CERTIFICATION

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that at the regular session duly constituted of the Sangguniang Panlalawigan, Province of Pangasinan, held on March 26, 2012 at Lingayen, Pangasinan, the following provincial ordinance was approved:

Sponsored by SP Members Generoso D. Tulagan, Jr. and Alfonso C. Bince, Jr.
and co-sponsored by Vice Governor Jose Ferdinand Z. Calimlim, Jr. and
all the other Members of the Sangguniang Panlalawigan

PROVINCIAL ORDINANCE NO. 158-2012

A PROVINCIAL CODE ADOPTING AND PURSUING A PUBLIC-PRIVATE PARTNERSHIP (PPP) APPROACH TOWARDS DEVELOPMENT, CREATING A PPP REGULATORY AUTHORITY, AND PROVIDING APPROPRIATIONS AND INCENTIVES THEREFOR AND FOR OTHER PURPOSES

Chapter 1. Basic Principles and Definitions

SECTION 1. *Short Title.* – This Ordinance shall be known and cited as the "**PROVINCE OF PANGASINAN PPP CODE**."

Sec. 2. *Declaration of Policy*. – It is hereby declared as a policy that the PROVINCE OF PANGASINAN shall advance the general welfare and promote the interest of the community and the PROVINCE within the framework of sustainable and integrated development; and shall ensure the participation of the private sector in local governance through effective and viable Public-Private Partnerships.

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

(a) The PROVINCE, pursuant to Sections 1, 2 and 5, Article X of the 1987 Constitution is a territorial and political subdivision which enjoys local autonomy and fiscal autonomy. Under Section 3, Article X of the 1987 Constitution, local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities.

(b) The PROVINCE exists and operates in its governmental and proprietary capacities thereby making the PROVINCE an agent of and is therefore accountable to the State and its community.
(c) The PROVINCE must develop into a self-reliant community and as such, is in a better position to address and resolve matters that are local in scope.
(d) Under Section 18 of the 1991 LGC, the PROVINCE may to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes.
(e) Under Section 22 (d) of the 1991 LGC, the PROVINCE enjoys full autonomy in the exercise of its proprietary functions and shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, those not otherwise prohibited by law and those which are essential to the promotion of the general welfare.
(f) Under Section 25 (b) of the 1991 LGC, the PROVINCE may collaborate or cooperate with other local governments, national government agencies, government-owned and controlled corporations, government instrumentalities and government corporate entities for the implementation of local projects.
(g) Under the charter of the PROVINCE, Sections 16, 17, 19 and 129 of Republic Act No. 7160 or the Local Government Code of 1991 (1991 LGC) and other statutes, the PROVINCE has been given the responsibility and mandate to exercise devolved and delegated powers.
(h) The PROVINCE, under Section 106 of 1991 LGC, is mandated to draw up and implement a comprehensive multi-sectoral development plan.
(i) The PROVINCE under Section 3 (l) of the 1991 LGC is duty-bound to ensure the active participation of the private sector in local governance.
(j) The role of the PROVINCE both as a regulator or business and as implementer of a proprietary undertaking must be delineated.
(k) The PROVINCE, as a partner in a PPP arrangement, may provide equity, subsidy or guarantee and use local funds and that the usage thereof for a PPP project shall be considered for public use and purpose.
(l) Under Sections 34, 35 and 36 of the 1991 LGC and in the exercise of its powers, the PROVINCE may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversity agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people; provide assistance, financial or otherwise, to such people's and non-governmental organizations for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction; provide funding for local projects, provide incentives and tax exemptions to private companies.

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

(a) PPPs should be adopted to address a pressing and urgent or critical public need. Under the principle of "Additionality", the increased economic benefits to consumer welfare of having needed public services/ infrastructure accessible now because of the PPP, rather than having to wait until the PROVINCE could provide the public services much later. PPP would also encourage the accelerated implementation of local projects.

(b) PPPs can be adopted to avoid costs and public borrowing. By contracting with the private sector to undertake a new infrastructure project, scarce Government capital budgets can be directed to other priority sectors such as social services, education, and health care.

(c) PPPs allow for technology transfer, and improved efficiency and quality of service. These could be valuable contribution of the private sector in local governance.

