



Comparative Analysis of the PPP Code and Agra Template P4 Ordinance

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ASPECTS	PPP CODE (RA 11966)	AGRA TEMPLATE P4 ORDINANCE
Enabler	Congress	Local Government Units/ Local Legislative Bodies
Policy Instrument	National Law/ Statute	Local Ordinance
Name	Public-Private Partnership (PPP)	PPP for the People (P4)
Rationale	<ul style="list-style-type: none">○ Indispensable role of the private sector, encourage private enterprise, and provide incentives to needed investments○ Enabling environment for the private sector to mobilize its resources to finance, design, construct, operate, and maintain infrastructure or development projects and services○ Public interest by providing affordable, accessible, and efficient public services○ Financing infrastructure and other development projects and services through all means available to effectively meet the objectives of the government○ LGU local autonomy, as self-reliant communities, more effective partners in the attainment of national goals○ Integration of climate resilience, sustainability, and gender and development policies and programs	<p>“It is hereby declared as a policy that the [Province of (name)/ City of (name)/ Municipality of (name)/ Barangay (name)/ BARMM] shall advance the public good and general welfare, and promote the interest of the community and the [Province/ City/ Municipality/ Barangay/ BARMM] within the framework of sustainable and integrated development, and effective constructive engagement and meaningful people’s participation in local governance.</p> <p>P4 shall be pursued by the [Province/ City/ Municipality/ Barangay/ BARMM] consistent with and in furtherance of the vision and mission of the [Province/ City/ Municipality/ Barangay/ BARMM] which state that: VISION: (state vision) MISSION: (state mission)”</p>

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	<ul style="list-style-type: none"> Open, fair, transparent, and competitive selection as the central tenet for securing private investment in PPP projects (Section 2) 	<p>“Rationale for P4. – P4 shall be promoted to provide more, better, affordable and timely services to the community. In pursuing P4, the Province/ City/ Municipality shall be guided by the following reasons and drivers: xxx in furtherance of the [Provincial/ City/ Municipal/ Barangay/ BARMM] development and physical framework plan, xxx overall infrastructure reform policy of the [Province/ City/ Municipality/ Barangay/ BARMM], xxx address a pressing and urgent or critical public need, xxx avoid costs and public borrowing, xxx technology transfer, and improved efficiency and quality of service, xxx feasible and affordable, demonstrating the need for the project xxx bankable, xxx value-for-money and good economic value, xxx provide economic and social benefits, xxx empowerment of Filipino citizens, xxx competitive and must be undertaken through open competitive bidding, xxx regulation xxx contract and exercised by the appropriate regulatory authority, xxx a duly executed and legal P4 Contract shall be respected and not impaired, and shall be binding on the successor administration, and xxx provide efficient public service, the [Province/ City/ Municipality/ Barangay/ BARMM] xxx that will result in value for money, on-time delivery of quality services to the public, achievement of government policy goals, all within sustainable and integrated development.”</p>
Power to Enact PPP Ordinances	“Upon effectivity of this Code, no other JV guidelines, PPP guidelines, codes, or ordinances, whatsoever may be enacted, issued and/or used by any government entity to enter into PPPs, except those that are enacted,	<p>Author’s Notes:</p> <ul style="list-style-type: none"> The LGUs’ power to legislate is founded on the 1987 Constitution and 1991 Local Government Code. Various opinions of National Government Agencies have

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	<p>issued, and/or used in accordance with this Code and its IRR.” (Section 35, last paragraph)</p> <p>“All executive orders and administrative laws, decrees, orders, codes, issuances, rules and regulations, and ordinances or any part thereof inconsistent with or contrary to this Code are hereby repealed or modified accordingly.” (Section 37, last paragraph)</p> <p>Author’s Notes:</p> <ul style="list-style-type: none"> ○ Under the Principle of Subordinate Legislation and Hierarchy of Policies, local ordinances must not be inconsistent with statutes such as the PPP Code. This is an implied restriction in local legislation and ordinance-making. ○ However, the restriction under the PPP Code cannot prohibit LGUs from enacting PPP ordinances that are not in conflict with the PPP Code. There can be no blanket denial of the constitutional power of LGUs to legislate. 	<p>confirmed, prior to the effectivity of the PPP Code, the authority of LGUs to enact their own PPP ordinances.</p> <ul style="list-style-type: none"> ○ Under the Principle of Subordinate Legislation and Hierarchy of Policies, local ordinances must not be inconsistent with statutes such as the PPP Code. This is an implied restriction in local legislation and ordinance-making.
Definition of a PPP	<p>Author’s Notes:</p> <p>The PPP Code does provide for an explicit definition of a PPP.</p> <p>Under the Draft Implementing Rules and Regulations (as of February 17, 2024) or Draft IRR, PPP is defined as:</p> <p>“A contractual arrangement between an Implementing Agency and a Private Partner to finance, design, construct, operate, and maintain, or any combination or</p>	<p>“At the policy level, a P4 is a developmental, innovative, change and partnership strategy aimed at promoting the general welfare, inclusive growth and better quality of life of Filipinos.”</p>

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	variation thereof, infrastructure or development projects and services which are typically provided by the public sector, and where each party shares in the associated risks.”	
PPP Project	<p>“Any public infrastructure or development projects and services implemented under the PPP Code.” (Section 3(c))</p> <p>“All PPP Projects shall be consistent and responsive to national, local, and sectoral development and investment plans.” (Section 6)</p> <p>“In developing a PPP Project, the Implementing Agency shall consider the following: (i) legal, technical, economic, financial, and commercial, feasibility of the project; (ii) VFM of the proposed project; (iii) optimal risk allocation; (iv) affordability of fees or tariffs; (v) climate resilience and sustainability; and (vi) social and environmental safeguards.” (Section 6, last paragraph)</p> <p>Author’s Notes: PPP Code does not contain a list of Projects.</p> <p>The Draft IRR provides a list of 26+ Eligible PPP Projects.</p> <ol style="list-style-type: none"> 1. Highways, including expressways, roads, bridges, interchanges, tunnels, viaducts, and related facilities 2. Land transportation systems, including railways, road-based transportation systems, bus rapid transit, high priority public utility vehicle systems, 	<p>“<i>Developmental Projects</i> – [Provincial/ City/ Municipal/ Barangay/ BARMM] Projects normally financed and operated by the [Province/ City/ Municipality/ Barangay/ BARMM], but which will now be wholly or partly financed, constructed and/ or operated by the PSP; projects that will advance and promote the general welfare and public good; projects and activities that will be responsive to the needs of the communities; projects that will raise revenues for the [Province/ City/ Municipality/ Barangay/ BARMM]; projects in furtherance of devolution, deconcentration and decentralization; and other infrastructure, social-related and developmental projects as may be authorized by the [Province/ City/ Municipality/ Barangay/ BARMM].”</p> <p>“At a project level, a P4 is a legally enforceable contract where each party assumes specified functions, bears certain risks, provides contribution or renders some obligation, and earns benefits and revenues from the P4 arrangement. Specifically, it is a form of legally enforceable contract between the [Province/ City/ Municipality/ Barangay/ BARMM] and a Private Sector Proponent (PSP), and in certain cases, with the requiring new investments from the PSP and transferring key risks to the PSP in which payments are made in exchange for performance, for the purpose of delivering a service provided or intended to be provided by the [Province/ City/ Municipality/ Barangay/</p>

