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GENERAL SANTOS CITY PUBLIC-PRIVATE PARTNERSHIP CODE

ORDINANCE NO. 9

SERIES OF 2014

A local ordinance that provides rules and guidelines for entering into PPP contractual arrangements between the City Government and the private sector

ORDINANCE NO. 09

Series of 2014

AN ORDINANCE ADOPTING THE CODE OF PUBLIC-PRIVATE PARTNERSHIP (PPP) APPROACH IN THE FINANCING, CONSTRUCTION, OPERATION, AND MAINTENANCE OF LOCAL GOVERNMENT INFRASTRUCTURE OR DEVELOPMENT PROJECTS, CREATING THE GENERAL SANTOS CITY PUBLIC-PRIVATE PARTNERSHIP BOARD (GSCPPPB), PROVIDING APPROPRIATIONS AND INCENTIVES THEREFOR, AND FOR OTHER PURPOSES

CHAPTER I POLICY APPLICATION

Section 1. Short Title. - This Ordinance shall be known and cited as the "GENERAL SANTOS CITY PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE."

Section 2. Declaration of Policy. - It is hereby declared as a policy that the City of General Santos shall advance the general welfare and promote the interest of the community and the city 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.

- 2.1. The 1987 Constitution recognizes the indispensable role of the private sector in development, encourages private enterprise, and provides incentives to needed investments.
- 2.2. It also states that a local government, as a territorial and political subdivision, enjoys local autonomy and fiscal autonomy. Thus, local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes, as well as the power to allocate their resources in accordance with their own priorities.
- 2.3. In line with the above, Section 1.1 of the Revised Implementing Rules and Regulations (IRR) of R.A. No. 6957 as amended by R.A. No. 7718, otherwise known as the BOT Law, states that it seeks to identify, among others, the contractual arrangements that reflect appropriate

sharing of risks between the government and the project proponent.

- 2.4. Section 1.2 of the same law states that concerned LGUs may formulate additional guidelines/procedures not in conflict with the BOT Law, its IRR and the Local Government Code and its IRR.
- 2.5. Further, under Section 302 of R.A. No. 7160, otherwise known as the 1991 Local Government Code (LGC) and under Section 3 of the BOT Law, LGUs are authorized to enter into contract with any duly pre-qualified project proponent for the financing, construction, operation and maintenance of financially viable infrastructure or development facility through any of the contractual arrangements indicated in the BOT Law.
- 2.6. Section 18 of the LGC states that the City may acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes.
- 2.7. Moreover, under Section 35 of the LGC and under Article 66, Rule XIII, of its IRR, local government units may enter into joint ventures and such other cooperative arrangements with people and non-governmental organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.

Section 3. Principles. - All Public Private Partnership (PPP) projects entered into by the City with private entities shall be consistent and in accord with the following:

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

- 3.2. PPP projects must be procured through an open, transparent, and competitive process;
- 3.3. PPP projects must encourage the entry of private capital, and technical and managerial expertise for the effective and efficient delivery of infrastructure and other relevant services to the public;
- 3.4. Public interest, which includes the provision of revenues and employment opportunities to the people of General Santos City, shall be the overriding factor in considering all PPP projects;
- 3.5. PPP projects must provide economic and social benefits, and should be evaluated on this basis rather than on pure financial considerations. The City remains responsible for services provided to the public without necessarily being responsible to the corresponding investments;
- 3.6. PPP projects must give consideration to the empowerment of Filipino citizens as a strategy for economic growth and sustainability and must provide for the participation of local investors whenever practicable given the nature of the project. The city shall also ensure the hiring and employment of local labor in the PPP venture.
- 3.7. In implementing PPP projects, adequate safeguards to protect the environment and to ensure the participation of the community should be considered;
- 3.8. PPP projects must have strategic objectives which are in line with national and local development goals in alleviating poverty and improving competitiveness;
- 3.9. PPP projects must be pursued consistent to the concept of risk-sharing between the City and the Private Sector Proponent;
- 3.10. PPP projects must be economically viable and ensure the best value for money to the City and commercially viable to the private sector; and

3.11. PPP projects may be supported by appropriate incentives to establish an enabling environment for private sector investments.

Section 4. Purposes. - This Code is enacted for the following objectives:

- 4.1. To provide rules and guidelines for entering into PPP Contractual Arrangements between the City and private sector entities;
- 4.2. To ensure that Contractual Arrangements reflect appropriate sharing of risks between the government and the Project Proponent;
- 4.3. To ensure close coordination between the national government and the City;
- 4.4. To ensure strict compliance by the City and the Project Proponent of their respective obligations and undertakings under the PPP Contract, and the monitoring thereof;
- 4.5. To ensure that all PPP Contracts are awarded through an open, transparent, and competitive process; and
- 4.6. To encourage the pooling of resources and expertise between government and private sector entities through PPP as a viable, efficient, and practical alternative in pursuing the development goals of the City.

Section 5. Scope of Application. - This Code shall apply to all Public-Private Partnership (PPP) Contracts entered into by the City with private sector entities to the extents provided herein. For BOT variants, the provisions of R.A. No. 6957 as amended by R.A. No.7718 and its Implementing Rules and Regulations (IRRs) shall be observed in undertaking PPP projects under the contractual arrangements covered by such Act. The provisions of R.A. No. 7718 and the Revised National Economic Development Authority (NEDA) Guidelines on Joint Venture Agreements (JVAs) shall also apply suppletorily to projects undertaken through Joint Venture Agreements (JVA), Management Contracts (MC), or Lease/Affermage Contracts and other PPP contractual

arrangements as may be deemed applicable unless otherwise provided in this Code.

