QUEZON CITY
PPP CODE



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QUEZON 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

Background:



Public-Private Partnership is a priority program of the current administration, and was identified as one of the four pillars to effect change in the Philippine Economy. In the same vein, the City recognizes the vital role of the private sector to promote and provide more, better, affordable and timely services to the community. However, a study by the Asian Development Bank identified four gaps in Philippine PPP. One of these gaps is the inadequacy of the existing policy, legal and regulatory framework on PPP.

Recognizing the need and importance of a policy to effect PPP, the Office of the Vice Mayor invited Atty. Alberto C. Agra, a Certified PPP Specialist and Regulation Specialist last 30 June 2014 at the Carlos Albert Hall (Session Hall), whereby, Vice Mayor Joy Belmonte together with the Officers and majority of the members of the 19th City Council discussed the appropriate PPP Code for Quezon City. Driven with his utmost desire to help and contribute something, Atty. Agra shared his expertise and helped the City Council craft the first Quezon City PPP Code.

Consistent with the policy to advance the public good and general welfare, and promote the interest of the community and the City government within the framework of sustainable and integrated development, and effective constructive engagement and meaningful people's participation in local governance, Quezon City pursued PPP in furtherance of its goals as contained in its Comprehensive Development Plan (CDP), Comprehensive Land Use Plan (CLUP), The Revised Quezon City Comprehensive Zoning Ordinance (Series 2013), Tourism Development Plan (TDP), and all other development planning documents of the City Government.



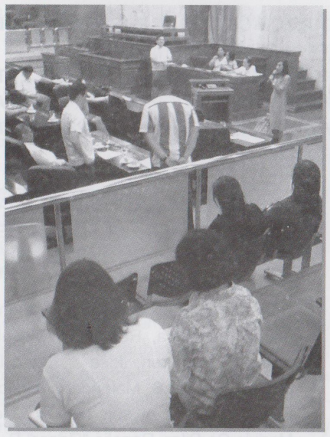
The Quezon City PPP Code, shall serve as an essential part of the overall infrastructure reform policy of the City. By encouraging performance-based management of the delivery of public services applying commercial principles and incentives whenever possible, by introducing competition in and for the market, and by involving users and stakeholders in the decision-making process, infrastructure and regulatory reform shall be achieved.



Further, 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.

Legislative Track:

PO 19CC-320 ("Quezon City PPP Code ") was included in the agenda for First Reading on 30 June 2014 during the 29th Regular Session and the same was referred to the Committees on Trade Commerce and Industry; Ways and Means; and Laws, Rules and Internal Government.



Few days thereafter or on 03 July 2014, the Committee on Trade, Commerce and Industry approved the PPP Code; while the Committee on Ways and Means recommended approval of the same on 15 July 2014. Two weeks after, the Committee on Laws, Rules and Internal Government approved the said PPP Code on 30 July 2014.

On 04 August 2014, 33rd Regular Session, the Quezon City PPP Code passed on Second Reading and duly confirmed on Third and Final reading on 11 August 2014, during the 34th Regular Session of the City Council.

Republic of the Philippines
Quezon City
19th CITY COUNCIL

PO19CC-320

34th Regular Session

ORDINANCE NO. SP-_____, S-2014

QUEZON 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.

Introduced by Councilors JESUS MANUEL C. SUNTAY, VICTOR V. FERRER, JR., ALLAN BENEDICT S. REYES, GODOFREDO T. LIBAN II, ALEXIS R. HERRERA and EUFEMIO C. LAGUMBAY.

Co-Introduced by Councilors Anthony Peter D. Crisologo, Ranulfo Z. Ludovica, Ramon P. Medalla, Estrella C. Valmocina, Franz S. Pumaren, Jose Mario Don S. De Leon, Jaime F. Borres, Raquel S. Malañgen, Jessica Castelo Daza, Bayani V. Hipol, Julienne Alyson Rae V. Medalla, Candy A. Medina, Marivic Co-Pilar, Rogelio "Roger" P. Juan, Melencio "Bobby" T. Castelo, Jr., Donato C. Matias and Ricardo B. Corpuz.

