Republic of the Philippines
BATANGAS CITY
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ORDINANCE NO. 3 S. 2013

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

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CHAPTER 1. Basic Principles and Definitions

SECTION 1. SHORT TITLE. - This Ordinance shall be known and cited as the "**BATANGAS CITY PPP CODE**".

SECTION 2. DECLARATION OF POLICY. - It is hereby declared as a policy that the BATANGAS CITY, PROVINCE OF BATANGAS 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.

SECTION 3. OPERATIVE PRINCIPLES. - The accomplishment of the stated policy shall be guided by the following principles:

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

(b) The CITY exists and operates in its governmental and proprietary capacities thereby making the CITY an agent of and is therefore accountable to the State and its community.

(c) The CITY must develop into a self-reliant community and as such, is in a better position to address and resolve matters that are local in scope.

(d) The CITY, being a component city, is under the direct supervision of the Province of Batangas.

Continuation of Ordinance No. 3 S. 2013

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(e) Under Section 18 of the 1991 LGC, the CITY may to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental or welfare purposes.

(f) Under Section 22 (d) of the 1991 LGC, the CITY enjoys full autonomy in the exercise of its proprietary functions and shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate or incidental for its efficient and effective governance, those not otherwise prohibited by law and those which are essential to the promotion of the general welfare.

(g) Under Section 25 (b) of the 1991 LGC, the CITY may collaborate or cooperate with other local governments, national government agencies, government-owned and controlled corporations, government instrumentalities and government corporate entities for the implementation of local projects.

(h) Under the charter of the CITY, Sections 16, 17, 19 and 129 of Republic Act No. 7160 or the Local Government Code of 1991 (1991 LGC) and other statutes, the CITY has been given the responsibility and mandate to exercise devolved and delegated powers.

(i) The CITY, under Section 106 of 1991 LGC, is mandated to draw up and implement a comprehensive multi-sectoral development plan.

(j) The CITY under Section 3 (l) of the 1991 LGC is duty-bound to ensure the active participation of the private sector in local governance.

(k) The role of the CITY both as a regulator or business and as implementer of a proprietary undertaking must be delineated.

(l) The CITY, as a partner in a PPP arrangement, may provide equity, subsidy or guarantee and use local funds and that the usage thereof for a PPP project shall be considered for public use and purpose.

(m) Under Sections 34, 35 and 36 of the 1991 LGC and in the exercise of its powers, the CITY may enter into joint

(n) ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversity agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people; provide assistance, financial or otherwise, to such people's and non-governmental organizations for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction; provide funding for local projects, provide incentives and tax exemptions to private companies.

SECTION 4. RATIONALE FOR PPP – PPP shall be promoted to provide more, better, affordable and timely services to the community. In pursuing PPPs, the CITY shall be guided by the following reasons and drivers:

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. DEFINITION OF TERMS. - As used in this Code, the following terms shall mean:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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