



OFFICE OF THE SANGGUNIANG PANLUNGSOD

EXCERPT TAKEN FROM THE JOURNAL OF THE REGULAR SESSION OF THE SANGGUNIANG PANLUNGSOD OF THE CITY OF ALAMINOS, PANGASINAN HELD ON SEPTEMBER 04, 2017.

PRESENT:

Vice Mayor Jose Antonio Miguel Y. Perez

Councilor Apolonia G. Bacay

Councilor Rufina J. Gabriel

Councilor Margielou Orange Humilde-Verzosa, DPA

Councilor Joselito O. Fontelera

Councilor Carolyn D. Sison

Councilor Alfred Felix E. de Castro

Councilor Perlito V. Rabago

Councilor Cirilo B. Radoc

Councilor Froebel A. Ranoy

LBP Raul B. Bacay

- **Presiding Officer**
- Presiding Officer Pro-Tempore
- Majority Floor Leader
- Minority Floor Leader
- Member
- Member
- Member
- Member
- Member
- Member
- Ex-Officio Member

ABSENT:

Councilor Rany S. de Leon

- On leave

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ORDINANCE NO. 2017-12

AN ORDINANCE ADOPTING A PUBLIC-PRIVATE PARTNERSHIP (PPP) APPROACH TOWARDS DEVELOPMENT, CREATING A PPP REGULATORY AUTHORITY, PROVIDING APPROPRIATION AND INCENTIVES THEREFORE AND FOR OTHER PURPOSES

WHEREAS, guided by the principles of transparency, accountability and sustained partnerships with the private sector, the National Government established the Public-Private Partnership Program of the Philippines to realize the Philippine Public Investment Program;

WHEREAS, the program intends to provide the public with adequate, safe, efficient, reliable, and reasonably-priced infrastructure and development facilities while affording the private sector a level playing field, reasonable returns and appropriate sharing risks;

WHEREAS, Article X of the 1987 Constitution grants local autonomy and fiscal autonomy to all Local Governments Units (LGUs), the City included, while Section 22 (d) of RA No. 7160 otherwise known as the 1991 Local Government Code (LGC) accords LGUs full autonomy in the exercise of their proprietary functions;

WHEREAS, Section 16 of the LGC, the general welfare clause, empowers LGUs to exercise those powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare;

WHEREAS, LGUs may, in accordance with Sections 3(l), 16, 17(j), 18, 22(d), 34, 35 and 36 of the LGC and Article 66 of the Implementing Rules and Regulations of the LGC, enter into joint ventures (JVs) and such other cooperative arrangements with the people's organizations, non-governmental organizations or the private sector, to engage in the delivery of certain basic services; capability-building and livelihood projects; 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;

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WHEREAS, PPP shall be a new development strategy of the city aimed at realizing its vision by 2030 to be a major growth center and prime tourism hub in Region 1 propelled by a sustainable, competitive and progressive local economy, with adequate, appropriate and world class facilities within a conserved and ecologically-balanced environment, which are inhabited by a healthy, God-loving and educated citizens and served by transparent, united and responsive local government leaders”;

WHEREAS, this ordinance will serve as the framework which will ensure and facilitate consistency, integrity, reliability, sustainability, accountability and transparency, and enforceability of the PPP Program in the City of Alaminos;

NOW, THEREFORE, on motion of Councilor Cirilo B. Radoc, duly seconded by Councilor Rufina J. Gabriel, Councilor Carolyn D. Sison, Councilor Froebel A. Ranoy, Councilor Alfred Felix E. de Castro and Liga ng mga Barangay President Raul B. Bacay

BE IT ORDAINED, by the Sangguniang Panlungsod of Alaminos City, Pangasinan, in session assembled that:

Chapter 1. **Basic Principles and Definitions**

SECTION 1. *Short Title.* – This Ordinance shall be known as the “Alaminos City, Pangasinan, Public-Private Partnership Code.”

SECTION 2. *Declaration of Policy.* – (a) It is hereby declared as a policy, that the City of Alaminos, Pangasinan, shall advance the public good and general welfare, and promote the interest of the community and the city within the framework of sustainable and integrated development, and effective constructive engagement and meaningful people’s participation in local governance.

(b) PPP shall be pursued by the City consistent with and in furtherance of the vision and mission of the City which states that:

Vision: We envision Alaminos City by 2030 to be a major growth center and prime tourism hub in Region I propelled by a sustainable, competitive and progressive local economy, with adequate, appropriate and world class facilities within a conserved and ecologically –balanced environment, which are inhabited by a healthy, God-loving and educated citizens and served by transparent, united and responsive local government leaders.

Mission: A pro-active City Government, setting standards in good governance serving as an architect of holistic development, an integrator of development initiatives and provider of opportunities to the broadest segments of its constituents.

SECTION 3. *Rationale for PPP.* – PPP shall be promoted to provide more, better, affordable and timely services to the community. In pursuing PPP, the city shall be guided by the following reasons and drivers:

(a) PPP shall be undertaken in furtherance of the city development and physical framework plan.

