



Republic of the Philippines
Province of Bohol
MUNICIPALITY OF LOON

OFFICE OF THE SANGGUNIANG BAYAN

EXCERPTS FROM THE MINUTES OF THE 72ND REGULAR SESSION OF THE 14TH SANGGUNIANG BAYAN OF LOON, PROVINCE OF BOHOL HELD ON THE 11TH DAY OF DECEMBER 2020 AT JUAN M. RELAMPAGOS SESSION HALL, LOON, BOHOL-

PRESENT:

Hon. Lloyd Peter M. Lopez, M.D.	Vice Mayor, Presiding Officer
Hon. Pedro M. Literatus, Jr.	SB Member
Hon. Ana Lisa O. Go	SB Member
Hon. Lydia L. Almasa	SB Member
Hon. Kristel P. Tecson	SB Member
Hon. Judy Marie H. Veloso	SB Member
Hon. Zaide Y. Coritico	SB Member
Hon. Timoteo L. Legitimas	SB Member
Hon. Priscila C. Branzuela	SB Member
Hon. Lucena C. Lanaja	LnB President, Ex-Officio Member
Hon. April Joseph L. Corciega	SKMF President, Ex-Officio Member

ABSENT:

NONE

MUNICIPAL ORDINANCE NO. 20-006

Series of 2020

THE PUBLIC-PRIVATE PARTNERSHIP CODE OF LOON, BOHOL

RATIONALE

There is a necessity to acknowledge the role of the private sector to participate in infrastructure development and social service-related projects of the town through what is popularly known as Public-Private Partnerships (PPPs) for the rapid socio-economic progress of the 67 barangays of the Municipality of Loon.

It is based on Section 35 of Republic Act No. (RA.) 7160 otherwise known as the Local Government Code of 1991 and Article 66 of its Implementing Rules and Regulations (IRR) which categorically empowers LGUs to enter into Joint Ventures (JVs).

The 1991 Local Government Code and its Implementing Rules and Regulations, however, do not define what a Joint Venture is and do not spell out the particular requirements and conditions, and procedures for identifying Joint Venture projects and selecting the private Joint Venture partners.

The absence of a detailed statute and framework on Local Government Unit Joint Ventures has been confirmed by the Department of Interior and Local Government

(DILG) in its Legal Opinion No. 8 s. 2014, March 6, 2014, Legal Opinion No. 47 S. 2012, July 13, 2012, and the Department of Justice Opinion No. 18, s. 2012, April 3, 2012.

The Joint Venture is not a variant under RA 6957 as amended by R.A. 7718, popularly known as the Built Operation Transfer (BOT) Law, and does not involve procurement as defined under the RA 9184 or the Government Procurement Reform Act (GPRA).

The Joint Ventures by Local Government Units are excluded from the coverage of the 2013 Revised and 2008 Joint Venture Guidelines issued by the National Economic and Development Authority (NEDA).

In furtherance of and consistent with local autonomy, fiscal autonomy, the principle of subsidiarity, public good, general welfare and full autonomy over proprietary powers, Local Government Units are free, provided no statute is violated, to adopt their own definition of a Joint Venture and prescribe the requirements, procedures, conditions and parameters for local Joint Ventures, and incorporate these in an operative framework.

Having a framework defined in an ordinance will ensure and facilitate consistency, integrity, reliability, sustainability, accountability, transparency, and enforceability.

Hence, the 14th Sangguniang Bayan of Loon has finally decided to enact a Public Private Partnership (PPP) Code in preparation for the massive infrastructure development and social service-related projects of this municipality.

INTRODUCTORY BRIEF

This Code is an output of the seminar on the Formulation of Public Private Partnership (PPP) Code with Director Eleazar Dicote, Director of the PPP Knowledge Center, National Economic Development Authority (NEDA) as the Resource Speaker. The Seminar sponsored by the PLEASES Inc. in Cebu City was duly attended by the entire membership of the 13th Sangguniang Bayan of Loon, Bohol.

With the new composition of the 14th Sangguniang Bayan, the enactment of this Public-Private Partnership Code was made possible, in answer to the pressing demand of the society, taking into consideration the socio-economic development of the Province of Bohol.

Pursuant to the recommendation of the Public Private Partnership (PPP) Knowledge Center of the National Economic Development Authority (NEDA) which is the authority on what is the best PPP Code to be adopted, the 14th Sangguniang Bayan has preferred to choose the NEDA template which is the latest model among the PPP Codes in the Philippines, incorporating therein some provisions of the PPP Code of Valenzuela City, as per referral by the Honorable Mayor Elvi Peter L. Relampagos.

May 8, 2020, Loon, Bohol, Philippines.

HON. PEDRO LITERATUS, JR.
Chairman, Rules and Codification Committee

HON. LLOYD PETER M. LOPEZ, M.D.
Vice Mayor

Be it ordained by the 14th Sangguniang Bayan of Loon in session duly assembled that:

SECTION 1. SHORT TITLE. This Code shall be known and cited as the “Public-Private Partnership Code of the Municipality of Loon”.

SECTION 2. DECLARATION OF POLICY. It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects normally financed and undertaken by the Government. It also states that a local government, as a territorial and political subdivision, enjoys local autonomy and fiscal autonomy. Thus, local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes, as well as the power to allocate their resources in accordance with their own priorities.

- a. Under Section 35 of R.A. No. 7160, otherwise known as the Local Government Code of 1991, local government units 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, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.
- b. Section 1.2 of the Revised Implementing Rules and Regulations (IRR) of R.A. No. 6957, as amended by R.A. No. 7718, otherwise known as the BOT Law, states that concerned LGUs may formulate additional guidelines/procedures not in conflict with the BOT Law, its IRR and the Local Government Code and its corresponding IRR.

SECTION 3. VISION. Loon, being the largest town of Bohol comprising of 67 barangays is envisioned to become an economically prosperous municipality that is anchored on vibrant trading, agri-fishery and ecotourism industries and sustained by a well-protected environment and good governance.

SECTION 4. MISSION. The LGU-Loon has the mission to alleviate the socio-economic condition of its constituents from lower-class society to “Middle Class Society”, empower the poor, promote discipline and order, attract investments, and in every aspect foster an environment conducive to human and institutional development.

SECTION 5. RATIONALE FOR JOINT VENTURES. In pursuing Joint Ventures, the municipality shall be guided by the following:

- a) Joint Ventures shall be promoted to provide better, affordable and timely services to the community.
- b) Joint Ventures shall be undertaken in the furtherance of the municipality's vision, mission, development and physical framework plan.
- c) Joint Ventures shall promote the pooling of community resources, sharing of responsibilities and functions, joint governance and decision-making, mutual innovation and profit, income, dividends, risk and loss allocation.

SECTION 6. PRINCIPLES. The development and implementation of PPP projects shall be guided by the following principles:

- a. The implementation of PPP projects must comply with existing laws, rules and regulations of the national and local governments.

- b. PPP Projects must be procured through an open, transparent, and competitive bidding process.
- c. PPP Projects must encourage the entry of private capital, advanced technology and managerial expertise for the effective and efficient delivery of infrastructure and services to the public.
- d. Public interest shall be the overriding factor in considering all PPP projects. This includes the provision of more, quality and cost-effective services and opportunity for income and employment to the people.
- e. In implementing PPP projects, adequate safeguards to protect the environment and ensure the participation of and benefit to the disadvantaged sectors of the community should be in place.
- f. PPP projects must have strategic objectives that are in line with national and local development goals of alleviating poverty, improving competitiveness, and inclusive growth.
- g. PPP Projects must be pursued consistent with the concept of proper risk allocation between the Local Government and the Private Sector Proponent.
- h. PPP projects must be economically viable and ensure the best value for money for the government and commercially viable to the private sector.
- i. PPP Projects must be supported by enabling policies and mechanisms, and appropriate incentives to attract private sector investments.
- j. 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 Joint Ventures from inception to implementation.
- k. The LGU, as a partner in a Joint Venture agreement, may provide money, capital, land, assets, intellectual property, personnel, services, franchise, equity, subsidy or guarantee and use local funds; and the usage thereof for a Joint Venture Project shall be considered for public use and purpose.

SECTION 7. LEGAL BASIS. The following shall serve as its legal basis:

- a. The Municipality, pursuant to Sections 1, 2 and 5, Article X of the 1987 Constitution, is a territorial and political subdivision, which enjoys local autonomy and fiscal autonomy. The LGU shall determine and identify Joint Venture Projects in accordance with its own priorities.
- b. Under Section 22 (d) of the 1991 Local Government Code, the LGU 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. The LGU may agree to such terms and conditions in the Joint Venture Agreement as will be beneficial and advantageous to the LGU and its residents.
- c. The LGU, under Section 106 of 1991 Local Government Code, is mandated to draw up and implement a comprehensive multi-sectoral development plan. Joint Ventures shall be pursued by the LGU consistent with its infrastructure, development, investment, environmental and governance framework embodied in relevant policies, plans, ordinances and codes.
- d. Under Section 22 (c) of the 1991 Local Government Code, no contract may be entered into by the Mayor on behalf of the LGU without prior authorization from the Sangguniang Bayan of Loon. The participation of the Sanggunian is thus indispensable in the adoption and implementation of a Joint Venture arrangement.

SECTION 8. OBJECTIVES. This Code has the following objectives:

- a. To identify specific support and undertakings, financial or otherwise, that may be granted to the Project Proponents, as well as specific incentives as provided for under the Local Investments and Incentives Code;
- b. Provide a climate of minimum Government regulations and procedures in undertaking PPP projects;
- c. Allow reasonable returns on investments made by Project Proponents;
- d. Provide rules and procedures that will ensure transparency and competitiveness in the bidding and awarding of projects;
- e. Ensure that PPP Contractual Arrangements reflect appropriate allocation of risks between the Government and the Project Proponent;
- f. Ensure close coordination between the national government and local government units (LGUs);
- g. Ensure strict compliance by the Government and the Project Proponent of their respective obligations and undertakings under the PPP Contract and the monitoring thereof; and
- h. To encourage pooling of resources and expertise between the local government and private sector entities through Public-Private Partnership as a viable, efficient, and practical alternative in pursuing development goals.