Section 6. Interpretation. - Any doubt or controversy arising from the interpretation of the provisions of this Code shall be resolved in favor of the interest of the City, subject to existing laws and jurisprudence.

CHAPTER II DEFINITION OF TERMS

Section 7. Definitions.- As used in this Code, the following terms shall mean:

- 7.1. Board - refers to the General Santos City Public-Private Partnership Board (GSCPPPB) constituted under Chapter III of this Code.
- 7.2. City - refers to the City Government of General Santos.
- 7.3. Code – refers to the General Santos City Public-Private Partnership (PPP) Code.
- 7.4. Government Undertaking - refers to any of the following forms of contribution and/or support which the City may extend to a Project Proponent:
 - a. Cost sharing - an agreement whereby the City bears a portion of capital expenses associated with the establishment of an infrastructure development facility, such as the provision of access infrastructure, right-of-way, transfer of ownership, or usufruct, or possession of land, building or any other real or personal property for direct use in the project and/or any partial financing of the project or components thereof; Provided, that such shall not exceed fifty percent (50%) of the Project Cost, the balance of which is to be provided by the Project Proponent. Such government share may be financed from direct government appropriations and/or from Official Development Assistance

(ODA) of foreign governments or institutions.

- b. Credit Enhancement - refers to a support to a development facility by the Project Proponent and/or the City, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the 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 Project Proponent.
- c. Direct Government Equity- an agreement whereby the City subscribes to shares of stocks or other securities convertible to shares of stocks of the project company, whether such subscription will be paid by money or assets.
- d. Direct Government Guarantee - an agreement whereby the City guarantees to assume responsibility for the repayment of debt directly incurred by the Project Proponent in implementing the PPP Project in case of a loan default.
- e. Direct Government Subsidy- an agreement whereby the City will: (a) defray, pay for or shoulder a portion of the Project Cost or the expenses and cost in operating or maintaining the PPP Project; (b) condone or postpone any payment due from the Project Proponent; (c) contribute any property or assets to the project; (d) waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/or waive charges or fees relative to business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the Project Proponent and/or Facility operator for such payment, contribution or support.
- f. Indirect Government Guarantees - an agreement whereby

the City assumes full or partial responsibility for, or assists in, maintaining the financial standing of the Project Proponent or project company in order that the Project Proponent/company avoids defaulting on the projects loans, subject to fulfillment of the Project Proponent of its undertakings and obligations under the PPP Contract.

- g. Performance Undertaking - refers to an undertaking of the City in assuming responsibility for the performance of the City's obligations under the contractual arrangement including the payment of monetary obligations, in case of default. These undertakings may be subject to payment of risk premium to the City.
- 7.5. Investment Incentives - refer to investment incentives that the City may grant to a Project Proponent pursuant to the provisions of the General Santos City Investment Code.
 - 7.6. NEDA-ICC - refers to the National Economic Development Authority (NEDA) Investment Coordination Committee.
 - 7.7. Negotiated Contracts - refer to contracts entered into by the City for convenience even if broader tendering would have been possible. This type of contract may be resorted to only in cases prescribed under Section 21 of this Code.
 - 7.8. Open Competition - refers to a selection or procurement process initiated and solicited by the PPP-SC, based on transparent criteria, which is open to participation by any prospective proponent.
 - 7.9. PPP-CC - refers to General Santos City PPP Coordinating Center (GSCPPPCC) established under Section 14 of this Code.
 - 7.10. PPP-SC - refers to the Public-Private Partnership Selection Committee established under Chapter IV of this Code.
 - 7.11. PPP Sub-Committee - refers to the Sub-Committee under the City Development Council created through DILG Memorandum

Circular 2011-16.

- 7.12. Project Cost - refers to the total cost to be expended to plan, develop and construct the project to completion stage including but not limited to the cost of feasibility studies, engineering and design, construction, equipment, land and right-of-way, taxes imposed on said cost, and development cost.
- 7.13. Project Proponent - the private sector entity which shall have contractual responsibility for the project and which shall have an adequate financial base to implement said project 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.
- 7.14. Public-Private Partnership (PPP) Contractual Arrangements. - refer to any of the following contractual arrangements or schemes, as well as variations thereof, by which infrastructure and/or development projects may be undertaken pursuant to the provisions of this Code:
- a. Build-and-Transfer (BT) - a contractual arrangement whereby the Project Proponent undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the City, which shall pay the Proponent on an agreed schedule its total investments expended on the project, plus a Reasonable Rate of Return (ROR) thereon. This arrangement may be employed in the construction of any infrastructure or development project, including critical facilities which, for security or strategic reasons, must be operated directly by the City.
 - b. Build-Lease-And-Transfer (BLT) - a contractual arrangement whereby the Project Proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it

over to the City on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the City.

- c. Build-Own-and-Operate (BOO) - a contractual arrangement whereby a Project Proponent is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the Proponent is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other chargers from facility users; Provided, that all such projects, upon recommendation of the NEDA Investment Coordination Committee (NEDA-ICC), shall be approved by the President of the Philippines. Under this project, the proponent which owns the assets of the facility may assign its operation and maintenance to a facility operator.