(b) PPP is an essential part of the overall infrastructure reform policy of the City. By encouraging performance- based management of the delivery of public



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- services applying commercial principles and incentives whenever possible, by introducing competition in and for the market, and by involving users and stakeholders in the decision-making process, infrastructure and regulatory reform shall be achieved.
- (c) PPP should be adopted to address a pressing and urgent or critical public need. Under the principle of "Additionalty," the increased economic benefits to consumer welfare of having needed public services and infrastructure accessible now because of the PPP, rather than having to wait until the City could provide the public services much later. PPP would also encourage the accelerated implementation of local projects.
 - (d) PPP can be adopted to avoid costs and public borrowing by contracting with the private sector to undertake a new infrastructure project, scarce City capital budgets can be directed to other priority sectors such as social services, education, and health care.
 - (e) PPP allows for technology transfer, and improved efficiency and quality of service. These could be valuable contribution of the private sector in local governance.
 - (f) PPP should be feasible and affordable, demonstrating the need for the project, broad level project costs estimation, and indicative commercial viability. The assessment of affordability shall be the cornerstone for all PPP projects, both to the city and the general public.
 - (g) PPP Projects should be bankable. High participation costs, unreasonable risk transfer or lengthy and complex contract negotiations must be avoided. A cost recovery pricing policy attractive to the private sector must be in place, provided that the same will not be disadvantageous to government and public interest.
 - (h) PPP Projects should provide value-for-money and good economic value as far as practicable, including allocation of risks to the party best able to control, manage, mitigate or insure these risks, and maximization of the benefits of private sector efficiency, expertise, flexibility and innovation.
 - (i) PPP Projects must provide economic and social benefits and should be evaluated on this basis rather than on purely financial considerations. The city remains responsible for services provided to the public, without necessarily being responsible for corresponding investment.
 - (j) PPP Projects must give consideration for empowerment of Filipino citizens as a strategy for economic growth and sustainability and must thus provide for the participation of local investors to the furthest extent practicable given the nature of the project. The City shall also ensure the hiring and employment of local labor in the PPP venture.
 - (k) Procurement of PPP Projects must be competitive and must be undertaken through open competitive bidding. Competition must be legitimate, fair and honest. In the field of government contract law, competition requires, not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, the same undertaking, but also that it be legitimate, fair and honest; and not designed to injure or defraud the government. Where competitive bidding cannot be applied, a competitive process ensuring both transparency and economically efficient outcome must be employed.

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- (l) The regulation of the PPP shall be pursuant to the PPP contract and exercised by the appropriate regulatory authority. A duly executed and legal PPP Contract shall be respected and not impaired, and shall be binding on the successor administration pursuant to the provision on corporate succession. Procedures, activities and steps duly undertaken by the City Mayor, PPP-SC, Sangguniang Panlungsod pursuant to this Ordinance shall be continued by the successor Administration. Any amendment or revision to this Ordinance by the next Administration shall not in any way prejudice vested and contractual rights of the city and the PSPs as to the substance of agreements signed, certifications issued, resolutions issued and procedures undertaken.

SECTION 4. *Definition of Terms.* – As used in this Code, the following terms shall mean:

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

- (i) *Build-and-Transfer (BT)* - A contractual arrangement whereby the Private Sector Proponent (PSP) undertakes the financing and construction of a given infrastructure or development facility, and after its completion, turns it over to the city, which shall pay the PSP, on an agreed schedule, its total investment expended on the project, plus a Reasonable Rate of Return thereon.
- (ii) *Build-Lease-and-Transfer (BLT)* - A contractual arrangement whereby a PSP is authorized to finance and construct an infrastructure or development facility and upon its completion, turns it over to the City on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the city.
- (iii) *Build-Operate-and-Transfer (BOT)* - A contractual arrangement whereby the PSP undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof.

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

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



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- (v) *Build-Transfer-and-Operate (BTO)* - A contractual arrangement whereby the City contracts out the construction of an infrastructure facility to a PSP such that the contractor builds the facility on a turnkey basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the city. The PSP, however, operates the facility on behalf of the city under an agreement.
- (vi) *Contract-Add-and-Operate (CAO)* - A contractual arrangement whereby the PSP adds to an existing infrastructure facility which it is renting from the City and operates the expanded project over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provided by the PSP.
- (vii) *Develop-Operate-and-Transfer (DOT)* - A contractual arrangement whereby 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 city.
- (ix) *Rehabilitate-Own-and-Operate (ROO)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.
- (b) *Competitive Challenge or Swiss Challenge* - An alternative selection process wherein third parties or challengers shall be invited to submit comparative proposals to an unsolicited proposal. Accordingly, the PSP who submitted the unsolicited proposal, or the original proponent, is accorded the right to match any superior offers given by a comparative PSP.
- (c) *Competitive Negotiations* - Refers to a process where city negotiates with eligible and qualified PSPs and awards the project to that PSP which offers the best combination of quality and price.
- (d) *Competitive Selection or Bidding or Open Competition* - Refers to a method of selection or procurement initiated and solicited by the city, based on a transparent criteria, which is open to participation by any interested party.
- (e) *Concession* - A contractual arrangement whereby the financing and construction of a new facility and/ or rehabilitation of an existing facility is undertaken by the PSP after turnover thereof to it, and includes the operation, maintenance, management and improvement, if any, of the facility for a fixed term during which the PSP generally provides service directly to facility users and is allowed to charge and collect the approved tolls, fees, tariffs, rentals or charges from them. The city may receive a concession or franchise fee during the term of the contract and/ or other consideration for the transfer, operation or use of any facility. There may be a transfer of ownership of the asset or facility after the concession period has ended subject to rules of the COA.