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	<p>active transportation, transit-oriented developments, public utility vehicle stations, transport plazas, intermodal terminals, park & ride, and related facilities</p> <p>3. Transport and traffic management projects, including transportation databases, automated fare and toll collection systems, traffic signaling, traffic monitoring systems, traffic enforcement systems, congestion and management systems, and related facilities</p> <p>4. Port infrastructures like piers, wharves, quays, storage, handling, ferry services, roll- on roll-off facilities, and related facilities, navigable inland waterways, and related facilities</p> <p>5. Airports, air navigation, and related facilities</p> <p>6. Power generation, transmission, sub-transmission, distribution, including hydropower plants, and related facilities</p> <p>7. Energy efficiency and conservation, renewable energy, and electric vehicle charging stations, and related facilities</p> <p>8. Telecommunications, backbone network, terrestrial, aerial, and space infrastructure, and related service facilities</p> <p>9. Information technology (IT) networks and database infrastructure, geo-spatial resource mapping, cadastral survey for resource accounting and planning, and related facilities</p> <p>10. Irrigation and related facilities</p>	<p>BARMM]. P4 shall also include dispositions of an asset, facility, project owned, or entity created by the [Province/ City/ Municipality/ Barangay/ BARMM] to a PSP; procurement of a service; donations to the [Province/ City/ Municipality/ Barangay/ BARMM]; incorporation of a subsidiary with PSP equity; assumption by a PSP of a proprietary function of the [Province/ City/ Municipality/ Barangay/ BARMM]; grant of a concession or franchise to a PSP by the [Province/ City/ Municipality/ Barangay/ BARMM]; or usage by the PSP of public property owned or possessed by the [Province/ City/ Municipality/ Barangay/ BARMM].”</p> <p>“The [Province/ City/ Municipality/ Barangay/ BARMM], through the appropriate and viable P4 mode, may undertake Developmental Projects, including but not limited to, singly or with other related components, energy and power, renewable energy, waste-to-energy, roads, bridges, causeways, waterways, highways, ports, wharfs, terminals, airports, community airports, canals, dams, desilting, dredging, mining and exploration, hydropower projects, water supply and distribution, sewerage, irrigation, drainage, water conservation such as impoundment areas and rainwater harvesting, telecommunications, railroad and railways, short-haul transit services such as monorail, guided bus, bus services and trams, intermodal and multi-modal transit systems, transport systems, traffic control and management, parking facilities, reclamation projects, platform settlements, industrial estates or townships, central</p>

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	<ol style="list-style-type: none"> 11. Water supply, sewerage, drainage, water treatment, desalination, and related facilities 12. Educational infrastructure and related facilities 13. Health infrastructure, hospitals, clinics, research facilities, and other related facilities 14. Multi-purpose water resources projects covering a combination of irrigation, power, water supply, flood control, and related facilities 15. Land reclamation, dredging, flood control projects, and related facilities 16. Industrial and tourism estates or townships, including ecotourism projects such as terrestrial and coastal/marine nature parks, among others and related infrastructure facilities and utilities 17. Government buildings 18. Urban redevelopment, townships, and housing projects 19. Heritage preservation and adaptive reuse projects 20. Markets, slaughterhouses, trading posts, and related facilities 21. Warehouses and post-harvest facilities 22. Public fish ports and fishponds, including storage and processing facilities 23. Agri-fishery industrial hubs, agribusiness facilities, agricultural research facilities, agricultural estates, agrilogistics systems, contract farming, and related facilities 24. Prisons, lease of patrol vessels/rescue helicopters, O&M of military facilities and equipment, and other national defense or security-related facilities 	<p>business and industrial park development, hotels and resorts, socialized housing, non-conventional low-cost housing, settlement/ resettlement and relocation facilities, residential subdivisions, parks and open space development/ redevelopment, pocket parks, public art, libraries, heritage conservation, government buildings, sustainable/ green public buildings, sports facilities, wellness establishments, tourism such eco-tourism, wellness tourism and agri/agro-tourism, public markets, commercial buildings, slaughterhouses, storage buildings, warehouses, cold storage, solid waste management, sanitary landfills, meeting and convention centers, information technology networks and database infrastructure, education-related, classrooms, health facilities, hospitals, social services-related, prisons, agriculture-related, post-harvest facilities, environmental management and protection, climate change adaption, disaster risk reduction, among other developmental projects.”</p>

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	<p>25. Environmental and solid waste management related facilities such as but not limited to waste collection, transportation and disposal facilities, transfer stations, composting plants, material recovery, landfill and tidal barriers, among others</p> <p>26. Climate change adaptation and mitigation and disaster risk reduction and management Infrastructure Projects, and related facilities</p> <p>27. Other infrastructure or development projects and services, as may be authorized by the Implementing Agency pursuant to the Code and this IRR</p>	
Value for Money (VfM)	<p>“Refers to the effective, efficient, and economic use of resources, which requires the evaluation of relevant costs and benefits, along with an assessment of risks, and of non-price attributes and/or life cycle costs, as appropriate. Price alone may not necessarily represent VFM.” (Section 3(jj))</p>	<p>“Refers to the concept that over the whole-life of a project finance- P4 project, government’s total expenditures (i.e., its payments to the PSP), adjusted for the risks that have been transferred to the PSP, will be less, on a Net Present Value (NPV) basis, than if the government will perform the services itself. VfM considers monetary and non-monetary factors such as: (i) risk transfer; (ii) reduced whole life costs; (iii) speed of implementation; and (iv) quality and reliability of service.”</p>
Reasonable Rate of Return	<p>“Refers to the net gain of an investment over a specified time period, expressed as an annualized percentage as prescribed by the appropriate Approving Body and reflected in the PPP contract: Provided, That where the realized rate of return exceeds the prescribed Reasonable Rate of Return, the excess shall be remitted to the National Treasury.” (Section 3(p))</p>	<p>“Refers to the rate of return that a PSP shall be entitled to, as determined by the P4 Regulatory Authority taking into account, among others, the prevailing cost of capital (equity and borrowings) in the domestic and international markets, risks being assumed by the PSP and the level of [Provincial/ City/ Municipal/ Barangay/ BARMM] undertakings and contributions extended for the project.”</p>
Private Sector	<p>○ <i>Private Partner</i> - private sector entity determined to be financially, legally, and technically capable to</p>	<p>“<i>Private Sector Proponent (PSP)</i> – Refers to the private sector entity which shall have contractual responsibility for the project and which shall have an adequate track record</p>

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	<p>undertake obligations under an awarded PPP contract (Section 3(z))</p> <ul style="list-style-type: none"> ○ <i>Private Proponent</i> - private sector entity which has submitted bid in relation to a Solicited Project, or a private sector entity which has submitted an Unsolicited Proposal; may be Filipino or foreign-owned, and may engage the services of a foreign Contractor or foreign Facility Operator, subject to requirements and limitations provided under the Constitution, existing laws, rules, and regulations (Section 3(aa)) ○ <i>Facility Operator</i> - any entity allowed and duly registered and licensed under Philippine laws, which may or may not be the Private Partner, that shall be responsible for operating and/or maintaining a facility (Section 3(f)) ○ <i>Contractor</i> - any entity allowed and duly registered and licensed under Philippine laws, which may or may not be the Private Partner, that shall be responsible for the construction and/or supply of equipment or services for PPP Projects (Section 3(e)) <p>Author's Notes: PPP Code does not provide for the specifics of the financial, legal and technical requirements for the Private Proponent, Facility Operator and Contractor. The Draft IRR supplies these.</p>	<p>in the concerned industry, as well as technical capability and financial base consisting of equity and firm commitments from reputable financial institutions, to provide, upon award, sufficient credit lines to cover the total estimated cost of the project to implement the said project.”</p> <p>“The P4-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, xxx pre-qualification of prospective PSPs, bidders or challengers; xxx”</p>
PPP Arrangements	Included/ Covered (Section 4)	“In undertaking a specific P4 Project, the Province/ City/ Municipality may adopt and pursue any of the following P4

