



SANGGUNIANG BAYAN

EXCERPT FROM THE MINUTES OF THE 17th REGULAR SESSION OF THE SANGGUNIANG BAYAN OF MONCADA, TARLAC HELD ON THE 3rd DAY OF JUNE 2019 AT THE SB SESSION HALL, LEGISLATIVE BUILDING.

PRESENT:

HON. JAIME O. DUQUE	.. VICE MAYOR/PRESIDING OFFICER
HON. EDWARD V. TOLENTINO	.. MEMBER
HON. JANIUS M. YASAY	.. MEMBER
HON. THELMAFLOR A. ESPEJO	.. MEMBER
HON. RUBEN V. GAMBOA, JR	.. MEMBER
HON. GEORGE MICHAEL P. AGUILAR	.. MEMBER
HON. CLEOFE D. FAVIS	.. MEMBER
HON. EZEKIEL C. RIVERA	.. SKF PRESIDENT

ABSENT:

HON. ALBERTO C. MARZAN, JR., MD	.. MEMBER
HON. GEORGE R. CUCHAPIN, MD	.. LnB PRESIDENT (Official Business)

MUNICIPAL ORDINANCE NO. 06 Series of 2019

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

Authored by: Coun. Janius M. Yasay
Chairperson, Committee on Rules and Ordinances, Justice

WHEREAS, the 1987 Constitution, the 1991 Local Government Code, and the BOT Law of 1990, recognize the indispensable role of the private sector in national and local governance, and the said three (3) laws empower local governments to partner with the private sector in pursuing infrastructure and development projects for the benefit of the people;

WHEREAS, Public-Private Partnerships or PPP is a priority program of the current Administration, and was identified as one of the four (4) pillars to effect change in the Philippine economy;

WHEREAS, the Asian Development Bank identified among the gaps in Philippine PPP is the inadequacy of existing policy, legal, and regulatory framework;

WHEREAS, the adoption of a PPP Code in the local government level aims to bridge this gap;

WHEREAS, the engagement of the municipality with the PPP Center resulted to recommendations that included the drafting of a local PPP Code;

WHEREAS, the proposed PPP Code will lay down the PPP framework for the local government as it enjoys local autonomy and fiscal autonomy and exercises decentralized, devolved, and delegated powers for the general welfare of the people and to ensure that PPPs redound to the benefit of the people and the communities the LGU serves and represents;



SANGGUNIAN BAYAN

NOW, THEREFORE, on the motion by Councilor Janius M. Yasay, duly seconded;

BE IT ENACTED by the Sangguniang Bayan of Moncada in session duly assembled, that:

CHAPTER I POLICY APPLICATION

Section 1. Short Title. – This Ordinance shall be known and cited as the “**MONCADA PPP CODE 2019**”

Section 2. Declaration of Policy. – It is hereby declared as a policy that the MUNICIPALITY OF MONCADA shall advance the general welfare and promote the interest of the community and the MUNICIPALITY 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 states that concerned LGUs may formulate additional guidelines/procedures not in conflict with the BOT Law, its IRR and the Local Government Code and its corresponding IRR.

2.5. Further, under Section 302 of the R.A. No. 7160, otherwise known as the 1991 Local Government Code (LGC), and likewise 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. Moreover, under Section 35 of the 1991 LGC, and under Rule XIII, Article 66 of its IRR, local government units may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.



SANGGUNIANG BAYAN

Section 3. Principles. – All Public Private Partnership (PPP) projects entered into by the Municipal Government 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 managerial expertise for the effective and efficient delivery of infrastructure and services to the public;
- 3.4. Public interest, which includes the provision of employment opportunities and revenues to the people of Moncada, shall be the overriding factor in considering all PPP projects;
- 3.5. In implementing PPP projects, adequate safeguards to protect the environment and ensure the participation of and benefit to the disadvantaged sectors of the community should be in place;
- 3.6. PPP projects must have strategic objectives that are in line with national and local development goals of alleviating poverty and improving competitiveness;
- 3.7. PPP Projects must be pursued consistent with the concept of risk-sharing between the Local Government and the Private Sector Proponent;
- 3.8. PPP projects must be economically viable and ensure the best value for money for the government and commercially viable to the private sector; and
- 3.9. PPP Projects may be supported by appropriate incentives to help establish an enabling environment for private sector investment.

