



30 JUL 2013 Republika ng Pilipinas

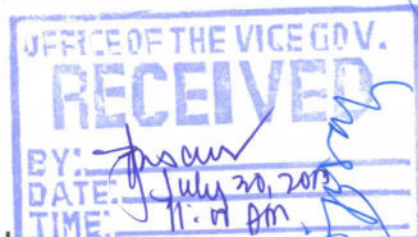
Tanggapan ng Sangguniang Panlalawigan

Balanga City, Bataan

EXCERPT FROM THE MINUTES OF THE REGULAR SESSION
OF THE SANGGUNIAN PANLALAWIGAN OF BATAAN HELD
AT FORTUNE HONGKONG SEAFOOD RESTAURANT,
BALANGA CITY, BATAAN ON FEBRUARY 27, 2013

PRESENT:

Hon. Efren E. Pascual, Jr., Vice-Governor and Presiding Officer
Hon. Manuel N. Beltran, Board Member
Hon. Dexter B. Dominguez, Board Member
Hon. Jovy Z. Banzon, Board Member
Hon. Eduard G. Florendo, Board Member
Hon. Dante R. Manalaysay, Board Member
Hon. Gaudencio C. Ferrer, Board Member
Hon. Jose Alejandro P. Payumo, III, Board Member
Hon. Aristotle J. Gaza, Board Member
Hon. Efren J. Cruz, Board Member
Hon. Jose M. Carandang, Board Member (FABC President)
Hon. Edgardo P. Calimbas, Board Member (PCL President)



ABSENT:

Hon. Gerardo R. Roxas, Board Member
Hon. Louise Gabriel Q. Del Rosario, Board Member (SKF President)

The Sangguniang Panlalawigan Members of Bataan in a session duly convened hereby enacts and approved the following Ordinance:

PROVINCIAL ORDINANCE NO. 02, S. 2013

INTEGRATED PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE OF THE PROVINCIAL GOVERNMENT OF BATAAN (Selection Process and Contract Management)

A PROVINCIAL 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, PROVIDING APPROPRIATIONS AND FOR OTHER PURPOSES.

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CHAPTER I

BASIC PRINCIPLES AND DEFINITIONS

SECTION 1. SHORT TITLE. – This Ordinance shall be known and cited as the "BATAAN INTEGRATED PPP CODE";

SECTION 2. DECLARATION OF POLICY. –

- (a) It is hereby declared as a policy that the Province of Bataan shall advance the public good and general welfare, and promote the interest of the community and the Province within the framework of sustainable and integrated development, and effective constructive engagement and meaningful people's participation in local governance;
- (b) Public-Private Partnerships (PPPs) shall be pursued by the Province consistent with and in furtherance of the vision and mission of the Province which state that:


VISION:

To be a world class center for eco-tourism and in the forefront of protecting the environment; guided by Godly virtues, with technically able, globally competitive people and governed by the rule of law, Bataan will be a haven of peace, progress and justice.

MISSION:

The Provincial Government of Bataan is committed to:

- Provide the constituency with decent and comfortable living through the acceleration of livelihood and job opportunities, promotion of eco-tourism as well as an efficient delivery of essential services;
- Respond to the needs and concern of the citizenry by developing their full potential, continuously upgrade their skills and competence, and foster an environment of peace, teamwork and responsibility;
- Maximize the utilization of resources to attain optimum returns but with utmost care for the environment;
- Enhance equal opportunities and advocate social justice;


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- Promote the province as an industrial Hub, as a globally competitive and sustainable growth center;
- Safeguard the province's verdant forest, aquatic and marine resources.