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

(e) PPP Projects should be bankable. PPPs should be bankable as financiers will be reluctant to commit funding when a project entails high participation costs, unreasonable risk transfer or lengthy and complex contract negotiations. PPPs project will remain attractive to the private sector through cost recovery pricing policy. This is critical to ensure that the project developer/ investor is assured of steady and predictable tariffs over the life of the project in order to guarantee service delivery.

(f) PPP Projects should provide Value for Money as far as practicable. PPPs should provide value for money to the PROVINCE and good economic value and includes allocating risks to the party best able to control and manage them, and maximizing the benefits of private sector efficiency, expertise, flexibility and innovation.

(g) Risk allocation should be based on the party most capable to manage the risk. PPPs always comprise a higher level of risk due to the magnitude of the financial stakes involved, uncertainties over construction and operating costs, and revenue related uncertainties. PPPs rely on balancing the allocation of risk, and enables transfer of the same to the private party when the said party is better able to mitigate/ manage the risk than the public authority. In return, the public party significantly reduces its risk exposure while overseeing project optimization efforts. The private party expects a return that is in line with the risks it shall undertake.

(h) PPP Projects should provide economic and social benefits. PPP projects should always be evaluated for economic and social benefits rather than focus on the financial considerations. PPPs underlying principle stems from the fact that the public authority remains responsible for services provided to the public, without necessarily being responsible for corresponding investment.

(i) PPP Projects should have due consideration for empowerment of Filipino citizens. The implementation of PPP projects should have due consideration for the empowerment of the citizens as a strategy for economic growth and sustainability. As such, PPPs undertakings need to provide for the participation of local investors.

(j) Procurement of PPP Projects should be competitive. PPP Projects should be procured through open competitive bidding. However, where competitive bidding is not applied, arrangements shall be made to introduce competition into the process in order to ensure both transparency and economically efficient outcome.

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

(l) The regulation of the PPP shall be pursuant to the PPP contract and exercised by the appropriate regulatory authority.

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

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

(i) *Build-and-Transfer (BT)* - A contractual arrangement whereby the Project Sector Proponent (PSP) undertakes the financing and construction of a given infrastructure or development facility, and after its completion, turns it over to the PROVINCE, which shall pay the PSP, on an agreed schedule, its total investment expended on the project, plus a Reasonable Rate of Return thereon.

(ii) *Build-Lease-and-Transfer (BLT)* - A contractual arrangement whereby a PSP is authorized to finance and construct an infrastructure or development facility and upon its completion, turns it over to the PROVINCE on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the PROVINCE.

(iii) *Build-Operate-and-Transfer (BOT)* - A contractual arrangement whereby the PSP undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The PSP operates the facility over a fixed term, during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid, or as negotiated and incorporated in the contract, to enable the PSP to recover its investment, and its operating and maintenance expenses in the project. The PSP transfers the facility to the PROVINCE at the end of the fixed term which shall not exceed fifty (50) years. This build, operate and transfer contractual arrangement shall include a supply-and-operate scheme, which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the PROVINCE so requires, operates the facility, providing in the process, technology transfer and training to Filipino nationals.

(iv) *Build-Own-and-Operate (BOO)* - A contractual arrangement whereby a PSP is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the PSP is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges from facility users. Under this project, the proponent who owns the assets of the facility may assign its operation and maintenance to a facility operator. The divestiture or disposition of the asset or facility shall be subject to relevant rules of the Commission on Audit.

(v) *Build-Transfer-and-Operate (BTO)* - A contractual arrangement whereby the PROVINCE contracts out the construction of an infrastructure facility to a PSP such that the contractor builds the facility on a turnkey basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the PROVINCE. The PSP, however, operates the facility on behalf of the PROVINCE under an agreement.

(vi) *Contract-Add-and-Operate (CAO)* - A contractual arrangement whereby the PSP adds to an existing infrastructure facility which it is renting from the PROVINCE and operates the expanded project over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provided by the PSP.

(vii) *Develop-Operate-and-Transfer (DOT)* - A contractual arrangement whereby favorable conditions external to a new infrastructure project to be built by a PSP are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates, such as higher property or rent values.

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

(ix) *Rehabilitate-Own-and-Operate (ROO)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.