Section 4. Purpose. – This Code is enacted for the following objectives:

- 4.1. To provide rules and guidelines for entering into PPP Contractual Arrangements between the Municipal Government 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 Municipal Government;
- 4.4. To ensure strict compliance by the Municipal Government 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 Municipal Government; and,

Section 5. Scope of Application. – This Code shall apply to all Public-Private Partnership (PPP) Contracts entered into by the Municipal Government with private sector



SANGGUNIAN BAYAN

entities to extents as provided herein. The provisions of 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 NEDA Guidelines on 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 Municipal Government 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 Moncada Public-Private Partnership Board (PPPB) constituted under Article III of this Code.

7.2. **Municipal Government.** Refers to the Municipal Government of Moncada.

7.3. **Moncada Municipal Council.** Refers to the Sangguniang Bayan of Moncada.

7.4. **Government Undertakings.** Refers to any of the following forms of contribution and/or support which the Municipal Government may extend to a Project Proponent:

7.4.1. **Cost sharing.** An agreement whereby the Municipal Government 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.

7.4.2. **Credit Enhancement.** This shall refer to support to a development facility by the Project Proponent and/or the Municipal Government, 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 Municipal Government under its contract with the Project Proponent.

7.4.3. **Direct Government Equity.** An agreement whereby the Municipal Government 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.



SANGGUNIANG BAYAN

7.4.4. **Direct Government Guarantee.** An agreement whereby the Municipal Government 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.

7.4.5. **Direct Government Subsidy.** An agreement whereby the Municipal Government 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.

7.4.6. **Indirect Government Guarantees.** An agreement whereby the Municipal Government 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 fulfilment of the Project Proponent of its undertakings and obligations under the PPP Contract.

7.4.7. **Performance Undertaking.** This shall refer to an undertaking of the Municipal Government in assuming responsibility for the performance of the Municipal Government'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 Municipal Government.

7.5. **Investment Incentives.** Refers to investment incentives that the Municipal Government may grant to a Project Proponent pursuant to the provisions of the Moncada Investment Code.

7.6. **NEDA-ICC.** Refers to the National Economic Development Authority (NEDA) Investment Coordination Committee.

7.7. **Negotiated Contracts.** Refers to contracts entered into by the Municipal Government 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 Municipality of Moncada PPP Coordinating Center (MPPCC) established under Section 14 of this Code.

7.10. **PPP-SC.** Refers to the Public-Private Partnership Selection Committee established under Article IV of this Code.

7.11. **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.



SANGGUNIANG BAYAN

7.12. **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.

7.13. **Public-Private Partnership (PPP) Contractual Arrangements.** These 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:

7.13.1. **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 Municipal Government, 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 Municipal Government.

7.13.2. **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 Municipal Government on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the Municipal Government.

7.13.3. **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.

7.13.4. **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 Municipal Government 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 Municipal Government so requires, operates the facility providing in the process technology transfer and training to Filipino nationals.



SANGGUNIANG BAYAN

7.13.5. **Build-Transfer-and-Operate (BTO).** A contractual arrangement whereby the Municipal Government 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 Municipal Government. The Project Proponent however operates the facility on behalf of the Municipal Government under an agreement.

7.13.6. **Contract-Add-and-Operate (CAO).** A contractual arrangement whereby the Project Proponent adds to an existing infrastructure facility which it is renting from the Municipal Government and operates it over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provide by the Project Proponent.

7.13.7. **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.

7.13.8. **Joint Venture Agreements (JVA).** A contractual arrangement whereby the Project Proponent and the Municipal Government 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. In consonance with Section 23 of this Code, no unsolicited JVAs shall be allowed. Investments on JVAs must be made only in activities directly and immediately related to, and in furtherance of the mandate of the Municipal Government.

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

7.13.10. **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 Municipal Government. 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.

7.13.11. **Rehabilitate-Own-And-Operate (ROO).** A contractual arrangement whereby an existing facility is turned over to the Project Proponent to refurbish, and operate



SANGGUNIANG BAYAN

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.

7.13.12. **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 Municipal Government. 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.

7.14. **Public-Private Partnership (PPP) Infrastructure or Development Projects.** 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.

7.15. **Reasonable Rate of Return.** Refers to the rate of return that a Project Proponent shall be entitled to, as determined by the Municipal Government subject to review by the PPP Board and final approval of: (a) the Municipality of Moncada 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%).

7.16. **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.

7.17. **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 Municipal Government. Unsolicited Proposals may only be entered into by the Municipal Government subject to the requirements/conditions prescribed under Section 23 of this Code.