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- (f) *Corporatization* - Refers to transformation of a wholly- or majority-owned subsidiary of or quasi-municipal corporation established by the city 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 city role is clearly identified as owner; segregation of the company's assets, finances, and operations from other city operations; and development of a commercial orientation and managerial independence while remaining accountable to the government or electorate.
- (g) *Credit Enhancement* - This shall refer to direct and indirect support to a development facility by the PSP and/or City, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the PPP contract. Credit enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved. Credit enhancements may include but are not limited to government guarantees on the performance or the obligation of the city under its contract with the PSP, subject to existing laws on indirect guarantees. Indirect Guarantees shall refer to an agreement whereby the city assumes full or partial responsibility for or assists in maintaining the financial standing of the PSP or project company in order that the PSP/project company avoids defaulting on the project loans, subject to fulfilment of the PSP/project company of its undertakings and obligations under the PPP contract.
- (h) *Developmental Projects* - City Projects normally financed and operated by the city, but which will now be wholly or partly financed, constructed and/or operated by the PSP; projects that will advance and promote the general welfare and public good; projects and activities that will be responsive to the needs of the communities; projects that will raise revenues for city; projects in furtherance of devolution, deconcentration and decentralization; and other infrastructure, social-related and developmental projects as may be authorized by the city.
- (i) *Direct City Equity* - Refers to the subscription by the city of shares of stock or other securities convertible to shares of stock of the special purpose vehicle or single-purpose project company, whether such subscription will be paid by money or assets.
- (j) *Direct City Guarantee* - Refers to an agreement whereby the city guarantees to assume responsibility for the repayment of debt directly incurred by the PSP in implementing the project in case of a loan default.
- (k) *Direct City Subsidy* - Refers to an agreement whereby the city shall: (a) defray, pay or shoulder a portion of the PPP project cost or the expenses and costs in operating and maintaining the project; (b) condone or postpone any payments due from the PSP; (c) contribute any property or assets to the project; (d) waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/ or (e) waive charges or fees relative to the business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the PSP or operator for such payment, contribution or support.
- (l) *Divestment or Disposition* - Refers to the manner or scheme of taking away, depriving, withdrawing of title to a property owned by the city and vesting ownership thereof to a PSP.



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- (m) *Feasibility or Project Study (FS)* - A study, full or pre-feasibility study or business case prepared by the City in a competitive selection or a PSP when submitting an unsolicited proposal, containing or indicating a needs analysis, affordability assessment, value for money assessment, preliminary risk assessment, stakeholder assessment, human resource assessment, bankability assessment, legal viability assessment, P4 mode selection, market testing if relevant, indicative transaction implementation plan, and draft P4 contract. The study may be supported by the results of the appropriate "willingness-and-ability-to-pay" survey. The Project Study can be a feasibility study, pre-feasibility study or business case.
- (n) *Franchise* - Refers to the right or privilege affected with public interest which is conferred upon a PSP, under such terms and conditions as the city may impose, in the interest of public welfare, security and safety.
- (o) *Joint Venture (JV)* - A contractual arrangement whereby a PSP or a group of PSPs on one hand, and the city on the other hand, contribute money/ capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing. The city shall be a minority equity or shareholder while the PSP shall be majority equity or shareholder. Each party shall be entitled to dividends, income and revenues and will bear the corresponding losses and obligations in proportion to its share. Parties to a JV share risks to jointly undertake an investment activity in order to accomplish a specific, limited or special goal or purpose with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transferring ownership of the investment activity to the PSP under competitive market conditions. It involves a community or pooling of interests in the performance of the service, function, business or activity, with each party having a right to direct and govern the policy in connection therewith, and with a view of sharing both profits and losses, subject to agreement by the parties.
- (p) *Lease or Affermage* - A contractual arrangement providing for operation, maintenance, and management services by the PSP, including working capital and/ or improvements to an existing infrastructure or development facility leased by the PSP from the city for a fixed term. Under a lease, the PSP retains revenue collected from customers and makes a specified lease payment to the city. Under an affermage, the parties share revenue from customers wherein the PSP pays the contracting authority an affermage fee, which varies according to demand and customer tariffs, and retains the remaining revenue. The city may provide a purchase option at the end of the lease period subject to rules of the COA.
- (q) *Limited Negotiations* - Refers to a process whereby the city negotiates with the PSP in instances when there is only one eligible and qualified PSP in a competitive selection process, under Stage 2 of the competitive challenge process, or when there is a prior completed competitive process.
- (r) *Management Contract* - A contractual arrangement involving the management or provision by the PSP of operation and maintenance or related services to an existing infrastructure or development facility owned or operated by the city. The PSP may be compensated by the city using the funds of the latter; or the PSP may collect tolls/ fees/ rentals and charges which shall be turned over to the city and shall be compensated in the form of a fixed fee, a share in the revenues and/ or performance based management or service fee during the contract term.