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

- (a) The Province, pursuant to Sections 1, 2 and 5, Article X of the 1987 Constitution, is a territorial and political subdivision which enjoys local autonomy and fiscal autonomy. Under Section 3, Article X of the 1987 Constitution, local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the National Government, as well as the power to allocate their resources in accordance with their own priorities;
- (b) The general welfare and the public good shall always be promoted and that transparency, public accountability and social accountability mechanisms and approaches shall be integrated in PPPs from inception to implementation;
- (c) The Province exists and operates in its governmental and proprietary capacities thereby making the Province an agent of and is therefore accountable to the State and its community. The role of the Province both as a regulator of a business and as implementer of a proprietary undertaking must be clearly delineated;
- (d) The Province 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 Province is under the supervision of the President and under the control of Congress;
- (e) Under Section 18 of Republic Act No. 7160 or the Local Government Code of 1991 (LGC), the Province shall have the power and authority to 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;

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- (f) Under Section 22 (c) of the LGC, the Governor may enter into contracts on behalf of the Province with the prior authorization by the Sangguniang Panlalawigan. The participation of the Sanggunian is indispensable in the adoption and implementation of a PPP arrangement;
- (g) Under Section 22 (d) of the LGC, the Province enjoys full autonomy in the exercise of its proprietary functions and shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, those not otherwise prohibited by law and those which are essential to the promotion of the general welfare;
- (h) Under Section 25 (b) of the LGC, the Province 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 Province, Sections 16, 17, 19 and 129 of the LGC and other statutes, the Province has been given the responsibility and mandate to exercise devolved and delegated powers;
- (j) The Province, under Section 106 of the LGC, is mandated to draw up and implement a comprehensive multi-sectoral development plan. PPPs shall be pursued by the Province consistent with its infrastructure, development, investment, environmental and governance framework embodied in relevant policies, plans, ordinances and codes;
- (k) The Province, 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 LGC and in the exercise of its powers, the Province 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

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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 Province, under Section 3 (I) of the 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 Province shall be guided by the following reasons and drivers:

- (a) PPPs shall be undertaken in furtherance of the provincial development and physical framework plan;
- (b) PPP is an essential part of the overall infrastructure reform policy of the Province. 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 "Additionalty", 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 Province could provide the

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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 provincial capital budgets can be directed to other priority sectors such as social services, education and health care;
- (e) PPPs allow for technology transfer, and improved efficiency and quality of service. These could be valuable contribution of the private sector in local governance;
- (f) PPPs should be feasible and affordable, demonstrating the need for the project, broad level project costs estimation, and indicative commercial viability. The assessment of affordability shall be the cornerstone for all PPP Projects, both to the Province 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 Province remains responsible for services provided to the public, without necessarily being responsible for corresponding investment;
- (j) PPP Projects must give consideration for empowerment of Filipino citizens as a strategy for economic growth and sustainability and must thus provide for the participation of local investors to the furthest extent practicable given the nature of the project. The Province shall also ensure the hiring and employment of local labor in the PPP venture;


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- (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 Province must secure, 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 RA No. 7718, the following are the BOT variants:
- (i) Build-and-Transfer (BT) – A contractual arrangement whereby the Project Sector Proponent (PSP) undertakes the financing and construction of a given infrastructure or development facility, and after its completion, turns it over to the Province, 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 Province on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the Province;

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- (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 Province 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 Province 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 Province 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 Province. The PSP, however, operates the facility on behalf of the Province 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

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Province 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 Province;

(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 Province, 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

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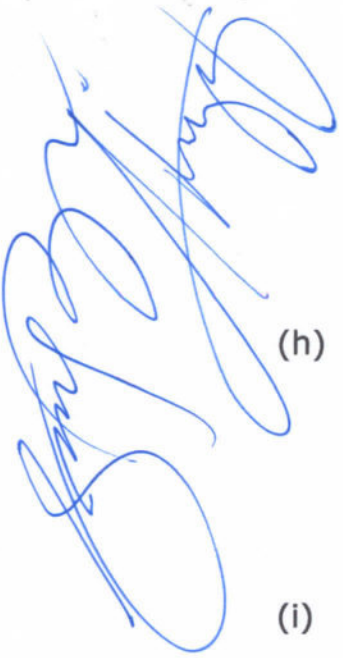
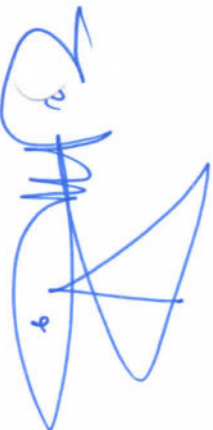