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	<ol style="list-style-type: none"> 1. Finance, Design, Construct, Operate and Maintain (<i>any combination or variation thereof</i>) 2. Joint Ventures 3. Construct, Operate and Maintain (<i>combination or variation thereof</i>) Toll Facilities 4. Lease 5. BOT, BT, BLT, BOO, BTO, CAO, DOT, ROT and ROO (per Draft IRR) 6. Arrangement which possesses characteristics or elements of a PPP 7. Arrangement approved by appropriate Approving Body <p>Excluded/ Not Covered:</p> <ol style="list-style-type: none"> 1. Procurement of Infrastructure Projects (GPRA) 2. ODA-Funded Infrastructure Projects (per Draft IRR) 3. Management Contracts under GPRA 4. Service Contracts (coal service, petroleum, mining, renewable energy and per COA and DBM, per Draft IRR) 5. Divestments or Dispositions 6. Corporatization or transfer of government assets into a public corporation 7. Incorporation of Subsidiaries with Private Sector Equity 8. Onerous Donations 9. Gratuitous Donations 10. JVs and leases involving purely commercial arrangements that neither provide nor include public infrastructure or development services 	<p>Modalities and provide for other modalities not inconsistent with law:</p> <ol style="list-style-type: none"> 1. Build-Transfer (BT) 2. Build-Lease-Transfer (BLT) 3. Build-Operate-Transfer (BOT) 4. Build-Own-Operate (BOO) 5. Build-Transfer-Operate (BTO) 6. Contract-Add-Operate (CAO) 7. Develop-Operate-Transfer (DOT) 8. Rehabilitate-Operate-Transfer (ROT) 9. Rehabilitate-Own-Operate (ROT) 10. Rehabilitate-Lease-Transfer 11. Rehabilitate-Transfer 12. Rehabilitate-Transfer-Operate 13. Concession Arrangement 14. Joint Venture 15. Lease or Affermage 16. Lease-to-Own 17. Real Property Swap 18. Management Contract 19. Management Contract (No Public Funds) 20. Service Contract 21. Service Contract (No Public Funds) 22. Divestment or Disposition 23. Corporatization 24. Subsidiary with Private Equity 25. Onerous Donation 26. Gratuitous Donation 27. Other similar arrangements.”

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	<p>Author's Notes:</p> <ul style="list-style-type: none"> ○ LGUs can enact their PPP Ordinances that would be applicable for the 10 excluded PPP modalities. ○ The P4 Ordinance is modified accordingly in this regard. ○ JVs and leases that combine commercial arrangements with public infrastructure are governed by the PPP Code while those which are purely commercial are not governed by the PPP Code and may be governed by a PPP Ordinance. 	
Joint Ventures	<p>“Refers to national or local PPP contractual arrangement whether solicited or unsolicited, where both the Implementing Agency performing its proprietary function and the Private Partner pool resources comprising of capital, services, or assets, including equipment, land, or intellectual property, to jointly undertake a specific investment activity within a specific period of cooperation, to deliver an infrastructure or development project typically provided by the public sector.” (Section 3(c))</p>	<p>“A contractual arrangement whereby a PSP or a group of PSPs on one hand, and the [Province/ City/ Municipality/ Barangay/ BARMM] on the other hand, contribute money/ capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing. The [Province/ City/ Municipality/ Barangay/ BARMM] shall be a minority equity or shareholder while the PSP shall be majority equity or shareholder. Each party shall be entitled to dividends, income and revenues and will bear the corresponding losses and obligations in proportion to its share. Parties to a JV share risks to jointly undertake an investment activity in order to accomplish a specific, limited or special goal or purpose with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transferring ownership of the investment activity to the PSP under competitive market conditions. It involves a community or pooling of interests in the performance of the service, function, business or activity, with each party</p>

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		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.”
Lease	“Lease agreements providing for the rehabilitation, operation, and/or maintenance, including the provision of working capital and/or improvements to, by the Private Partner of an existing land or facility owned by the government for a fixed period of time covering more than one (1) year.” (Section 4, 3 rd paragraph (c))	“A contractual arrangement providing for operation, maintenance, and management services by the PSP, including working capital and/ or improvements to an existing infrastructure or development facility leased by the PSP from the [Province/ City/ Municipality/ Barangay/ BARMM] for a fixed term. Under a lease, the PSP retains revenue collected from customers and makes a specified lease payment to the [Province/ City/ Municipality/ Barangay/ BARMM].”
Management Contracts	<p>Author’s Notes: Management Contracts are excluded from coverage of the PPP Code.</p> <p>The Draft IRR provides that management contracts are governed by the GPRA.</p>	“A contractual arrangement involving the management or provision by the PSP of operation and maintenance or related services to an existing infrastructure or development facility owned or operated by the Province/ City/ Municipality. The PSP may be compensated by the [Province/ City/ Municipality/ Barangay/ BARMM] using the funds of the latter; or the PSP may collect tolls/ fees/ rentals and charges which shall be turned over to the [Province/ City/ Municipality/ Barangay/ BARMM] and shall be compensated in the form of a fixed fee, a share in the revenues and/ or performance-based management or service fee during the contract term.”
Service Contracts	<p>Author’s Notes: Service Contracts are excluded from the coverage of the PPP Code.</p>	“A contractual arrangement whereby the PSP shall provide a particular service to the [Province/ City/ Municipality/ Barangay/ BARMM] involving the [Province’s/ City’s/ Municipality’s/ Barangay’s/ BARMM’s] proprietary authority or to entities or corporation created by the [Province/ City/ Municipality/ Barangay/ BARMM]. The PSP

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	Under the Draft IRR, service contracts are those contracts pertaining to coal service, petroleum, mining, renewable energy and those per COA and DBM.	shall be entitled to be paid a fee per unit of work done during the term of the contract; or compensated by the [Province/ City/ Municipality/ Barangay/ BARMM] using the funds of the latter; or the PSP may collect tolls/ fees/ rentals and charges which shall be turned over to the [Province/ City/ Municipality/ Barangay/ BARMM] and shall be compensated in the form of a share in the revenues.”
Concession	<p>Author’s Notes:</p> <p>Concession is neither stated in the PPP Code either as included or excluded nor mentioned in the Draft IRR.</p>	“A contractual arrangement whereby the financing and construction of a new facility and/ or rehabilitation of an existing facility is undertaken by the PSP after turnover thereof to it, and includes the operation, maintenance, management and improvement, if any, of the facility for a fixed term during which the PSP generally provides service directly to facility users and is allowed to charge and collect the approved tolls, fees, tariffs, rentals or charges from them. The [Province/ City/ Municipality/ Barangay/ BARMM] may receive a concession or franchise fee during the term of the contract and/ or other consideration for the transfer, operation or use of any facility. There may be a transfer of ownership of the asset or facility after the concession period has ended subject to rules of the COA.”
Corporatization	<p>Author’s Notes:</p> <p>Corporatization is mentioned as an excluded PPP arrangement but is not defined under the PPP Code.</p> <p>Under the Draft IRR, corporatization is defined as a transfer of government assets into a public corporation.</p>	“Refers to transformation of a wholly- or majority-owned subsidiary of or quasi-municipal corporation established by the [Province/ City/ Municipality/ Barangay/ BARMM] into one that has the structure and attributes of a private corporation, such as a board of directors, officers, and shareholders, and having it registered with the Securities and Exchange Commission as a stock corporation. The process involves the establishment of a distinct legal identity for the company under which the [Province’s/

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		City's/ Municipality's/ Barangay's/ BARMM's] role is clearly identified as owner; segregation of the company's assets, finances, and operations from other [Provincial/ City/ Municipal/ Barangay/ BARMM] operations; and development of a commercial orientation and managerial independence while remaining accountable to the government or electorate."
Subsidiary with PSP Equity	<p>Author's Notes: Subsidiaries are mentioned as excluded from the scope of the PPP Code. These are not defined in the Draft IRR.</p>	<p>"A corporation or quasi-municipal corporation incorporated by a [Province/ City/ Municipality/ Barangay/ BARMM] and registered as a stock corporation under the Corporation Code where majority of the shares are held by a [Province/ City/ Municipality/ Barangay/ BARMM] and where a PSP is a or PSPs are minority shareholder(s) which acquire their shares through an initial public offering or other competitive means."</p>
Donations	<p>Author's Notes: Gratuitous and onerous donations are mentioned as excluded PPP arrangements but are not defined in the PPP Code.</p> <p>Under the Draft IRR, Onerous Donations are subject to burdens, charges, or future services equal to or more in value than the thing donated while Gratuitous Donations are disposed by a person without charge, in favor of another who accepts it.</p>	<p>"<i>Gratuitous Donation</i> - A donation made by a PSP to a [Province/ City/ Municipality/ Barangay/ BARMM] whose cause is pure liberality on the part of the former and does not require from the latter any additional action other than utilizing the thing donated for the purpose agreed upon, or impose any obligation, burden, charge or future services, benefits, or concessions, or other form of grant, in order to be valid."</p> <p>"<i>Onerous Donation</i> – A donation made by a PSP to a [Province/ City/ Municipality/ Barangay/ BARMM] which subjects the latter to obligations, burdens, charges or future services, benefits, or concessions, or other form of grant, equal or greater in value than that of the thing donated by the donor-PSP."</p>