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 the Interior and Local Government (DILG) Legal Opinion No. 8, S. 2014 declared that "there is neither 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,

BE IT ORDAINED BY THE CITY COUNCIL OF QUEZON CITY IN REGULAR SESSION ASSEMBLED:

CHAPTER I
BASIC PRINCIPLES AND DEFINITIONS

SECTION 1. Short Title – This Ordinance shall be known and cited as the "Quezon City PPP Code".

SECTION 2. Declaration of Policy – (a) It is hereby declared as a policy that Quezon City 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 its goals as contained in its Comprehensive Development Plan (CDP), Comprehensive Land Use Plan (CLUP), The Revised Quezon City Comprehensive Zoning Ordinance (Series 2013), Tourism Development Plan (TDP), and all other development planning documents of the City Government.

SECTION 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 same Constitution, local autonomy means a more responsive and accountable local government structure instituted through a system of de centralization. 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 control of Congress.

(e) Under Section 18 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 (1991 LGC), the 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 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, the City enjoys full autonomy in the exercise of its proprietary functions and shall exercise the powers expressly granted, those necessarily implied there from, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, those not otherwise prohibited by law and those which are essential to the promotion of the general welfare.

(h) Under Section 25 (b) of the 1991 LGC, the 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 to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversity agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people; provide assistance, financial or otherwise, to such people's and non-governmental organizations for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction.

(m) The 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 groups to have effective and meaningful participation in the regulation and management of PPP projects.

SECTION 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's Comprehensive Development Plan, Comprehensive Land Use Plan 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 efficien-

cy 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 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.

(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.

SECTION. 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 Republic Act No. 7718, the following are the BOT variants:

(i) Build-and-Transfer (BT) - A contractual arrangement whereby the Private Sector Proponent (PSP) undertakes the financing and construction of a given infrastructure or development facility, and after its completion, turns it over to the 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.

(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 favourable conditions external to a new infrastructure project to be built by a PSP are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates, such as higher property or rent values.

(viii) Rehabilitate – Operate – and – Transfer (ROT) - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the 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 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.

(d) Concession - A contractual arrangement whereby the financing and construction of a new facility and/or rehabilitation of an existing facility is undertaken by the PSP after 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 Commission on Audit.

(e) Corporatization - Refers to transformation of a public entity or quasi-municipal corporation established by the City into one that has the structure and attributes of private corporation, such as 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.

(f) 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.

(g) 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.

(h) Development Projects - Projects normally financed and operated by the City, 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.

(i) 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.

(j) 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.

(k) 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 with-

out receiving payment or value from the PSP or operator for such payment, contribution or support.

(l) 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.

(m) 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 need 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.

(n) 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.

(o) Joint Venture (JV) - A contractual arrangement whereby a PSP or a group of private sector entities 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.

(p) 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 Commission on Audit.

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

(r) 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 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.

(s) New Technology - Refers to having at least one of the

following attributes:

A recognized process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce the implementation of construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations, or reduce negative environmental impact or social/ economic disturbances or disruptions during either the project implementation/construction phase or the operation phase; or

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

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

(t) 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.

(u) Public-Private Partnerships (PPP) - PPP is a form of legally enforceable contract between the City and a 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 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; 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.

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

(v) 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.

(w) 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.

(x) 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.

(y) Unsolicited Proposal - Refers to project proposals submitted by a PSP to the City to undertake a Development Projects without a formal solicitation issued by the City.

(z) 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 private sector), adjusted for the risks that have been transferred to the private sector, will be less, on a Net Present Value (NPV) basis, than if the government will perform the services itself. VfM considers monetary and non-monetary factors such as: (i) risk transfer; (ii) reduced whole life costs; (iii) speed of implementation; and (iv) quality and reliability of service.