- d. Build-Operate-And-Transfer (BOT) - a contractual arrangement whereby the Project Proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The Project Proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the Project Proponent to recover its investment and operating and maintenance expenses in the project. The Project Proponent transfers the facility to the City at the end of the fixed term which shall not exceed fifty (50) years; Provided, that in the case of an infrastructure or development facility the operation of which requires a public utility franchise, the proponent must be Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty

percent (60%) by Filipinos.

Build-operate-and-transfer shall include a supply-and-operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the City so requires, operates the facility providing in the process technology transfer and training to Filipino nationals.

- e. Build-Transfer-and-Operate (BTO) - a contractual arrangement whereby the City contracts out the construction of an infrastructure facility to a private entity such that the Project Proponent builds the facility on a turn-key basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the City. The Project Proponent however operates the facility on behalf of the City under an agreement.
- f. Contract-Add-and-Operate (CAO) - a contractual arrangement whereby the Project Proponent adds to an existing infrastructure facility which it is renting from the City and operates it over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provided by the Project Proponent.
- g. Develop-Operate-And-Transfer (DOT) - a contractual arrangement whereby favorable conditions external to a new infrastructure project which is to be built by a Project Proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values.
- h. Joint Venture Agreements (JVA) – a contractual arrangement whereby the Project Proponent and the

City contribute money/capital, services, assets (including equipment, land or intellectual property), or a combination of any or all of the foregoing or other legal consideration, and share risks to jointly undertake the financing, construction, rehabilitation, and/or operation, maintenance and management of a new and/or existing infrastructure or development facility. 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 to sharing both profits and losses, subject to agreement by the parties. A JV may be Contractual JV, or a Corporate JV.

1. JV Company- an entity registered with the Securities and Exchange Commission (SEC) by the JV partners that shall perform the primary functions and obligations of the JV as stipulated under the JV agreement. The JV Company shall possess the characteristics stipulated under this Code.
 2. Contractual JV- a legal binding arrangement under which the JV partners shall perform the primary functions and obligations under the JV Agreement without forming a JV Company.
- i. Lease or Affermage- a contractual arrangement providing for operation, maintenance, and management services by the Project Proponent, including working capital and/or improvements to an existing infrastructure or development facility leased by the City to the Project Proponent for a fixed term.

Under a lease, the Project Proponent retains revenue collected from customers and undertakes specified lease payments to the City.

Under an affermage, both parties share revenue from customers wherein the Project Proponent pays the City an affermage fee – which varies according to demand and customer tariffs, and retain the remaining revenue.

- j. Management Contract (MC) - a contractual arrangement involving the management and/or provision by the Project Proponent of operation, maintenance and/or related services such as the acquisition, provision and upgrading of equipment and systems to an existing infrastructure or development facility owned or operated by the City. The Project Proponent may collect tolls, fees, rentals and charges which shall be turned over to the government and shall be compensated in the form of a performance-based management or service fee during the contract term.
 - k. Rehabilitate-Own-And-Operate (ROO) - a contractual arrangement whereby an existing facility is turned over to the Project Proponent to refurbish, and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.
 - l. Rehabilitate-Operate-And-Transfer (ROT)- a contractual arrangement whereby an existing facility is turned over to the Project Proponent to refurbish, operate, and maintain for a Franchise period at the expiry of which the legal title to the facility is turned over to the City. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.
- 7.15. Public-Private Partnership (PPP) Infrastructure or Development Projects - are infrastructure or development projects normally financed and operated by the public sector, including but not limited to, power plants, highways, ports, airports, canals, dams,

hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, bulk grains handling facility or logistic support system, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the Board pursuant to this Code.

- 7.16. Reasonable Rate of Return - refers to the rate of return that a Project Proponent shall be entitled to, as determined by the City subject to review by the PPP Board, and that for projects under any BOT variants, final approval of: (a) the Sangguniang Panlungsod for PPP Projects costing up to Php 200 million, or (b) by the NEDA-ICC for PPP Projects costing above Php 200 million, by taking into account, among others, the prevailing cost of capital (equity and borrowings) in the domestic and international markets, risks being assumed by the Project Proponent and the extent of Government Undertaking extended for the project; Provided, that in the case of Negotiated Contracts, such rate of return shall be determined by the concerned body prior to negotiation and/or call for proposals; Provided, further, that for Negotiated Contracts for public utilities projects which are monopolies, the rate of return on rate base shall be determined by existing laws, which in no case shall exceed twelve percent (12%).
- 7.17. Sangguniang Panlungsod (SP) - refers to the General Santos City Council.
- 7.18. Swiss Challenge - an alternative selection process wherein third parties or challengers are invited to submit comparative proposals to challenge the unsolicited proposal. The original proponent who submitted the unsolicited proposal is accorded the right to match any superior comparative proposal. This process is referred to as among the conditions for unsolicited proposals under Section 23(c) of this Code.

7.19. Unsolicited Proposals.- refer to project proposals submitted by the private sector to undertake Infrastructure or Development Projects without any formal solicitation or request issued by the City. Unsolicited Proposals may only be entered into by the City subject to the requirements/conditions prescribed under Section 23 of this Code.

CHAPTER III
THE GENERAL SANTOS CITY PUBLIC-PRIVATE PARTNERSHIP BOARD
(GSCPPPB)

Section 8. The General Santos City Public-Private Partnerships Board (GSCPPPB). - Cognizant of the intent and purpose of revised Department of the Interior and Local Government (DILG) Memorandum Circular 2011-016, referring to a special committee to assist the LGUs in adopting PPP as an approach to improve the LGU's infrastructure program and service delivery, there is hereby created a General Santos City Public-Private Partnerships Board (GSCPPPB) to implement the provisions of this Code.