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Divestment	<p>Author's Notes:</p> <p>Divestments are mentioned as excluded PPP arrangements but are not defined in the PPP Code.</p> <p>Under the Draft IRR, divestment refers to taking away, depriving, withdrawing of an authority, power or title over a government asset.</p>	<p>“Refers to the manner or scheme of taking away, depriving, withdrawing of title to a property owned by the [Province/ City/ Municipality/ Barangay/ BARMM] and vesting ownership thereof to a PSP.”</p>
Approval	<p>For an LGU Project:</p> <ul style="list-style-type: none"> ○ Approved by Sanggunian ○ Confirmed by the Local Development Council or LDC (prior to approval) (Section 7(a)(1)) <p>Sanggunian shall assess all PPP Projects based on its overall feasibility and VfM, and in accordance with the principle of protecting public interest through the provision of affordable, accessible, and efficient public services. (Section 7(b))</p> <p>For Inter-LGU Projects, these may be implemented by:</p> <ul style="list-style-type: none"> ○ National Government ○ Supervising/ Higher LGU or ○ Implementing LGUs concerned (Section 7(a)(1) 7th and 8th paragraphs) 	<p>“In pursuing BOT Law variants, the [Province/ City/ Municipality/ Barangay/ BARMM] shall comply with BOT Law and its Implementing Rules and Regulations.</p> <p>In entering into Management and Service Contracts where [provincial/ city/ municipal/ barangay/ BARMM] funds are used, the Province/ City/ Municipality shall comply with Republic Act 9184 or the Government Procurement Reform Act (GPRA) and its Implementing Rules and Regulations.</p> <p>For Dispositions, COA Circular No. 89-296 (January 27, 1989) shall govern.</p> <p>For Corporatization, the incorporation of the corporation must be done in accordance with the Corporation Code of the Philippines.</p> <p>For Local Concessions, Leases and Affermage, Rehabilitate-and-Transfer, Rehabilitate-Lease-and-Transfer, and Rehabilitate-Transfer-and-Operate, Management and Service Contracts where [Provincial/ City/ Municipal/ Barangay/ BARMM] funds are not used to</p>

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		<p>procure the services of the PSP, and donations, the [Provincial/ City/ Municipal/ Barangay/ BARMM] ordinances policies or ordinances will be the governing instrument.</p> <p>For Joint Ventures, Section 35 of the 1991 LGC and Article 62 of the Implementing Rules and Regulations of the 1991 LGC shall be governing law, and Law on Partnerships of the Civil Code of the Philippines shall apply suppletorily.</p> <p>For Leases and Affermage, and Donations, the Law on Leases of the Civil Code of Philippines may be referred to.”</p>
Role of NEDA	<p>Author’s Notes: Regardless of the project cost, no NEDA Board approval</p> <ul style="list-style-type: none"> ○ Approved by NEDA-ICC and endorsed by Regional Development Council (RDC) if project has Government Undertakings using national government funds such as: Guarantees on Demand, Guarantees on Private Sector Return, Guarantees on Loan Repayment; Viability Gap Funding and other forms of Subsidy; and monetary payment of Contingent Liability. (Section 7(a)(1) 2nd paragraph) ○ Endorsement for the National Government through the RDC prior to the endorsement of the LDC concerned and approval by the Sanggunian (Section 7(a)(1) 4th paragraph) 	<p>“In pursuing BOT Law variants, the [Province/ City/ Municipality/ Barangay/ BARMM] shall comply with BOT Law and its Implementing Rules and Regulations.”</p> <p>“The xxx NEDA may extend technical and financial assistance to the [Province/ City/ Municipality/ Barangay/ BARMM] and such assistance may be embodied in a memorandum of understanding or agreement.”</p> <p>Author’s Notes: LGU JVs are excluded from the coverage of the NEDA JV Guidelines.</p>
Role of PPP Center	<ul style="list-style-type: none"> ○ Assist LGUs in identifying, prioritizing, developing, and maintaining a pipeline of PPP Projects ○ Provide project advisory services and technical assistance to LGUs 	<p>“The xxx PPP Center may extend technical and financial assistance to the [Province/ City/ Municipality/ Barangay/ BARMM] and such assistance may be embodied in a memorandum of understanding or agreement.”</p>

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	<ul style="list-style-type: none"> ○ Provide regular monitoring and status reports on the implementation of LGU PPP Projects ○ Manage and administer the Project Development and Monitoring Facility ○ Manage and administer the PPP Risk Management Fund ○ Determine completeness of unsolicited proposals and appropriate Approving Body ○ Assist LGUs during negotiations of unsolicited proposals (Section 24(a)) 	
Role of Department of Finance	Clearance from DOF needed if there is a national Government Undertaking under the PPP contract. (Section 8(b)(2))	“The xxx Department of Finance, xxx may extend technical and financial assistance to the [Province/ City/ Municipality/ Barangay/ BARMM] and such assistance may be embodied in a memorandum of understanding or agreement.”
Prequalification, Bids and Awards Committee (PBAC)	<p>PBAC shall responsible for all aspects of pre- bidding and bidding process in solicited proposals, or the comparative bidding process in Unsolicited Proposals. (Section 8)</p> <p>PPP Code does not enumerate the members of the PBAC. The Draft IRR provides a list:</p> <ul style="list-style-type: none"> ○ Chairperson – the Administrator or at least a third ranking permanent official of the local IA ○ IA Treasurer or Accountant ○ IA Planning and Development Coordinator or Engineer of the Implementing ○ Legal officer of the LGU (if none, external legal advisor or higher LGU) 	<p>“There is hereby created a P4 Selection Committee (P4-SC) for purposes of selecting a PSP for a specific P4 Project. The P4-SC, to be constituted and convened by the [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Economic and Development Planning Board], shall be composed of the following:</p> <ol style="list-style-type: none"> 1. Chairperson – At least a third ranking officer of the [Province/ City/ Municipality/ Barangay/ BARMM]; 2. Secretary – [Provincial/ City/ Municipal/ BARMM Legal Officer]; 3. The [Provincial/ City/ Municipal/ BARMM Treasurer]; 4. The [Provincial/ City/ Municipal/ BARMM Planning and Development Officer]; 5. One (1) representative from and selected by the Sanggunian [Panlalawigan/ Panlungsod/ Bayan/

