV)** – A contractual arrangement whereby a PSP or a group of private sector entities on one hand, and the City Government 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 to undertake an infrastructure and development project for the purpose of accomplishing a specific goal which may be commercial in nature or any other public function of the City Government, subject to applicable laws.

(m) **Negotiated Projects** – Refers to instances where the desired project is the result of an unsolicited proposal from a PSP or, where the City Government has failed to identify an eligible private sector partner for a desired PPP activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding.

(n) **New Technology** – Refers to having at least one of the following attributes:

i. A recognized process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce implementation of constructive 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

ii. A process for which the project proponent or any member of the proponent joint venture/consortium possesses exclusive rights, either world-wide or regionally; or

iii. A design, methodology or engineering concept for which the proponent or a member of the proponent consortium or association possesses intellectual property rights

(o) **Operations and Maintenance** – Refers to the management, operation, preservation, repair, maintenance, and other related activities of structures, facilities, equipment, systems, and other appurtenances. This may also refer to a PPP modality

(p) **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.

(q) **Public-Private Partnerships (PPP)** – At the policy level, PPP is a developmental, innovative, change and partnership strategy aimed at promoting the general welfare, inclusive growth and better quality of life for Filipinos. On the project level, PPP is a form of legally enforceable contract between the City Government and PSP requiring new investments from the PSP and transferring key risks to the PSP in which payments are made in exchange for performance, for the purpose of delivering a service traditionally provided by the public sector.

(r) **PPP Contract** - Refers to the agreement between the City Government and a PSP that govern an PPP project.

(s) **Reasonable Rate of Return** – Refers to the rate of return that a PSP shall be entitled to as determined by 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 Government undertakings and contributions extended for the project.

(t) **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 Government on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the City Government

(u) **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 Government which shall pay the PSP, on an agreed schedule, its total investment expended on the project, plus a reasonable rate of return thereon

(v) **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 Government. The PSP, however, operates the facility on behalf of the City Government under an agreement

(w) **Unsolicited Proposal** – Refers to project proposals submitted by a PSP to the City Government to undertake a Development Project without a former solicitation issued by the City Government (or by the latter) which may be entered into by the City Government subject to the requirements/conditions prescribed in this Code

(x) **Value for Money (VfM)** – Refers to the concept that over the whole life of a project finance which includes the PPP project, government's total expenditures (i.e. its payments to the private sector, adjusted for the risks that have been transferred to the private sector, will be less on a Net Present Value (NPV) basis, that 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

(y) **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

SECTION 6. RULES OF INTERPRETATION. – The provisions of this Code shall be liberally interpreted to accomplish the policy and objectives set forth in Sections 2, 3 and 4 hereof.

SECTION 7. AUTHORITIES OR SCOPE OF APPLICATION. This Code shall apply to all PPP Contracts entered into by the City Government with private sector entities to extents as provided herein.

(a) This Code is adopted pursuant to the City Government constitutional and statutory authorities enumerated under Section 3 hereof.

(b) In pursuing BOT and its Variants, the City Government shall comply with Republic Act No. 6957, as amended by R.A. No. 7718 (BOT Law) and its Implementing Rules and Regulations.

(c) For Joint Ventures, the provisions of this Code shall be applicable.

(d) This Code shall govern the adoption and implementation of the PPP Modalities.

CHAPTER 2
PPP PROJECTS AND MODALITIES

SECTION 8. LGU PPP PROJECTS. –

(a) The City Government, through the appropriate and viable PPP mode, may undertake Development Projects, including but not limited to, singly or with other related components, 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 as eco-tourism, wellness tourism and agri/agro-tourism, public markets, commercial buildings, slaughterhouses, storage buildings, warehouses, cold storage, solid waste management, sanitary landfills, meeting and convention centers, information technology networks and database infrastructure, education-related, classrooms, health facilities, hospitals, social services-related, prisons, agriculture-related, post-harvest facilities, environmental management and protection, climate change adaption, disaster risk reduction, among other developmental projects. The City can also undertake PPPS for any of the devolved activities under Section 17 of the LGC.

(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 an PPP project.

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

(d) No PPP Project shall bear the name of any past or incumbent local official.

SECTION 9. LIST OF PRIORITY PROJECTS. – The City Government shall identify specific priority projects that may be undertaken under any of the PPP Modalities enumerated under Section 10 hereof.