The GSCPPPB is hereby created to perform contract management for all PPP arrangements entered into by the City, and such other functions provided in this Code.

Section 9. Composition of the GSC PPP Board.- The GSC PPP Board shall be composed of the following:

9.1. Chairperson ----- City Mayor

9.2. Co-Chairperson ----- Vice-Mayor

Members:

9.3. Chairperson, SP Committee on Finance, Ways and Means, Appropriations and Economic Enterprises;

9.4. Chairperson, SP Committee on Trade, Commerce, and Industry;

- 9.5. Chairperson, SP Committee on Labor;
- 9.6. Chairperson, SP Committee on Public Works and Infrastructure;
- 9.7. Regional Director, NEDA Regional Office XII;
- 9.8. Department Head/ Local Economic and Investment Promotion Officer (LEIPO), City Economic Management and Cooperative Development Office (CEMCDO);
- 9.9. Department Head, City Treasurer's Office (CTO);
- 9.10. Department Head, City Engineering Office (CEO);
- 9.11. Department Head, City Legal Office (CLO);
- 9.12. Department Head, City Planning and Development Office (CPDO);
- 9.13. Five (5) Representatives from the private sector/non-government organizations with expertise in business, finance, law, infrastructure development, or service delivery, provided they are operating in the city and accredited by the Sangguniang Panlungsod, to be appointed by the Mayor co-terminus with his/her term.

The number of private sector members shall constitute no less than one-third (1/3) of the total membership of the Board.

- 9.14. City Director, Department of the Interior and Local Government (DILG)-General Santos City.

The City Director of DILG shall be a permanent non-voting member of the Board and shall not be included in the count to constitute quorum.

- 9.15. Representatives of concerned national government agencies

such as the Department of Trade and Industry (DTI), the Department of Public Works and Highways (DPWH), and the Department of Finance (DOF) may be invited as resource persons when necessary, and shall not have voting powers.

Each member of the Board may designate duly authorized permanent alternate representative.

The PPP Board may recommend an increase or decrease of its membership to the Sangguniang Panlungsod as it deems necessary.

Section 10. Functions and Powers of the GSC PPP Board. - The GSC PPP Board shall:

- 10.1 Request the City Planning and Development Office (CPDO), the City Development Council (CDC), and other appropriate and concerned offices of the City to develop a pipeline of PPP infrastructure projects for prioritization by the PPP Board;
- 10.2 Formulate and establish a favorable and stable local policy on Public-Private Partnership (PPP) consistent with the PPP Program of the National Government;
- 10.3 Include in the Development Program of the City those priority projects that may be financed, constructed, operated and maintained by the private sector under the provisions of this code;
- 10.4 Ensure that all PPP Contracts are entered into and implemented through an open, transparent, and competitive process;
- 10.5 Review, evaluate, and approve project proposals/feasibility studies and contracts for final endorsement to the Sangguniang Panlungsod and/or other appropriate government body;

- 10.6 Establish and promulgate, if needed, the rules and regulations for the effective and efficient implementation of this Code;
- 10.7 Request necessary appropriations from the Sangguniang Panlungsod or secure the pooling of additional funding from other sources to support the General Santos City PPP Program;
- 10.8 Enlist the assistance of other government agencies and private sector organizations as it deems necessary for the effective implementation of this Code;
- 10.9 Perform contract management functions such as partnership management, performance 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 the PPP arrangements entered into by the city;
- 10.10 Set and monitor the tariff, and administer the subsidy pursuant to the PPP contract; and
- 10.11 Exercise such other functions whenever necessary and incidental to its mandate.

Section 11. Functions of the Chairperson of the Board. - The Chairperson of the Board shall exercise the following functions:

- 11.1 To sign in behalf of the Board special reports and recommendations as may be required;
- 11.2 To preside over regular and special meetings of the PPP Board;
- 11.3 To render and sign annual reports to the Sangguninang

Panlungsod and other special reports and recommendations as may be required;

11.4 To recommend to the Board such policies, measures, and guidelines necessary to effectively carry out the provisions of the Code; and

11.5 To exercise such other powers and functions as may be authorized by the Sangguniang Panlungsod.

Section 12. Meetings and Quorum. - The Board shall meet at least once in every quarter or as often as maybe necessary and on such day and time as it may fix.

The presence of a simple majority shall constitute a quorum for a meeting to be validly held and to exercise its powers and performs its functions.

All decisions of the Board shall be in the form of a resolution. The General Santos City PPP Coordinating Center (GSCPPPCC), as technical secretariat of the Board, shall be responsible for the framing of the resolutions, which shall be numbered consecutively every fiscal year indicating the number of the resolution and the year the resolution was passed.

SECTION 13. PPP Project Technical Working Group (TWG). - Each PPP project shall be facilitated and assisted by a project-based Technical Working Group.

13.1 **Composition of the PPP Project TWG.** The Project TWG shall be led by the Department Head of the appropriate City office based on sector category (e.g. tourism, health, trade, agriculture, fisheries, etc.) of the project or as designated and appointed by the Board.