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- (s) *Negotiated Projects* - Refer to instances where the desired project is the result of an unsolicited proposal from a PSP or, where the city has failed to identify an eligible PSP for a desired P4 activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding.
- (t) *New Technology* - Refers to having at least one of the following attributes:
- A recognized process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce implementation of construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations, or reduce negative environmental impact or social/ economic disturbances or disruptions during either the project implementation/ construction phase or the operation phase; or
 - A process for which the project proponent or any member of the proponent joint venture/ consortium possesses exclusive rights, either world-wide or regionally; or
 - A design, methodology or engineering concept for which the proponent or a member of the proponent consortium or association possesses intellectual property rights.
- (u) *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.
- (v) *Public-Private Partnerships* – At the policy level, a PPP is a developmental, innovative, change and partnership strategy aimed at promoting the general welfare, inclusive growth and better quality of life of Filipinos.
- At a project level, a PPP is a legally enforceable contract where each party assumes specified functions, bears certain risks, provides contribution or renders some obligation, and earns benefits and revenues from the PPP arrangement. Specifically, it is a form of legally enforceable contract between the city and a PSP, and in certain cases, with the requiring new investments from the PSP and transferring key risks to the PSP in which payments are made in exchange for performance, for the purpose of delivering a service provided or intended to be provided by the city. PPP shall also include dispositions of an asset, facility, project owned, or entity created by the city to a PSP; procurement of a service; donations to the city; incorporation of a subsidiary with PSP equity; assumption by a PSP of a proprietary function of the city; grant of a concession or franchise to a PSP by the city; or usage by the PSP of public property owned or possessed by the city.
- (w) *PPP Contract* - Refers to the agreement between the city and a PSP that govern a PPP project.
- (aa) *Reasonable Rate of Return (RROR)* - Refers to the rate of return that a PSP shall be entitled to, as determined by the PPP Regulatory Authority taking into account, among others, the prevailing cost of capital (equity and borrowings) in the domestic and international markets, risks being assumed by the PSP and the level of city undertakings and contributions extended for the project.



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- (bb) *Rehabilitate-Lease-and-Transfer (RLT)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, and upon its completion, turns it over to the city on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the city.
- (cc) *Rehabilitate-and-Transfer (RT)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, and after its completion, turns it over to the city, which shall pay the PSP, on an agreed schedule, its total investment expended on the project, plus a reasonable rate of return thereon.
- (dd) *Rehabilitate-Transfer-and-Operate (RTO)* - A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate. Once the facility is commissioned satisfactorily, title is transferred to the City. The PSP, however, operates the facility on behalf of the City under an agreement.
- (ee) *Service Contract* - A contractual arrangement whereby the PSP shall provide a particular service to the city involving the city's proprietary authority or to entities or corporation created by the city. The PSP shall be entitled to be paid a fee per unit of work done during the term of the contract; or compensated by the city using the funds of the latter; or the PSP may collect tolls/ fees/ rentals and charges which shall be turned over to the city and shall be compensated in the form of a share in the revenues.
- (ff) *Subsidiary with PSP Equity* - A corporation or quasi-municipal corporation incorporated by a City and registered as a stock corporation under the Corporation Code where majority of the shares are held by a city and where a PSP is or PSPs are minority shareholder(s) which acquire their shares through an initial public offering or other competitive means.
- (gg) *Unsolicited Proposal* - Refers to project proposals submitted by a PSP to the City to undertake Developmental Projects without a formal solicitation issued by the City whereby the negotiated terms shall be subjected to comparative proposals.
- (hh) *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 PSP), adjusted for the risks that have been transferred to the PSP, 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.
- (ii) *Viability Gap Funding (VGF)* - Refers to an explicit subsidy that is performance-driven (i.e., based on private party achieving measurable outputs) and targeted to socio-economically disadvantaged users or groups of users; or any financial support in the form of grants or assistance, one time or deferred, to infrastructure projects undertaken through PPP with a view to make them commercially viable.

SECTION 5. *Rules of Interpretation.* - This Code and the provisions hereof shall be liberally interpreted to accomplish the policy and objectives set forth in Sections 2, 3 and 4 hereof.

SECTION 6. *Authorities.*

- (a) This Code is being adopted pursuant to the city's constitutional and statutory



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- authorities enumerated under Section 3 hereof; and when not inconsistent with the relevant laws aforementioned, shall govern the adoption and implementation of the PPP Modalities.
- (b) In pursuing BOT Law variants, the city shall comply with BOT Law and its Implementing Rules and Regulations.
 - (c) In entering into Management and Service Contracts where city funds are used, the city shall comply with Republic Act 9184 or the Government Procurement Reform Act (GPRA) and its Implementing Rules and Regulations.
 - (d) For Dispositions, COA Circular No. 89-296 (January 27, 1989) shall govern.
 - (e) For Corporatization, the incorporation of the corporation must be done in accordance with the Corporation Code of the Philippines.
 - (f) For Local Concessions, Leases and Affermage, Rehabilitate-and-Transfer, Rehabilitate-Lease-and-Transfer, and Rehabilitate-Transfer-and-Operate, Management and Service Contracts where City funds are not used to procure the services of the PSP, and donations, the City policies or ordinances will be the governing instrument.
 - (g) For Joint Ventures, Section 35 of the 1991 LGC and Article 62 of the Implementing Rules and Regulations of the 1991 LGC shall be governing law, and Law on Partnerships of the Civil Code of the Philippines shall apply supplementary.
 - (h) For Leases and Affermage, and Donations, the Law on Leases of the Civil Code of Philippines may be referred to.