(b) *Competitive Challenge or Swiss Challenge* - An alternative selection process wherein third parties or challengers shall be invited to submit comparative proposals to an unsolicited proposal. Accordingly, the PSP who submitted the unsolicited proposal, or the original proponent, is accorded the right to match any superior offers given by a comparative PSP.

(c) *Competitive Selection or Bidding or Open Competition* - Refers to a method of selection or procurement initiated an solicited by the PROVINCE, based on a transparent criteria, which is open to participation by any interested party.

(d) *Concession* - A contractual arrangement whereby the financing and construction of a new facility and/ or rehabilitation of an existing facility is undertaken by the PSP after its turnover thereof to the PSP, and includes the operation, maintenance, management and improvement, if any, of the facility for a fixed term during which the PSP generally provides service directly to facility users and is allowed to charge and collect the approved tolls, fees, tariffs, rentals or charges from them. The PROVINCE may receive a concession or franchise fee during the term of the contract and/ or other consideration for the transfer, operation or use of any facility. There may be a transfer of ownership of the asset or facility after the concession period has ended subject to rules of the Commission on Audit.

2F Capitol Bldg., Lingayen, Pangasinan 2401 * Tel/Fax (+6375) 5424040 * e-mail address: spsecpang@yahoo.com

(e) *Corporatization* – Refers to transformation of a public entity or quasi-municipal corporation established by the PROVINCE into one that has the structure and attributes of a private corporation, such as a board of directors, officers, and shareholders, and having it registered with the Securities and Exchange Commission as a stock corporation. The process involves the establishment of a distinct legal identity for the company under which the PROVINCE's role is clearly identified as owner; segregation of the company's assets, finances, and operations from other PROVINCE operations; and development of a commercial orientation and managerial independence while remaining accountable to the government or electorate.

(f) *Credit Enhancement*. This shall refer to direct and indirect support to a development facility by the PSP and/or PROVINCE, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the PPP contract. Credit enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved. Credit enhancements may include but are not limited to government guarantees on the performance or the obligation of the PROVINCE under its contract with the PSP, subject to existing laws on indirect guarantees. Indirect Guarantees shall refer to an agreement whereby the PROVINCE assumes full or partial responsibility for or assists in maintaining the financial standing of the PSP or project company in order that the PSP/ project company avoids defaulting on the project loans, subject to fulfillment of the PSP/ project company of its undertakings and obligations under the PPP contract.

(g) *Development Projects* - Projects normally financed, and operated by the public sector, but which will now be wholly or partly financed, constructed and operated by the PSP; projects that will advance and promote the general welfare; and other infrastructure and development projects as may otherwise be authorized by the PROVINCE.

(h) *Direct Provincial Government Equity* - Refers to the subscription by the PROVINCE of shares of stock or other securities convertible to shares of stock of the special purpose vehicle or single-purpose project company, whether such subscription will be paid by money or assets.

(i) *Direct Provincial Government Guarantee* - Refers to an agreement whereby the PROVINCE guarantees to assume responsibility for the repayment of debt directly incurred by the PSP in implementing the project in case of a loan default.

(j) *Direct Provincial Government Subsidy* - Refers to an agreement whereby the PROVINCE shall: (a) defray, pay or shoulder a portion of the PPP project cost or the expenses and costs in operating and maintaining the project; (b) condone or postpone any payments due from the PSP; (c) contribute any property or assets to the project; (d) waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/ or (e) waive charges or fees relative to the business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the PSP or operator for such payment, contribution or support.

(k) *Divestment or Disposition* - Refers to the manner or scheme of taking away, depriving, withdrawing of title to a property owned by a PROVINCE and vesting ownership thereof to a PSP.

(l) *Feasibility Study* - A study prepared by the PROVINCE in a competitive selection or a PSP when submitting an unsolicited proposal containing a needs analysis, affordability assessment, value for money assessment, preliminary risk assessment, stakeholder assessment, human resource assessment, bankability assessment, legal viability assessment, PPP mode selection, market testing if relevant, indicative transaction implementation plan, and draft PPP contract. The study shall be supported by the results of the appropriate "willingness-and-ability-to-pay" survey.

(m) *Franchise* - Refers to the right or privilege affected with public interest which is conferred upon a PSP, under such terms and conditions as the PROVINCE may impose, in the interest of public welfare, security and safety.