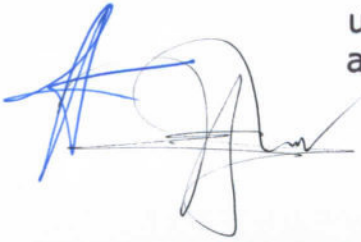



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allowed to charge and collect the approved tolls, fees, tariffs, rentals or charges from them. The Province may receive a concession or franchise fee during the term of the contract and/or other consideration for the transfer, operation or use of any facility. There may be a transfer of ownership of the asset or facility after the concession period has ended subject to the rules of the Commission on Audit;

- (e) Corporatization - Refers to transformation of a public entity or quasi-municipal corporation established by the Province into one that has the structure and attributes of a private corporation, such as a board of directors, officers and shareholders, and having it registered with the Securities and Exchange Commission as a stock corporation. The process involves the establishment of a distinct legal identity for the company under which the Province's role is clearly identified as owner; segregation of the company's assets, finances and operations from other provincial 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 provincial 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 Province, 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 Province under its contract with the PSP, subject to existing laws on indirect guarantees. Indirect Guarantees shall refer to an agreement whereby the Province 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;


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- (h) Development Projects – Projects normally financed and operated by the Province, 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 Province;
- (i) Direct Provincial Equity – Refers to the subscription by the Province 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 Provincial Guarantee – Refers to an agreement whereby the Province 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 Provincial Subsidy – Refers to an agreement whereby the Province shall:
- (a) Defray, pay or shoulder a portion of the PPP Project cost or the expenses and costs in operating and maintaining the project;
 - (b) Condone or postpone any payments due from the PSP;
 - (c) Contribute any property or assets to the project;
 - (d) Waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/or
 - (e) Waive charges or fees relative to the business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the PSP or operator for such payment, contribution or support.
- (l) Divestment or Disposition – Refers to the manner or scheme of taking away, depriving, withdrawing of title to a property owned by the Province and vesting ownership thereof to a PSP;
- (m) Feasibility Study (FS) – A study prepared by the Province in a competitive selection or a PSP when submitting an unsolicited proposal, containing a needs analysis, affordability assessment, value for money assessment,
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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 shall 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 Province 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 Province 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 Province 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 Province for a fixed term. Under a lease, the PSP retains revenue collected from customers and makes a specified lease payment to the Province. 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

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Province 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 Province. The project proponent may collect tolls/fees/rentals and charges which shall be turned over to the Province 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 Province 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 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
 - 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

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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 Partnership (PPP) – PPP is a form of legally enforceable contract between the Province 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 Province. PPP shall also include dispositions of an asset, facility, project owned, or entity created by the Province to a PSP; procurement of a service; assumption by a PSP of a proprietary function of the Province; grant of a concession or franchise to a PSP by the Province; or usage by the PSP of public property owned or possessed by the Province;
- (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 Province undertakings and contributions extended for the project;
- (x) Service Contract – A contractual arrangement whereby the PSP shall provide a particular service to the Province involving the Province's proprietary authority or to entities or corporation created by the Province. The PSP shall be

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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 Province to undertake a Development Projects without a formal solicitation issued by the Province;
- (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 Province'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 Province shall comply with Republic Act No. 6957 as amended by RA No. 7718 (BOT Law) and its Implementing Rules and Regulations;

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- (c) In entering into Management and Service Contracts, the Province shall comply with Republic Act 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 the Philippines may be referred to.

CHAPTER II

PPP PROJECTS AND PPP MODALITIES

SECTION 8. PPP PROJECTS. -

- (a) The Province, 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, prisons, and hospitals. The Province 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 study weighing all the relevant value drivers and reasons for pursuing a PPP Project.