ASPECTS	PPP CODE (RA 11966)	AGRA TEMPLATE P4 ORDINANCE
	<ul style="list-style-type: none"> ○ A representative from and selected by the local <i>Sanggunian</i> or by the LUC Board designated through a resolution ○ 2 representatives from and chosen by the accredited CSOs, Pos, and NGOs who are members of the local development council 	<p>Barangay/ Regional Assembly] designated in an appropriate resolution; and</p> <p>6. Two (2) representatives from and chosen by the accredited CSOs, POs and NGOs who are members of the [Provincial/ City/ Municipal Development Council/ Regional Economic and Development Planning Board].”</p>
Feasibility Study	<p>Complete FS required per Draft IRR:</p> <ol style="list-style-type: none"> 1. Problem Definition/ Objectives 2. Project Description 3. Project/ Sectoral Program/ Regional and Spatial Context 4. Expected Outcomes and Key Success Indicators 5. Analysis of Technical Solutions 6. Project Costs 7. Legal Due Diligence 8. Demand and Supply/ Market Analysis 9. Proposed Tariff Structure 10. Financial Analysis 11. Economic Analysis 12. Social and Environmental Analysis 13. Risk Allocation 14. Value for Money Analysis (for Solicited) 15. Contractual Arrangement Options 16. Job Creation Information 17. Description of Supply Chain 18. Description of Products or Services to be provided 19. Description of the Geographic and Catchment Area 20. Results of Stakeholder Consultation 	<p>“A study, full or pre-feasibility study or business case prepared by the [Province/ City/ Municipality/ Barangay/ BARMM] in a competitive selection or a PSP when submitting an unsolicited proposal, containing or indicating a needs analysis, affordability assessment, value for money assessment, preliminary risk assessment, stakeholder assessment, human resource assessment, bankability assessment, legal viability assessment, P4 mode selection, market testing if relevant, indicative transaction implementation plan, and draft P4 contract. The study may be supported by the results of the appropriate “willingness-and-ability-to-pay” survey. The Project Study can be a feasibility study, pre-feasibility study or business case.”</p> <p>“The P4-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation of the Feasibility or Project Study xxx.”</p>

ASPECTS	PPP CODE (RA 11966)	AGRA TEMPLATE P4 ORDINANCE
Parameters, Terms and Conditions (PTCs)	<p>“Upon submission of complete requirements by the Implementing Agency, the appropriate Approving Body shall evaluate and render its decision on the project, and set forth the required parameters, terms, and conditions (PTCs), considering the nature and complexity of the PPP Project.</p> <p>The PTCs set forth by the Approving Body shall be the basis for the drafting and approval of tender documents and PPP contract, and shall include, among others, the project scope, required levels of service and key performance indicators, safeguards that will protect the interests of the government and the public, and penalties to be imposed for failure of any party to deliver obligations under the PPP contract.” (Section 7(c))</p> <p>Under the Draft IRR, the Minimum PTCs are:</p> <ol style="list-style-type: none"> 1. Project Scope 2. Contractual Arrangement 3. Term 4. Rights and Obligations of Parties 5. Performance Standards and Key Performance Indicators 6. Investment Recovery Schemes 7. Revenue share, if any 8. Government Undertakings 9. Proposed Risk Allocation 10. Contingent Liabilities 11. Bid Parameter 	<p>“The P4-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the xxx determination of the minimum designs, performance standards/ specifications, economic parameters xxx.”</p>

ASPECTS	PPP CODE (RA 11966)	AGRA TEMPLATE P4 ORDINANCE
	12. Ceiling for Debt-to-Equity Ratio 13. Proposed Public Bidding Process – single or 2-stage (if solicited) 14. Proposed Period for Comparative Challenge (90 days to 1 year)	
Solicited Projects	Public bidding initiated by IA (Section 9) ○ Stages: Single-Stage or Two-Stage (qualification requirements and/ then bid proposals) ○ Manner: Manual or Electronic	“The Competitive Selection procedure shall consists of the following steps: advertisement, issuance of instructions and tender documents, conduct of pre-bid conferences, eligibility screening of prospective bidders, receipt and opening of bids, posting of proposal securities, evaluation of bids, post-qualification, and award of contract.”
Bid Parameters	<p>“The PPP contract shall be awarded to the bidder who has satisfied all pre- qualification and eligibility requirements and has submitted the most responsive bid to the bid parameter proposed by the Implementing Agency and set forth in the PTCs approved by the appropriate Approving Body.” (Section 9(b), 2nd paragraph)</p> <p>“Most Responsive Bid refers to the bid that conforms, in all material respects, to the bid solicitation requirements and approved bid parameters, and the one that is most advantageous to the government.” (Section 3(w))</p> <p>Per Draft IRR, the most responsive bid is the bid that conforms, in all material respects, to the bid solicitation requirements and approved bid parameters, and the one that is most advantageous to the government. A bid that is most advantageous to the government</p>	<p>“Competitive Selection. – (a) The Competitive Selection procedure shall consists of the following steps: advertisement, issuance of instructions and tender documents, conduct of pre-bid conferences, eligibility screening of prospective bidders, receipt and opening of bids, posting of proposal securities, evaluation of bids xxx”</p> <p>“Competitive Negotiations. – For concession arrangements, leases or affermage, management and service contracts where public funds are not used to procure the services of the PSP, and onerous donations and the [Province/ City/ Municipality/ Barangay/ BARMM] invites two or more qualified PSPs to enter into negotiations for a P4 project, unless there is only one qualified offeror with a unique specialization, informing all the qualified PSPs that there is more than one offeror and simultaneous negotiations are being conducted and that the P4 contract shall be awarded to the PSP which offers the best combination of quality and price based on the</p>

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	includes one that protects the public by providing affordable, accessible, and efficient public service, taking into account the totality of circumstances.	feasibility or project study prepared by the [Province/ City/ Municipality/ Barangay/ BARMM].”
Unsolicited Proposals (UPs)	<p>“Refers to a project proposal made by a Private Proponent to undertake a PPP Project pursuant to Section 10 of this Code.” (Section 3(ii))</p> <p>“Unsolicited Proposals shall be submitted to the PPP Center for determination of completeness and determination of the appropriate Approving Body, within ten (10) calendar days from receipt thereof. If the Unsolicited Proposal is determined to be complete, such Unsolicited Proposal shall thereafter be endorsed by the PPP Center to the appropriate Implementing Agency.” (Section 10(a))</p>	“Refers to project proposals submitted by a PSP to the [Province/ City/ Municipality/ Barangay/ BARMM] to undertake Developmental Projects without a formal solicitation issued by the [Province/ City/ Municipality/ Barangay/ BARMM] whereby the negotiated terms shall be subjected to comparative proposals.”
Government Undertakings	<p>“An Unsolicited Proposal shall not contain any of the following Government Undertakings:</p> <ol style="list-style-type: none"> 1. Viability Gap Funding and other forms of subsidy; 2. Payment of ROW related costs; 3. Performance undertaking; 4. Additional exemptions from any tax other than those provided for by law; 5. Guarantee on Demand; 6. Guarantee on Loan Repayment; 7. Guarantee on Private Sector Return; 8. Government equity; and 9. Contribution of assets, properties, and rights. <p>(Section 10(c))</p>	<p>“The prohibition for extending Direct [Provincial/ City/ Municipal/ Barangay/ BARMM] Guarantee, Direct [Provincial/ City/ Municipal/ Barangay/ BARMM] Subsidy and Direct [Provincial/ City/ Municipal/ Barangay/ BARMM] Equity only applies to unsolicited proposals for BOT Law variants under the BOT Law.</p> <p>For BOT Law variants that will be subjected to bidding, Concession Arrangements, Leases or Affermage, Management and Service Contracts, and Joint Ventures, the [Province/ City/ Municipality/ Barangay/ BARMM] may provide Direct [Provincial/ City/ Municipal/ Barangay/ BARMM] Guarantee, Direct [Provincial/ City/ Municipal/ Barangay/ BARMM] Subsidy, Direct [Provincial/ City/ Municipal/ Barangay/ BARMM] Equity, or Viability Gap</p>

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		<p>Funding; provided, that the [Province/ City/ Municipality/ Barangay/ BARMM] can use a portion of its general fund, its development fund comprising its annual share in the Internal Revenue Allotment, and/ or its equitable share in the proceeds of the utilization and development of the national wealth found within its territory for this purpose; provided further, that any amount used for subsidy or equity for a P4 project shall be deemed for development purposes and for the direct benefits of the inhabitants [pursuant to Sections 287 and 294 of the 1991 LGC respectively].</p> <p>For all P4 Modalities, the [Province/ City/ Municipality/ Barangay/ BARMM] may provide Credit Enhancements and Cost-Sharing schemes.”</p>
Viability Gap Funding	“xxx may be extended by the government to make an economically viable revenue-based PPP Project financially viable.” (Section 3 (gg))	“Refers to an explicit subsidy that is performance-driven (i.e., based on private party achieving measurable outputs) and targeted to socio-economically disadvantaged users or groups of users; or any financial support in the form of grants or assistance, one time or deferred, to infrastructure projects undertaken through P4 with a view to make them commercially viable.”
Subsidy	“Refers to an agreement where the Implementing Agency will: (1) defray, pay for, or shoulder a portion of the Project Cost or the expenses and costs in operating or maintaining the project; (2) bear a portion of capital expenditures associated with the establishment of an infrastructure or development project and services; (3) contribute any property or assets to the project; and/or (4) waive charges or fees relative to business permits or	“Cost-Sharing - This shall refer to the [Province/ City/ Municipality/ Barangay/ BARMM] portion of capital expenses associated with the establishment of an infrastructure development facility such as the provision of access infrastructure, right-of-way, and any partial financing of the project.”