SECTION 9. COVERAGE. This Code shall apply to all Public-Private Partnership Projects undertaken by the Local Government Units with the private sector as provided herein.

SECTION 10. INTERPRETATION. This Code shall be liberally interpreted to accomplish the policies, principles and objectives as set forth in Section 2, 3, 4, 5, 6 and 8 hereof. Any doubt or controversy arising from the interpretation shall be resolved in favor of the interest of the Local Government subject to existing laws and jurisprudence.

SECTION 11. DEFINITIONS. For purposes of this Code, the following terms shall mean:

- a. A debenture is a type of bond or other debt instrument which has no collateral backing, but relies on the creditworthiness and reputation of the issuer for support with a term greater than 10 years. Both corporations and governments frequently issue debentures to raise capital or funds.
- b. **Comparative Bidding Process or Swiss Challenge.** A selection process wherein third parties or challengers are invited to submit comparative proposals to challenge the unsolicited proposal. The original proponent who submitted the unsolicited proposal is accorded the right to match any superior comparative proposal. This process is among the conditions for unsolicited proposals under **Section 20**.
- c. **Government Undertakings.** Refers to any of the following forms of contribution and/or support which the LGU may extend to a Project, such as, but not limited to, the following:
 - (i) **Cost sharing.** This refers to the LGU bearing a portion of capital expenses associated with the establishment of an infrastructure development facility, such as the provision of access infrastructure, right-of-way, transfer of ownership, or usufruct, or possession of land, building or any other real or personal property for direct use in the project and/or any partial financing of the project or components thereof; *Provided*, that such shall not exceed fifty percent (50%) of the Project Cost, and the balance is to be provided by the Project Proponent. Such government share may be financed from direct government appropriations and/or loans from Official Development Assistance (ODA) of foreign governments or institutions.
 - (ii) **Credit Enhancement.** This shall refer to support to a development project by the Project Proponent and/or the LGU concerned. This can be considered to

improve the risk and return profile of a project to attract financing. Credit enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved. Credit enhancements provided by the Project Proponent may take the form of escrow account of project revenues, the use of a loan, or a contingent credit line for the project company. While LGU support can improve the predictability of project cash flows and reduce the levels of risk through capital grants, off-take agreement, revenue guarantees or tax holiday.

- (iii) **Direct Government Equity.** An agreement whereby the LGU subscribes to shares of stocks or other securities convertible to shares of stocks of the project company, whether such subscription will be paid by money or assets.
- (iv) **Direct Government Guarantee.** An agreement whereby the LGU guarantees to assume responsibility for the repayment of debt directly incurred by the Project Proponent in implementing the PPP Project in case of a loan default.
- (v) **Direct Government Subsidy.** An agreement whereby the LGU will: (a) defray, pay for or shoulder a portion of the Project Cost or the expenses and cost in operating or maintaining the PPP Project; (b) condone or postpone any payment due from the Project Proponent; (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 waive charges or fees relative to business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the Project Proponent and/ or Facility operator for such payment, contribution or support.
- (vi) **Performance Undertaking.** This shall refer to an undertaking of LGU in assuming responsibility for the performance of its obligations under the contractual arrangement including the payment of monetary obligations, in case of default. These undertakings may be subject to payment of risk premium to the LGU.

The LGU may offer any or more Government Undertakings relative to a project, which shall be pre-cleared by the Local Chief Executive (LCE), the Sanggunian, and any other government entity that will grant the same as mandated by law; *provided, that*, the total government undertakings shall not exceed fifty percent (50%) of the total project cost.

Provided, further, that in case of a Joint Venture (JV), the LGU will only contribute up to 50% of the equity (or outstanding capital stock in the case of a JV company) required for the investment activity.

- d. **Head of LGU.** Shall refer to the Local Chief Executive (LCE) or its authorized official
- e. **Investment Incentives.** Refers to any form of support, which the LGU may extend to a Project Proponent pursuant to the provisions of this Code.
- f. **Local Government Unit (LGU).** Refer to the municipal government entity.
- g. **Local Sanggunian.** A council in the LGU which is tasked to: a) approve the proposed LGU PPP project; and b) authorize the LCE to enter into agreement with the private investor
- h. **Municipal Investment Coordination Committee (MICC).** Refers to Municipal Investment Coordination Committee of the LGU.
- i. **Negotiated Contracts.** Refer to contracts entered into by the LGU in cases prescribed under Section 19 of this Code.
- j. **Open Competition.** Refers to a selection or procurement process initiated and solicited by the BAC, based on transparent criteria, which is open to participation by any prospective proponent.

- k. **PPP Infrastructure or Development Projects.** Infrastructure or development projects normally financed and operated by the public sector but will now be wholly or partly financed, constructed and operated by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates or townships, commercial/real estates, housing, government buildings, tourism projects, public markets, slaughterhouses, bulk grains handling facility or logistic support system, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the LGU pursuant to this Code.
- l. **PPP BAC.** Refers to the Public-Private Partnership Bids and Awards Committee established under Section 18 of this Code.
- m. **Project Cost.** Refers to the total cost to be expended to plan, develop and construct the project to completion stage including but not limited to the cost of feasibility studies, engineering and design, construction, equipment, land and right-of-way, taxes imposed on said cost, and development cost.
- n. **Project Proponent.** 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 to implement the project.
- o. **Project Steering Committee (PSC).** The PSC shall be composed of high-level representatives from the implementing agency, the project proponent, and other relevant authorities. It shall be the forum for regular communication between high-level representatives of the parties for the purpose of facilitating the implementation of the PPP contract; and perform any other task as envisaged under the concession agreement.

The LGU is tasked to prepare infrastructure and development programs and identify priority projects that may be financed, constructed, operated and maintained by the private sector through the Contractual Arrangements or schemes authorized under this Code and submit for approval by the Local Sanggunian and upon endorsement by the Local Development Council. These priority projects shall be included in the Local Development Investment Program (LDIP) listed under the category of projects for possible private sector Contractual Arrangement.

- p. **Public-Private Partnership (PPP).** Refers to a contractual arrangement between a Project Proponent and an LGU for the financing, design, construction, operation, and maintenance, or any combination thereof, of Infrastructure or Development Projects, in which the Project Proponent bears significant risk, management responsibility, or both. Said contractual arrangements may refer to the following schemes (PPP Contractual Arrangements), as well as variations thereof upon approval of the Municipal Mayor with prior authority by the Sangguniang Bayan, by which Infrastructure or Development Projects may be undertaken pursuant to the provisions of this Code, viz:
 - (i) **Build-and-Transfer (BT).** A contractual arrangement whereby the Project Proponent undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the LGU, which shall pay the Proponent, on an agreed schedule, its total investments expended on the project, plus a Reasonable Rate of Return (ROR) thereon. This arrangement may be employed in the construction of any infrastructure or development project, including critical facilities which, for security or strategic

reasons, must be operated directly by the LGU.

- (ii) **Build-Lease-and-Transfer (BLT).** A contractual arrangement whereby the Project Proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the LGU on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the LGU.
- (iii) **Build-Own-and-Operate (BOO).** A contractual arrangement whereby a Project Proponent is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the Proponent is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other chargers from facility users; *Provided*, that all such projects, upon recommendation of the Municipal Investment Coordination Committee (MICC), shall be approved by the Municipal Mayor with prior authority by the Sangguniang Bayan. Under this project, the proponent who owns the assets of the facility may assign its operation and maintenance to a facility operator.
- (iv) **Build-Operate-and-Transfer (BOT).** A contractual arrangement, whereby the Project Proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The Project Proponent 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 Project Proponent to recover its investment and operating and maintenance expenses in the project. The Project Proponent transfers the facility to the LGU at the end of the fixed term which shall not exceed fifty (50) years; *Provided*, that in the case of an infrastructure or development facility the operation of which requires a public utility franchise, the proponent must be Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos. This build-operate-and-transfer shall include a supply-and-operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the LGU so requires, operates the facility providing in the process technology transfer and training to Filipino nationals.
- (v) **Build-Transfer-and-Operate (BTO).** A contractual arrangement whereby the LGU contracts out the construction of an infrastructure facility to a private entity such that the Project Proponent builds the facility on a turn-key basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the LGU. The Project Proponent however operates the facility on behalf of the LGU under the agreement.
- (vi) **Contract-Add-and-Operate (CAO).** A contractual arrangement whereby the Project Proponent adds to an existing infrastructure facility which it is renting from the LGU and operates it over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provided by the Project Proponent.
- (vii) **Develop-Operate-and-Transfer (DOT).** A contractual arrangement whereby

favorable conditions external to a new infrastructure project which is to be built by a Project Proponent 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) **Joint Venture (JV) Agreements.** A contractual arrangement whereby a private person or a group of private persons on one hand, and a Local Government Unit on the other hand, contribute money, services, assets, or a combination of any or all of the foregoing to undertake a PPP project, with the intention to share profits, risks and losses. Assets may include equipment, land, intellectual property or anything of value.
- (ix) **Operations and Maintenance Contract.** A contractual arrangement whereby the Project Proponent undertakes the day-to-day operation and maintenance of an infrastructure facility owned by the LGU. The Project Proponent shall undertake the acquisition or provision and upgrading of equipment, systems and other items related to operation and maintenance. The Project Proponent shall be compensated in the form of a performance-based management or service fee during the cooperation period.
- (x) **Rehabilitate-Own-And-Operate (ROO).** A contractual arrangement whereby an existing facility is turned over to the Project Proponent 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.
- (xi) **Rehabilitate-Operate-And-Transfer (ROT).** A contractual arrangement whereby an existing facility is turned over to the Project Proponent 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 LGU. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.
- q. **Reasonable Rate of Return.** Refers to the rate of return that a Project Proponent shall be entitled to, as determined by the LGU subject to the approval of the MICC taking into account, among others, the prevailing cost of capital (equity and borrowings) in the domestic and international markets, risks being assumed by the Project Proponent and the extent of Government Undertaking extended for the project; *Provided*, that in the case of Negotiated Contracts, such rate of return shall be determined by the MICC prior to negotiation and/or call for proposals; *Provided, further*, that for Negotiated Contracts for public utilities projects which are monopolies, the rate of return on rate base shall be determined by existing laws, which in no case shall exceed twelve percent (12%).
- r. **Solicited Projects** – Refer to projects identified by the LGU as part of the list of priority projects as contained in the Local Development Investment Program.
- s. **Supervising LGU** – Refers to provinces with respect to component cities and municipalities.
- t. **Unsolicited Proposals.** Refer to project proposals submitted by the private sector to undertake Infrastructure or Development Projects without any formal solicitation or request issued by the LGU, subject to the requirements or conditions prescribed in Section 20.