SECTION 9. LIST OF PRIORITY PROJECTS. - The Province shall identify specific priority projects that may undertaken under any of the PPP Modalities defined under Section 10 hereof;


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SECTION 10. PPP MODALITIES. – In undertaking a specific PPP Project, the Province may adopt and pursue any of the following 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; and
- (p) Corporatization.

SECTION 11. GENERAL REQUIREMENTS. – These are the general requirements for the Province 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 Province under any of the BOT variants shall be submitted for confirmation to the Provincial Development Council for projects costing above TWENTY up to FIFTY MILLION PESOS; above FIFTY MILLION up to TWO HUNDRED

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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 Provincial Guarantee, Direct Provincial Subsidy and Direct Provincial Equity only applies to unsolicited proposals for BOT variants under Republic Act No. 6957 as amended by RA 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 Province may provide Direct Provincial Guarantee, Direct Provincial Subsidy, Direct Provincial Equity, or Viability Gap Funding; provided, that the Province 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 Section 287 and 294 of the LGC respectively;
- (f) For all PPP Modalities, the Province 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 Province must be targeted, transparent and efficiently administered;

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- (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 Province 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 Province, provided that the total franchise period shall not exceed fifty (50) years;
- (l) The Province 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 PPPs, the Province 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 ordinances;
- (n) The Province shall prescribe and impose Procurement Ethics to be followed by the Province and all bidders based on the principles of honesty, integrity, probity, diligence, fairness, trust, respect and consistency for all PSPs and bidders;

SECTION 12. GOVERNMENT-TO-GOVERNMENT JOINT PPP UNDERTAKINGS. - The Province 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 Province's territory or those projects that will benefit the Province and its community even if the project site is outside the Province's territory; provided, that the collaborating or partner

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government entity jointly undertakes with the Province the selection of the PSP using the appropriate PPP Modality;

CHAPTER III

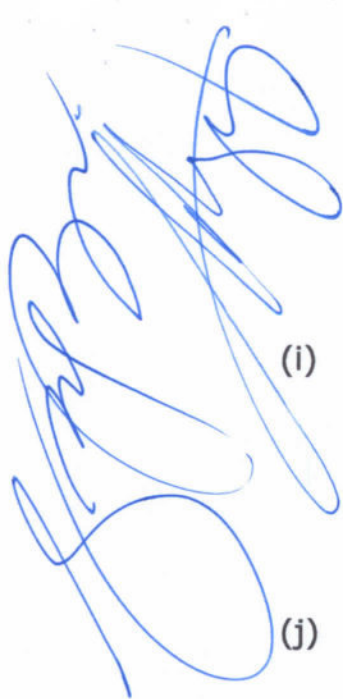
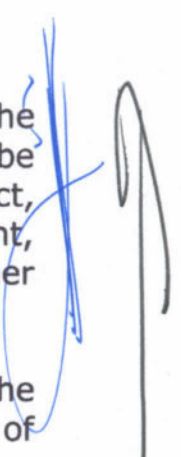
PPP PROCEDURES AND PPP CONTRACT

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

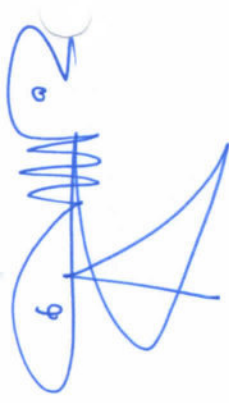

- (a) For BOT variants, the Province must comply with the procedure set forth in Republic Act No. 6957 as amended by RA No. 7718 and its Implementing Rules and Regulations;
- (b) For Management and Service Contracts, the Province shall comply with Republic Act No. 9184 or the Government Procurement Reform 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 Province 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 Province opts to select a PSP using either Competitive Selection or Competitive Challenge, the Province in the Competitive Selection and the PSP in the Competitive Challenge approach must prepare and submit a Feasibility Study. The costs of preparing the Feasibility Study may be reimbursed by the winning PSP to the Province under the Competitive Selection mode;
- (g) All recommendations of the PPP Selection Committee shall be submitted to the Governor for consideration and approval;
- (h) All PPP contracts must be signed by the Governor with prior authorization by the Sangguniang Panlalawigan;


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- (i) During the consideration of the PPP Contract by the Sangguniang Panlalawigan, 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 Governor, the PPP Selection Committee (PPP-SC) shall issue the Notice of Award to the PSP.