CHAPTER III **THE MUNICIPALITY OF MONCADA PUBLIC-PRIVATE PARTNERSHIP BOARD** **(MONCADA PPPB)**

Section 8. The Moncada Public-Private Partnerships Board (MONCADA PPPB). Cognizant of the intent and purpose of revised 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



SANGGUNIAN BAYAN

infrastructure program and service delivery, there is hereby created a Moncada Public-Private Partnerships Board (MONCADA PPPB) to implement the provisions of this Code.

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

Chairperson ----- Municipal Mayor
Co-Chairperson ----- Mun. Vice-Mayor

Members:

1. Chairperson, SB Committee on Rules and Ordinances
2. Chairperson, SB Committee on Finance, Ways and Means, Appropriations
3. Regional Director, NEDA Regional Office III
4. Department Head, Municipal Accounting Office
5. Department Head, Municipal Budget Officer
6. Department Head, Municipal Treasury
7. Department Head, Municipal Engineer's Office
8. Department Head, Sangguniang Bayan Secretariat
9. Municipal Legal Officer / Consultant for Legal Affairs
10. Five (5) Representatives from private sector/ non-government organizations with expertise in business, finance, law, infrastructure development, or service delivery, provided they are operating in the Municipality and accredited by the Municipal Council, 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.
11. Representatives of concerned national 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 necessary, but who shall be non-voting members. The PPP Board may recommend an increase or decrease of its membership to the Sangguniang Bayan of Moncada as it deems necessary.

Section 10. Functions and Powers of the PPP Board. The primary functions of the Board shall be to: (1) formulate and establish a favorable and stable local policy on Public-Private Partnerships (PPP) consistent with the PPP Program of the National Government; and (2) include in the Development Program of the Municipal Government those priority projects that may be financed, constructed, operated, and maintained by the private sector under the provisions of this Code.

Accordingly, the PPP Board shall be vested with the following powers:

- a. To request the Municipal Planning and Development Office (MPDO), the Municipal Development Council (MDC), and other appropriate and concerned offices of the Municipal Government to develop a pipeline of PPP infrastructure projects for prioritization by the PPP Board;
- b. To ensure that all PPP Contracts are entered into and implemented through an open, transparent, and competitive process;
- c. To review, evaluate, and approve project proposals/ feasibility studies and contracts for final endorsement to the Municipality of Moncada and/or other appropriate government body;
- d. To promulgate, if needed, the rules and regulations for the effective and efficient implementation of this Code subject to final approval of the Moncada;
- e. To request necessary appropriations from the Moncada or to secure the pooling of additional funding from other sources to support the Moncada PPP Program;



SANGGUNIANG BAYAN

- f. To enlist the assistance of other government agencies and private sector organizations as it deems necessary for the effective implementation of this Code;
- g. To perform contract management functions such as partnership management, performance management, risk management, and contract administration for all the PPPs arrangements entered into by the Municipality;
- h. To set and monitor the tariff and administer the subsidy pursuant to the PPP contract;
- i. To exercise such other functions as 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:

- a. To sign on behalf of the Board special reports and recommendations as may be required;
- b. To preside over regular and special meetings of the PPP Board;
- c. To render and sign annual reports to the Moncada and other special reports and recommendations as may be required;
- d. To recommend to the Board such policies, measures, and guidelines necessary to effectively carry out the provisions of the Code; and
- e. To exercise such other powers and functions as may be authorized by the Moncada.

Section 12. Meetings and Quorum. The Board shall meet at least once a month 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 and as such is necessary 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 MONCADA PPPCC, 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 TWG shall be led by the Department Head of the appropriate Municipal Government office based on sector category (e.g. tourism, health, trade, agriculture, fisheries, etc.) of the project or as designated and appointed by the Board. The Board shall designate representatives from the following Offices as members of the Project TWG to provide technical support:

- a) Office of the Municipal Mayor;
- b) Sangguniang Bayan;
- c) Municipal Planning and Development Office (MPDO);
- d) Municipal Budget Office (MBO);
- e) Municipal Engineer's Office (MEO);
- f) Municipal Agriculture Office (MAO);
- g) Municipal Cooperative Development Council (MCDC);
- h) Municipal Environment and Natural Resources Office (MENRO);
- i) Municipal Social Welfare and Development Office (MSWDO);
- j) and from such other Municipal Government offices 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:

13.2.1 Development Phase



SANGGUNIAN BAYAN

- a) Prepare and conduct pre-investment activities such as pre-feasibility studies, business case, feasibility studies, among others.