ASPECTS	PPP CODE (RA 11966)	AGRA TEMPLATE P4 ORDINANCE
	licenses that are to be obtained for the Construction of the project: Provided, That items (1) to (4) shall not be considered as Subsidy if the government receives payment or remuneration from the Private Partner for such xxx.” (Section 3 (gg))	
Guarantees	<p>“Guarantee on Demand refers to an agreement where the Implementing Agency undertakes to assume the market demand risks associated with the PPP Project: Provided, That the adoption of availability-based schemes and Availability Payments shall not be considered as Guarantee on Demand.” (Section 3 (n))</p> <p>“Guarantee on Loan Repayment refers to an agreement where the Implementing Agency guarantees to assume responsibility for the repayment of debt directly incurred by the Private Partner in implementing the PPP Project in case of a loan default. As an exception, government repayment of debt as part of Termination Payments shall not be considered as Guarantee on Loan Repayment.” (Section 3 (o))</p> <p>“Guarantee on Private Sector Return refers to an agreement where the Implementing Agency guarantees to provide a predetermined rate of return on the investment of the Private Partner. This shall not cover Termination Payments arising from government events of default.” (Section 3 (p))</p>	<p><i>Direct [Provincial/ City/ Municipal/ Barangay/ BARMM] Equity</i> - Refers to the subscription by the [Province/ City/ Municipality/ Barangay/ BARMM] 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.</p> <p><i>Direct [Provincial/ City/ Municipal/ Barangay/ BARMM] Guarantee</i> - Refers to an agreement whereby the [Province/ City/ Municipality/ Barangay/ BARMM] guarantees to assume responsibility for the repayment of debt directly incurred by the PSP in implementing the project in case of a loan default.</p> <p><i>Direct [Provincial/ City/ Municipal/ Barangay/ BARMM] Subsidy</i> - Refers to an agreement whereby the [Province/ City/ Municipality/ Barangay/ BARMM] shall: (a) defray, pay or shoulder a portion of the P4 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</p>

ASPECTS	PPP CODE (RA 11966)	AGRA TEMPLATE P4 ORDINANCE
		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.”
Submission of UPs	Per Draft IRR, UPs shall be submitted first to the PPP Center, not the LGU	“A PSP submits an unsolicited proposal accompanied by a Feasibility or Project Study and draft P4 contract to the [Provincial/ City/ Municipal/ Barangay/ BARMM] for a projected P4 Project.”
Completeness of UPs	Per Draft IRR: <ol style="list-style-type: none"> 1. Complete Feasibility Study (FS) 2. Traceable Economic Model 3. Traceable Financial Model 4. Minimum Parameters, Terms and Conditions 5. Information on the qualifications of the Private Proponent 6. Certification that UP has no Government Undertakings 7. Draft PPP Contract 8. Valuation Report for the usufruct 9. Gender Responsive Checklist (per PPP Center Website) 10. Right of Way Acquisition/ Resettlement Plan (per PPP Center Website) 	“The P4-SC shall make a determination of the completeness of the unsolicited proposal, the eligibility of the PSP, the necessity for the proposed project, the consistency of the terms of the draft P4 contract with this Ordinance, and the appropriateness of the proposed P4 modality.”
UP Timelines	<ul style="list-style-type: none"> ○ Completeness check by PPP Center (10 days) (Section 10(a)) ○ Detailed Evaluation post-completeness test (90 days, otherwise, approval by inaction) (Section 10(d)(2)) ○ Good faith negotiations (not exceed 150 days) (Section 10(d)(3)) 	“The [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Governor] through an executive order, upon the recommendation of the P4-SC, shall have the authority to adopt and prescribe the appropriate schedules and timelines for each PSP selection process: provided, that the periods are reasonable and will

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	<ul style="list-style-type: none"> ○ Submission of UP for approval by Sanggunian (120 days, otherwise, approval by inaction) (Section 7(d)) ○ Comparative Challenge (90 to 365 days) (Section 10(e)) 	not undermine free competition, transparency and accountability.”
If Multiple UPs	<p>“xxx in case there are more than one (1) complete Unsolicited Proposal for the same or similar project, the Implementing Agency shall determine the most advantageous proposal for the government and the public among the submitted proposals, considering, among others, economic and financial viability of the project, proposed project scope and terms, investment recovery scheme, risks proposed to be assumed by the government, and the qualifications of the Private Proponent: xxx”</p> <p>Per Draft IRR, similar UPs may be entertained by the PPP Center within the 10 calendar days from the receipt of the 1st UP. Beyond the 10th day, PPP Center shall no longer assess.</p>	“If there is more than one unsolicited proposal submitted for the same P4 Project, the [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Governor], upon recommendation of the P4-SC, may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and provides the greater advantage and benefits to the community and revenues to the [Province/ City/ Municipality/ Barangay/ BARM].”
Conferment of Original Proponent Status (OPS)	<p>“Refers to the Private Proponent conferred with the “Original Proponent Status (OPS)” in accordance with Section 10 of this Code.”</p> <p>“If the Implementing Agency and the Private Proponent reach a successful negotiation, the Implementing Agency shall grant the Private Proponent an OPS, which shall be valid for a period not exceeding one (1) year from such conferment. (Section 10(d)(3))</p>	“Upon completion of the initial evaluation, the [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Governor], upon recommendation of the P4-SC, shall either issue a certificate of acceptance or non-acceptance of the proposal for purposes of detailed negotiations. Upon the issuance of the certificate of acceptance, the PSP is <i>ipso facto</i> conferred original proponent status and no other proposal for the same project may be subjected to the competitive challenge process.”

ASPECTS	PPP CODE (RA 11966)	AGRA TEMPLATE P4 ORDINANCE
Right of OP	<p>“The comparative challenge shall be conducted using the right-to-match mechanism. Under such mechanism, the Original Proponent shall have the right to match the proposal submitted by a challenger during the comparative challenge: Provided, that the Original Proponent shall have thirty (30) calendar days to match the said proposal put forth by the challenger.</p> <p>If the Original Proponent is able to match the proposal of the challenger, the PPP Project shall be awarded to the Original Proponent. Otherwise, the PPP Project shall be awarded to the winning challenger.” (Section 10(e))</p>	<p>“In the evaluation of proposals, the best offer shall be determined to include the original proposal of the PSP. If the [Province/ City/ Municipality/ Barangay/ BARMM] determines that an offer made by a comparative PSP or challenger other than the negotiated terms with original proponent is superior or more advantageous to the [Province/ City/ Municipality/ Barangay/ BARMM] than the original proposal, the PSP who submitted the original proposal shall be given the right to match such superior or more advantageous offer. Should no matching offer be received within the stated period, the P4 Project shall be awarded to the comparative PSP submitting the most advantageous proposal. If a matching offer is received within the prescribed period, the P4 Project shall be awarded to the original proponent. If no comparative proposal is received by the [Province/ City/ Municipality/ Barangay/ BARMM], the P4 Project shall be immediately awarded to the original proponent.”</p>
PPP Contracts	<p>Mandatory Provisions in PPP Contracts per Draft IRR:</p> <ul style="list-style-type: none"> ○ specific contractual arrangement, term, and scope of work ○ minimum performance standards and specification ○ KPIs, targets, and procedures for measuring and reporting results ○ implementation milestones, including those for securing other approvals and the project completion date ○ cost recovery scheme via proposed tolls, fares, fess, rentals, and other charges, as the case may be 	<p>“The P4 Contract shall be signed by the [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Governor] on behalf of the [Province/ City/ Municipality/ Barangay/ BARMM][with the prior authorization or ratification by the Sanggunian [Panlalawigan/ Panlungsod/ Bayan/ Barangay]] approving all terms of the P4 Contract, and the duly authorized representative of the PSP.</p> <p>The direct and ultimate beneficiary of any P4 Contract shall be the constituents of the Province/ City/ Municipality.</p>