SECTION 14. PPP SELECTION COMMITTEE. -


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- (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:
- (i) Chairperson - At least a third ranking officer of the Province;
 - (ii) Secretary - Provincial Legal Officer;
 - (iii) The Provincial Treasurer;
 - (iv) The Provincial Planning and Development Officer;
 - (v) One (1) Representative from and selected by the Sangguniang Panlalawigan; and
 - (vi) Two (2) Representatives from and chosen by the accredited civil society groups, people's and non-governmental organizations who are members of the Provincial 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 Governor may invite provisional non-voting members from the National Government Agencies, Regulatory Agencies, National Economic Development Authority, Department of Interior and Local Governments, 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 Province;

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- (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 Study and



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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 Governor shall approve the tender documents and the draft PPP Contract before they are issued to the prospective PSPs/bidders.

SECTION 16. LIMITED NEGOTIATIONS. - Where the Province 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 Study and Terms of Reference for the Competitive Selection are complied with. The Governor 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:

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STAGE ONE/UNSOLICITED PROPOSAL – The three (3) steps are:

- (i) A PSP submits an unsolicited proposal accompanied by a Feasibility Study to the Province 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 Governor, 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 are more than one solicited proposal submitted for the same PPP Project, the Governor, 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 Province.

STAGE TWO/DETAILED NEGOTIATIONS – The steps are:

- (i) The parties shall negotiate and agree on the terms and conditions of the PPP Project concerning its technical and financial aspects;
- (ii) Once negotiations are successful, the Parties shall issue a joint certification stating that an agreement has been reached and specifying the eligibility of the PSP and the technical and financial aspects of the PPP Project as agreed upon;
- (iii) The issuance of the certification commences the activities for the solicitation for comparative proposals;
- (iv) However, should negotiations not result to an agreement acceptable to both parties, the Province 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.


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STAGE THREE/COMPETITIVE OR SWISS CHALLENGE - 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 Governor 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 Province 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 Province 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 Province, the PPP Project shall be immediately awarded to the original proponent.


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SECTION 18. SCHEDULES AND TIMELINES. – The Province 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 Governor on behalf of the Province with the prior authorization or ratification by the Sangguniang Panlalawigan, and the duly authorized representative of the PSP;
- (b) The direct and ultimate beneficiary of any PPP Contract shall be the constituents of the Province;
- (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

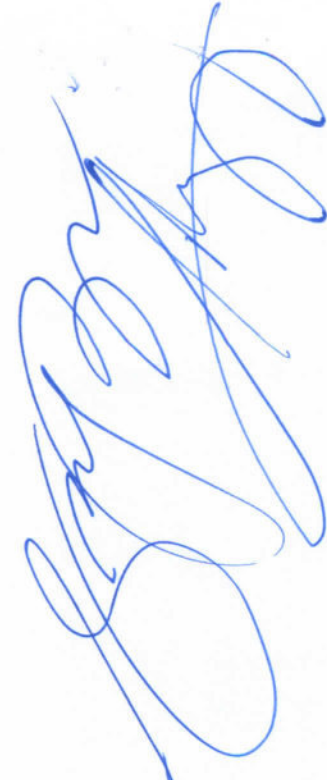







SECTION 20. PPP REGULATORY AUTHORITY'S MANDATE. – The PPP Regulatory Authority (PPP-RA) created under this Code shall be tasked with performing contract management functions, such as partnership management (i.e., corporate governance, communication and information sharing, and dispute resolution), performance 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 Province. 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:

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- (i) Chairperson – The Governor or the Provincial Administrator if so designated by the Governor;
 - (ii) Vice-Chairperson – Vice-Governor or a member of the Sangguniang Panlalawigan to be chosen by the Sanggunian;
 - (iii) Two (2) Representatives of the Sanggunian belonging to two (2) distinct registered political parties to which the Governor does not belong to be chosen on the basis of proportional representation of all parties represented in the Sangguniang Panlalawigan;
 - (iv) Provincial Legal Officer;
 - (v) Provincial Treasurer;
 - (vi) Provincial 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 Provincial 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 Province 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 Province and its community even if the project site is outside the Province'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



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source of payment for the contract manager's compensation, provided that if a regular employee of the Province 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;


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- (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 Governor 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-government organizations and civic groups;
 - (f) The PPP-RA may form a support staff composed of employees and personnel of the Province. The PPP-RA may also engage consultants hired pursuant to law.

SECTION 22. CONTRACT MANAGEMENT MANUAL. -

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- (a) The Provincial Legal Officer, Provincial Treasurer and Provincial 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 Province 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 (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
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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 Provincial Development Council.

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 provincial 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

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that the Province 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 Province who shall 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 provincial 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 provincial 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 provincial personnel, provided that, except in the case of contract managers engaged in accordance with Section 8 (c), contractors may only be engaged for a period not exceeding three (3) years from the effective date of the PPP Contract. Such contractor shall:
 - (i) Have at least two (2) understudies; and
 - (ii) Provide a training program for provincial personnel in his field of specialization, with such training being done regularly during regular office hours.
- (c) During the contract life, the provincial personnel shall undergo such continuous training on contract monitoring to ensure that the Province is equipped to monitor reliably the PSP's performance over the entire life of the PPP Contract.

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SECTION 27. PARTNERSHIP MANAGEMENT. - Each contract management manual shall identify processes to ensure accountability and manage the relationship between the Province 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 Province 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 Province to monitor affordability, service delivery, value for money,

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quality, and performance improvement, which shall in all cases include:

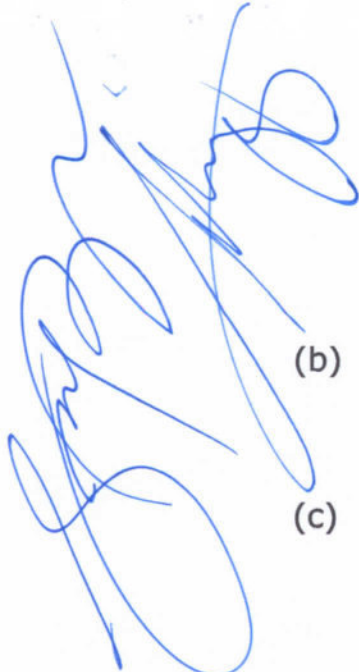
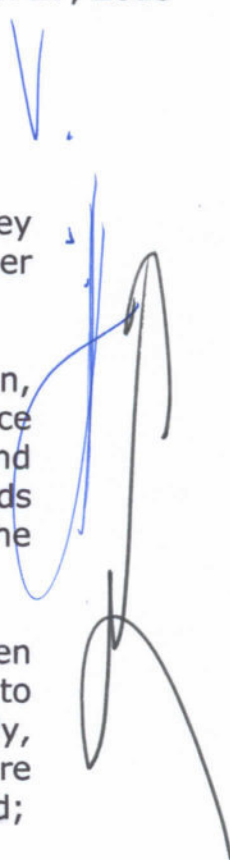
- (i) A timetable and start and end date for each performance component, including milestones with accompanying timeframes, dependencies, required or desired outcomes, and acceptable performance levels;
 - (ii) Requirements and standards to be used to monitor PSP Performance;
 - (iii) Procedures and guidelines for measuring customer satisfaction and mechanisms to solicit end user feedback;
 - (iv) Submission of regular, accurate and timely reports by the PSP, provincial 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) Province access to PSP records to allow provincial 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.
- (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 shall include:


- (a) Systems and procedures for variation management, the roles and responsibilities of provincial personnel, and reportorial requirements for each event of proposed or successful contract variation;