SECTION 12. JOINT VENTURE AGREEMENT.

- a) A Joint Venture Agreement is a contractual arrangement between the Municipality and a Joint Venture Partner or a group of private sector entities as Joint Venture Partners involving a community or pooling of interests in the performance of the service, function, business, activity or components of the Joint Venture Project, with each party having a right to direct and govern the policy in connection therewith, and with a view of sharing income, dividends, revenues, profits, risks and losses, subject to Joint Venture Agreement.
- b) The term of the Joint Venture Agreement should be a fixed period not to exceed a maximum of twenty five (25) years, renewable for another 25 years subject to the approval of the Sangguniang Bayan.
- c) The municipality, by mutual agreement in a Government-to-Government arrangement with other Local Government Units (LGUs), National Government Agencies (NGAs), Government Owned or Controlled Corporations (GOCCs), Government Instrumentalities (GIs) and Government Controlled Entities (GCEs), may implement Joint Venture Projects for projects located within the municipality's territory or those projects that will benefit the municipality and its community even if the project site is outside the municipality's territory; provided, that the collaborating or partner government entity jointly undertakes with the municipality the selection of the Private Sector Proponent.

SECTION 13. CONTRIBUTION AND EQUITY.

- a) The co-venturers or parties to a Joint Venture 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 Joint Venture. On the part of the municipality, it may grant a franchise, concession, permit an undertaking, delegate or share its proprietary functions, usufruct, right-of-way, equity, subsidy or guarantee, provide cost-sharing and credit enhancement mechanisms, exercise police power, perform devolved powers, expropriate and reclassify and enact or integrate zoning ordinances and extend goodwill. The contribution of the parties shall be subject to third party independent valuation.
- b) The municipality 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 Joint Venture project is education-related, Calamity Fund when the Joint Venture project is calamity- or reconstruction-related, and special funds, if appropriate, as its contribution or share in the Joint Venture activity, subject to applicable laws, rules and regulations regarding on any or all of the foregoing.
- c) The municipality 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 Joint Venture activity.
- d) The municipality shall be a minority equity or shareholder while the Private Sector Proponent shall be majority equity or shareholder, except in the case where fifty percent (50%) of the outstanding capital stock or contribution is owned or made by the municipality.
- e) Subject to the agreement of the parties, the municipality may be entitled to a share greater than its contribution or equity.
- f) 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 municipality will have a greater share in the dividends, profits, income and revenues, and/ or bear a lower proportion of the risks than its proportionate share in the Joint Venture;
- g) For as long as the municipality is involved in the Joint Venture, the Private Sector Proponent shall not sell or transfer its interest in the Joint Venture without the

express written consent of the Mayor upon authority of the Sangguniang Bayan, provided that the municipality may sell or transfer its interest in the Joint Venture by public auction, subject to the Joint Venture Agreement and applicable laws, ordinances, rules and regulations.

SECTION 14. TERMS AND CONDITIONS OF THE JOINT VENTURE AGREEMENT.

- a) As far as practicable, the Joint Venture Agreement shall contain the following provisions:
1. The date on which the agreement is established, executed, and considered effective;
 2. The names, addresses and identification of the parties, including the type of business of each member of the Joint Venture;
 3. The name under which the Joint Venture will do business;
 4. The principal place of business of the Joint Venture, shall be within the municipal jurisdiction of the Municipality of Loon provided that it conforms to the zoning ordinance;
 5. The Joint Venture Project and the purposes of the Joint Venture and term of the Joint Venture;
 6. The Joint Venture Vehicle;
 7. Total cost of the Joint Venture activity, project specifications and features;
 8. The relationship between the parties, management roles of each party in the Joint Venture activity, and a statement that the parties are actually co-venturers for the project, whether or not the Joint Venture Agreement is in the name of all members;
 9. The amount, kind, description (cash, personal or real property) and valuation of committed contributions of each party and when such contributions will be made and procedure for additional capital infusions, if required;
 10. The participation of the parties and percentage in which profits, revenues, risks and losses are shared, in proportion to their contributions, unless otherwise provided in the Joint Venture Agreement. The amount of contribution by the parties can be increased or decreased, depending on the contributions of equipment or expertise;
 11. The formation of a governing board or equivalent structure in the case of a Contractual Joint Venture and a board of directors in case of a Company Joint Venture and the selection of the Managing Director, Secretary and Treasurer and other officers of the Joint Venture;
 12. Specified termination/liquidation of the Joint Venture Company, buy-out provisions, and details on the transfer of ownership of the Joint Venture activity/facility including provisions on what happens to the Joint Venture's assets after the expiration of the Joint Venture agreement or end of the Joint Venture period. If equity other than cash is to be contributed, a statement as to how the property will be evaluated and the ownership of the property during and after the effectivity of the Joint Venture Agreement;
 13. Procedure for divestment and disposition;
 14. Alternative Dispute Resolution and Arbitration;
 15. Anti-Corruption warranties; and
 16. Compliance with applicable laws, rules and regulations, viz:
 - a. All Joint Venture Agreements must be signed by the Mayor with prior authorization by the Sanggunian Bayan, and the duly authorized representative of the Private Sector Proponent.
 - b. Any amendment or supplement to a Joint Venture Agreement, which if effected will not violate the policy on competition and fairness, after award

and signing of Joint Venture Agreement shall undergo approval by the Mayor with prior authorization by the Sanggunian Bayan. Non-compliance with the corresponding approval process stated shall render the amendment or supplement null and void.

- c. The regulation of the Joint Venture shall be pursuant to the Joint Venture Agreement. A duly executed Joint Venture Agreement shall be respected and not impaired, and shall be binding on the successor administration pursuant to the provision on corporate succession.

SECTION 15. JOINT VENTURE PROJECTS.

- a. The Municipality, regardless of the cost, may undertake infrastructure, development or social service-related projects which are traditionally or not traditionally provided or supplied by the LGU.
- b. The Municipality may enter into Joint Venture agreements for power plants, highways, ports, airports, canals, dams, hydropower projects, sewerage, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housing, buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and school facilities, sewerage, drainage, dredging, prisons, and hospitals and health services, memorial parks and services, parking structures and traffic management, material testing, zoos, parks and plazas, sports, leisure gaming and recreational facilities cockpits, theaters, among other projects and business purposes. The Municipality can also undertake Joint Ventures for any of the devolved activities under Section 17b2 of the 1991 Local Government Code. The municipality shall not undertake Joint Venture projects that are hazardous and extremely pollutant that will have adverse environmental and health impacts.
- c. The municipality may identify specific priority projects enumerated in its comprehensive multi-sectoral development plan, and development and physical framework plan for Joint Venture arrangements.
- d. In case of a project or activity requiring a franchise, concession or license to operate, the winning Private Sector Proponent, in case of a contractual Joint Venture, shall automatically be granted by the municipality, through a duly enacted ordinance, the franchise or license or permit to jointly operate and maintain the facility with the municipality, including the collection of tolls, fees, rentals, and other charges in accordance with the schedules stipulated in the approved Joint Venture Agreement. In case a Joint Venture Company is formed, the franchise concession or license shall be automatically granted to the Joint Venture Company. The original franchise period as stipulated in the Joint Venture Agreement may be extended, as may be authorized by the municipality, provided that total franchise period shall not exceed twenty five (25) years.
- e. Procurements made by the municipality using public/ municipality funds shall be subject to the RA 9184 and its Revised Implementing Rules and Regulations. Procurements made by the Private Sector Proponent using private funds or by the Joint Venture Company shall not be covered by said statute.
- f. The revenues, funds, expenditures and contributions of the municipality shall be subject to the audit examination by the Commission on Audit (COA). Revenues, funds, expenditures and contributions of the Private Sector Proponent shall be subject to audit by a private auditing firm.

SECTION 16. JOINT VENTURE VEHICLE.

- a. The Municipality and the Private Sector Proponent have the option to implement the Joint Venture through a Contractual Joint Venture (Unincorporated Joint Venture), or establish a Joint Venture Company (Incorporated Company).
- b. The Joint Venture Company may be formed by the municipality and the Private Sector Proponent under the following parameters:
 1. The Joint Venture Company shall be incorporated and registered as a stock corporation in accordance with the provisions of Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, as amended, and the prevailing and applicable rules and regulations promulgated by the Securities and Exchange Commission;
 2. Ownership and nationality requirements under the Constitution and other pertinent laws should be complied with;
 3. The Municipality shall be represented in the Board of the Joint Venture Company in proportion to its investment unless more seats are allotted for the municipality;
 4. The Joint Venture Company shall be permitted to derive income from the activities authorized under the Joint Venture Agreement during the term thereof. The municipality and the Private Sector Proponent shall be entitled to receive dividends each year from the net profits that would constitute portion of the unrestricted retained earnings of the company in each year in accordance with the Joint Venture Agreement; and
 5. The Joint Venture Company should stipulate a fixed period for term of existence not to exceed a maximum of twenty five (25) years renewable for another twenty five (25) years upon the approval of the Sangguniang Bayan.