Mandatory technical staff representatives shall be designated by the Board from the following Offices as members of the Project TWG to provide technical support:

- a) Office of the City Mayor;
- b) Sangguniang Panlungsod;
- c) City Legal Office;
- d) City Planning and Development Office (CPDO);
- e) City Treasure's Office (CTO)
- f) City Engineer's Office (CEO);
- g) City Economic Management and Cooperative Development Office (CEMCDO);
- h) City Environment and Natural Resources Office (CENRO);
- i) City Social Welfare and Development Office (CSWDO);

The Board shall designate additional technical staff-representatives from other appropriate offices (e.g. City Agriculturist's Office, City Veterinarian's Office, Office of the City Administrator, City Health Office, etc.) based on sector category (e.g. tourism, health, trade, agriculture, fisheries, etc.) of the project as members of the Project TWG as determined to be necessary by the Board.

13.2 **Mandate and Functions of the PPP Project TWG.** The PPP Project TWG shall perform the following functions in every phase:

a. Development Phase

1. Prepare and conduct pre-investment activities such as pre-feasibility studies, business case, and feasibility studies;
2. Outsource among others and/or facilitate such through engagement with consultants;

b. Approval Phase

1. Prepare the necessary documents that may be required by the approving body, including coordination with the Sangguniang Panlungsod for the needed resolution, ordinance, endorsement of the project, and authority to the City Mayor for the project;
2. Submit to the PPP Board the project for endorsement to the appropriate approving body pursuant to Section 20 of this code.

c. Competition Phase

1. Assist the PPP-SC in preparing tender documents including pre-qualification and bidding documents, and draft contract.

d. Cooperation Phase

1. Monitor and evaluate the implementation of PPP projects; and
2. Prepare status and implementation reports of PPP projects and submit the same to the Board and to the PPP-CC. The reports shall be in accordance with the format, contents, and other guidelines prescribed by the PPP-CC.

Section 14. General Santos City PPP Coordinating Center (PPP-CC). - As support to the implementation of the PPP program of the City, there shall be a General Santos City PPP Coordinating Center which shall house the services and facilities to ensure implementation of the Code by harmonizing all national and local government efforts in collaboration with private stakeholders through the implementation of policies, programs, and activities.

14.1 Administrative Control and Staff Compliment. – The City, through its investment center, shall exercise administrative control and shall provide the necessary personnel for the operation of the General Santos City PPP-CC.

The City Mayor, in his/her concurrent capacity as General Santos City PPP Board Chairperson may, upon Board resolution, assign personnel from other departments of the City, or hire consultants, and resource persons as the need arises.

Section 15. Responsibility of the PPP-CC

15.1 Secretariat Services to the PPP Board. – The PPP-CC shall provide technical secretariat services to the Board by implementing its policies and guidelines, and shall specifically perform the following duties:

15.1.1 Provide administrative support to the Board;

15.1.2 Establish and maintain linkages with other offices and agencies;

15.1.3 Facilitate meetings of the Board, prepare agenda, resolutions and minutes thereof, and submit for their consideration and approval the policies and actions to fulfill pursuant to the provisions of this Code;

15.1.4 Prepare budgetary requirements for the operations of the Board;

15.1.5 Report to the Board matters affecting plans, programs, and performance of the PPP-CC;

15.1.6 Keep all records and decisions made by the Board and maintain a library of literature regarding public-private partnerships;

- 15.1.7 Coordinate inter-related tasks and functions between and among the Board, PPP-SC, PPP Project TWG, PPP Center, and with such other necessary and appropriate offices and agencies; and
 - 15.1.8 Perform such other functions necessary and incidental for the effective implementation of this Code as directed by the Board.
- 15.2 Secretariat Services to the PPP Selection Committee – The PPP-CC shall provide technical secretariat services to the PPP Selection Committee and shall specifically perform the following duties:
- 15.2.1 Provide administrative support to the PPP-SC;
 - 15.2.2 Organize and arrange all necessary requirements for PPP-SC meeting;
 - 15.2.3 Prepare the minutes of meetings;
 - 15.2.4 File and keep all records pertaining to PPP-SC transactions;
 - 15.2.5 Facilitate arrangements for the pre-qualifications, pre-bid conference, and bid openings;
 - 15.2.6 Facilitate the compliance of all the requisite permits and approval prior to implementation of PPP Projects;
 - 15.2.7 Submit the original signed copy of PPP contract and other project-related documents to the Board and the PPP Center within five (5) working days after signing thereof; and
 - 15.2.8 Perform such other functions that are necessary and incidental for the effective operation of the PPP Selection Committee.

CHAPTER IV

THE PUBLIC-PRIVATE PARTNERSHIPS SELECTION COMMITTEE (PPP-SC)

Section 16. The Public-Private Partnerships Selection Committee (PPP-SC). - Consistent with Rule 3 of the Implementing Rules and Regulations of R.A. No. 7718, there is hereby created a Public-Private Partnerships Selection Committee (PPP-SC).

Section 17. Composition of the PPP-SC.- The PPP-SC shall be composed of the following:

16.1 A third ranking City Official as Chairperson to be appointed by the City Mayor;

16.2 The City Legal Officer – Member-Secretary;

16.3 The City Engineer – Member;

16.4 The Department Head, CEMCDO – Member;

16.5 One (1) technical officer knowledgeable with the technical aspects or requirements of the project, duly designated and appointed by the City Mayor on a project-to-project basis – Member (provisional);

16.6 One (1) technical officer knowledgeable with aspects or requirements of the project from a concerned regulatory body, when applicable, to be invited by the City Mayor on a project-to-project basis – Member (provisional and non-voting) ;

16.7 A public officer knowledgeable in finance to be appointed by the City Mayor;

16.8 A public officer knowledgeable in the management/operation of the project to be appointed by the City Mayor – Member;

16.9 Two (2) representatives from the private sector to be appointed by the City Mayor: one from duly recognized Contractors

associations and the other from either the facility users, or duly recognized accounting associations. – Observers (non-voting);

16.10A representative from the Commission on Audit – Observer (non-voting); and

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

Observers will be notified at least two (2) working days before the following stages: pre-bid conference, opening of bids, contract award, and special meetings of the PPP-SC.