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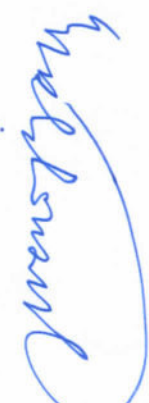
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- (b) A system for contract maintenance, identifying key contract deliverables and schedules, as well as trigger events; and
 - (c) Systems and procedure for financial administration, including an estimate of the resources that the Province will devote 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.
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SECTION 30. CLOSEOUT PROCEDURES. - Formal, written closeout procedures shall be included in contract management plan to ensure that all goods and services have been delivered satisfactorily, all properties are disposed accordingly, all provincial 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 Province's contract management system. The post-contract review shall likewise include a financial audit of the entire PPP Project and determination of lessons learned. Provincial 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.
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CHAPTER V

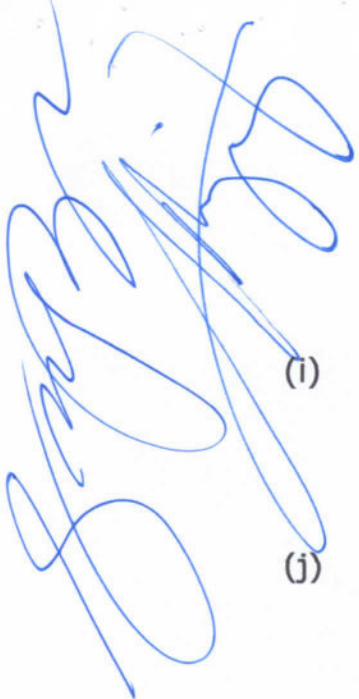
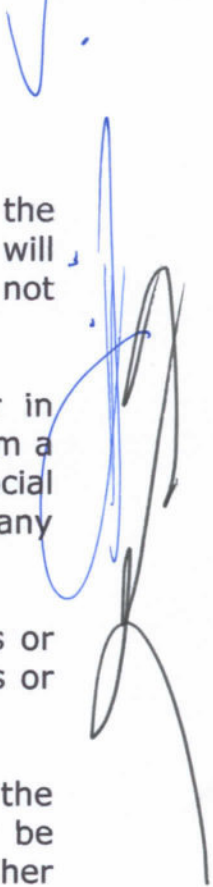




ACCOUNTABILITY, INFORMATION, EDUCATION AND MONITORING


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 Province and its constituents;
- (c) Recognize the public's right to access to information in accordance with law;
- (d) No misuse his or her position and privileges of a member of the PPP-SC and PPP-RA, whether or not such will prejudice the interest of the public, the PSP, or any third person;
- (e) To take the utmost care in ensuring reasonable protection of the records of each PPP Project, and to not disclose any confidential and proprietary information to persons without a need to know such information, or in violation of any non-disclosure requirements under law or contract;
- (f) Carry out his or her duties with the skill and care expected from a person of knowledge and experience, and to exercise prudent judgment;
- (g) Forthwith report to the appropriate authorities any act of negligence, fraud, corruption, misuse of government funds, failure or refusal to perform duties, or any other act which may constitute a crime or offense, or which is prejudicial to the public interest, in the selection of the PSP and implementation of a PPP Contract;
- (h) Forthwith declare any personal or business interest that he or she, or any of his or her relatives within the fourth degree of affinity or consanguinity, may have in any business of a PSP, in which case, the official or representative shall no longer be a member of the PPP-SC and PPP-RA;

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- (i) Forthwith declare any conflict of interest, insofar as the PPP Project concerned, that he or she may have or will have, in which case, the official or representative shall not longer be a member of the PPP-SC and PPP-RA;
 - (j) Not vote or act in a particular way on any matter in consideration of any offer, promise, gift or present, from a member of the public, government, a political party, social group or 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.