SECTION 10. LGU PPP MODALITIES. – In undertaking a specified PPP Project, the City Government may adopt and pursue any of the following Modalities and provide for other modalities not inconsistent with law:

(a) Build-and-Transfer (BT)
(b) Build-Lease-and-Transfer (BLT)
(c) Build-Operate-and Transfer (BOT)
(d) Build-Own-and-Operate (BOO)
(e) Build-Transfer-and-Operate (BTO)
(f) Contract-Add-and-Operate (CAO)

(g) Develop-Operate-and-Transfer (DOT)
(h) Operate-and-Maintain (O&M)
(i) Rehabilitate-Operate-and-Transfer (ROT)
(j) Rehabilitate-Own-and-Operate (ROO)
(k) Rehabilitate-Lease-and-Transfer (RLT);
(l) Rehabilitate-and-Transfer (RT);
(m) Rehabilitate-Transfer-and-Operate (RTO);
(n) Joint Venture (JV); and
(o) Any other modality akin to any of the above or features thereof which falls under the alternative definition of an PPP under Section 5 (q) hereof.

SECTION 11. GENERAL REQUIREMENTS. – The following are the general requirements for entering into PPPs:

(a) The undertaking of a PPP 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 Government under any of the BOT variants under the BOT Law 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 Council; and those above Two Hundred Million Pesos to the Investment Coordination Committee of the National Economic Development Authority (NEDA).
(c) Projects included in the List of Priority Projects shall not be eligible for unsolicited proposals under any of the BOT variants, unless involving a new concept or technology; provided, that for any of the other PPP Modalities, unsolicited proposals may be accepted even if the project is included in the List of Priority Projects or whether the same features a new concept or technology or not.
(d) The prohibition for extending Direct LGU Guarantee, Direct LGU Subsidy and Direct LGU Equity only applies to unsolicited proposals for BOT variants under Republic Act No. 6957 as amended by R.A. No. 7718.
(e) For BOT variants that will be subjected to bidding and Joint Ventures, the City Government may provide Direct LGU Guarantee, Direct LGU Subsidy, Direct LGU Equity or Viability Gap Funding, provided, that the City Government 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 LGC, respectively.
(f) For all PPP Modalities, the City Government 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 Government must be targeted, transparent and efficiently administered.
(i) Each PPP Modality adopted for a specific Project must specifically provide and adopt a tariff mechanism such as but not limited to cash needs, price cap, and revenue cap, rate of return, and hybrid of the foregoing or any other appropriate scheme.

(j) For negotiated contracts for BOT variants involving public utility projects which are monopolies, the rate of return on the 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 Government 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 or license shall be automatically granted to the JV company. Upon signing of the JV agreement by the City Mayor pursuant to the authority given by the Sangguiang Panungsod, the franchise or license is deemed awarded to the winning PSP, in case of a contractual JV or a JV company. The original franchise period as stipulated in the contract agreement may be extended, as may be authorized by the City Government, provided that the total franchise period shall not exceed fifty (50) years.

(l) The City Government 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 modality.

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

(n) The City Government may prescribe Procurement Ethics and a Code of Conduct based on the principles of honesty, integrity, probity, diligence, fairness, trust, respect, and consistency for all PSPs and bidders.

(o) In a JV, whether contractual or corporate, the co-venturers or parties to a JV agreement 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 Government shall be subject to third party independent valuation. Further:

   (i) The City Government 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 Government.

   (ii) The City Government 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 Government, in addition to the foregoing contributions, it may extend goodwill, 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 Government 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 Government. A reasonable percentage of the equity to be provided by the PSP should come from its own resources and not borrowed.
Notwithstanding having only a minority share or equity, the written consent of the City Government may be obtained, based on the JV agreement, 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 the prescribed thresholds, or other activities which may affect the rights and stake in the Project of the City.

(v) Any cost avoidance or substantial savings that will be made by the City Government because of and directly attributable to the JV activity may be factored in the computation of the respective shares of the City Government and the PSP.

(vi) For the utilization and development of natural resources located within its jurisdiction, the City of Ormoc shall be entitled to an equitable share which may come in the form of a portion of the benefits, revenues and profits thereof.

(vii) 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 Government shall have representation in the governing structure based on in proportionate share at the minimum.

(viii) Subject to the terms of the competitive selection process and agreement of the parties, the City Government may be entitled to a share greater than its contribution or equity.

(ix) Each party shall be entitled to dividends, profits, income or 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 Government will have a greater share in the dividends, profits, income or revenues and/or bear lower risk and percentage loss than what it contributes to the JV arrangement.