(aa) 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.

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

SECTION 7. Authorities – (a) This Code is being adopted pursuant to the 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 and its Variants, the City shall comply with Republic Act No. 6957, as amended by Republic Act No. 7718 (BOT Law), and its Implementing Rules and Regulations.

(c) In entering into Management and Service Contracts, the City shall comply with Republic Act No. 9184 or the Government Procurement Reform Act (GPRA) and its Implementing Rules and Regulations.

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

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

(f) For Joint Ventures, the Law on Partnerships of the Civil Code of the Philippines shall be applicable.

(g) For Leases and Affermages, the Law on Leases of the Civil Code of Philippines may be referred to.

CHAPTER II
PPP PROJECTS AND PPP MODALITIES

SECTION 8. PPP Projects – (a) The City, through the appropriate and viable PPP mode, may undertake Development Projects, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, sewerage, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, social services, sewerage, drainage, dredging, mining, prisons, and hospitals. The City can also undertake PPPs for any of the devolved activities under Section 17 of the 1991 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 a PPP project.

(c) Parties to PPP arrangement shall undertake an activity in or-

der to accomplish either an integrated or multi-use arrangement or specific goal or purpose with the end view of serving the public good or generating revenues.

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

SECTION 10. PPP Modalities – In undertaking a specific PPP Project, the City may adopt and pursue any of the following sixteen (16) PPP Modalities and provide for other modalities not inconsistent with law:

(a) Build-and-Transfer (BT);
(b) Build-Lease-and-Transfer (BLT);
(c) Build-Operate-and-Transfer (BOT);
(d) Build-Own-and-Operate (BOO);
(e) Build-Transfer-and-Operate (BTO);
(f) Contract-Add-and-Operate (CAO);
(g) Develop-Operate-and-Transfer (DOT);
(h) Rehabilitate-Operate-and-Transfer (ROT);
(i) Rehabilitate-Own-and-Operate (ROO);
(j) Concession Arrangement;
(k) Joint Venture (JV);
(l) Lease or Affermage;
(m) Management Contract;
(n) Service Contract;
(o) Divestment or Disposition;
(p) Corporatization; and
(q) 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.

SECTION 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 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 Development Authority.

(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 City Guarantee, Direct City Subsidy and Direct City Equity only applies to unsolicited proposals for BOT variants under Republic Act No. 6957, as amended by Republic Act No. 7718.

(e) For BOT 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 twenty percent (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 Republic Act No. 8182, otherwise known as the ODA Act of 1996, as amended by Republic Act No. 8555, may be availed of for

PPP projects where there is difficulty in sourcing funds; provided, that ODA financing shall not exceed fifty percent (50%) of the project cost, with the balance to be provided by the PSP.

(h) Any subsidy to the constituents that will be extended by the 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 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. 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, 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.

(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, 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.

(v) 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.

(vi) 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, unless the parties agree that the City will have a greater share in the dividends, profits, income and revenues.

(vii) 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.

(viii) The share or equity of the Municipality in the JV arrangement may be advanced, in full or in part, by the PSP where the PSP shall be paid from the future revenues due the Municipality either by set-off or actual payment.

(ix) 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/ city 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 shall be subject to the audit examination by the Commission on Audit (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 must be reflected, disclosed and recognized in the annual appropriations of the City.

SECTION 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 III
PPP PROCEDURES AND PPP CONTRACT

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

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

(b) For Management and Service Contracts, the City shall comply with Republic Act No. 9184 or the Government Procurement Reform Act and its Implementing Rules and Regulations.

(c) For Concessions, Joint Ventures, and Leases or Affermage, the procedures specified herein shall govern.

(d) For Divestment or Disposition of a property, Commission on Audit Circular No. 89-296 (January 27, 1989) shall be applicable.

(e) 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 Commission on Audit Circular No. 89-296 (January 27, 1989).