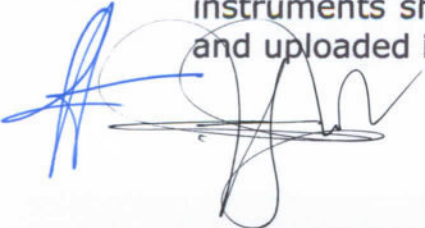


SECTION 34. DISCIPLINARY ACTION. - Violation of this Code and the Code of Conduct insofar as provincial elective officials are concerned shall constitute a ground for disciplinary action or amount to loss of confidence under the LGC and relevant laws, and with regards local appointive officials, such 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 Province 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 36. ACCOUNTABILITY. - The Province 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, Province, National Government Agencies, regulatory agencies and PSP;

SECTION 37. TRANSPARENCY AND RIGHT TO INFORMATION. - The PPP Contract, feasibility 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 Province and uploaded in a dedicated website of the PPP-RA which can be freely



ENRIQUE T. GARCIA, JR.
Provincial Governor

accessed by the public. The Province shall also implement a strategic communication plan addressed to all stakeholders;

SECTION 38. CAPABILITY-BUILDING PROGRAM. -

- (a) The Province 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 Province shall also undertake a comprehensive and sustained education and governance campaign aimed at informing all stakeholders and civil society organization about PPPs ventures of the Province and allowing them to participate in the overall PPP program of the Province. 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 Province may tap consultants to assist them in implementing PPPs and in building capability for PPPs.

SECTION 39. MONITORING AND GOVERNANCE AUDIT PROGRAM. - The Province, 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 Province and other government institutions;

SECTION 40. TECHNICAL AND FINANCIAL ASSISTANCE. - The Department of 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 Province and such assistance shall be embodied in a memorandum of understanding or agreement;

CHAPTER VI

FINAL PROVISIONS

SECTION 41. APPROPRIATIONS. - To carry out the provisions of this Code, necessary appropriations shall be made, which shall be included in the Annual Budget of the Province for the continuous implementation of this Code;


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Provincial Governor

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SECTION 42. IMPLEMENTING RULES. - While this Code and the provisions hereof are already operative upon the Code's effectivity, the Governor may issue the appropriate and relevant rules and regulation for the proper implementation of the Code or its provisions, including the issuance of relevant mechanisms to insure competition, manuals, guidelines, sample contracts and bid documents, PPP indexes and comparators, and performance scorecards;

SECTION 43. APPLICATION OF OTHER PPP LAWS AND REGULATIONS. - Whenever relevant and appropriate as determined by the Governor 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 R.A. 7718 or the BOT Law, R.A. 9184 or the Government Procurement Reform Act, Executive Order No. 301 (26 July 1987), Commission on Audit Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the Joint Venture Guidelines adopted by the National Economic Development Authority shall apply in a suppletory manner;

SECTION 44. 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 45. REPEALING CLAUSE. - All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly;

SECTION 46. EFFECTIVITY. - This Code shall take effect fifteen (15) days after its posting in two conspicuous places within the Province.

ENACTED: February 27, 2013.

APPROVED UNANIMOUSLY."

We hereby certify/attest to the correctness of the above-quoted resolution.

EFREN E. PASCUAL, JR.
Vice-Governor
(Presiding Officer)

ENRIQUE T. GARCIA, JR.
Provincial Governor

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MANUEL N. BELTRAN
Board Member



JOVY Z. BANZON
Board Member




DANTE R. MANALAYSAY
Board Member



JOSE ALEJANDRE P. PAYUMO, III
Board Member



EFREN J. CRUZ
Board Member



DEXTER B. DOMINGUEZ
Board Member




EDUARD G. FLORENDO
Board Member




GAUDENCIO C. FERRER
Board Member



ARISTOTLE J. GAZA
Board Member

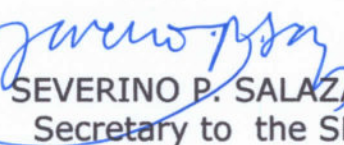


JOSE M. CARANDANG
Board Member
(FABC President)



EDGARDO P. CALIMBAS
Board Member
(PCL President)

ATTESTED:



SEVERINO P. SALAZAR
Secretary to the SP

APPROVED:



ENRIQUE T. GARCIA, JR.
Provincial Governor