(x) For as long as the City Government is involved in the JV undertaking, the PSP may not sell or transfer its interest in the JV Company without the express written consent of the City Government.

(xi) The share or equity of the City Government 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 to the City either by set-off or actual payment.

(xii) The JV activity may, subject to the terms of 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.

(xiii) The role of the City Government as a regulator of the business of the JV should be clearly delineated and explicitly from its role as implementer of the business to avoid conflicts of interest.

(xiv) If the formation of a JV company is not the best mode to implement a JV activity as determined by the City Government, it may opt to implement the JV project through a contractual arrangement

(p) Procurement made by the City Government using public funds shall be subject to the GPRA and its Revised Implementing Rules and Regulations. Procurement made by the PSP using private funds shall not be covered by said statute.

(q) The revenues, funds, expenditures and contributions of the City Government 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.

(r) Any subsidy, guarantee, equity or contingent liability assumed or given by the City Government must be reflected, disclosed and recognized in the annual appropriations of the City Government.

(s) The City Government may charge and collect fees in such amounts and under such terms and conditions as determined by the PPP-SC for obtaining the selection, tender and other documents from the City Government as described herein.

SECTION 12. GOVERNMENT-TO-GOVERNMENT JOINT PPP UNDERTAKINGS. – The City Government 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 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 Government the selection of the PSP using the appropriate PPP Modality.

CHAPTER 3
PPP PROCEDURES AND CONTRACT

SECTION 13. PPP PROCEDURES. – The following procedures shall apply:

(a) For BOT variants, the City Government must comply with the procedure set forth in Republic Act No. 6957, as amended by R.A. No. 7718 and its Implementing Rules and Regulations.

(c) For Joint Ventures, competitive selection, limited negotiations, competitive negotiations, or competitive challenge as may be applicable and defined herein may be utilized to select the PSP.

(d) If the City Government opts to select a PSP using either Competitive Selection or Competitive Challenge, it must prepare and submit a Feasibility Study. The costs of preparing the Feasibility Study may be reimbursed by the winning PSP to the City Government.

(e) All recommendations of the PPP- Selection Committee (SC) shall be submitted to the City Mayor for consideration and approval. Upon approval of the recommendation of the PPP-SC, the City Mayor shall issue the Notice of Award. Thereafter, the PPP Contract shall be signed by the parties.

(f) PPP contracts must be signed by the City Mayor, with prior authorization by the Sanggunian.

(g) 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.

(h) While the PPP Contract is already valid, perfected and enforceable, it may be submitted for judicial, executive or administrative confirmation from the courts or appropriate government institutions.

SECTION 14. THE PPP SELECTION COMMITTEE - There is hereby created an PPP Selection Committee (PPP-SC) for purposes, among others, 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:

Chairman:	The City Administrator
Vice Chairman:	Chairman, Sanggunian Committee on Trade, Commerce and Industry
Members:	Secretary - The City Legal Officer
	The City Treasurer
	Chairman, Sanggunian Committee on Laws and Ordinances
	The City Engineer
	One (1) technical officer from the City Government or, if none is available, from other government agencies, knowledgeable with the technical aspects of requirements of the Project duly designated on a project-to-project basis
	One (1) officer from the City Government or, if none is available, from other government agencies, knowledgeable in the management and operation of the Project duly designated on a project-to-project basis

PPP-SC's quorum shall be based on simple majority of all voting members.

The PPP-SC, may invite provisional non-voting members from the City or National Government Agencies, regulatory agencies, National Economic Development Authority (NEDA), Public-Private Partnership Center, Department of Interior and Local Government (DILG), private sector, non-governmental and people's organization to observe in the proceedings of the PPP-SC; and with the approval of the City Mayor, may form a support staff composed of employees and staff of the City Government.

The PPP-SC shall be responsible for all aspects of the pre-selection and selection process, including among others:

i. issuance of rules and regulations concerning the bidding process;
ii. the preparation of the Feasibility Study and selection/tender documents;
iii. determination of the minimum designs, performance, standards/specifications, economic parameters and reasonable rate of return or tariff setting mechanism appropriate to the PPP Modality;
iv. drafting or evaluation of PPP contract;
v. publication of the invitation to apply for eligibility and submission of proposals or vi. comparative proposals;
vii. defining the eligibility requirements;
viii. appropriate form and amount of proposal and performance securities, and schedules of the selection and challenge processes;
ix. prequalification of prospective PSPs, bidders or challengers;
x. conduct of pre-selection conferences and issuance of supplemental notices;
xi. interpretation of the rules regarding the selection process;
xii. conduct of the selection or challenge process;
xiii. receipt of unsolicited proposals;

xiv. evaluation of the legal, financial and technical aspects of the proposals;
xv. resolution of disputes between PSPs and challengers;
xvi. defining the appeals mechanisms; and
xvii. recommendation for the acceptance of the proposal and/or for the award of the contract.