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

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

(h) All PPP contracts must be signed by the Mayor with prior authorization by the Sanggunian Panlungsod.

(i) During the consideration of the PPP Contract by the Sangguniang Panlungsod, a public consultation 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.

(j) After the signing of the PPP Contract by the Mayor, the PPP-SC shall issue the Notice of Award to the PSP.

(k) Jointly or at the instance of the City or the PSP, the PPP Contract may be submitted for judicial, executive or administrative confirmation from the courts or appropriate government institution.

SECTION 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 shall be composed of the following:

Chairperson – The Mayor or the City Administrator if so designated by the Mayor;
Secretary – City Legal Officer;
Member - City Treasurer;
Member - City Planning and Development Officer;
Member – Majority Floor Leader; and
Member - Two (2) representatives from and chosen by the accredited civil society groups, people's and non-governmental organizations 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, National Economic Development Authority, Department of the Interior and Local Government, 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.

SECTION 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 Mayor shall approve the tender documents and the draft PPP Contract before they are issued to the prospec-

tive PSPs/ bidders.

SECTION 16. Limited Negotiations – 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 or where the desired PPP project is the subject of an unsolicited proposal from a PSP, 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 for the Competitive Selection are complied with. The Mayor shall approve the terms of the Limited Negotiations prior to the award of the contract to the PSP.

SECTION 17. Competitive Challenge – The Competitive Challenge process shall be divided into three (3) Stages, described as:

Stage One/ Unsolicited Proposal – The steps are:

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

(ii) The PPP-SC shall make an initial evaluation of the proposal and determination of the eligibility of the PSP.

(iii) Upon completion of the initial evaluation, the Mayor, upon recommendation of the PPP-SC, shall either issue a certificate of acceptance or non-acceptance of the proposal for purposes of detailed negotiations.

(iv) If there is more than one unsolicited proposal submitted for the same PPP Project, the 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.

In the event that the Original Proponent has an exclusive franchise, right or concession, such as a power service contract, water rights, or mining contracts/ rights vested, granted or awarded by the responsible national government agency, or ownership over real, personal or intellectual property, without which the JV project or activity cannot be undertaken without the participation or consent of the Original Proponent-Franchise Holder, subjecting the unsolicited proposal to challenge under Stage Three hereof need not be undertaken. In which case, the Competitive/ Swiss Challenge process is deemed complete.

(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 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 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 thirty (30) days from issuance of the notice of award, the original proponent the cost of preparing the project study, provided, that this reimbursement arrangement and the cost of preparing of the project study are expressly stated in the terms of reference for the competitive challenge, and that the PPP-SC has determined that the cost is reasonable.

SECTION 18. Schedules and Timelines – The City 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 19. PPP Contract – (a) The PPP Contract shall be signed by the 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.

CHAPTER IV
REGULATION AND CONTRACT MANAGEMENT

SECTION 20. 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.

SECTION 21. Composition of the PPP Regulatory Authority – (a) The membership of the PPP-RA shall be composed of the following:

(i) Chairperson – The Mayor or the City Administrator if so designated by the Mayor;

(ii) Vice-Chairperson – Vice-Mayor or representative from the Sangguniang Panlungsod designated by the Vice-Mayor;

(iii) Two (2) representatives of the sanggunian belonging to two (2) distinct registered political parties to which the Mayor does not belong to be 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 civil society groups, people's and non-governmental organizations 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 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 National Economic Development Authority, the PPP Center, the Department of Interior and Local Governments, private sector, non-governmental organizations and civic groups.

(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.

SECTION 22. Contract Management Manual – (a) The City Legal Officer, City Treasurer and City Planning and Development Officer and one of the civil society 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.

SECTION 23. 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 24. 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.

SECTION 25. 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:
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.

SECTION 26. 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.

SECTION 27. 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;

(v) 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;

(vi) 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;

(vii) random inspections of PSP records and on-site monitoring visits; and

(viii) 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 28. 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.