Chapter 2. PPP Projects and PPP Modalities

SECTION 7. *PPP Projects.*

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

SECTION 8. *List of PPP Priority Projects.* – The city shall identify specific priority developmental projects that may be undertaken under any of the PPP Modalities defined under Sec. 9 hereof.

SECTION 9. *PPP Modalities.* – In undertaking a specific PPP, the city may adopt and pursue any of the following PPP Modalities and provide for other modalities not inconsistent with law:

1. Build-and-Transfer (BT);
2. Build-Lease-and-Transfer (BLT);
3. Build-Operate-and-Transfer (BOT);
4. Build-Own-and-Operate (BOO);
5. Build-Transfer-and-Operate (BTO);



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6. Contract-Add-and-Operate (CAO);
7. Develop-Operate-and-Transfer (DOT);
8. Rehabilitate-Operate-and-Transfer (ROT);
9. Rehabilitate-Own-and-Operate (ROO);
10. Rehabilitate-Lease-and-Transfer (RLT);
11. Rehabilitate-and-Transfer (RT);
12. Rehabilitate-Transfer-and-Operate (RTO);
13. Concession Arrangement;
14. Joint Venture (JV);
15. Lease or Affermage;
16. Management Contract;
17. Service Contract;
18. Divestment or Disposition; and
19. Corporatization;

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SECTION 10. *General Requirements.* – These are the general requirements for the City in entering into PPP:

- (a) Undertaking a PPP for a Development Project must be premised on any or all of the reasons and drivers mentioned in Section 3 hereof.
- (b) The list of projects to be implemented by the city under any of the BOT Law variants shall be submitted for confirmation to the City Development Council for projects costing above Twenty Million 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 and Development Authority (NEDA).
- (c) Projects included in the List of Priority Projects shall not be eligible for unsolicited proposals under any of the BOT Law variants, unless involving a new concept or technology; provided, that for any of the other PPP Modalities, unsolicited proposals may be accepted even if the project is included in the List of Priority Projects or whether the same features a new concept or technology or not.
- (d) The prohibition for extending Direct City Guarantee, Direct City Subsidy and Direct City Equity only applies to unsolicited proposals for BOT Law variants under the BOT Law.
- (e) For BOT Law variants that will be subjected to bidding, Concession Arrangements, Leases or Affermage, Management and Service Contracts, and Joint Ventures, the City may provide Direct City Guarantee, Direct City Subsidy, Direct City Equity, or Viability Gap Funding; provided, that the City can use a portion of its general fund, its development fund comprising its annual share in the Internal Revenue Allotment, and/ or its equitable share in the proceeds of the utilization and development of the national wealth found within its territory for this purpose; provided further, that any amount used for subsidy or equity for a PPP project shall be deemed for development purposes and for the direct benefits of the inhabitants [pursuant to Sections 287 and 294 of the 1991 LGC respectively].
- (f) For all PPP Modalities, the city may provide Credit Enhancements schemes.
- (g) Official Development Assistance (ODA) as defined in R.A. 8182, otherwise known as the ODA Act of 1996, as amended by R.A. 8555, may be availed of for PPP projects where there is difficulty in sourcing funds; provided, that ODA financing shall not exceed 50% of the project cost, with the balance to be provided by the PSP.

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- (h) Any subsidy that will be extended by city must be targeted, transparent and efficiently administered.
- (i) Each PPP Modality adopted for a specific PPP project must specifically provide and adopt a tariff-mechanism such as but not limited to cash-needs, price cap, revenue cap, rate of return, hybrid of the foregoing, or any other appropriate scheme.
- (j) The city shall have the option to form or allow the formation of a special purpose vehicle or single-purpose project company to implement the PPP project as may be appropriate under the chosen PPP Modality.
- (k) In participating in PPP, the city may, subject to Sections 16, 17, 18, 19 and 20 of the 1991 LGC, exercise police power, perform devolved powers, power to apply and generate resources, expropriate and reclassify and enact or integrate zoning regulations.

SECTION 11. *Government-to-Government Joint PPP Undertakings.* – The city by mutual agreement in a Government-to-Government arrangement with other local governments, national government agencies, government-owned and -controlled corporations, government instrumentalities and government corporate entities, may implement PPP for projects located within the city's territory or those projects that will benefit the city and its community even if the project site is outside the city's territory; provided, that the collaborating or partner government entity jointly undertakes with the city the selection of the PSP using the appropriate PPP Modality.