SECTION 17. PROJECT STUDY. A Project Study for a Joint Venture Project must be prepared. It shall be the responsibility of the municipality to prepare the Project Study in case of Competitive Selection, and that of the Private Sector Proponent for unsolicited proposals subject to Swiss Challenge.

The costs of preparing the Project Study may be reimbursed by the winning Private Sector Proponent to the municipality or to the Original Proponent, as the case may be, subject to the terms of the Competitive Selection or Swiss Challenge.

SECTION 18. BIDS AND AWARDS COMMITTEE (BAC).

- a. **Composition of the PPP BAC.** The PPP BAC shall be composed of the following:
 - (1) At least a third ranking regular official of the LGU – to act as Chairman, to be appointed by the Local Chief Executive
 - (2) The Legal Officer or its equivalent – Member, to act as Secretary (non-voting)
 - (3) The Municipal Engineer – Member, to be appointed by the Local Chief Executive
 - (4) A regular official or employee of the LGU knowledgeable in finance – Member
 - (5) A regular official or employee of the LGU knowledgeable in the management/operation of the project – Member
 - (6) Municipal Planning and Development Officer (MPDO) or One (1) technical officer knowledgeable with the technical aspects or requirements of the project, duly designated and appointed by the Local Chief Executive – Member
 - (7) One (1) technical public officer knowledgeable with aspects or requirements of the project from a concerned regulatory body, when applicable, to be invited by the Local Chief Executive on a project-to-project basis – Member (provisional and non-voting)
 - (8) Two (2) representatives from the private sector to be appointed by the Local Chief Executive: one from duly recognized Contractors' associations and the

other from either the facility users, or Non-Government Organizations or People's Organizations (non-voting)

(9) A representative from the Commission on Audit – Observer (non-voting)

(10) One (1) representative from the local DILG office – Observer (non-voting)

Observers will be notified not later than seven (7) calendar days before the following stages: pre-bid conference, opening of bids, evaluation of bids, contract award, and special meetings of the BAC. The absence of observers will not nullify the PBAC proceedings, provided that they have been duly invited in writing.

- b. **Quorum.** The presence of a simple majority of all voting members shall constitute a quorum and as such is necessary for a meeting to be validly held and to exercise its powers and perform its functions. The Chairman shall vote only in case of a tie.
- c. **Functions:**
- i. The Bid and Awards Committee shall act as the selection committee for purposes of selecting a Joint Venture Partner or Private Sector Proponent for a specific Joint Venture Project.
 - ii. When acting as selection committee, the Bids and Awards Committee has a quorum with the presence of a simple majority of all voting members. The Chairperson shall vote only in case of a tie.
 - iii. The rules pertaining to the conduct of business of the Bids and Awards Committee shall be applied if no rules or guidelines are provided in this Joint Venture Ordinance.
 - iv. The Bids and Awards Committee, with the approval of the Mayor, may invite provisional non-voting members from the national government agencies, regulatory agencies, NEDA, DILG, COA and the private sector to observe in the proceedings of the selection committee; and form a support staff or technical working group composed of employees and staff of the municipality.
 - v. The Bids and Awards Committee shall be responsible for the:
 - a) identification of Joint Venture Projects and for all aspects of the pre-selection and selection of the Joint Venture partners, including among others,
 - b) the preparation or evaluation of the Project Study;
 - c) drafting or evaluation of the Joint Venture Agreement;
 - d) publication of the invitation to apply for eligibility and submission of proposals or comparative proposals;
 - e) defining the eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge processes;
 - f) pre-qualification of prospective Private Sector Proponents, bidders or challengers;
 - g) conduct of pre-selection conferences and issuance of supplemental notices;
 - h) interpretation of the rules regarding the selection process;
 - i) conduct of the selection or challenge process;
 - j) evaluation of the legal, financial and technical aspects of the proposals;
 - k) resolution of disputes between Private Sector Proponents and challengers;
 - l) defining the appeals mechanisms; and recommendation for the acceptance of the proposal and/ or for the award of the Joint Venture Agreement;

- m) responsible for all aspects of the pre-bidding and bidding process in the case of solicited proposals, and for comparative bidding process (otherwise known as the “Competitive or Swiss Challenge”) in the case of negotiated Joint Venture (JV) or unsolicited proposals including, among others, the preparation of the bidding/tender documents, publication of the invitation to pre-qualify and bid, pre-qualification of prospective bidders, conduct of pre-bid conferences and issuance of supplemental notices, interpretation of the rules regarding bidding, the conduct of bidding, evaluation of bids, resolution of disputes between bidders, and recommendation for the acceptance of the bid and/or the award of the project;
- n) All recommendations of the Bids and Awards Committee shall be submitted to the Mayor for consideration and approval. The Mayor shall approve the tender documents and the draft Joint Venture Agreement before they are issued to the prospective Private Sector Proponents/ bidders.

SECTION 19. SOLICITED PROPOSAL THROUGH COMPETITIVE SELECTION. The municipality may solicit proposal for Joint Venture Projects through Competitive Selection. This involves:

a. Preparation of bid / tender documents which shall include the following:

- (i) Invitation to Bid (ITB)
- (ii) Instructions to Bidders;
- (iii) Terms of Reference/Minimum Design, Performance Standards/Specifications, and Economic Parameters” such as discount rate, inflation factor and foreign exchange rate, where applicable, among others;
- (iv) Draft Joint Venture Agreement reflecting the respective undertakings of the contracting parties;
- (v) Bid Form reflecting the required information to properly evaluate the bid proposal;
- (vi) Forms of bid and performance securities;
- (vii) Requirements and timelines/milestones of concerned Agencies in granting of franchise, if applicable; and
- (viii) Other documents as may be deemed necessary by the BAC (i.e. bid bulletin).

b. Publication of Invitation to pre-qualify and bid for a particular project;

The Chairman of the Bids and Awards Committee shall cause to be published, once every week for three (3) consecutive weeks, in at least two (2) newspapers of general circulation, a notice inviting all prospective Public Sector Proponent/s to pre-qualify and bid for the Joint Venture Project. Said invitation should also be posted in two (2) conspicuous places in the municipality and in the website of the municipality, during the period stated above.

c. Requirements for Prequalification of Private Sector Proponents. To pre-qualify, a prospective Private Sector Proponent must comply with the following requirements:

- (i) Legal Requirements

For Joint Venture projects which require a public utility Franchise for its operation, and where the Private Sector Proponent and Facility Operator are one and the same entity, the PSPs must be Filipinos or, if corporations, must be duly

registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos, or, if a consortium of local, foreign, or local and foreign firms, Filipinos must have at least sixty percent (60%) interest in said consortium.

For Joint Venture projects requiring a public utility Franchise for its operation but where the Private Sector Proponent and Facility Operator may be two separate and independent entities, the Facility Operator must be a Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos.

For Joint Venture projects that do not require a public utility Franchise for its operation, the prospective Private Sector Proponent or the Facility Operator may be Filipino or foreign-owned.

In case the prospective Private Sector Proponent is a consortium, the members or participants thereof shall be disclosed during the pre-qualification stage and shall undergo pre-qualification. Further, the members or participants thereof shall execute an undertaking in favor of the Municipality that if awarded the Joint Venture Agreement, they shall bind themselves to be jointly and severally liable for the obligations of the Private Sector Proponent under the Joint Venture Agreement.

However, if members of the consortium organize themselves as corporation registered under Philippine laws, such corporation shall execute such an undertaking binding itself to be liable for the obligations of the Private Sector Proponent under the Joint Venture Agreement, which shall substitute or be in lieu of the undertaking submitted by the members or participants of the consortium.

For purposes of pre-qualification, the Contractor proposed to be engaged by the Private Sector Proponent to undertake the Construction of the Joint Venture Project must be duly licensed and accredited by the Philippine Contractors Accreditation Board (PCAB), in the case of a Filipino Contractor, or by an equivalent accreditation institution in the Contractor's country of origin, in the case of a foreign Contractor. Once the Private Sector Proponent is awarded the project, such foreign Contractor must secure a license and accreditation from the Philippine Contractors Accreditation Board.

- (ii) Experience or Track Record - The prospective Private Sector Proponent must possess adequate experience in terms of Firm and Key Personnel Experience.
- (iii) Financial Capability - The prospective Private Sector Proponent must have adequate capability to sustain the financing requirements for the detailed engineering design, Construction and/or operation and maintenance phases of the project, as the case may be.

The municipality shall determine on a project-to-project basis the detailed legal, financial, experience and other qualifications or criteria it requires for a particular project.

d. Determination of Pre-qualified prospective Private Sector Proponents.

The municipality, through its PPP Bids and Awards Committee, shall, within a period of thirty (30) calendar days after the deadline set for the submission of the pre-

qualification documents, determine which among prospective Private Sector Proponents are "pre-qualified" or "disqualified". PPP BAC shall duly inform the prospective Private Sector Proponents who have been pre-qualified within seven (7) calendar days after approval thereof. A certificate of Pre-qualification shall be issued for this purpose. Disqualified proponents shall likewise be informed stating therein the grounds for their disqualification within the same period. Those disqualified may appeal the disqualification within five (5) calendar days from receipt of the notice of disqualification to the Mayor.