SECTION 29. 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.

SECTION 30. 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.

SECTION 31. Document Control – The PPP-RA shall act as the administrator of documents and correspondence relating to the PPP pro-

ject 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 V
ACCOUNTABILITY, INFORMATION, EDUCATION AND MONITORING

SECTION 32. 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 an 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 is concerned, that he or she may have or will have, in which case, the official or representative shall no longer be a member of the PPP-SC and PPP-RA;
(j) not vote or act in a particular way on any matter in consideration of any offer, promise, gift or present, from a member of the public, government, a political party, social group or non-governmental organization, or any stakeholder or potential stakeholder;
(k) not receive any gift or anything else of value which is or may be viewed as aimed at influencing or directing his or her vote or actions; and
(l) to disclose immediately to the PPP-SC or PPP-RA as the case may be, any attempted inducement that may be construed as aimed at influencing or directing his or her acts as a member of the PPP-SC and PPP-RA.

SECTION 33. Disciplinary Action – Violation of this Code and the Code of Conduct insofar as 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 as 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 34. 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.

SECTION 35. 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.

SECTION 36. 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.

SECTION 37. 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 civil society organizations 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.

SECTION 38. Monitoring and Governance Audit Program – The City, in order to ensure transparency and accountability, shall encourage civil society organizations, people's and non-governmental organization and civic aggrupations to establish a PPP monitoring, evaluation and governance audit body functionally and fiscally independent from the City and other government institutions.

SECTION 39. Technical and Financial Assistance – The Department of the Interior and Local Government, Department of Finance, Department of Budget and Management, National Economic and Development Authority and the PPP Center shall extend technical and financial assistance to the City and such assistance shall be embodied in a memorandum of understanding or agreement.

CHAPTER VI
FINAL PROVISIONS

SECTION 40. Appropriation – Necessary funds are hereby appropriated from the General Fund and other available funds of the City Government for the implementation of this Code, subject to limitations provided under the Local Government Code and other pertinent laws.

SECTION 41. Implementing Rules – While this Code and the

provisions hereof are already operative upon the Code's effectivity, the Mayor may issue the appropriate and relevant rules and regulations for the proper implementation of the Code or its provisions, including the issuance of relevant mechanisms to insure competition, manuals, guidelines, sample contracts and bid documents, PPP indexes and comparators, and performance scorecards.

SECTION 42. Application of Other PPP Laws and Regulations - Whenever relevant and appropriate as determined by the Mayor and in the absence of a specific provision to the contrary, upon recommendation of the PPP-SC and PPP-RA as the case may be, the provisions of Republic Act No. 6957, as amended by Republic Act No. 7718 or the BOT Law, Republic Act No. 9184 or the Government Procurement Reform Act, Executive Order No. 301 (26 July 1987), Commission on Audit Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the Joint Venture Guidelines adopted by the National Economic Development Authority shall apply in a suppletory manner.

SECTION 43. 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 44. Repealing Clause – All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

SECTION 45. Effectivity – This Code shall take effect fifteen (15) days after its posting in two conspicuous places within the City.

ENACTED: August 4, 2014.

MA. JOSEFINA G. BELMONTE
Vice Mayor
Presiding Officer

ATTESTED:

Atty. JOHN THOMAS S. ALFEROS III
City Gov't. Asst. Dept. Head III

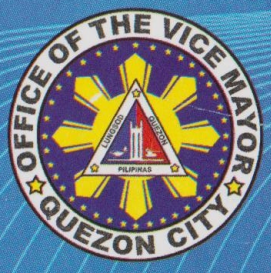
APPROVED:

HERBERT M. BAUTISTA
City Mayor

CERTIFICATION

This is to certify that this Ordinance was APPROVED by the City Council on Second Reading on August 4, 2014 and was PASSED on Third/Final Reading on August 11, 2014.

Atty. JOHN THOMAS S. ALFEROS III
City Gov't. Asst. Dept. Head III



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