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

(o) *Lease or Affermage* - A contractual arrangement providing for operation, maintenance, and management services by the PSP, including working capital and/ or improvements to an existing infrastructure or development facility leased by the PSP from the PROVINCE for a fixed term. Under a lease, the PSP retains revenue collected from customers and makes a specified lease payment to the PROVINCE. Under an affermage, the parties share revenue from customers wherein the PSP pays the contracting authority an affermage fee, which varies according to demand and customer tariffs, and retains the remaining revenue. The PROVINCE may provide a purchase option at the end of the lease period subject to rules of the Commission on Audit.

(p) *Management Contract* - A contractual arrangement involving the management or provision by the PSP of operation and maintenance or related services to an existing infrastructure or development facility owned or operated by the PROVINCE. The project proponent may collect tolls/ fees/ rentals and charges which shall be turned over to the PROVINCE and shall be compensated in the form of a fixed fee and/ or performance-based management or service fee during the contract term.

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

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

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

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

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

(s) *Private Sector Proponent (PSP)* - Refers to the private sector entity which shall have contractual responsibility for the project and which shall have an adequate track record in the concerned industry, as well as technical capability and financial base consisting of equity and firm commitments from reputable financial institutions, to provide, upon award, sufficient credit lines to cover the total estimated cost of the project to implement the said project.

(t) *Public-Private Partnerships (PPP)* - PPP is a form of legally enforceable contract between the PROVINCE and PSP, which requires new investments from the PSP and which transfers key risks to the PSP in which payments are made in exchange for performance, for the purpose of delivering a service traditionally provided by the public sector. PPP shall also include disposition of an asset, facility, project owned or entity created by the PROVINCE to a PSP; assumption by a PSP of a proprietary function of the PROVINCE; grant of a concession or franchise to a PSP by the PROVINCE; or usage by the PSP of public property owned or possessed by the PROVINCE.

(u) *Reasonable Rate of Return (RROR)* - Refers to the rate of return that a PSP shall be entitled to, as determined by the PPP Regulatory Authority taking into account, among others, the prevailing cost of capital (equity and borrowings) in the domestic and international markets, risks being assumed by the PSP and the level of PROVINCE undertakings extended for the project.

(v) *Service Contract* - A contractual arrangement whereby the PSP shall provide a particular service to the PROVINCE involving the PROVINCE's proprietary authority or to entities or corporation created by the PROVINCE. The PSP shall be entitled to paid a fee per unit of work done during the term of the contract.

*2F Capitol Bldg., Lingayen, Pangasinan 2401 * Tel/Fax (+6375) 5424040 * e-mail address: spsecpang@yahoo.com*

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

(x) *Value for Money (VfM)* - Refers to the concept that over the whole-life of a project finance-PPP project, government's total expenditures (i.e., its payments to the private sector), adjusted for the risks that have been transferred to the private sector, will be less, on a Net Present Value (NPV) basis, than if the government will perform the services itself. VfM considers monetary and non-monetary factors such as: (i) risk transfer; (ii) reduced whole life costs; (iii) speed of implementation; and (iv) quality and reliability of service.

(y) *Viability Gap Funding (VGF)* - Refers to an explicit subsidy that is performance-driven (i.e., based on private party achieving measurable outputs) and targeted to socio-economically disadvantaged users or groups of users.

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

Sec. 7. *Authorities*. – (a) This Code is being adopted pursuant to the PROVINCE's constitutional and statutory authorities enumerated under Section 3 hereof.
(b) In pursuing BOT Variants, the PROVINCE shall comply with Republic Act No. 6957 as amended by RA No. 7718 and its Implementing Rules and Regulations.
(c) In entering into Management and Service Contracts, the PROVINCE shall comply with Republic Act 9184 and its Implementing Rules and Regulations.
(d) For Dispositions, Commission on Audit Circular No. 89-296 (January 27, 1989) shall govern.
(d) This Code shall govern the adoption and implementation of the other PPP Modalities.
(e) The authority to accept and process unsolicited proposals for joint venture projects between local governments and the private sector has been affirmed by the Office of the Executive Secretary in a letter to the Province of Camarines Sur dated October 25, 2011.

Chapter 2. PPP Projects and PPP Modes

Sec. 8. *PPP Projects*. – The PROVINCE, through the appropriate and viable PPP mode, may undertake Development Projects including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, sewerage, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, prisons, and hospitals.