13.2.2 Approval Phase

- a) Prepare the necessary documents that may be required by the approving body, including coordination with the Sangguniang Bayan for the needed resolution, ordinance, endorsement of the project, and authority to the LCE for the project;
- b) Submit to the LCE the project for endorsement to the appropriate approving body pursuant to Section 20 of this code.

13.2.3 Competition Phase

- a) Assist the PPP-SC in preparing tender documents including pre-qualification and bidding documents and draft contract;
- b) Assist the PPP-SC in the conduct of pre-qualification, bidding, evaluation of bids and recommendation for award;
- c) Facilitate the compliance of all the requisite permits and approval prior to implementation; and

13.2.4 Cooperation Phase

- a) Monitor and evaluate the implementation of PPP project;
- b) Prepare and submit reports to the Board on the implementation of the PPP projects;
- c) Submit the original signed copy of PPP contract and other project-related documents to the Approving Body and the PPP Center within five (5) calendar days after signing thereof; and
- d) Prepare status and implementation reports of PPP Projects and submit the same to the PPP Center. The reports shall be in accordance with the format, contents, and other guidelines prescribed by the PPP Center.

Section 14. Moncada PPP Coordinating Center (PPP-CC).As support to the implementation of the PPP program of the Municipal Government, there shall be a Moncada 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 Municipal Government, through the Municipal Cooperative Development Council (MCDC) shall exercise administrative control and shall provide the necessary personnel for the operation of the Moncada PPP-CC. The Municipal Mayor, in his/her concurrent capacity as local chief executive and/or as Moncada PPP Board Chairperson, or as manifested by the Board through a resolution, may assign personnel/s from other departments of the LGU, or hire consultants, resource persons and, other competent personnel as the need arises.

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

14.2.1 Provide administrative support to the Board;

14.2.2 Establish and maintain network linkages with other offices and agencies;

14.2.3 Facilitate meetings of the Board, prepares agenda and minutes thereof, and submit for its consideration and approval the policies and actions to fulfil the provisions of the Code;



SANGGUNIANG BAYAN

14.2.4 Prepare budgetary requirements for the operations of the Board;

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

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

14.2.7 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

14.2.8 Perform such other functions that are necessary and incidental for the effective implementation of the Code as directed by the Board.

CHAPTER IV

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

Section 15. 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 16. Composition of the PPP-SC. The PPP-SC shall be composed of the following:

- a. A third ranking Municipal Government Official as Chairman to be appointed by the Mayor
- b. The Municipal Legal Consultant - Member - Secretary
- c. The Municipal Engineer – Member
- d. One (1) technical officer knowledgeable with the technical aspects or requirements of the project, duly designated and appointed by the Local Chief Executive on a project-to-project basis – Member (provisional)
- e. One (1) technical officer knowledgeable with aspects or requirements of the project from a concerned regulatory body, when applicable, to be invited by the Local Chief Executive on a project-to-project basis – Member (provisional and non-voting)
- f. A public officer knowledgeable in finance to be appointed by the Local Chief Executive – Member
- g. A public officer knowledgeable in the management/operation of the project to be appointed by the Local Chief Executive – Member
- h. Two (2) representatives from the private sector to be appointed by the Local Chief Executive: one from duly recognized Contractors associations and the other from either the facility users, or duly recognized accounting associations. – Observers (non-voting)
- i. A representative from the Commission on Audit – Observer (non-voting)
- j. One (1) representative from the local DILG office – Observer (non-voting) Observers will be notified at least two (2) calendar 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 17. 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 for comparative bidding process (otherwise known as the "Swiss



SANGGUNIANG BAYAN

Challenge") in the case of unsolicited proposals including, among others, the preparation of the bidding/tender documents, publication of the invitation to pre-qualify and bid, pre-qualification of prospective bidders, conduct of pre-bid conferences and issuance of supplemental notices, interpretation of the rules regarding bidding, the conduct of bidding, evaluation of bids, resolution of disputes between bidders, and recommendation for the acceptance of the bid and/or the award of the project.

Section 18. Responsibility of the Bids and Awards Committee (BAC) Secretariat. The BAC Secretariat shall assist the PPP-SC by providing the following:

1. Administrative support;
2. Organize and arrange all necessary requirements for PPP-SC meeting;
3. Provide minutes of meetings;
4. Safekeeping and filing of all records pertaining to PPP-SC transactions; and
5. Facilitate arrangements for the pre-qualifications, pre-bid conference, and bid openings.

