

Republic of the Philippines
Province of Cebu
CITY OF NAGA



Excerpt from the minutes of the regular session of the Sangguniang Panlungsod of the City of Naga, Cebu held on March 25, 2015 at the Session Hall, City of Naga, Cebu.

Present:

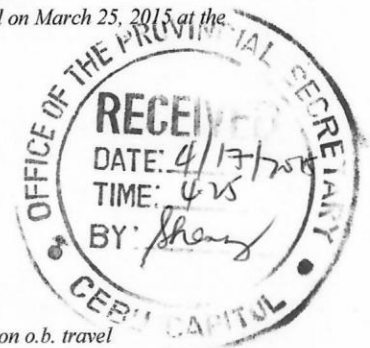
HON. DELFIN R. SEÑOR
HON. ALEXANDER R. LARA
HON. OTHELLO M. CHIONG
HON. VIRGILIO M. CHIONG
HON. ELMER Q. LAPITAN
HON. NILO B. ALINSONORIN
HON. CARMELINO N. CRUZ
HON. AFSHIN MARK K. SEÑOR
HON. LETECIA F. ABANGAN

- Vice Mayor/Presiding Officer
- Sangguniang Panlungsod Member
- Sangguniang Panlungsod Member
- Sangguniang Panlungsod Member
- Sangguniang Panlungsod Member
- Sangguniang Panlungsod Member
- Sangguniang Panlungsod Member
- Sangguniang Panlungsod Member
- Sangguniang Panlungsod Member

Absent:

HON. VENCI R. DEL MAR
HON. RODRIGO A. NAVARRO
HON. AURELIO B. ALINSONORIN

- Sangguniang Panlungsod Member - on o.b. travel
- Sangguniang Panlungsod Member - on o.b. travel
- ABC President - on o.b. travel



ORDINANCE NO. 2015-004

A CITY ORDINANCE PROMOTING A PUBLIC-PRIVATE PARTNERSHIP THROUGH A JOINT VENTURE AGREEMENT (JVA) WITH PROVISIONS OF PROCEDURE IN SELECTING THE PRIVATE SECTOR PROPONENT

WHEREAS, under Section 20, Article II of the 1987 Constitution, the “State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments”;

WHEREAS, the private sector participates in infrastructure, development and social service-related projects of the State and local government units (LGUs) through what it is popularly known as Public-Private Partnership (PPPs);

WHEREAS, Section 35 and 66 of Republic Act No. (R.A.) 7160 otherwise known as the Local Government Code of 1991 (1991 LGC) and its Implementing Rules and Regulation (IRR) categorically empower LGUs to enter into Joint Venture Agreements (JVAs);

WHEREAS, having a framework in ordinance form will ensure and facilitate consistency, integrity, reliability, sustainability, accountability and transparency, and enforceability;

NOW THEREFORE, on motion of Hon. Othello M. Chiong, duly seconded by Hon. Nilo B. Alinsonorin,

BE IT ORDAINED, by the Sangguniang Panlungsod of the City of Naga, Cebu in session assembled that:

SECTION 1. Title – This Ordinance shall be known as the “City of Naga, Cebu Joint Venture Agreement (JVA) Ordinance.”

SECTION 2. Rationale for JVAs – In pursuing JVAs, the City shall be guided by the following reasons and drivers:

- (a) JVAs provide more, better, affordable and timely services to the community.
- (b) JVAs promote the pooling and community of resources, sharing of responsibilities and functions, joint governance and decision-making, mutual innovation, and profit, income dividends, risk and loss allocation.

- (c) JVs encourage the accelerated implementation of local projects, allow for technology transfer, and improved efficiency and quality service, provide value-for-money and good economic value, enhance economic and social benefits.

SECTION 3. *Rules of Interpretation* – This Ordinance and the provisions hereof shall be liberally interpreted to accomplish the policy and objectives herein set forth.