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

Sec. 10. ***PPP Modalities***. – In undertaking specific PPP Projects, the PROVINCE may adopt and pursue the following 16 PPP Modalities:

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

Sec. 11. ***General Requirements***. – (a) Undertaking a PPP for a Development Project must be premised on any or all of the reasons and drivers mentioned in Section 4 hereof.
(b) The list of projects to be implemented by the PROVINCE under any of the BOT variants shall be submitted for confirmation to the Provincial Development Council for projects costing above Twenty up to Fifty million pesos; above Fifty million up to Two hundred million pesos to the regional development councils; and those above Two hundred million pesos to the Investment Coordination Committee of the National Economic Development Authority.
(c) Projects included in the List of Priority Projects shall not be eligible for unsolicited proposals under any of the BOT variants, unless involving a new concept or technology; provided, that for any of the other PPP Modalities, unsolicited proposals may be accepted even if the project is included in the List of Priority Projects or whether the same features a new concept or technology or not.
(d) The prohibition for unsolicited proposals under Republic Act No. 6957 as amended by RA No. 7718 on providing Direct Provincial Government Guarantee, Direct Provincial Government Subsidy and Direct Provincial Government Equity only applies to BOT variants.
(e) For Concession Arrangements, Leases or Affermage, Management and Service Contracts, and Joint Ventures, the PROVINCE may provide Direct Provincial Government Guarantee, Direct Provincial Government Subsidy, Direct Provincial Government Equity, or Viability Gap Funding; provided, that the PROVINCE may use a portion of its general fund, its development fund comprising 20% of it annual share in the Internal Revenue Allotment, or its equitable share in the proceeds of the utilization and development of the national wealth found within its territory for this purpose; provided further, that any amount used for subsidy or equity for a PPP project shall be deemed for development purposes and for the direct benefits of the inhabitants pursuant to Sections 287 and 289 of the 1991 LGC respectively.
(f) For all PPP Modalities, the PROVINCE may provide Credit Enhancements.

(g) Official Development Assistance (ODA) as defined in R.A. 8182, otherwise known as the ODA Act of 1996, as amended by R.A. 8555 may be availed of for PPP projects where there is difficulty in sourcing funds; provided, that ODA financing shall not exceed 50% of the project cost, the balance to be provided by the PSP.
(h) Any subsidy that will be extended by the PROVINCE must be targeted, transparent and efficiently administered.
(i) Each PPP Modality adopted for a specific PPP project must specifically provide and adopt a tariff-mechanism such as but not limited to cash-needs, price cap, revenue cap, rate of return, hybrid of the foregoing, or any other appropriate scheme.
(j) The PROVINCE shall have the option to form or allow the formation of a special purpose vehicle or single-purpose project company to implement the PPP project as may be appropriate under the chosen PPP Modality.
(k) In participating in PPPs, the PROVINCE may, subject to Sections 16, 17, 18, 19 and 20 of the 1991 LGC, exercise police power, perform devolved powers, apply and generate resources, expropriate and reclassify and provide zoning regulations.

Sec. 12. ***Government-to-Government Joint PPP Undertakings***. – The PROVINCE by mutual agreement in a Government-to-Government arrangement with other local governments, national government agencies, government-owned and -controlled corporations, government instrumentalities and government corporate entities, may implement PPP Projects for projects located within the PROVINCE's territory or those projects that will benefit the PROVINCE and its community even if the project site is outside the PROVINCE's territory; provided, that the collaborating or partner government entity jointly undertakes with the PROVINCE the selection of the PSP using the appropriate PPP Modality.

Chapter 3. PPP Procedures

Sec. 13. ***PPP Procedures.*** – (a) For BOT variants, the PROVINCE must comply with the procedure set forth in Republic Act No. 6957 as amended by RA No. 7718 and its Implementing Rules and Regulations.
(b) For Management and Service Contracts, the PROVINCE shall comply with Republic Act 9184 and its Implementing Rules and Regulations.
(c) For Concessions, Joint Ventures, and Leases or Affermage, the procedures specified herein shall govern.
(d) For Divestment or Disposition of a property, Commission on Audit Circular No. 89-296 (January 27, 1989) shall be applicable.
(e) For the Divestiture of a subsidiary or corporation incorporated by the PROVINCE under Corporatization, the sale may be pursued via a public offering or through a public auction or other relevant schemes under Commission on Audit Circular No. 89-296 (January 27, 1989).
(f) If the PROVINCE opts to select a PSP using the Competitive Selection or Competitive Challenge approach, the PROVINCE in the first approach and the PSP in the second approach must prepare and submit a Feasibility Study.
(g) All recommendations of the PPP Selection Committee shall be submitted to the Governor for consideration and approval.