The absence of observers will not nullify the PPP-SC proceedings, provided that they have been duly invited in writing.

Section 18.. Responsibility of the PPP-SC. - The PPP-SC herein created shall be responsible for all aspects of the pre-bidding and bidding process in the case of solicited proposals, and Swiss Challenge in the case of unsolicited proposals including, the preparation of the bidding/tender documents, publication of the invitation to pre-qualify and bid, pre-qualification of prospective bidders, conduct of pre-bid conferences and issuance of supplemental notices, interpretation of the rules regarding bidding, the conduct of bidding, evaluation of bids, resolution of disputes between bidders, and recommendation for the acceptance of the bid and/or the award of the project.

Section 19. Quorum. - The presence of a simple majority of all voting members shall constitute a quorum and as such is necessary for a meeting to be validly held and to exercise its powers and perform its functions.

CHAPTER V GENERAL RULES AND GUIDELINES

Section 20. PPP Procedures. – The following PPP procedures shall apply:

20.1 For BOT variants, the City must comply with the procedures set forth in

Republic Act No. 6957 as amended by R.A. No 7718 and its Implementing Rules and Regulations;

20.2 For Management Contracts, Joint Ventures, and Leases or Affermage, the

procedures specified herein shall govern.

Section 21. Prioritization and Approval of PPP Projects. - The PPP Sub-Committee shall include in the Annual Investment Program (AIP) of the City those priority projects that may be financed, constructed, operated, and maintained by the private sector under the provisions of this Code. It shall be the duty of the PPP-CC to publish the List of Priority Projects proposed for implementation/financing under this code, through the following:

21.1 a national newspaper of general circulation once every six (6) months;

21.2 where applicable, international newspaper of general circulation; and

21.3 the website of the General Santos City, if available.

The list of priority projects proposed for implementation under any contractual arrangement of the BOT Law shall be submitted prior to final approval for confirmation:

a. To the city development council for projects costing up to Php 50 Million;

b. To the regional development councils for projects costing above Php 50 Million up to Php 200 million; and

c. To the NEDA-ICC for projects above Php 200 Million.

Final approval of PPP Projects under (a) and (b), including those implemented through JVAs, MCs, or Lease/Affermage Contracts, is vested to the Sangguniang Panlungsod.

Section 22. Public Bidding of PPP Projects. - The public bidding must be conducted under a two-envelope/two-stage system: the first envelope to contain the technical proposal and the second envelope to contain the financial proposal. The detailed procedures outlined in the Implementing Rules and Regulations of the BOT Law shall apply.

For JV Agreements, the preferred mode of implementation shall be through a JV company to be formed by the City and the Project Proponent, under the following parameters:

- 22.1 The JV Company shall be registered as a stock corporation in accordance with the provisions of the Corporation Code, as amended, and the prevailing and applicable rules and regulations promulgated by the SEC;
- 22.2 Ownership and nationality requirements under the Constitution and other pertinent laws should be complied with; provided, that the City Government Entity's equity contribution in the JV Company shall only be less than fifty percent (50%) of the outstanding capital stock of the latter. The City's contribution may be through assets (including money, equipment, land, intellectual property or anything of value) which shall be subject to a 3rd party independent valuation. For as long as the City is involved in the JV undertaking, the Project Proponent shall not sell/ transfer its interest in the JV Company without the express written consent of the City;
- 22.3 The City shall be represented in the Board of the JV Company in proportion to its investment;
- 22.4 The JV Company shall be permitted to derive income from the activities authorized under the JV Agreement during the term thereof. The City and the project proponent shall be entitled to receive dividends and/or any other form of share from net

profits earned by the JV Company in accordance with the JV Agreement. The determination of net profits shall be subject to a verification process for allowable operations and management expenses specified therein;

22.5 The JV Company is encouraged to stipulate a fixed period for the participation of the Government Entity. This period shall be determined

by the attainment of the Government Entity's objective in pursuing the

investment, or when the project proponent is projected to be able to

proceed with the JV activity without further need of government support. Further, the withdrawal of the City capital contribution before the expiration of the said period is likewise encouraged; provided, that the divestment is made through competitive selection, initial public offering (IPO), or any other means that promote competition, fairness and transparency. The foregoing factors shall be accorded greater importance than the financial impact or financial benefit of the proposed investment to the City.

22.6 In drafting the incorporation documents of the JV Company and other contracts governing the relationship between the City and the Project proponent, the parties should consider the following guidelines: (1) clearly defined business objectives; (2) specified degree of participation and the management roles of each party in the JV Activity; (3) defined contribution of capital and ownership rights to property; (4) specified division of the profits and losses; (5) identified dispute mechanism to avoid management impasses that may produce deadlock or litigation; (6) specified termination/liquidation of the JV Company and indicate buy-out provisions; (7) specified confidentiality terms; and (8) stipulated indemnification mechanisms.

22.7 If the formation of a JV Company is not the best mode to implement a JV Activity as determined by the Government

Entity, it may opt to implement the JV project through a contractual agreement. Prior to entering into a Contractual JV, the parameters similar to those governing JV Companies under Sections 22.1-22.6 herein are to be observed.