A Technical Working Group (TWG) and Secretariat may be created which shall assist the PPP-SC in the conduct of its functions.

SECTION 15. COMPETITIVE SELECTION.

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

i. Advertisement;
ii. issuance of instructions and tender documents;
iii. pre-bid conference;
iv. eligibility screening of prospective bidders;
v. receipt and opening of bids;
vi. posting of proposal securities;
vii. evaluation of bids;
viii. post-qualification; and,
ix. award of contract.

Further, the Competitive Selection procedure shall comply with all the requirements prescribed by applicable laws and rules and regulations.

b. The City Mayor shall approve the tender documents and the draft PPP Contract before they are issued to the prospective PSPs/bidders. Tender documents shall be released upon payment of the non-refundable bid document fee as determined by the PPP-SC. The PPP-SC shall prescribe the appropriate non-refundable bid document fee based on the nature, scope, size, and complexity of the proposed JV activity. Provided, that the principles of transparency, competition and accountability are observed.

SECTION 16. LIMITED NEGOTIATIONS. – Where the City Government:

(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, financial, and legal aspects of the PPP project or activity; provided, that the minimum designs, performance standards/specifications and economic parameters stated in the Feasibility Study and Terms of Reference for the Competitive Selection 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 2nd instance, the City Government shall publish a notice to the public prior to the start of the negotiations, and if pursued under Competitive Challenge, the 3rd stage as defined below may be dispensed with.

SECTION 17. COMPETITIVE NEGOTIATIONS. - As may be deemed appropriate, the City Government 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 Government. Prior to the start of the negotiations with the identified PSPs, the City Government shall publish the announcement.

SECTION 18. COMPETITIVE CHALLENGE OR SWISS CHALLENGE. - The Competitive Challenge or Swiss Challenge process shall be divided into three (3) stages described as:

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

i. A PSP submits an unsolicited proposal accompanied by a Feasibility Study, draft contract, and eligibility documents to the PPP-SC for a projected PPP Project.

ii. PPP-SC shall make an initial evaluation of the merits of the proposal, completeness of the project documents, and the eligibility of the PSP.

iii. Upon completion of the initial evaluation, the City Mayor, taking into consideration the recommendations of the PPP-SC, shall either issue a certificate of acceptance or non-acceptance of the proposal for purposes of detailed negotiations. An acceptance shall not bind the City Government to enter into the JV activity, but, shall mean that authorization is given to proceed with detailed negotiations on the terms and conditions of the JV activity. In case of non-acceptance, the PSP shall be informed of the reasons/ground for non-acceptance.

iv. If there is more than one unsolicited proposal submitted for the same PPP Project, the City Mayor, taking into consideration the recommendations 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.

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

i. The parties shall negotiate and agree on the terms and conditions of the PPP Project concerning its technical, financial, and legal 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. Said certification shall confer the proponent the original proponent status.

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 Government shall have the option to reject the proposal by informing the PSP in writing stating the ground/s for rejection and thereafter may accept a new proposal from other PSPs.

(c) Stage Three/Competitive- The steps are:

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

ii. The 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 offers shall be determined to include the original proposal of the PSP. If the City Government 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 Government than the original proposal, the PSP who submitted the original proposal shall be given the right to match such superior or more advantageous offer, as defined and specified in the tender documents. 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 Government 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.

SECTION 19. SCHEDULES AND TIMELINES. – 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.

SECTION 20. PPP CONTRACT. – The following shall govern PPP Contracts:

(a) The PPP Contract shall be signed by the City Mayor on behalf of the City with the authorization or ratification by the Sanggunian, 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. Representatives of accredited CSOs, NGOs and POs may sign the PPP Contract as monitoring entity or witness.
(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. 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.

(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) Neither party shall unilaterally rescind or amend a PPP Contract. 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 Sanggunian. 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 Sanggunian through a Resolution by majority vote of all the Members present.

(g) All laws, ordinances and rules and regulations are read or deemed to form part of the PPP Contract, Regulation and Contract Management.