The bidding process will be suspended while the appeal is being evaluated. The Mayor or his authorized representative, as the case may be, shall act on the appeal within thirty (30) working days from receipt of the appeal and upon filing of a non-refundable appeal fee in an amount equivalent to no less than one-half of one percent (0.5 %) of the Project Cost. The decision of the Mayor or his authorized representative on the appeal shall be final and immediately executory.

e. Acceptance of Criteria and Waiver of Rights to Enjoin Project.

All prospective Private Sector Proponents shall be required to submit, as part of their qualification documents, a statement stipulating that the bidder: (i) has accepted the qualification criteria established by the Bids and Awards Committee, and (ii) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the municipality or its Bids and Awards Committee, or any of its officials to prevent or restrain the qualification process or any proceedings related thereto, the holding of a bidding or any proceedings related thereto, the negotiation of and award of the Joint Venture Agreement to a successful bidder, and the carrying out of the awarded Joint Venture Agreement. Such waiver shall, however, be without prejudice to the right of a disqualified or losing bidder to question the lawfulness of its disqualification or the rejection of its bid by appropriate administrative or judicial processes not involving the issuance of a writ of Injunction or prohibition or restraining order.

f. Issuance of Tender Documents

The Bids and Awards Committee shall make available the related bid documents to all pre-qualified bidders upon completion of pre-qualification evaluation and issuance of notice of pre-qualification/ disqualification to provide respective bidders ample time to examine the same and to prepare their respective bids prior to the date of opening of bids.

g. Pre- bid Conference

A pre-bid conference shall also be conducted by the municipality at least forty five (45) calendar days before the deadline for the submission of bids to clarify any provisions, requirements and/or terms and conditions of the bidding documents and/ or any other matter that the prospective bidders may raise.

Nothing stated at the pre-bid conference shall modify any provisions or terms and conditions of the bidding documents unless such is made as a written amendment thereto by the municipality. Any amendments shall be issued by the municipality to all bidders within thirty (30) days to allow them to consider the same in the preparation of their bids and shall be duly acknowledged by each bidder prior to the submission of his bid and shall be so indicated in his bid. A summary of the pre-bid conference

proceedings shall also be issued to all prospective bidders by the municipality. Attendance to the pre-bid conference by prospective bidders shall not be mandatory.

h. Requirements for Bid Submission. (Qualification Requirements, Technical and Financial Proposals)

Bidders shall be required to submit their bids on or before the deadline stipulated in the "Instructions to Bidders". They shall be marked "Do Not Open Before (date and time of opening of bids)". The envelopes shall be appropriately labeled as Qualification Requirements, Technical Proposal and Financial Proposal.

- (i) The **Qualification Requirements** shall be those stated in Section 19 (c) hereof. Pre-qualified Private Sector Proponents shall submit the Certificate of Pre-qualification as the qualification requirement.
- (ii) The **Technical Proposal** shall contain the following requirements, as may be deemed necessary by the municipality:
 - (1) Acceptance/Compliance statements with regard to all terms and conditions in the tender documents including those with regard to financial parameters and any changes which were made thereto by the municipality prior to bid submission.
 - (2) Operational feasibility of the project, which shall indicate the proposed organization, methods and procedures for the operation and maintenance of the project under bidding;
 - (3) Technical soundness/preliminary engineering design, including proposed project timeline;
 - (4) Preliminary environmental assessment, which shall indicate the probable adverse effects of the project on the environment and the corresponding mitigating measures to be adopted;
 - (5) Project Cost;
 - (6) Bid Security. The municipality shall determine which form of Bid Security it will require which may be in cash, certified check, manager's check, letter of credit, or bank draft/ guarantee issued by a reputable local/foreign bank, or a surety bond callable on demand issued by the Government Service Insurance System (GSIS) or an entity duly registered and recognized by the office of the Insurance Commissioner and acceptable to the municipality, or any combination thereof payable to the municipality concerned based on the total Project Cost (as indicated by the prospective Private Sector Proponent) in accordance with the following schedules:

PROJECT COST <i>(as estimated by the Agency/ LGU or proposed by the Project Proponent)</i>	REQUIRED BID SECURITY
Less than PhP 100 million	3% Of the Project Cost
PhP 100 million to less than PhP 500 million	2.5 % of the Project Cost or PhP 3,000,000.00, whichever is higher
PhP 500 million to less than PhP 1 billion	2% of the Project Cost or PhP 12,500,000.00, whichever is higher
PhP 1 billion to less than PhP 5 billion	1.5% of the Project Cost or PhP 20,000,000.00, whichever is higher
PhP 5 billion or higher	1% of the Project Cost or PhP 75,000,000.00, whichever is higher

The municipality shall determine whether the Bid Security shall be issued by a local bank, an international bank, or both. In case the bid security is issued by an international bank, said security has to be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the Bangko Sentral ng Pilipinas.

The posting of the bid security is for the purpose of guaranteeing that the Private Sector Proponent shall enter into Joint Venture Agreement with the municipality within the time prescribed therefore.

Bids and bid securities shall be valid for a period to be prescribed by the municipality concerned in the bidding documents but in no case beyond one hundred and eighty (180) calendar days from the date of opening of bids. The actual amount of bid security to be posted by the bidders will be fixed by the concerned municipality prior to bidding. Said actual amount shall not be less than the amount prescribed in the above schedule.

- (7) Other documents as may be required by the Joint Venture-Selection Committee to support the bidder's technical proposal.

(iii) The **Financial Proposal** shall contain the Financial bid based on the parameters set by the municipality which may include the following, among others:

- (1) Joint Venture Project Cost;
- (2) The proposed contribution of the bidder and of the municipality to the total Joint Venture Project Cost;
- (3) The proposed equity sharing between the bidder and the Municipality;
- (4) Project Financing Scheme.

i. Submission of Late Bids

Bids submitted after the deadline for submission prescribed in the "Instructions to Bidders" shall be considered late and shall be returned unopened.

j. Opening of the Envelope for Qualification of Bidder

At the date and time stipulated in the "Instructions to Bidders", the PPP BAC shall open the envelope and ascertain whether the same is complete in terms of the information required. Such information shall be recorded at the time, including the names and addresses of required witnesses. All bidders or their representatives present at the opening of the first envelopes shall sign a register of the opening of the qualification envelope.

k. Evaluation of Qualification Requirements

The qualification documents will first be evaluated prior to the opening of the technical proposal. The municipality shall inform bidders whether they are qualified or disqualified, and for the latter, the reasons for disqualification, within ten (10) calendar days. Only qualified bidders shall be allowed to participate in the bid evaluation. Disqualified bidders shall be informed of the grounds of disqualification and their technical and financial proposals returned unopened.

l. Rejection of Bids

Incomplete information on any of the envelopes and for non-compliance with the bid security requirements shall be grounds for automatic rejection of bids.

m. Opening of the Envelope for the Technical Proposal

At the date and time of bid opening, as stipulated in the "Instructions to Bidders", the Bids and Awards Committee shall open only the technical proposal and ascertain whether the same is complete in terms of the data/information required under and whether the same is accompanied by the required bid security in the prescribed form, amount and period of validity. Such information shall be recorded at the time, including the names and addresses of required witnesses. All bidders or their representatives present at the opening of the first envelopes shall sign a register of the bid opening.

n. Opening of the Envelope for the Financial Proposal

Only those bidders whose technical proposal passed the evaluation criteria as prescribed shall have their financial proposal opened for further evaluation. Those who failed the evaluation of the technical proposal shall not be considered further, and the PPP BAC shall return their financial proposals unopened together with the reasons for their disqualification from the bidding.

Once the bidders who have qualified for the evaluation of the financial proposal have been determined, the Bids and Awards Committee shall notify said bidders of the date, time and place of the opening of the envelopes for the financial proposal. The opening thereof shall follow the same procedures prescribed for the opening of the previous envelopes.

The Bids and Awards Committee may opt to simultaneously open and evaluate the technical and financial proposals, provided all Private Sectors Proponents/ bidders are notified of the procedure prior to the opening of the envelopes.

o. Withdrawal and/or Modification of Bids

Withdrawal and/or modification of bids may be allowed upon written notice by the bidder concerned to the municipality prior to the time and date set for the opening of bids (opening of first envelopes) as specified in the "Instructions to Bidders". No bids shall be modified or withdrawn after the time prescribed to open bids. Bid modifications received after said period shall be considered late and will be returned unopened. Withdrawal of bids after the bid opening date shall cause the forfeiture of the bidder's bid security.

p. Right to Reject All Bids

The municipality reserves the right to reject any or all bids, waive any minor defects therein and accept the offer it deems most advantageous to the Government.

q. Direct Negotiations

Direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder:

- (i) If, after advertisement, only one prospective Private Sector Proponent applies for pre-qualification and it meets the pre-qualification requirements, after which, it is required to submit a bid/ proposal which is subsequently found by the municipality to be complying;
- (ii) If, after advertisement, more than one prospective Private Sector Proponent applied for pre-qualification but only one meets the pre-qualification requirements, after which it submits a bid proposal that is found by the municipality to be complying;
- (iii) If, after pre-qualification of more than one prospective Private Sector Proponent, only one submits a bid which is found by the municipality to be complying;
- (iv) If, after pre-qualification, more than one prospective Private Sector Proponent submit bids but only one is found by the municipality to be complying;

Negotiated Contracts also include negotiated Joint Venture (JV) which refers to a proposal initiated by a private sector proponent or, by the government in case it has failed to identify an eligible private sector partner for a desired activity after subjecting the same to a competitive selection.

The negotiations will cover all the technical and financial aspects of the Joint Venture project or activity; provided, that the minimum designs, performance standards/ specifications and economic parameters stated in the Project Study and Terms of Reference for the Competitive Selection are complied with. The Mayor shall approve the terms of the Direct Negotiations prior to the award of the Joint Venture Agreement to the Private Sector Proponent.