Chapter 3. PPP Procedures

SECTION 12. *PPP Procedures.* – The following procedures shall apply:

- (a) For BOT Law variants, the city must comply with the procedure set forth in the BOT Law and its Implementing Rules and Regulations.
- (b) For Management and Service Contracts where city funds will be used, the city shall comply with Republic Act No. 9184 or the Government Procurement Reform Act and its Implementing Rules and Regulations.
- (c) For Concessions, Leases or Affermage, and Management and Service Contracts where public funds are not used to procure the services of the PSP, competitive selection, limited negotiations, competitive negotiations or competitive challenge as defined herein may be utilized to select the PSP.
- (d) For Joint Ventures, Rehabilitate-Transfer, Rehabilitate-Lease-and-Transfer and Rehabilitate-Transfer-and-Operate, competitive selection, limited negotiations or competitive challenge as defined herein may be utilized to select the PSP/JV partner.
- (e) For Divestment or Disposition of a property, COA Circular No. 89-296 (January 27, 1989) shall be applicable.
- (f) For the incorporation of a subsidiary with equity from the PSP, the Corporation Code shall be followed.
- (g) For the Divestiture of a subsidiary or corporation incorporated by the City under Corporatization, the sale may be pursued via a public offering or through a public auction or other relevant schemes under COA Circular No. 89-296 (January 27, 1989).



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- (h) If the city opts to select a PSP using either Competitive Selection or Competitive Challenge, the City in the Competitive Selection and Competitive Negotiations, and the PSP in the Competitive Challenge approach must prepare and submit a Feasibility or Project Study. The costs of preparing the Feasibility or Project Study may be reimbursed by the winning PSP to the City under the Competitive Selection mode.
- (i) All recommendations of the PPP Selection Committee shall be submitted to the City Mayor for consideration and approval.
- (j) All PPP contracts must be signed by the City Mayor with prior authorization from the Sanggunian Panlungsod through a resolution.
- (k) During the consideration of the draft PPP Contract by the Sanggunian Panlungsod, a public consultation/ hearing shall be conducted explaining the PPP Project, PPP Contract, accountability mechanisms built into the PPP arrangement, the benefits and costs of the PPP Project, among other relevant matters.
- (l) After the signing of the PPP Contract by the City Mayor, the PPP-SC shall issue the Notice of Award to the PSP. After the required condition precedents are complied with by the winning PSP, the City Mayor, upon the recommendation of the PPP-SC, shall issue the Notice to Proceed.
- (m) While the PPP Contract is already valid, perfected and enforceable, it may be submitted for judicial, executive or administrative confirmation from the courts or appropriate government institutions.

SECTION 13. *PPP Selection Committee.*

- (a) There is hereby created a PPP Selection Committee (PPP-SC) for purposes of selecting a PSP for a specific PPP Project. The PPP-SC, to be constituted and convened by the City Mayor, shall be composed of the following:
 - (i) Chairperson – At least a third ranking officer of the Executive Department of the City;
 - (iii) The City Treasurer;
 - (iv) The City Planning and Development Coordinator;
 - (v) One (1) representative from and selected by the Sanggunian Panlungsod designated in an appropriate resolution; and

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

The PPP-SC with the approval of the City Mayor may invite provisional non-voting members from the national government agencies, regulatory agencies, NEDA, DILG, and the private sector to observe in the proceedings of the PPP-SC; and form a support staff composed of employees and staff of the City.

- (b) The PPP-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation of the Feasibility or Project Study and selection/ tender documents; determination of the minimum designs, performance standards/ specifications, economic parameters and reasonable rate of return or tariff-setting mechanism appropriate to the PPP Modality; drafting or evaluation of the PPP contract; publication of the invitation to apply for eligibility and submission of proposals or comparative proposals; defining the eligibility requirements, appropriate form and amount of proposal securities, and



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schedules of the selection and challenge processes; pre-qualification of prospective PSPs, bidders or challengers; conduct of pre-selection conferences and issuance of supplemental notices; interpretation of the rules regarding the selection process; conduct of the selection or challenge process; evaluation of the legal, financial and technical aspects of the proposals; resolution of disputes between PSPs and challengers; defining the appeals mechanisms; and recommendation for the acceptance of the proposal and/ or for the award of the contract.

SECTION 14. *Competitive Selection.*

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

SECTION 15. *Limited Negotiations.* – Where the city:

- (a) fails to identify an eligible PSP for a desired PPP activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding; or
- (b) considers a project or activity either through competitive selection or competitive challenge where an indispensable or integral component thereof has already been subjected to a competitive process by the appropriate administrative agency, government instrumentality or government-owned and -controlled corporation which gives the PSP/offerer a vested and exclusive right over that component without which, the PPP Project cannot be implemented as envisioned, Limited Negotiations may take place. The negotiations will cover all the technical and financial aspects of the PPP project or activity; provided, that the minimum designs, performance standards/specifications and economic parameters stated in the Feasibility or Project Study and Terms of Reference are complied with. The City Mayor shall approve the terms of the Limited Negotiations prior to the award of the contract to the PSP. Under the 2nd instance, the City shall publish a notice to the public prior to the start of the negotiations, and if pursued under Competitive Challenge, the 3rd stage as defined below may be dispensed with

SECTION 16. *Competitive Challenge.* – The Competitive Challenge process shall be divided into three (3) Stages, described as:

Stage One/ Unsolicited Proposal – The steps are:

- (i) A PSP submits an unsolicited proposal accompanied by a Feasibility or Project Study and draft PPP contract to the City for a projected PPP Project.
- (ii) The PPP-SC shall make a determination of the completeness of the unsolicited proposal, the eligibility of the PSP, the necessity for the proposed project, the consistency of the terms of the draft PPP contract with this Ordinance, and the appropriateness of the proposed PPP modality.