(h) All PPP contracts must be signed by the Governor with prior authorization by the sanggunian.
(i) After the signing of the PPP Contract by the Governor, the PPP-SC shall issue the Notice of Award to the PSP.

Sec. 14. ***PPP Selection Committee***. – (a) There is hereby created a PPP Selection Committee or PPP-SC for purposes of selecting a PSP for a specific PPP Project. The PPP-SC shall be composed of the following:

(i) Chairperson – At least a third ranking officer of the PROVINCE;
(ii) Secretary – Provincial Legal Officer;
(iii) The Provincial Treasurer;
(iv) The Provincial Planning and Development Officer; and
(v) One (1) representative from and selected by the Sanggunian Panlalawigan.

A quorum of the PPP-SC shall be composed of a simple majority of all voting members. The Chairperson shall vote only in case of a tie.

The PPP-SC with the approval of the Governor may invite provisional non-voting members from the national government agencies, regulatory agencies, National Economic Development Authority, Department of Interior and Local Governments, private sector, non-governmental and people's organization to observe in the proceedings of the PPP-SC; and form a support staff composed of employees and staff of the PROVINCE.

(b) The PPP-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation of the Feasibility Study, selection/ tender documents; determine the minimum designs, performance standards/ specifications, economic parameters and reasonable rate of return or tariff-setting mechanism appropriate to the PPP Modality; drafting or evaluation of the PPP contract; publication of the invitation to apply for eligibility and submit proposals or comparative proposals; define the eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge processes; pre-qualification of prospective PSPs, bidders or challengers; conduct of pre-selection conferences and issuance of supplemental notices; interpretation of the rules regarding the selection process; the conduct of the selection or challenge process; evaluation of the legal, financial and technical aspects of the proposals; resolution of disputes between PSPs and challengers; defining the appeals mechanisms; and recommendation for the acceptance of the proposal and/ or for the award of the contract.

Sec. 15. ***Competitive Selection***. – (a) The Competitive Selection procedure shall consists of the following steps: advertisement, issuance of instructions and tender documents, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, posting of proposal securities, evaluation of bids, post-qualification, and award of contract.
(b) The Governor shall approve the tender documents and the draft PPP Contract before they are issued to the prospective PSPs/ bidders.

Sec. 16. *Limited Negotiations*. – Where the PROVINCE has failed to identify an eligible PSP for a desired PPP activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding or where the desired PPP project is the subject of an unsolicited proposal from a PSP, Limited Negotiations may take place. The negotiations will cover all the technical and financial aspects of the PPP project or activity; provided, that the minimum designs, performance standards/ specifications and economic parameters stated in the Feasibility Study and Terms of Reference for the Competitive Selection are complied with. The Governor shall approve the terms of the Limited Negotiations prior to the award of the contract to the PSP.

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

Stage One – The steps are:

(i) A PSP submits an unsolicited proposal accompanied by a Feasibility Study to the PROVINCE for a projected PPP Project.
(ii) The PPP-SC shall make an initial evaluation of the proposal and determination of the eligibility of the PSP.
(iii) Upon completion of the initial evaluation, the Governor, upon recommendation of the PPP-SC, shall either issue an acceptance or non-acceptance of the proposal for purposes of detailed negotiations.
(iv) If there are more than one unsolicited proposal submitted for the same PPP Project, the Governor, upon recommendation of the PPP-SC, may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and provides the greater advantage and benefits to the community and revenues to the PROVINCE.