Any disqualified bidder may appeal the disqualification of the Bids and Awards Committee to the Mayor or his authorized representative, within fifteen (15) working days from receipt of the notice of disqualification. The Mayor or his authorized representative shall act on the appeal within thirty (30) working days from receipt thereof. The decision of the Mayor or his authorized representative shall be final and immediately executory.

SECTION 20. UNSOLICITED PROPOSALS.

1) **Unsolicited Project Proposals.** Project proposals submitted by the private sector, not in response to a formal solicitation or request issued by the LGU, to undertake Infrastructure or Development Projects, which may be entered into by the LGU subject to the following conditions:

- a. Such projects involve a new concept or technology and/or are not part of the list of priority projects;
- b. No Direct Government Guarantee, Direct Government Subsidy or Direct Government Equity is required; and
- c. The LGU has invited by publication, for three (3) consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of sixty (60) working days; *Provided further*, that in the event another proponent submits a lower price proposal, the original proponent shall have the right to match that price within thirty (30) working days.

2) **Unsolicited Proposal subject to Swiss Challenge.**

This process shall be divided into three (3) Stages, described as follows:

Stage One/ Unsolicited Proposal - The steps are:

- i. A Private Sector Proponent submits an unsolicited proposal to the municipality for a projected Joint Venture Project.

For an unsolicited proposal to be considered by the municipality, the proponent has to submit a complete proposal, which shall include a cover letter, project study which should indicate relevant assumptions, company profile, the draft Joint Venture Agreement and other documents that are needed even if proprietary in nature. The cover letter shall indicate the basic information on the Unsolicited Proposal such as its expected output and outcome, implementation period, and general description of the new concept or technology, among others, and shall include the company profile of the unsolicited proponent. The project study draft Joint Venture Agreement, and other documents that are needed even if proprietary in nature shall be submitted in a sealed envelope. The municipality shall acknowledge receipt of the proposal within fifteen (15) calendar days and advise the proponent whether the proposal is complete or incomplete within forty five (45) calendar days from submission thereof. If incomplete, the municipality shall return to the proponent its submission indicating what information is lacking or necessary and the municipality may entertain thereafter other same or similar project proposal.

- ii. The Bids and Awards Committee shall make an initial evaluation of the proposal and determination of the eligibility of the Private Sector Proponent.
- iii. Upon completion of the initial evaluation, the Mayor, upon recommendation of the Bids and Awards Committee, 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 unsolicited proposals submitted for the same Joint Venture Project, the Mayor, upon recommendation of the Bids and Awards Committee, 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 municipality.

Stage Two / Detailed Negotiations - The steps are:

- i. The parties shall negotiate and agree on the terms and conditions of the Joint Venture 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 Private Sector Proponent and the technical and financial aspects of the Joint Venture Project as agreed upon.
- iii. The issuance of the certification commences the activities for the solicitation for comparative proposals under Stage Three hereof.

In the event that the Original Proponent has an exclusive franchise or concession, such as a power service contract, water rights, and mining contracts/ rights, granted or awarded by the responsible national government agency, without which the Joint Venture 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 municipality shall have the option to reject the proposal by informing the Private Sector Proponent in writing stating the grounds for rejection and thereafter may accept a new proposal from other Private Sector Proponents, decide to pursue the proposed activity through other Public-Private Partnerships Modalities or subject the Public-Private Partnership or Joint Venture Project to a Competitive Selection.

Stage Three/ Swiss Challenge - The steps are:

- i. The Bids and Awards Committee shall prepare the tender documents. The eligibility criteria used in determining the eligibility of the Private Sector Proponent 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 Joint Venture Agreement before the publication of the invitation for comparative proposals.
- iii. The Bids and Awards Committee shall publish the invitation for comparative proposals at least once a week for three (3) consecutive weeks in at least two (2) newspapers of general circulation. Said invitation shall also be posted in two conspicuous places in the municipality and in the official website of the municipality.
- iv. The 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 Private Sector Proponent. If the municipality determines that an offer made by a comparative Private Sector Proponent or challenger other than the negotiated terms with original proponent is superior or more advantageous to the municipality than the original proposal, the Private Sector Proponent that 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 Joint Venture Project shall be awarded to the comparative Private Sector Proponent submitting the most advantageous proposal. If a matching offer is received within the prescribed period, the Joint Venture Project shall be awarded to the original proponent. If no comparative Private Sector Proponent or challenger proposal is received by municipality the Joint Venture Project shall be immediately awarded to the original proponent.

SECTION 21. RECOMMENDATION TO AWARD. Within seven (7) calendar days from the date the financial evaluation shall have been completed, the Bids and Awards Committee will submit to the Mayor a recommendation of award. The Bids and Awards Committee will prepare and submit a detailed evaluation/assessment report on its decision regarding the evaluation of the bids and explain in clear terms the basis of its recommendations.

SECTION 22. DECISION TO AWARD. Within seven (7) calendar days from the submission by the Bids and Awards Committee of the recommendation to award, the Mayor shall decide on the award. The approval shall be manifested by signing and issuing the "Notice of Award" to the winning Private Sector Proponent within three (3) calendar days from approval thereof.

All unsuccessful bidders shall be informed in writing of the decision of the Mayor to award the project to the winning Private Sector Proponent. Such decision shall be made available to the public when requested.

SECTION 23. NOTICE OF AWARD. The "Notice of Award", which is issued by the Mayor, shall indicate, among others, that the winning Private Sector Proponent must submit within thirty (30) calendar days from official receipt of the "Notice of Award" the following:

1. Prescribed performance security;
2. Proof of commitment of the required equity contribution, as specified by the Bids and Awards Committee;
3. Proof of firm commitments from reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project;
4. In the case of a consortium, the agreement indicating that the members are jointly and severally liable for the obligations of the Private Sector Proponent under the contract; or
5. In case a special purpose company (SPC) is formed for purposes of undertaking the project, proof of registration in accordance with Philippine laws; or
6. Such other conditions imposed by the Bids and Awards Committee.

Failure to submit the requirements within the prescribed thirty (30)-calendar day period will result in confiscation of the bid security. Within seven (7) calendar days upon receipt of the foregoing requirements for award, the Mayor, upon recommendation of the Bids and Awards Committee, shall determine and notify the winning bidder of its compliance of all the conditions stated in the said notice.

SECTION 24. PUBLIC DISSEMINATION OF BIDDING RESULTS. The Bids and Awards Committee shall post the notice of award and/or bidding results once every week for two (2) consecutive weeks, in at least one (1) newspaper of general circulation. Said notice of

award/bidding results should also be posted in two (2) conspicuous places in the municipality and in the website of the municipality during the period stated above.

SECTION 25. EXECUTION OF THE JOINT VENTURE AGREEMENT. The authorized signatory(ies) of the winning Private Sector Proponent and the Mayor shall execute and sign the Joint Venture Agreement for the project within twenty (20) calendar days from receipt by the winning Private Sector Proponent of the notice from the Mayor that all conditions stated in the Notice of Award have been complied with.

In the event of refusal, inability or failure of the winning Private Sector Proponent or winning bidder to enter into Joint Venture Agreement with the municipality within the time provided therefore, the municipality shall forfeit its bid security. The following steps shall be observed thereafter in either solicited or unsolicited proposal process of Private Sector Proponent selection.

In the case of solicited proposal, the municipality shall consider the bidder with the next ranked complying bid. If the same shall likewise refuse or fail to enter into a Joint Venture Agreement with the municipality, its bid security shall likewise be forfeited and the municipality shall consider the next ranked complying bid, and so on until a Joint Venture Agreement shall have been entered into. In the event that the municipality is unable to execute the Joint Venture Agreement with any of the complying bidders, a failure of bidding will be declared and the project may be subjected to a re-bidding.

In the case of unsolicited proposal, the municipality shall consider the comparative Private Sector Proponent or challenger proposal if the winning Private Sector Proponent is the original proponent and if the winning Private Sector Proponent is the comparative or challenger Private Sector Proponent, the municipality shall consider the original proponent. In the event that the municipality is unable to execute the Joint Venture Agreement with any of the original or comparative proponent as the case maybe, a failure of unsolicited proposal selection shall be declared and the project may be subjected to another round of Private Sector Proponent process of selection.

SECTION 26. SUBMISSION AND RATIFICATION OF THE JOINT VENTURE AGREEMENT. Within seven (7) calendar days from the signing of the Joint Venture Agreement, the original signed Joint Venture Agreement shall be submitted to the Sangguniang Bayan for ratification by simple majority.

During the consideration of the Joint Venture Agreement by the Sanggunian Bayan, a public consultation shall be conducted explaining the Joint Venture Project, Joint Venture Agreement, accountability mechanisms built into the Joint Venture arrangement, the benefits and costs of the Joint Venture Project, among other relevant matters.

The Joint Venture Agreement shall be effective upon ratification thereof by the Sangguniang Bayan, unless another date is stipulated therein.

SECTION 27. NOTICE TO COMMENCE. The municipality, when deemed necessary, shall issue the "Notice to Commence Implementation" of the project to the winning bidder within a reasonable period to be determined by the Bids and Awards Committee and stated in the contract

SECTION 28. SCHEDULE AND TIMELINES. The Mayor, upon recommendation of the Joint Venture-Selection Committee, shall have the authority to adopt, prescribe, or modify the appropriate schedules and timelines for each Private Sector Proponent selection process:

provided, that the periods are reasonable and will not undermine free competition, transparency and accountability.

SECTION 29. JOINT VENTURE REGULATORY AUTHORIZATION.