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	<ul style="list-style-type: none"> ○ obligation of the Private Partner to disclose loan or financing documents ○ liquidated damages ○ performance security requirements, including their validity and top-up mechanism procedures, contemplated under this IRR ○ minimum insurance coverage as may be required for the project, such as Contractors' all risk, motor vehicle, workmen's compensation, third party liability, force majeure, or comprehensive general liability insurance, as may be applicable ○ acceptance tests and procedures ○ warranty period and procedures (after transfer) and warranty security ○ lock-in periods, as applicable ○ grounds for and effects of contract termination, including formula for termination payment ○ conditions and procedures for lender step-in rights ○ conditions for acceptable permitted security interest ○ procedures for resolving disputes as detailed in this IRR ○ the manner and procedures for the resolution of warranty against corruption ○ wind-up and transfer measures ○ period within which Financial Close shall be achieved by the Private Partner ○ compliance with all other applicable laws, rules, and regulations 	<p>Representatives of accredited CSOs, NGOs and POs may sign the P4 Contract as monitoring entity or witness.</p> <p>The principal P4 Contract shall describe the P4 Project, the rights, functions, obligations and responsibilities of and risks assumed by each of the contracting party, dispute mechanisms and all other provisions enumerated under Section 5 (v) hereof. Whenever appropriate, the P4 Contract shall contain the Preambulatory Clauses or Whereas Clauses, Party Clause, Rules of Interpretation, Nature of the P4, Term of the Project, Contract Objective, Performance Bonds, Key Performance Indicators, Risk Allocation, Rights, Payment to PSE or PSP, Tariff Scheme, Subsidy or Support Mechanism, Insurance Requirements, Delay Provisions, Force Majeure, Governmental Action, Government and Public Sector Entity (PSE) Warranties, PSP Warranties, Change in the Law, Regulatory Regime, Variations, Termination, Indemnification, Intellectual Property, Claims, Financial security, Dispute Resolution, Step-in Rights, Changes in the Composition of the PSP/ Service Provider, Partnership Management, Compliance with all Laws, Personnel, Conditions Precedent, among others."</p>

ASPECTS	PPP CODE (RA 11966)	AGRA TEMPLATE P4 ORDINANCE
	<ul style="list-style-type: none"> total cost of the project, project specifications and features social and environment safeguards provisions on the use of dispute avoidance and ADR mechanisms ownership or retention of patents, technology and consultant 	
Regulation	<p>“All regulatory bodies charged with approval of initial tolls, fares, fees, rentals, and other charges and adjustments thereof, including but not limited to the Toll Regulatory Board, the Civil Aviation Authority of the Philippines, and the Land Transportation Franchising and Regulatory Board, shall: xxx</p> <p>In the absence of an appropriate regulatory body, the initial tolls, fares, fees, rentals, and other charges and adjustments thereof shall be as stipulated in the PPP contract. In the case of Local PPP Projects, the Implementing Agency may also opt to create and establish a local rate setting body: Provided, That the composition, powers, and responsibilities of such body shall be set forth in an ordinance or resolution approved by the local Sanggunian of the Implementing Agency.” (Section 13)</p>	<p>“The regulation of the P4 shall be pursuant to the P4 contract and exercised by the appropriate regulatory authority.”</p> <p>“The P4 Regulatory Authority (P4-RA) created under this Code shall be tasked with performing contract management functions, such as partnership management (i.e., corporate governance, communication and information sharing, and dispute resolution), performance or service delivery management (i.e., risk management and performance management), and contract administration (i.e., variation management, contract maintenance and financial administration), for all P4 arrangements entered into by the [Province/ City/ Municipality/ Barangay/ BARMM]. Aside from these, the P4-RA shall be responsible for setting and monitoring the tariff, and administering the subsidy pursuant to the P4 contract.”</p>
Amendments	<p>“A contract variation, expansion, or extension of an existing PPP Project may be allowed, subject to due diligence and recommendation of the Head of the Implementing Agency.</p>	<p>“P4 contracts entered into prior to the enactment of this P4 Code may be amended; provided, that the terms of the original P4 contract allow for amendments, or the amendments do not tend to increase the financial exposure, liabilities and risks of the [Province/ City/ Municipality/ Barangay/ BARMM] or any other factors that</p>

ASPECTS	PPP CODE (RA 11966)	AGRA TEMPLATE P4 ORDINANCE
	<p>The following variation, expansion, or extension of an existing PPP Project, shall be approved by the appropriate Approving Body:</p> <ol style="list-style-type: none"> Changes in the agreed schedule or parametric formula to calculate tolls, fares, fees, rentals, and other charges and adjustments thereof, as stipulated in the PPP contract, unless already regulated and publicly- disclosed; Decrease in the Implementing Agency's revenue or profit share derived from the project, except as may be allowed under a formula approved by the relevant regulatory or Approving Body; Change in the approved scope of works, decrease in the performance standards, deferment of committed service levels, or change in the contractual arrangement; Extension in the contract term; or Increase in the financial liabilities of the government under the PPP Project.” (Section 19) 	<p>would cause disadvantage to [Province/ City/ Municipality/ Barangay/ BARMM] and any deviation that will cause prejudice to losing PSPs[; provided further, that the amendments are approved by the [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Governor] with prior authorization from the Sanggunian [Panlalawigan/ Panlungsod/ Bayan/ Barangay], and the revised terms are approved or confirmed by the Sanggunian through the enactment of an ordinance].”</p> <p>“Neither party shall unilaterally rescind or amend a P4 Contract. Any amendment to a P4 Contract, which if effected will not violate the policy on competition and fairness and does not materially affect the substance of the P4 Contract, after award and signing of contract shall undergo approval by the [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Governor][with prior authorization by the Sanggunian [Panlalawigan/ Panlungsod/ Bayan/ Barangay]. Non-compliance with the corresponding approval process stated shall render the amendment null and void.] Any form of amendment may be allowed after the P4 contract has been executed, provided that, the right to amend is accorded to all bidders and challengers and specified in the tender documents, and such right is stipulated in the P4 contract. [Any amendment must be approved by the Sanggunian [Panlalawigan/ Panlungsod/ Bayan/ Barangay through an ordinance by two-thirds (2/3) vote of the members present, there being a quorum].”</p>

ASPECTS	PPP CODE (RA 11966)	AGRA TEMPLATE P4 ORDINANCE
Contract Termination	<p>“All PPP contracts shall define all events that may lead to its termination, including but not limited to, either party event of default, force majeure and other no-fault termination events, and other termination events, as may be agreed upon by the parties to the PPP contract. For such events that may lead to contract termination, the PPP contract shall provide remedies, curing periods, lender step-in rights, remittance procedures, default interest rates, and written notice requirements agreed upon by both parties. The contract shall likewise provide that termination shall take place only upon failure to remedy or cure the default in accordance with the PPP contract.</p> <p>The PPP Project shall not be terminated for an event of default without exhausting the corresponding remedy or curing period.” (Section 21)</p>	<p>Stated in the P4 Contract</p>
Material Adverse Government Action (MAGA)	<p>“Refers to any act of the government which the Private Partner had no knowledge of, or could not be reasonably expected to have had knowledge of, prior to the effectivity of the PPP contract, and that occurs after the effectivity of the PPP contract, other than an act which is authorized or permitted under the PPP contract, which (1) specifically discriminates against the sector, industry, or project, and (2) has a significant negative effect on the ability of the Private Partner to comply with any of its obligations under the approved PPP contract. MAGA may include unanticipated regulatory risks.” (Section 3(v))</p>	<p>“A duly executed and legal P4 Contract shall be respected and not impaired, and shall be binding on the successor administration pursuant to the provision on corporate succession. Procedures, activities and steps duly undertaken by the [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Governor], P4-SC, [Regional Economic and Development Planning Board,] [Sangguniang Panlalawigan/ Panlungsod/ Bayan/ Barangay] pursuant to this Ordinance shall be continued by the successor Administration. Any amendment or revision to this Ordinance by the next Administration shall not in any way prejudice vested and contractual rights of the [Province/ City/ Municipality/ Barangay/ BARMM] and the PSPs as to the substance of agreements signed,</p>