Stage Two – The steps are:

(i) The parties shall negotiate and agree on the terms and conditions of the PPP Project concerning its technical and financial aspects.
(ii) Once negotiations are successful, the Parties shall issue a joint certification stating that an agreement has been reached and specifying the eligibility of the PSP and the technical and financial aspects of the PPP Project as agreed upon.
(iii) The issuance of the certification commences the activities for the solicitation for comparative proposals.
(iv) However, should negotiations not result to an agreement acceptable to both parties, the PROVINCE shall have the option to reject the proposal by informing the PSP in writing stating the grounds for rejection and thereafter may accept a new proposal from other PSPs, decide to pursue the proposed activity through other PPP Modalities or subject the PPP Project to a Competitive Selection.

Stage Three – The steps are:

(i) The PPP-SC shall prepare the tender documents. The eligibility criteria used in determining the eligibility of the private sector entity shall be the same as those stated in the tender documents. Proprietary information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents.
(ii) The Governor shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.
(iii) The PPP-SC shall publish the invitation for comparative proposals.
(iv) The PSP or Original Proponent shall post the proposal security at the date of the first day of the publication of the invitation for comparative proposals in the amount and form stated in the tender documents.
(v) In the evaluation of proposals, the best offer shall be determined to include the original proposal of the PSP. If the PROVINCE determines that an offer made by a comparative PSP or challenger other than the negotiated terms with original proponent is superior or more advantageous to the PROVINCE than the original proposal, the PSP who submitted the original proposal shall be given the right to match such superior or more advantageous offer. Should no matching offer be received within the stated period, the PPP Project shall be awarded to the comparative PSP submitting the most advantageous proposal. If a matching offer is received within the prescribed period, the PPP Project shall be awarded to the original proponent. If no comparative proposal is received by the PROVINCE, the PPP Project shall be immediately awarded to the original proponent.

Sec. 18. *Schedules and Timelines*. – The PROVINCE shall have the authority to adopt and prescribe the appropriate schedules and timelines for each PSP selection process: provided, that the periods are reasonable and will not undermine free competition, transparency and accountability.

Chapter 4. Regulation

Sec. 19. *PPP Regulatory Authority*. – (a) There shall be created a PPP Regulatory Authority (PPP-RA) composed of the following:

(i) Chairperson – The Governor or the Provincial Administrator if so designated by the Governor;
(ii) Vice-Chairperson – Vice-Governor or a member of the Sanggunian Panlalawigan to be chosen by said sanggunian;
(iii) Provincial Legal Officer;
(iv) The Provincial Treasurer; and
(v) The Provincial Planning and Development Officer.

Sec. 20. *Mandate*. - The PPP-RA shall perform contract management functions such as partnership management, performance management, risk management, and contract administration for all the PPPs arrangements entered into by the PROVINCE.

Sec. 21. ***Tariff-Setting and Subsidy Administration***. The PPP-RA shall be responsible for setting and monitoring the tariff and administering the subsidy pursuant to the PPP contract.

Chapter 5. Final Provisions

Sec. 22. ***Appropriations***. – To carry out the provisions of this Code, the amount of Five Hundred Thousand Pesos (P500,000.00) shall be appropriated. Thereafter, such sums as may be necessary for the continuous implementation of this Code shall be included in the annual budget of the PROVINCE.

Sec. 23. ***Implementing Rules***. – While this Code and the provisions hereof are already operative upon the Code's effectivity, the Governor may issue the appropriate and relevant rules and regulation for the proper implementation of the Code or its provisions.

Sec. 24. ***Application of Other PPP Laws and Regulations***. – Whenever relevant and appropriate as determined by the Governor, upon recommendation of the PPP-SC, the provisions of Republic Act No. 6957 as amended by R.A. No. 7718 or the BOT Law, R.A. 9184 or the Government Procurement Reform Act, Executive Order No. 301 (26 July 1987), Commission on Audit Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the Joint Venture Guidelines adopted by the National Economic Development Authority shall apply in a suppletory manner.

Sec. 25. ***Separability Clause***. – If, for any reason, any section or provision of this Code or any part thereof, or the application of such section, provision or portion is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

Sec. 26. ***Repealing Clause***. – All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

Sec. 27. ***Effectivity***. – This Code shall take effect fifteen (15) days after its posting in two conspicuous places within the PROVINCE.

ATTY. VERNA T. NAVA-PEREZ
Secretary to the Sanggunian

ATTESTED:

VICE GOVERNOR JOSE FERDINAND Z. CALIMLIM, JR.
Presiding Officer

APPROVED:

AMADO T. ESPINO, JR.
Governor