(a) There shall be a Joint Venture Regulatory Authority (JV-RA) which shall be composed of the following:

- | | |
|--------------------|--|
| Chairperson | - The Mayor |
| Vice-Chairperson | - The Vice-Mayor |
| Executive Director | - The Planning and Development Officer (MPDO) |
| Members | - The Legal Officer |
| | - The Treasurer |
| | - The Accountant |
| | - The Chairman of the BAC |
| | - Two (2) representatives for the Sangguniang Bayan to be chosen by the Sangguniang Bayan members. |

A quorum of the Joint Venture – Regulatory Authority shall be composed of a simple majority of all voting members. The Chairperson shall vote only in case of a tie.

The Joint Venture -Regulatory Authority with the approval of the Mayor shall invite third party experts to attend its meetings to act as advisors and observers. Such third party experts may represent national government agencies, regulatory agencies, the NEDA, the DILG, COA, private sector, non-governmental organizations and civic groups.

The Joint Venture – Regulatory Authority shall form a secretariat and support staff composed of employees and personnel of the municipality. The Joint Venture – Regulatory Authority may also engage consultants hired pursuant to law.

(b) The Joint Venture -Regulatory Authority, on behalf of the Municipality, 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). Aside from these, the Joint Venture - Regulatory Authority shall be responsible for setting and monitoring the tariff, and administering the subsidy pursuant to the Joint Venture Authority.

SECTION 30. ACCOUNTABILITY MECHANISM.

- (a) Before commencing their functions, each member of the Bids and Awards Committee and Joint Venture -Regulatory Authority shall sign a Code of Conduct, which shall guide each member in the performance of their duties as such.
- (b) The municipality shall ensure, promote and eliminate all obstacles to social accountability and allow and enhance constructive engagement between citizens' groups, academe, consumers, rate-payers, general public, municipal, provincial, national government agencies, regulatory agencies, and Private Sector Proponent.

SECTION. 31. IMPLEMENTING RULES AND REGULATIONS. While this Code and the provisions hereof are already operative upon its effectivity, the Mayor, upon recommendation of the Bids and Awards Committee, and within six (6) months from the approval of this code, shall issue the appropriate and relevant rules and regulation for the proper implementation of its provisions.

SECTION 32. THE LGU PPP IMPLEMENTING OFFICE. Each PPP project shall be categorized per sector. The LGU Office in charge of that particular sector shall be considered as the LGU PPP Implementing Office.

32.1. Composition of the LGU PPP Implementing Office. The LGU PPP Implementing Office shall be led by the Department Head of the Sectoral Office concerned. For purposes of PPP implementation, the LCE shall designate representatives from the following Offices to provide technical support:

- a) Office of the LCE;
- b) Legal;
- c) Planning and Development;
- d) Accounting;
- e) Finance (Budget Office or Treasurers Office);
- f) Engineering; and
- g) Environment Officer.

32.2. Mandate and Functions of the LGU PPP Implementing Office. The LGU PPP Implementing Office (PPP-IO) shall perform the following functions in every phase:

32.2.1. Development Phase

- a. Assist in the preparation and conduct of pre-investment activities such others as pre-feasibility studies, business case, feasibility studies, among others.

32.2.2. Approval Phase

- a. Assist in the preparation of the necessary documents that may be required by the approving body, including coordination with the Sangguniang Bayan for the needed resolution, ordinance, endorsement of the project, and authority to the LCE for the project;
- b. Submit to the LCE the project for endorsement to the appropriate approving body pursuant to the provisions of this code.

32.2.3. Competition Phase

- a. Assist the BAC in preparing tender documents including bidding documents and draft contract;
- b. Assist the Bids and Awards Committee (BAC) in the conduct of bidding, evaluation of bids and recommendation for award;
- c. Facilitate the compliance of all the requisite permits and approval prior to implementation; and
- d. Facilitate the conduct of investor's forum for each PPP project.

32.2.4. Cooperation Phase

- a. Serve as the Implementation Unit designated for the implementation and monitoring of PPP projects.
- b. Recommend to the LCE to appoint a Project Manager who will manage the execution of the LGU's PPP contracts, implementation of PPP projects, and share information to the PPP Center and other relevant government agencies.
- c. Together with the Project Proponent, establish the Project Steering Committee (PSC), which will serve as forum for regular communication between the high representatives of parties in the facilitation of the PPP

- contract, and Technical Working Group (TWG) which shall assist the PSC in this regard.
- d. Submit the original signed copy of PPP contract and other project-related documents to the Approving Body and the PPP Center within five (5) calendar days after signing thereof;
 - e. Prepare and implement a contract management plan for each PPP project; and
 - f. Prepare status and implementation reports of PPP Projects and submit the same to the PPP Center. The reports shall be in accordance with the format, contents and other guidelines prescribed by the PPP Center.

SECTION 33. APPROVAL OF PROJECTS. The list of all such local PPP projects that is part of the development program of the concerned LGU shall be submitted for confirmation, as follows:

- a. To the Municipal Development Council (MDC) for projects costing up to Php 20 million;
- b. To the Provincial Development Council (PDC), for projects of municipalities and component cities under it, costing above Php 20 million up to Php 50 million;
- c. To the Investment Coordinating Committee of NEDA for local projects costing above Php 200 million and PPP projects costing up to Php 300 million.

Final approval of projects classified under items a-c of this section is vested on the Sangguniang Bayan per provisions of the Local Government Code.

Upon recommendation by the Municipal Investment Coordination Committee (MICC), all negotiated projects shall be submitted to the Municipal Mayor for approval with prior authorization of the Sangguniang Bayan.

SECTION 34. APPEALS AND AWARDS. In reference to Section 19-24 hereof, the following guidelines shall be observed:

- a. In all stages of the procurement process, decisions of the Bids and Awards Committee may be questioned by filing an appeal to the Municipal Mayor concerned within fifteen (15) working days upon receipt of written notice of such decision; Provided, further, that the Honorable Mayor concerned shall act on the appeal within forty-five (45) working days from receipt thereof and upon filing of a non-refundable appeal fee in an amount equivalent to no less than one-half of one percent (0.5%) of the project cost as approved by the Approving Body.
- b. In no case shall any appeal taken from any decision treated in this Code stay or delay the bidding process; Provided, however, that appeals must first be resolved by the Honorable Mayor before any award is made.
- c. The contract shall be awarded to the bidder who passed the pre-qualification stage for having satisfied the minimum financial, organizational and legal standards set by the BAC as required by the BOT Law and its IRR, has passed the technical proposal evaluation, and has submitted the most favorable or responsive financial bid based on the parameters defined in the bid documents.
- d. In the case of Build-and-Transfer (BT) or Build-Lease-and-Transfer (BLT) arrangement, the contract shall be awarded to the lowest complying bidder based on the present value of its proposed schedule of amortization payments for the facility to be constructed according to the prescribed minimum design and performance standards, plans, and specifications; Provided, however, that a Filipino contractor who submits an equally advantageous bid with exactly the same price and technical specifications as those of a foreign contractor shall be given preference.
- e. In all cases, a consortium that participates in a bid must present proof that the

members of the consortium have bound themselves jointly and severally to assume responsibility for any project. The withdrawal of any member of the consortium prior to the implementation of the project could be a ground for the cancellation of the contract.

SECTION 35. PRIOR AUTHORIZATION FROM THE SANGGUNIANG BAYAN. Prior to the signing of the PPP contract by the Municipal Mayor and in conformity with the provisions of the Local Government Code of 1991 (R.A. 7160), the contract will have to be presented to the Sangguniang Bayan for review and approval. The draft contract will be reviewed and approved based on the parameters, terms and conditions set forth by the Approving Body. The Sangguniang Bayan shall approve or disapprove the contract without revising its terms which have undergone public bidding.

SECTION 36. REPAYMENT SCHEME. The repayment schemes for the projects shall depend on the PPP Contractual Arrangement as follows or as may be approved by the Sangguniang Bayan:

- a. For projects undertaken through Build Operate and Transfer (BOT), Contract-Add and Operate (CAO), Develop Operate and Transfer (DOT), Rehabilitate-Operate-and-Transfer (ROT), Build-Own-and-Operate (BOO) and Rehabilitate Own and Operate (ROO) arrangements, the Project Proponent may be repaid by authorizing it to collect reasonable tolls, fees, and charges for a fixed term. In the case of BOT, CAO, DOT, ROT arrangements, such term shall in no case exceed twenty five (25) years. However, for BOO and ROO arrangements, the Project Proponent, upon renewal of its Franchise or contract with the LGU, may be allowed to continue collecting tolls, fees, charges and rentals for the operation of the facility or the provision of the service.
- b. For projects undertaken through a BTO arrangement, the Project Proponent may be repaid by either of the following options: First Option – the LGU provides Amortization as may be appropriate and reasonable. Tolls, fees, rentals and charges that the Project Proponent may collect while operating the facility on behalf of the LGU may be applied directly to the Amortization. Moreover, the Project Proponent may be repaid by the LGU through a management fee as may be incorporated in the management contract entered between the LGU and the Project Proponent. Second Option – the Project Proponent may be allowed to directly collect tolls, fees, rentals and charges for a fixed term.
- c. For projects undertaken through BT and BLT arrangements, the Project Proponent may be repaid by the LGU through Amortization as may be appropriate and reasonable.
- d. For projects undertaken through JVs, the Project Proponent / JV Partner may be repaid, should repayment be applicable, in the form of a share in the revenue of the project or other non-monetary payments but not limited to the grant of commercial development rights or the grant of a portion or percentage of the reclaimed land, subject to constitutional requirements.
- e. For projects undertaken through arrangements not enumerated under the BOT Law and its IRR but approved/authorized by the NEDA Board, the Project Proponent may be repaid through any schemes as recommended by the MICC and approved/authorized by the NEDA Board.

SECTION 37. USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISMS. In accordance with Executive Order No. 78 (s. 2012), all PPP contracts entered into pursuant to this Ordinance shall include provisions on the use of ADR mechanisms, subject to the agreement of the parties in the said contracts.