Section 23. Mode of Selection. -

23.1 Open Competition/Competitive Selection. -The process for the conduct of bidding process for projects to be undertaken through Joint Ventures, Management Contracts, Lease and Affermage agreements shall be stipulated under Annex A of this Code. In the conduct of the Open Competition process, the City shall ensure the following:

- a. All activities during the competitive selection, award, and final approval are conducted in a transparent and competitive process that promotes accountability and efficiency;
- b. The competitive selection parameters are clearly defined and shall include the parameters as approved by the City Mayor; and
- c. In addition to the proposed contents of the invitation to bid as mentioned under Section 21 of the Government Procurement Reform Act (RA 9184), all bidding documents shall be accompanied by a sworn statement of the bidder that he/she or any officer of their corporation is not related to the head of the procuring entity and the PPP Selection Committee and the Sangguniang Panlungsod by consanguinity or affinity after the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of the Government Procurement Reform Act (RA 9184).

23.2 Negotiated Contracts.- Detailed guidelines for the conduct of direct negotiations shall be stipulated under Annex B of this code.

Direct negotiations may be entered under the following circumstances:

- a. When the City receives an unsolicited proposal
- b. If, after advertisement, only one contractor applies for pre-qualification and it meets the pre-qualification requirements, after which it is required to submit a bid/proposal which is subsequently found by the City to be complying.
- c. If, after advertisement, more than one contractor applied for pre-qualification but only one meets the pre-qualification requirements, after which it submits a bid/proposal which is found by the City to be complying.
- d. If, after pre-qualification of more than one contractor, only one submits a bid which is found by the City to be complying.
- e. If, after pre-qualification, more than one contractor submit bids but only one is found by the City to be complying: Provided, that any of the disqualified prospective bidder may appeal the decision of the PPP-SC within fifteen (15) working days to the Department of the Interior and Local Government (DILG) from the date the disqualification was made known to the disqualified bidder: Provided, furthermore, that the DILG should act on the appeal within forty-five (45) working days from receipt thereof.

Section 24. Unsolicited Proposals.- Project proposals submitted by the private sector, not in response to a formal solicitation or request issued by the City, to undertake infrastructure or development projects, which may be entered into by the City subject to the following conditions:

- 24.1 Projects included in the List of Priority Projects for implementation through any of the BOT variants shall not be eligible for unsolicited proposals, unless involving a new concept or technology; and that for any of the other

PPP modalities, unsolicited proposals may be accepted even if the projects are included in the List of Priority projects or whether the same features a new concept or technology or not.

24.2 No direct government guarantee, direct government subsidy or direct government equity is required; and

24.3 The City has invited by publication, for three (3) consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals and no other proposal is received for a period of sixty (60) working days; Provided further, that in the event another proponent submits a better price match proposal, the original proponent shall have the right to match that price within thirty (30) working days.

Section 25. Prior Authorization from the Sangguniang Panlungsod. - Prior to the signing of the PPP Contract by the City Mayor and in conformity with the provisions of the Local Government Code of 1991 (R.A. 7160) the Contract will have to be presented to the Sangguniang Panlungsod for review and approval.

Section 26. Repayment Scheme. - The repayment schemes for the projects shall depend on the contractual arrangement as follows or as may be approved by the Sangguniang Panlungsod:

26.1 For projects undertaken through BOT, CAO, DOT, ROT, BOO and ROO

arrangements, the Project Proponent may be repaid by authorizing it to collect reasonable tolls, fees, and charges for a fixed term. In the case of BOT, CAO, DOT, ROT arrangements, such term shall in no case exceed fifty (50) years. However, for BOO and ROO arrangements, the Project Proponent, upon renewal of its Franchise or contract with the City, may be allowed to continue collecting tolls, fees, charges and rentals for the operation of the facility or the provision of the service.

26.2 For projects undertaken through a BTO arrangement, the Project Proponent may be repaid by either of the following options:

- a. First Option – the City provides Amortization as may be appropriate and reasonable. Tolls, fees, rentals and charges that the Project Proponent may collect while operating the facility on behalf of the City may be applied directly to the Amortization. Moreover, the Project Proponent may be repaid by the City through a management fee as may be incorporated in the management contract entered between the City and the Project Proponent.
- b. Second Option – the Project Proponent may be allowed to directly collect tolls, fees, rentals and charges for a fixed term.

26.3 For projects undertaken through BT and BLT arrangements, the Project

Proponent may be repaid by the City through Amortization as may be appropriate and reasonable.

26.4 For projects undertaken through service contracts, i.e. Management Contracts, Lease and Affermage arrangements, the Project Proponent may share in the revenue from the operation of the facility in the form of either a fixed fee or a certain percentage of the gross revenue or a combination of both.

26.5 For projects undertaken through a JVA, the Project Proponent/JV Partner may be repaid, should repayment be applicable, in the form of a share in the revenue of the project or other non-monetary payments but not limited to the grant of commercial development rights or the grant of a portion or percentage of the reclaimed land, subject to constitutional requirements.

Section 27. Project Supervision. - Every infrastructure project undertaken under this Code shall be in accordance with the plans, specifications, standards, and costs approved by the PPP-SC of the City and shall be under

the supervision of the PPP Board.