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- (iii) Upon completion of the initial evaluation, the City Mayor, upon recommendation of the PPP-SC, shall either issue a certificate of acceptance or non-acceptance of the proposal for purposes of detailed negotiations. Upon the issuance of the certificate of acceptance, the PSP is *ipso facto* conferred original proponent status and no other proposal for the same project may be subjected to the competitive challenge process.
- (iv) If there is more than one unsolicited proposal submitted for the same PPP Project, the City Mayor, upon recommendation of the PPP-SC, may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and provides the greater advantage and benefits to the community and revenues to the City

Stage Two/ Detailed Negotiations – The steps are:

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

Stage Three/ Competitive or Swiss Challenge Proper – The steps are:

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



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is received by the City, the PPP Project shall be immediately awarded to the original proponent.

(vi) In the event that the Original Proponent is not able to match the superior offer of the challenger, the winning challenger shall reimburse, within 30 days from issuance of the notice of award, the original proponent the cost of preparing the project study, provided, that this reimbursement arrangement and the cost of preparing of the project study are expressly stated in the terms of reference for the competitive challenge, and that the PPP-SC has determined that the cost is reasonable.

SECTION 17. *Schedules and Timelines.* – The City Mayor, through an executive order, upon the recommendation of the PPP-SC, shall have the authority to adopt and prescribe the appropriate schedules and timelines for each PSP selection process: provided, that the periods are reasonable and will not undermine free competition, transparency and accountability.

SECTION 18. *PPP Contract.*

- (a) The PPP Contract shall be signed by the City Mayor in-behalf of the City with the prior authorization or ratification by the Sanggunian Panlungsod approving all terms of the PPP Contract, and the duly authorized representative of the PSP.
- (b) The direct and ultimate beneficiary of any PPP Contract shall be the constituents of the City. Representatives of accredited CSOs, NGOs and POs may sign the PPP Contract as monitoring entity or witness.
- (c) The principal PPP Contract shall describe the PPP Project, the rights, functions, obligations and responsibilities of and risks assumed by each of the contracting party, dispute mechanisms and all other provisions enumerated under Section 5 (v) hereof. Whenever appropriate, the PPP Contract shall contain the Preambulatory Clauses or Whereas Clauses, Party Clause, Rules of Interpretation, Nature of the PPP, Term of the Project, Contract Objective, Performance Bonds, Key Performance Indicators, Risk Allocation, Rights, Payment to PSE or PSP, Tariff Scheme, Subsidy or Support Mechanism, Insurance Requirements, Delay Provisions, Force Majeure, Governmental Action, Government and Public Sector Entity (PSE) Warranties, PSP Warranties, Change in the Law, Regulatory Regime, Variations, Termination, Indemnification, Intellectual Property, Claims, Financial security, Dispute Resolution, Step-in Rights, Changes in the Composition of the PSP/ Service Provider, Partnership Management, Compliance with all Laws, Personnel, Conditions Precedent, among others.
- (d) The other ancillary contracts may include insurance contracts; loan agreements; bonds; guarantee arrangements; equity arrangements; operations and maintenance contracts; and engineering, procurement and construction (EPC) contracts.
- (e) The City Mayor shall not proceed with the award and signing of the contract if there are material deviations from the parameters and terms and conditions set forth in the proposal/tender documents that tend to increase the financial exposure, liabilities and risks of the city or any other factors that would cause disadvantage to government and any deviation that will cause prejudice to losing PSPs.
- (f) Neither party shall unilaterally rescind or amend a PPP Contract. Any amendment to a PPP Contract, which if effected will not violate the



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policy on competition and fairness and does not materially affect the substance of the PPP Contract, after award and signing of contract shall undergo approval by the City Mayor with prior authorization by the Sanggunian Panlungsod. Non-compliance with the corresponding approval process stated shall render the amendment null and void. Any form of amendment may be allowed after the PPP contract has been executed, provided that, the right to amend is accorded to all bidders and challengers and specified in the tender documents, and such right is stipulated in the PPP contract. Any amendment must be approved by the Sanggunian Panlungsod through an ordinance by two-thirds (2/3) vote of the members present, there being a quorum.

- (g) All laws and ordinances are read or deemed to form part of the PPP Contract, Regulation and Contract Management.
- (h) The gist of the PPP Contract shall be annotated at the back of the title of the property over which the PPP project is located.

Chapter 4. Regulation and Contract Management

SECTION 19. *PPP Regulatory Authority's Mandate.* – The PPP Regulatory Authority (PPP-RA) created under this Code shall be tasked with performing contract management functions, such as partnership management (i.e., corporate governance, communication and information sharing, and dispute resolution), performance or service delivery management (i.e., risk management and performance management), and contract administration (i.e., variation management, contract maintenance and financial administration), for all PPP arrangements entered into by the City. Aside from these, the PPP-RA shall be responsible for setting and monitoring the tariff, and administering the subsidy pursuant to the PPP contract.