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	<p>“Contingent Liability refers to an obligation that may arise from events specified in a PPP contract, the occurrence, timing, and amount of which are uncertain. These events include, but are not limited to, regulatory action, force majeure, breach of government warranties, and MAGA, among others.” (Section 3(d))</p>	<p>certifications issued, resolutions issued and procedures undertaken.”</p> <p>“Neither party shall unilaterally rescind or amend a P4 Contract. Any amendment to a P4 Contract, which if effected will not violate the policy on competition and fairness and does not materially affect the substance of the P4 Contract, after award and signing of contract shall undergo approval by the [Provincial Governor/ City Mayor/ Municipal Mayor/ Punong Barangay/ Regional Governor][with prior authorization by the Sanggunian [Panlalawigan/ Panlungsod/ Bayan/ Barangay]. Non-compliance with the corresponding approval process stated shall render the amendment null and void.] Any form of amendment may be allowed after the P4 contract has been executed, provided that, the right to amend is accorded to all bidders and challengers and specified in the tender documents, and such right is stipulated in the P4 contract. [Any amendment must be approved by the Sanggunian [Panlalawigan/ Panlungsod/ Bayan/ Barangay through an ordinance by two-thirds (2/3) vote of the members present, there being a quorum].”</p> <p>“The gist of the P4 Contract shall be annotated at the back of the title of the property over which the P4 project is located.”</p> <p>(“A P4 Contract, upon the favorable action of the Sanggunian [Panlalawigan/ Panlungsod/ Bayan/ Barangay/ BARMM] through an ordinance by two-thirds (2/3) vote of</p>

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		the members present, there being a quorum, may be the subject of a plebiscite funded by local funds pursuant to a referendum under Section 126 of the 1991 LGC.”
Accountability and Liability	<p>“Without prejudice to the provisions of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act" and other penal laws, any person, whether private individual or public officer or employee, who commits any of the prohibited acts under (a), (c), (d), (e), (f), (k), (l), (m), (n), and (o) of this section, shall be punished by imprisonment from a minimum of three (3) years to a maximum of six (6) years and a fine ranging from One million pesos (P1,000,000.00) to Five million pesos (P5,000,000.00). For prohibited acts under (b), (h), (i), and (j) of this section, the penalty of imprisonment of three (3) to six (6) years or a fine ranging from One million pesos (P1,000,000.00) to Five million pesos (P5,000,000.00), or both, shall be imposed.”</p> <p>In addition, such acts committed by the Private Partner and its concerned officers may cause the termination of the PPP contract, the lapse of any applicable warranty period, and the perpetual disqualification of the Private Partner from participating in any public bidding or entering into any contractual arrangement allowed in this Code. This is without prejudice to any other civil or administrative liability that erring officials, Private Proponents, or Private Partners may incur.</p>	<p>“The [Province/ City/ Municipality/ Barangay/ BARMM] shall ensure, promote and eliminate all obstacles to social accountability and allow and enhance constructive engagement between citizens’ groups, academe, consumers, rate-payers, general public, [Province/ City/ Municipality/ Barangay/ BARMM], national government agencies, regulatory agencies, and PSP.”</p> <p>“The [Province/ City/ Municipality/ Barangay/ BARMM] and its officials, in undertaking a P4 project, selecting a PSP and implementing a P4 contract, shall not be exempt from liability for death or injury to persons or damage to property. Failure to respect a duly-executed P4 Contract by successor officials shall render them liable without prejudice to the application of Alternative Dispute Resolution mechanisms under Section 42 hereof.”</p> <p>“Violation of this Code and the Code of Conduct insofar as the [Provincial/ City/ Municipal/ Barangay/ BARMM] elective officials are concerned shall constitute a ground for disciplinary action or amount to loss of confidence under the 1991 LGC and relevant laws, and with regards local appointive officials, such violation shall render them administratively liable. Officials may also be rendered criminally liable under applicable laws and ordinances. Representatives of the PSP shall be held liable for damages, offenses and crimes depending on the nature of</p>

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	<p>The liability of the public officer or employee or former public officer or employee for any violation of the prohibitions under this Code shall survive the retirement, resignation, expiration of term, or removal from office, of said public officer or employee, and shall include the prohibition for the erring officer to hold public office, either as an elected, or an appointed government official to any local or national position, and to act as a consultant for the Philippine Government with regard to any activity provided or authorized in this Code, the termination of the PPP contract, and the lapse of any applicable warranty period/s.” (Section 32)</p>	<p>their participation and involvement in the unlawful act or omission.”</p> <p>“Before commencing their functions, each member of the P4-SC and P4-RA and the contract manager shall sign a Code of Conduct, which shall guide each member in the performance of their duties as such.”</p>
Role of Courts	<p>“No temporary restraining order, preliminary injunction, preliminary mandatory injunction, temporary environmental protection order, or similar temporary or provisional reliefs or remedies, shall be issued by any court, except the Supreme Court, against any Implementing Agency or the PPP Center, its officials or employees, or any person or entity, whether public or private acting under the government direction, to restrain, prohibit, or compel the following acts: xxx” (Section 23)</p>	<p>While the P4 Contract is already valid, perfected and enforceable, it may be submitted for judicial, executive or administrative confirmation from the courts or appropriate government institutions.</p>
Alternative Dispute Resolution (ADR)	<p>“All PPP contracts shall include provisions on the use of dispute avoidance and Alternative Dispute Resolution (ADR) mechanisms pursuant to Republic Act No. 9285 otherwise known as the “Alternative Dispute Resolution Act of 2004.” The contracting parties shall be given complete freedom to choose which ADR mechanisms to be followed, subject to applicable laws, rules, and regulations.” (Section 14)</p>	<p>“All P4 contracts of the [Province/ City/ Municipality/ Barangay/ BARMM] shall include a provision on the use of Alternative Dispute Resolution (ADR) mechanisms in resolving disputes arising from the P4 contract. All controversies in connection with P4 undertakings and projects of the [Province/ City/ Municipality/ Barangay/ BARMM] shall likewise be addressed using ADR.”</p>

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Audit	<p>“PPP Projects awarded under this Code shall be subject to the Government Auditing Code of the Philippines and the 2009 Revised Rules of Procedures of the Commission on Audit (COA) and any amendments thereto. The COA, in consultation and coordination with the PPP Center, shall adopt and promulgate the necessary framework and guidelines on accounting and auditing PPP Projects, respectively.” (Section 31, last paragraph)</p>	<p>“The revenues, funds, expenditures and contributions of the [Province/ City/ Municipality/ Barangay/ BARMM] shall be subject to the audit examination by the COA. Revenues, funds, expenditures and contributions of the PSP shall be subject to audit by a private auditing firm.”</p> <p>“The [Province/ City/ Municipality/ Barangay/ BARMM], in order to ensure transparency and accountability, shall encourage CSOs, POs, NGOs and civic aggrupations to establish a P4 monitoring, evaluation and governance audit body functionally and fiscally independent from the [Province/ City/ Municipality/ Barangay/ BARMM] and other government institutions.”</p>