During the course of implementation of any PPP Project, the Chairperson of the Board shall submit an annual report on the status of its implementation during a current year to the Sangguniang Panlungsod, for monitoring purposes. The annual report shall be submitted within the first quarter of the succeeding year.

Section 28. Use of Alternative Dispute Resolution (ADR) Mechanisms. - In accordance with Executive Order No. 78, Series of 2012, all PPP contracts entered into pursuant to this Code shall include provisions on the use of ADR mechanisms, subject to the agreement of the parties in the said contracts.

Section 29. Contract Termination. - PPP Contracts implemented under any of the nine (9) modalities prescribed by the BOT Law may only be terminated in the following events:

29.1 If the City fails to comply with any major obligation prescribed in the approved contract, and such failure is not remediable or if remediable shall remain unremedied for an unreasonable length of time, the Project Proponent may, with prior notice to the City, and specifying the turn-over date, terminate the contract. In such an event, the Project Proponent shall be reasonably compensated by the City for actual expenses plus a Reasonable Rate of Return thereon not exceeding that stated in the contract as of the date of contract termination.

29.2 If the Project Proponent refuses or fails to perform any of the provisions of the approved contract with such diligence as will ensure the project's completion, operation and maintenance in accordance with the prescribed technical and performance standards or otherwise fails to satisfy any of the contract provisions including compliance with the prescribed/agreed milestone activities, or commits any substantial breach of the approved contract, the City shall notify the Project Proponent in writing of the same and if not corrected within the time specified, the City may terminate the contract. In such an event, the City may either:

- a. Take over the facility; or
- b. Allow the Project Proponent's lenders/creditors/banks to exercise their rights and interests under the loan and collateral documents with respect to the project.

In any case, the City shall forfeit the performance security of the defaulting Project Proponent.

29.3 In the event that the contract is revoked, cancelled or terminated by the City in accordance with the contract though no fault of the Project Proponent or (ii) by mutual agreement, the City shall compensate the said Project Proponent for its actual expenses incurred in the project plus a Reasonable Rate of Return thereon not exceeding that stated in the contract as of the date of termination.

29.4 In the event that the contract is revoked or cancelled by a court by final judgment.

In the cases referred to in (29.1) and (29.3) above, an independent appraiser, mutually acceptable to the City and the Project Proponent, shall determine the amount to be paid to the Project Proponent, which determination shall be made within a period not more than one hundred eighty (180) calendar days from contract termination. The amount determined by the independent appraiser shall be binding to both the Project Proponent and the City.

For contracts implemented under any of the three (3) additional modalities, namely JVAs, MCs, and Lease/Affermage contracts, rules on contract termination shall be governed by provisions on termination stipulated under the project contract.

Section 30. Liquidated Damages.- Where the Project Proponent fails to satisfactorily complete the work on or before completion date, including any extension or grace period duly granted, or meet the operating performance

standard as prescribed in the contract, the Project Proponent shall pay the City concerned liquidated damages, as specified in the contract as an indemnity and not by way of penalty. The performance security for construction works or for operations, as the case may be, may be applied to answer for any liquidated damages due to the City.

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

The imposition and collection of liquidated damages shall be without prejudice to the right of the City to terminate the contract and proceed with the procedures prescribed under Section 29.2.

CHAPTER VI FINAL PROVISIONS

Section 31. Compliance with Relevant National Laws and Regulations. - In cases where the approval of national government offices or agencies is indispensably necessary in the procurement and implementation of the PPP Contract subject herein, the same shall be priorly and properly complied with. Nothing in this Code shall dispense with statutory requirements under the Local Government Code (Republic Act No. 7160) and the Revised Administrative Code of the Philippines (Executive Order No. 292) regarding the requirements for validity of contracts entered into by a Local Government Unit, whether such contracts are for a proprietary or governmental purpose.

Further, nothing in this Code shall exempt the PPP Board from obtaining the required authority of the Sangguniang Panlungsod each time the City Mayor enters into any PPP Contracts and such other relevant contracts under this Code pursuant to Section 455 (b) (1) of R.A. No. 7160.

Section 32. Formulation of the Implementing Rules and Regulations. -

The Board may promulgate the Implementing Rules and Regulations to effectively carry out the provisions of this Code. These IRRs must at all times remain consistent with the provisions of R.A. No. 7718 and its IRRs.

Section 33. Budget. - The City shall appropriate funds for purposes of implementing this Code, which may include, but not limited to: (a) funding to meet additional staffing requirements, (b) funding for various activities related to the development, approval, and implementation of the project; and (c) honoraria for the Board, PPP-SC and PPP TWG. This funding shall be subject to existing accounting and auditing rules and regulations.

Section 34. Separability Clause. - If any provision of this Code is declared unconstitutional or invalid, other provisions unaffected thereby shall remain in full force and effect.

Section 35. Repealing Clause.- All ordinances, executive orders and issuances by the City or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

Section 36. Effectivity.- This Ordinance shall take effect fifteen (15) days after publication in one (1) local newspaper in general circulation.

Enacted by the 17th Sangguniang Panlungsod, City of General Santos on its 48th Regular Session held on June 24, 2014.

CERTIFIED CORRECT:

(sgd) VIRGINIA P. DIME, MPA

Assistant Secretary to the Sanggunian

OIC-Office of the Secretary to the Sangguniang Panlungsod

ATTESTED BY:

(sgd) RICHARD L. ATENDIDO

City Councilor and Presiding Officer

Approved by His Honor, the City Mayor on July 14, 2014.

(sgd) RONNEL C. RIVERA

City Mayor

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