(h) A PPP Contract, upon the favorable action of the Sanggunian through a Resolution by a majority vote of all the Members present, there being a quorum, may be the subject of a plebiscite funded by local funds pursuant to a referendum under Section 126 of the LGC.

CHAPTER 4
REGULATION AND CONTRACT MANAGEMENT

SECTION 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 Government. Aside from these, the PPP-RA shall be responsible for setting and monitoring the tariff, and administering the subsidy pursuant to the PPP contract.

SECTION 22. COMPOSITION OF THE PPP REGULATORY AUTHORITY.

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

Chairperson:	The City Mayor or the City Administrator if so designated by the City Mayor
Vice Chairperson:	Vice-Mayor or a member of Sangguniang Panlungsod to be chosen by the Sanggunian as evidenced by an appropriate resolution
Members:	Two (2) representatives of the Sangguniang Panlungsod to be chosen by the Sanggunian;
	City Treasurer
	City Legal Officer;
	City Planning and Development Coordinator; and,
	Two (2) representatives from and chosen by the accredited CSOs, POs and NGOs who are members of the City Development Council
	Representative from the PPP Center (observer and non-voting)

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 Government 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.

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.

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.

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.

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.

SECTION 23. CONTRACT MANAGEMENT MANUAL. –

(a) The City Legal Officer, City Treasurer and City Planning and Development Coordinator, and one of the CSO representatives of the PPP-RA, acting as the PPP-RA Manual Committee (PPP-RA-MC), in consultation with the PPP Center, 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 (CDC).

SECTION 24. CONTENTS OF THE CONTRACT MANAGEMENT MANUAL. – Each contract management manual shall include the following information:

(a) a description of the PPP project and its history;
(b) a summary of the key terms of the PPP contract;
(c) roles and responsibilities of each member of the PPP-RA and other 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.

SECTION 25. POST-AWARD CONFERENCE –

(a) Immediately after the PPP contract is awarded, the PPP-RA Chairperson shall call a post-award conference to ensure that the City Government 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 Government 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 Government personnel present.
(d) The minutes of the conference shall be sent to each participant within five (5) days of the adjournment of the conference.

SECTION 26. PERSONNEL AND TRAINING REQUIREMENTS. –
(a) The contract management manual shall identify the City Government 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 Government personnel, provided that, except in the case of contract managers engaged in accordance with Section 8(c), contractors may only be engaged 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 Government personnel in his field of specialization, with such training being done regularly during regular office hours.
(c) During the contract life, the City Government personnel shall undergo such continuous training on contract monitoring to ensure that the City Government is equipped to monitor reliably the PSP's performance over the entire life of the PPP contract.

SECTION 27. PARTNERSHIP MANAGEMENT. – Each contract management manual shall identify processes to ensure accountability and manage the relationship between the City Government 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 Government and the PSP, including reporting requirements, frequency and purpose of regular meetings, record-keeping of all exchanges, and the acceptable modes of correspondence between them; and
(c) the process for resolving disputes between the parties, identifying, among others, the different levels of dispute resolution, offices and officials involved, timetable for resolving such disputes, and possible actions to compel a party to adequately comply with contractual terms.

SECTION 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 Government 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 Government 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 Government access to PSP records to allow City Government personnel to verify the information that the PSP reports to them and to ensure that funds are expended properly;
vi. random inspections of PSP records and on-site monitoring visits; and
vii. regular meetings with the PSP to review progress, discuss problems and consider necessary changes; and

(d) a performance review and corrective actions system that apply to non-compliance or breach of contract, and penalties for non-performance and bonuses for good performance.

SECTION 29. CONTRACT ADMINISTRATION. – The contract management manual shall lay down a contract administration system, which may include:

(a) systems and procedures for variation management, the roles and responsibilities of City Government 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 Government will devote thereto, systems and procedures to make and receive financial payments, and rules for keeping records of financial transactions in accordance with the requirements of the contract.

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

SECTION 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 Government contract management system. The post-contract review shall likewise include a financial audit of the entire PPP project and determination of lessons learned. City Government 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.

SECTION 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

SECTION 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 Government 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 any 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 and shall be replaced by an official or representative from the same department/office chosen by the PPP-SC or PPP-RA, as the case may be;
(i) forthwith declare any conflict of interest, insofar as the PPP Project concerned, that he or she may have or will have, in which case, the official or representative shall no longer be a member of the PPP-SC and PPP-RA and shall be replaced by an official or representative from the same department/office chosen by the PPP-SC or PPP-RA, as the case may be;
(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.