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. Prioritization and Approval of PPP Projects. The PPP Board shall include in the Development and Investment Program of the Municipal Government 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 Board to give wide publicity to all projects eligible for financing under this Code, including publication in the following:

- a. a national newspaper of general circulation once every six (6) months; and
- b. the website of the Municipal Government, if available.

The list of all such projects must be part of the development program of the Municipality of Moncada and shall be submitted, for confirmation:

- a. To the Municipal development council for projects costing up to Php 50 million;
- b. To the regional development councils for projects costing above Php 50 million
- a. up to Php 200 million; and
- b. 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 under Moncada .

Section 21. Public Bidding of PPP Projects. Upon approval of the projects mentioned in the preceding Section, the Municipal Government shall forthwith cause to be published, once every week for three (3) consecutive weeks, in at least two (2) newspapers of general circulation and in at least one (1) local newspaper which is circulated in the region, province, city or municipality in which the project is to be constructed, a notice inviting all prospective infrastructure or development project proponents to participate in a competitive public bidding for the projects so approved. In the case of a Build-Operate-and-Transfer (BOT) arrangement, the contract shall be awarded to the bidder who, having satisfied the minimum financial,



SANGGUNIANG BAYAN

technical, organizational and legal standards as stipulated in the Implementing Rules and Regulations of the BOT Law, has submitted the lowest bid and most favorable terms for the project, based on the present value of its proposed tolls, fees, rentals and charges over a fixed term for the facility to be constructed, rehabilitated, operated and maintained according to the prescribed minimum design and performance standards, plans and specifications. For this purpose, the winning project proponent shall be automatically granted by the Municipal Government the franchise to operate and maintain the facility, including the collection of tolls, fees, rentals, and charges.

In the case of Build-and-Transfer (BT) or Build-Lease-and-Transfer (BLT) arrangement, the contract shall be awarded to the lowest complying bidder based on the present value of its proposed schedule of amortization payments for the facility to be constructed according to the prescribed minimum design and performance standards, plans, and specifications; *Provided, however,* that a Filipino contractor who submits an equally advantageous bid with exactly the same price and technical specifications as those of a foreign contractor shall be given preference. In all cases, a consortium that participates in a bid must present proof that the members of the consortium have bound themselves jointly and severally to assume responsibility for any project. The withdrawal of any member of the consortium prior to the implementation of the project could be a ground for the cancellation of the contract. 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. A copy of each contract involving a project entered into under this Code shall forthwith be submitted to Congress for its information.

Section 22. Negotiated Contracts. Direct negotiation may be resorted to when there is only one complying bidder left as defined hereunder:

- a. 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 Municipal Government to be complying.
- b. 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 Municipal Government to be complying.
- c. If, after pre-qualification of more than one contractor, only one submits a bid which is found by the Municipal Government to be complying.
- d. If, after pre-qualification, more than one contractor submit bids but only one is found by the Municipal Government 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 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 23. Unsolicited Proposals. Project proposals submitted by the private sector, not in response to a formal solicitation or request issued by the Municipal Government, to undertake infrastructure or development projects, which may be entered into by the Municipal Government subject to the following conditions:

- a. Such projects involve a new concept or technology and/or are not part of the list of priority projects;



SANGGUNIANG BAYAN

- b. No direct government guarantee, direct government subsidy or direct government equity is required; and
- c. The Municipal Government 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 24. Prior Authorization from the Moncada. Prior to the signing of the PPP Contract by the Local Chief Executive 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 Moncada for review and approval.

Section 25. Repayment Scheme. The repayment schemes for the projects shall depend on the contractual arrangement as follows or as may be approved by the Moncada :

- a. 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 Municipal Government, may be allowed to continue collecting tolls, fees, charges and rentals for the operation of the facility or the provision of the service.
- b. For projects undertaken through a BTO arrangement, the Project Proponent may be repaid by either of the following options:

First Option – the Municipal Government provides Amortization as may be appropriate and reasonable. Toll, fees, rentals and charges that the Project Proponent may collect while operating the facility on behalf of the Municipal Government may be applied directly to the Amortization. Moreover, the Project Proponent may be repaid by the Municipal Government through a management fee as may be incorporated in the management contract entered between the Municipal Government and the Project Proponent.