SECTION 20. *Composition of the PPP Regulatory Authority.*

- (a) The membership of the PPP-RA shall be composed of the following:
 - (i) Chairperson – The City Mayor or the City Administrator if so designated by the City Mayor;
 - (ii) Vice-Chairperson – Vice Mayor or a member of the Sanggunian Panlungsod to be chosen by the Sanggunian as evidenced by an appropriate resolution;
 - (iv) City Legal Officer;
 - (v) City Treasurer; and
 - (vi) City Planning and Development Officer.
- (b) For projects covered by government-to-government joint PPP undertakings, the collaborating or partner government entity shall have one (1) representative in the PPP-RA, provided that such representative shall only sit in meetings of the PPP-RA, or portions thereof, and have a vote only on matters directly affecting the PPP project covered by such joint PPP undertaking. For this purpose, government-to-government joint PPP undertakings means such mutual agreement entered into by the city with other local governments, national government agencies, government-owned and - controlled corporations, government instrumentalities and government corporate entities, for the implementation of PPP projects that will benefit the city and its community even if the project site is outside the City's territory.



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- (c) The PPP-RA may appoint a contract manager for a PPP project depending on the PPP contract value, complexity and associated risks. The contract manager shall have the necessary management skills and technical knowledge of the goods, services or works to be provided under the PPP contract. The PPP-RA shall determine the manner and source of payment for the contract manager's compensation, provided that if a regular employee of the City is appointed as contract manager, he/she shall not receive additional compensation for such appointment. The contract manager shall have a vote on matters directly affecting the PPP project that he/she is managing.
- (d) A quorum of the PPP -RA shall be composed of a simple majority of all voting members. The Chairperson shall vote only in case of a tie.
- (e) The PPP-RA with the approval of the City Mayor may invite third party experts to attend its meetings to act as advisors and observers. Such third party experts may represent national government agencies, regulatory agencies, the NEDA, the PPP Center, the DILG, private sector, CSOs, POs and NGOs.
- (f) The PPP-RA may form a support staff composed of employees and personnel of the City. The PPP-RA may also engage consultants hired pursuant to law.

Chapter 5. Final Provisions

SECTION. 21. *Appropriations.* – To carry out the provisions of this Code, the amount of FIVE HUNDRED THOUSAND PESOS (Php 500,000.00) shall be appropriated in the Supplemental Budget No. 02 of the City of Alaminos, Pangasinan for the year 2017. Thereafter, such sums as may be necessary for the continuous implementation of this Code shall be included in the annual budget of the city.

SECTION 22. *Alternative Dispute Resolution.* – All PPP contracts of the city shall include a provision on the use of Alternative Dispute Resolution (ADR) mechanisms in resolving disputes arising from the PPP contract. All controversies in connection with PPP undertakings and projects of the City shall likewise be addressed using ADR.

SECTION 23. *Implementing Rules.* – While this Code and the provisions hereof are already operative upon the Code's effectivity, the City Mayor may issue the appropriate and relevant rules and regulation for the proper implementation of the Code or its provisions, including the issuance of relevant mechanisms to insure competition, manuals, guidelines, sample contracts and bid documents, PPP indexes and comparators, and performance scorecards.

SECTION 24. *Application of Other PPP Laws and Regulations.* – Whenever relevant and appropriate as determined by the City Mayor and in the absence of a specific provision to the contrary, upon recommendation of the PPP-SC and PPP-RA as the case may be, the BOT Law, the GPRA, Executive Order No. 301 (26 July 1987), COA Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the JV Guidelines adopted by the NEDA, either the 2008 or 2013 versions, shall apply in a suppletory manner.



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SECTION 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.

SECTION 26. *Repealing Clause.*

(a) All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

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

SECTION 27. *Effectivity.* – This Code shall take effect fifteen (15) days after its posting in three (3) conspicuous places within the city.

I **HEREBY CERTIFY** to the correctness of the foregoing ordinance consisting of nineteen (19) pages including this page.


LUZ B. VALE
Secretary

ATTESTED:


JOSE ANTONIO MIGUEL Y. PEREZ
City Vice Mayor/Presiding Officer

APOLONIA G. BACAY
Presiding Officer Pro-Tempore



RUFINA J. GABRIEL
Majority Floor Leader



MARGIELOU ORANGE HUMILDE VERZOSA, DPA
Minority Floor Leader

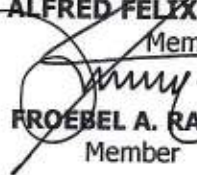

JOSELITO O. FONTELERA
Member

CAROLYN D. SISON
Member


ALFRED FELIX E. DE CASTRO
Member


PERLITO V. RABAGO
Member


CIRILO B. RADOC
Member


FROEBEL A. RANO
Member


RAUL B. BACAY, LBP
Ex-Officio Member

APPROVED BY:


ARTHUR F. CELESTE
City Mayor

09/26/17
Date