SECTION 34. DISCIPLINARY ACTION. - Violation of this Code and the Code of Conduct insofar as the City Government elective officials are concerned shall constitute a ground for disciplinary action or amount to loss of confidence under the LGC and relevant laws, and with regards local appointive officials, such violation shall render them administratively liable.

Officials may also be rendered criminally liable under applicable laws and ordinances. Representatives of the PSP shall be held liable for damages, offenses and crimes depending on the nature of their participation and involvement in the unlawful act or omission.

SECTION 35. LIABILITY. - The City Government 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 caused by gross negligence or with deliberate, willful or malicious intent. Failure to respect a duly-executed PPP Contract by successor officials unreasonably or unjustifiably shall render them liable without prejudice to the application of Alternative Dispute Resolution mechanisms under Section 42 hereof.

SECTION 36. SOCIAL ACCOUNTABILITY. - The City Government 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 Government, national government agencies, regulatory agencies, and PSP.

SECTION 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, 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 Government and uploaded in a dedicated website of the PPP-RA which can be freely accessed by the public. The City Government shall also implement a strategic communication plan addressed to all stakeholders.

SECTION 38. CAPABILITY-BUILDING PROGRAM. –

(a) The City Government shall design and implement a continuing education and capacity-building program on PPP for its officials, and the members of the PPP-SC and PPP-RA.

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

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

SECTION 39. MONITORING AND GOVERNANCE AUDIT PROGRAM. – The City Government, 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 Government and other government institutions.

SECTION 40. TECHNICAL AND FINANCIAL ASSISTANCE. – The DILG, Department of Finance, Department of Budget and Management, NEDA, the PPP Center and other National Government Agencies may extend technical and financial assistance to the City Government and such assistance may be embodied in a Memorandum of Understanding or Agreement.

CHAPTER 6
FINAL PROVISIONS

SECTION 41. APPROPRIATIONS. – The expenditures to carry out the provisions of this Code for Calendar Year 2019 in the initial amount of ONE MILLION PESOS (PHP 1,000,000.00) under the Office of the City Mayor shall be provided through Supplemental Budget from the General Fund of the City, or from any available funds from the City Treasury. Thereafter, such sums as may be necessary for the continuous implementation of this Code shall be included in the annual budget of the City Government under said Office.

SECTION 42. ALTERNATIVE DISPUTE RESOLUTION. – All PPP contracts of the City Government 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 Government shall likewise be addressed using ADR.

SECTION 43. IMPLEMENTING RULES AND REGULATIONS. – 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 regulations, as necessary for the proper implementation of any and all provisions of this Code, including the issuance of relevant mechanisms to insure competition, manuals, guidelines, sample contracts and bid documents, PPP indices and comparators, and performance scorecards.

SECTION 44. APPLICATION OF OTHER PPP LAWS AND REGULATIONS. – Whenever relevant and appropriate as determined by the City Mayor upon recommendation of the PPP -SC, the provisions of Republic Act No. 6957 as amended by R.A. No. 7718, otherwise known as the BOT Law, R.A. No. 9184 or the Government Procurement Reform Act, Executive Order No. 301 (July 26, 1987), resolutions of the PPP Governing Board, Commission on Audit Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the Joint Venture Guidelines adopted by the National Economic Development Authority shall apply in a suppletory manner.

SECTION 45. 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.

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

SECTION 47. REPEALING CLAUSE. – All Ordinances and Resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

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

SECTION 48. EFFECTIVITY. – This Code shall take effect upon approval and after publication and posting, in compliance with the requirements of Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

ENACTED, November 19, 2019.

RESOLVED, FURTHER, to furnish copies of this ordinance one each to the City Mayor Richard I. Gomez, the City Administrator; the City Legal Officer; the OIC-City Treasurer; City Planning & Development Officer; CDC; the Department of Budget & Management; the NEDA; the PPP Center; the City Local Government Operations Officer-DILG; all other offices concerned;

CARRIED by Nine (9) Affirmative Votes. SP Member Eusebio Gerardo S. Penserga and SP Member Joan Marbie C. Simbajon were out of the Session Hall during the time of voting.

I HEREBY CERTIFY to the correctness of the above ordinance.

MARIA ANTONIETA G. CO HAT
Secretary to the
Sangguniang Panlungsod

ATTESTED:

LEO CARMELO L. LOCSIN, JR.
City Vice Mayor & Presiding Officer

APPROVED:

RICHARD I. GOMEZ
City Mayor
2 6 NOV 2019