Second Option – the Project Proponent may be allowed to directly collect tolls, fees, rentals and charges for a fixed term.

- c. For projects undertaken through BT and BLT arrangements, the Project Proponent may be repaid by the Municipal Government through Amortization as may be appropriate and reasonable.
- d. 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.
- e. 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 26. 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 Municipal Government 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



SANGGUNIANG BAYAN

submit an annual report on the status of its implementation during a current year to the Moncada, for monitoring purposes. The annual report shall be submitted within the first quarter of the succeeding year.

Section 27. Use of Alternative Dispute Resolution (ADR) Mechanisms. In accordance with Executive Order No. 78 (s. 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 28. 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:

- a. If the Municipal Government 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 Municipal Government, and specifying the turn-over date, terminate the contract. In such an event, the Project Proponent shall be reasonably compensated by the Municipal Government for actual expenses plus a Reasonable Rate of Return thereon not exceeding that stated in the contract as of the date of contract termination.
- b. 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 Municipal Government shall notify the Project Proponent in writing of the same and if not corrected within the time specified, the Municipal Government may terminate the contract. In such an event, the Municipal Government may either:
 - i. Take over the facility; or
 - ii. 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 Municipal Government shall forfeit the performance security of the defaulting Project Proponent.
- c. In the event that the contract is revoked, cancelled or terminated by (i) the Municipal Government in accordance with the contract through no fault of the Project Proponent or (ii) by mutual agreement, the Municipal Government 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.
- d. In the event that the contract is revoked or cancelled by a court by final judgment. In the cases referred to in (a) and (c) above, an independent appraiser, mutually acceptable to the Municipal Government 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 Municipal Government. 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 29. 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



SANGGUNIANG BAYAN

Proponent shall pay the Municipal Government 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 Municipal Government. 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 Municipal Government based on the formula in the contract. During the operation period, the amount of liquidated damages, which will be determined by the Municipal Government, shall be based on the principle of fair compensation for damages which the Municipal Government 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 Municipal Government to terminate the contract and proceed with the procedures prescribed under Section 28 (b).

CHAPTER VI FINAL PROVISIONS

Section 30. 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 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 Moncada each time the Local Chief Executive 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 31. Formulation of the Implementing Rules and Regulations .The Board may promulgate the Implementing Rules and Regulations to effectively carry out the provisions of R.A. No. 7718 and its IRRs.

Section 32. Budget. The Municipal Government 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 members of the Board. This funding shall be subject to existing accounting and auditing rules and regulations.

Section 33. Separability Clause. If any provision of this Code is declared unconstitutional or invalid, the other provisions unaffected thereby shall remain in full force and effect.

Section 34. Repealing Clause. All ordinances, executive orders and issuances by the Municipal Government or parts thereof inconsistent with the provision of this Code are hereby repealed or modified accordingly.

Section 35. Effectivity. This Ordinance shall take effect fifteen (15) days after complete publication in a newspaper of local circulation or posting hereof in at least three (3) conspicuous places, this Municipality.


ENACTED, June 3, 2019 at Moncada, Tarlac.



Republic of the Philippines
MUNICIPALITY OF MONCADA
Province of Tarlac

SANGGUNIANG BAYAN

**CERTIFIED TO HAVE BEEN DULY ENACTED
ON THE ABOVE-MENTIONED DATE AND PLACE:**


VICTOR SANDINO S. MOLINA, MPA
Secretary to the Sanggunian

CONCURRED:

VACANT
Member


HON. EDWARD V. TOLENTINO
Member


HON. THELMAFLOR A. ESPEJO
Member


HON. GEORGE MICHAEL P. AGUILAR
Member

HON. GEORGE R. CUCHAPIN, MD
Ex-Officio Member, LnB Pres.
(On Official Business)

HON. ALBERTO C. MARZAN, JR., MD
Member (Absent)


HON. JANIUS M. YASAY
Member


HON. RUBEN V. GAMBOA, JR.
Member


HON. CLEOFE D. FAVIS
Member


HON. EZEKIEL C. RIVERA
Ex-Officio Member, SKF Pres.

**ATTESTED AND CERTIFIED
TO BE DULY ENACTED:**


HON. JAIME O. DUQUE
Vice-Mayor & Presiding Officer

APPROVED by HER HONOR, the MUNICIPAL MAYOR OF MONCADA on _____:


HON. ESTELITA M. AQUINO
Municipal Mayor