SECTION 38. CONTRACT TERMINATION. The specific events that may lead to a termination shall be determined on a project to project basis, such as, but not limited to, the following:

- a. Failure of the Project Proponent or the LGU to satisfy the conditions precedent under the contract;
- b. Occurrence of a force majeure event, the effects of which is prolonged or not remediable;
- c. Abandonment of works by the Project Proponent;
- d. Violation of any laws, rules and regulations of the Republic of the Philippines;
- e. When the Project Proponent assigns, transfers or otherwise disposes of any of the rights under the PPP contract without the consent of the LGU;
- f. Insolvency;
- g. Poor performance of the Project Proponent or persistent breach of its obligations under the PPP contract;
- h. A Material Adverse Government Action (MAGA) event where the parties are unable to agree to a MAGA compensation;
- i. Default of the LGU as defined in the contract; and
- j. When banks or lenders call the Project Proponent in default.

Upon termination of a PPP contract, either party may be entitled to compensation depending on the nature of termination event.

SECTION 39. LIQUIDATED DAMAGES. Where the Project Proponent fails to satisfactorily complete the work on or before completion date, including any extension or grace period duly granted, or meet the operating performance standard as prescribed in the contract, the Project Proponent shall pay the LGU concerned liquidated damages, as specified in the contract as an indemnity and not by way of penalty. The performance security for construction works or for operations, as the case may be, may be applied to answer for any liquidated damages due to the LGU.

During the construction period, the amount of liquidated damages due for every calendar day of delay beyond the completion date will be determined by the LGU based on the formula in the contract. During the operation period, the amount of liquidated damages, which will be determined by the LGU, shall be based on the principle of fair compensation for damages which the LGU will sustain as a result of the Project Proponent's failure to meet its obligations.

The imposition and collection of liquidated damages shall be without prejudice to the right of the LGU to terminate the contract and proceed with the procedures prescribed under Section 30.

SECTION 40. PROJECT SUPERVISION. Every infrastructure project undertaken under this Code shall be in accordance with the contract approved by the Municipal Mayor with prior authorization by the Sanggunian Bayan and shall be under the supervision of the PPP Implementing Office and the Project Steering Committee.

SECTION 41. FISCAL OVERSIGHT. The Sanggunian Bayan shall establish within six (6) months from the approval of this code, a reporting system to institutionalize the submission of performance or spending reports to enable the concerned and responsible office to monitor and evaluate the implementation of the Code.

SECTION 42. SUBMISSION OF DOCUMENTS TO THE PPP CENTER. The LGU shall submit to the PPP Center copies of all executed PPP contracts and all Unsolicited Proposals received. The LGU shall also periodically submit to the PPP Center information on the status of the PPP projects implemented.

SECTION 43. APPLICATION OF OTHER LAWS AND REGULATIONS. Whenever relevant and appropriate and in the absence of a specific provision to the contrary, the provisions of the Built Operation Transfer (BOT) Law, the Corporation Code of the Philippines, the New Civil Code, Government Procurement Reform Act (GPRA), Executive Order No. 301 (26 July 1987), COA Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the 2008 or 2013 Joint Venture Guidelines adopted by the National Economic and Development Authority (NEDA) shall apply in a suppletory manner.

SECTION 44. MUNICIPAL INVESTMENT COORDINATION COMMITTEE (MICC). For purposes of this Code, there shall be created the Municipal Investment Coordination Committee (MICC) of the Local Government Unit of Loon.

Composition of the MICC:

Chairperson - The Municipal Treasurer

Co-chairperson – The Local Enterprise and Investment Promotion Officer (LEIPO)

Members - The Municipal Budget Officer or his/her authorized representative in case of unavailability
The Municipal Assessor or his/her authorized representative in case of unavailability
The Municipal Engineer or his/her authorized representative in case of unavailability
The Municipal Planning and Development Coordinator or his/her authorized representative in case of unavailability

Functions and Responsibilities of the MICC. The MICC shall have the following functions and responsibilities:

- 1.) To establish an updated registry or list of investments and investors currently located and operating in the Municipality of Loon;
- 2.) To receive, validate and process investment applications including joint venture proposals from investors for submission to the Municipal Mayor and the Sangguniang Bayan;
- 3.) To coordinate all investment related plan activities and projects being undertaken by the Local Government Unit of Loon and the investor/s;
- 4.) To serve as the extension arm of the Loon Investment and Incentive Board and the Joint Venture Regulatory Board of this Code.

SECTION 45. PPP TRUST FUND. There shall be created a Public- Private –Partnership Trust Fund which shall serve as the depository of the operational funds allocated from the annual budget subject to the discretion of the Municipal Mayor and other funds that are generated accruing in the implementation of this Code.

SECTION 46. REPEALING CLAUSE. All ordinances or resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

SECTION 47. SEPARABILITY CLAUSE. If any provision of this Code is held invalid, the other provisions not affected thereby shall continue in operation.

SECTION 48. EFFECTIVITY. This Code shall take effect fifteen (15) days after two (2) publications in one (1) newspaper of general circulation.

UNANIMOUSLY APPROVED.

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I hereby certify to the correctness of the above-quoted ordinance.

FIDELINO P. CORITICO, LLB
SB Secretary

ATTESTED:

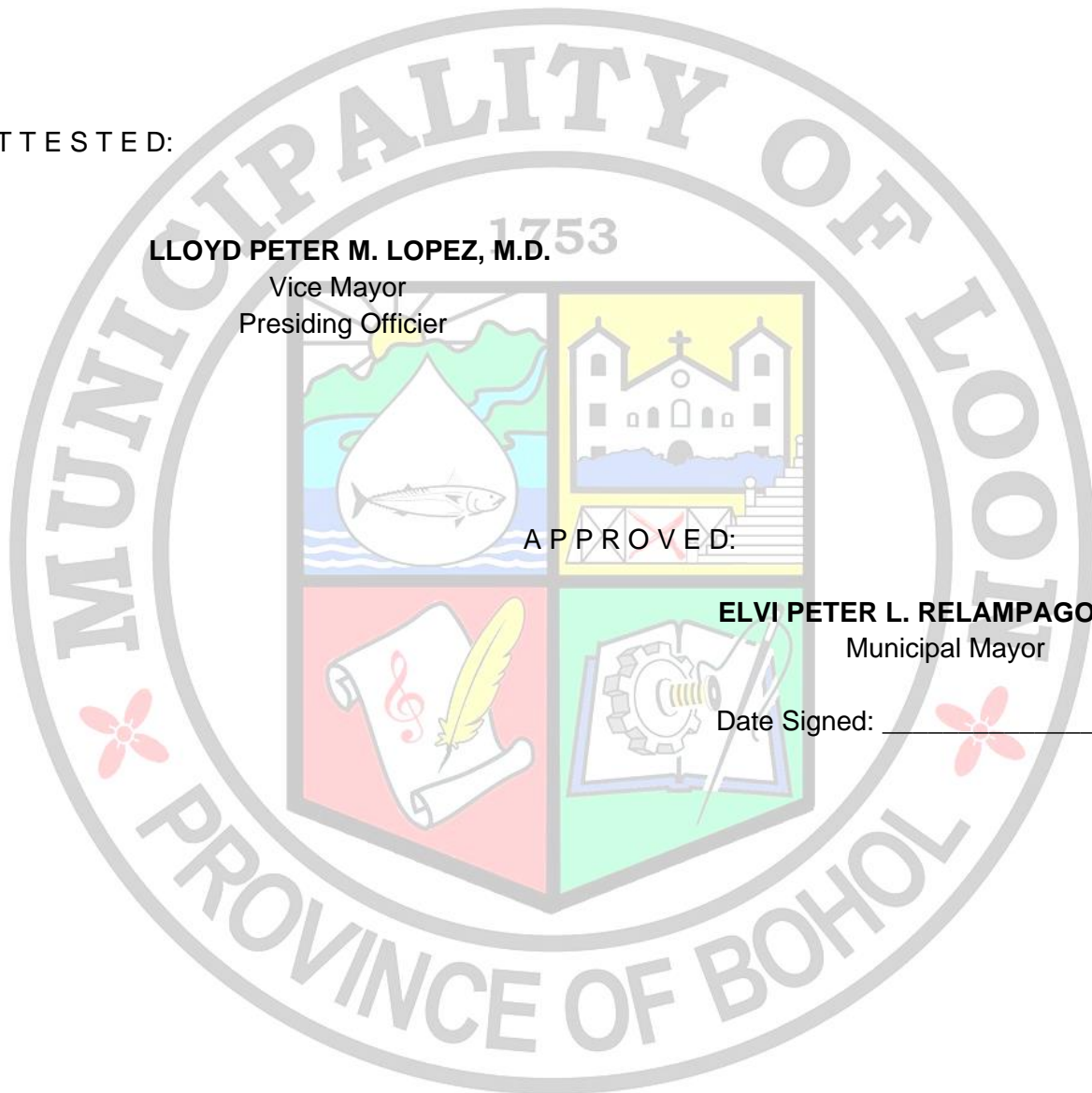
LLOYD PETER M. LOPEZ, M.D.

Vice Mayor
Presiding Officer

APPROVED:

ELVI PETER L. RELAMPAGOS
Municipal Mayor

Date Signed: _____



UNANIMOUSLY APPROVED.

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I hereby certify to the correctness of the above-quoted ordinance.

FIDELINO P. GORITICO, LLB
SB Secretary

ATTESTED:

LLOYD PETER M. LOPEZ, M.D.

Vice Mayor
Presiding Officer

January 08, 2021

APPROVED:

ELVI PETER L. RELAMPAGOS
Municipal Mayor

Date Signed: _____

01/19/2021