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

- (a) *Competitive Challenge* – An alternative selection process wherein third parties or challengers shall be invited to submit comparative proposal to an unsolicited proposal, Accordingly, the PSP that submitted the unsolicited proposal, or the original proponent, is accorded the right to match any superior offers given by a comparative PSP/ challenger.
- (b) *Competitive Selection or Open Competition* – A method of selection or procurement initiated and solicited by the City, based on a transparent criteria, which is open to participation by any interested party.
- (c) *Contractual JV* – A legal and binding agreement under which the JV Partners shall perform the primary functions and obligations under the JVA without forming a JV Company.
- (d) *Cost of JV Activity/Project* – The total amount of the contributions of the parties to the JV activity/project in present value with discount rate.
- (e) *Project Study* – A study prepared by the City in a competitive selection or a PSP when submitting an unsolicited proposal, which indicates the following: needs analysis, affordability assessment, value for money assessment, preliminary risk assessment, stakeholder assessment, human resource assessment, bankability assessment, legal viability assessment, market testing if relevant, indicative transaction implementation plan, and draft JVA.
- (f) *JV Company* – A stock corporation, formed by the City and the PSP, fifty percent (50%) or less of the outstanding capital stock of which is owned by the City.
- (g) *JV Partner or Private Sector Proponent (PSP)* – The private sector entity which shall be the JV partner of the City for the JV project or activity and which shall have and adequate track record in the concerned industry, as well as technical capability and financial base consisting of equity and firm commitments from reputable financial institutions, to provide, upon award, sufficient credit lines to cover the total estimated cost of the project to implement the said project. The JV Partner or PSP may be a consortium or private JV.
- (h) *Negotiated Projects* – The instances where the desired project is the result of an unsolicited proposal from a PSP or, where the City has failed to identify an eligible private sector partner for a desired JV activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding.

- (i) *Public-Private Partnership (PPP)* – PPP is a form of legally enforceable contract between the City and a PSP, where each party assumes specified functions, bears certain risks, provides contribution or renders some obligation, and earns benefits and revenues from PPP arrangement.
- (j) *Unsolicited Proposal* – Refers to project proposals submitted by a PSP to the City to undertake a JV Project without a formal solicitation issued by the City.

SECTION 5. *JV Arrangement* – (a) A JVA, a PPP modality, is a contractual arrangement between the City and a JVA PSP or a group of private sector entities as co-venturers involving a community or pooling of interests in the performance of the service, function, business, activity or components of the JV project, with each party having a right to direct and govern the policy in connection therewith, and with a view of sharing income, dividends, revenues, profits, risks and losses, subject to the JVA.

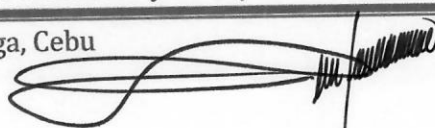
- (b) The term of the JV activity should be a fixed period not to exceed a maximum of fifty (50) years.
- (c) The City, by mutual agreement in a Government-to-Government arrangement with other local government units (LGUs), national government agencies (NGAs), government-owned and controlled corporations (GOCCs), and others, may implement JV Projects for projects located within the City's territory or those projects that will benefit the City and its community even if the project site is outside the City's territory; provided, that the collaborating or partner government entity jointly undertakes with the City the selection of the PSP.

SECTION 6. *JV Agreement* – (a) The JVA shall govern the relationship between the co-venturers, the City and PSP. The JVA shall be a public document which can be freely accessed by the public, shall be posted in two conspicuous places of the City and uploaded in the website of the City.

(b) The JVA shall contain the following provision:

1. The date on which the agreement is established, executed, and considered effective;
2. The names, addresses and identification of the parties, including the type of business of each member of the JV;
3. The name under which the JV will do business;
4. The principal place of business of the JV;
5. Clearly defined purpose and objective/s contractual/agreement mode (whether JV Company/Corporate JV or contractual JV), term and scope of the JV;
6. The term of the JV activity;
7. Total cost of the JV activity, project specifications and features;
8. The relationship between the parties, management roles of each party in the JV activity, and a statement that the parties are actually co-venturers for the project, whether or not the contract is in the name of all members;
9. Alternative Dispute Resolution;
10. Disputes arbitration clause;
11. Anti-Corruption warranties; and
12. All other pertinent provisions as the parties shall deem necessary

(c) All JVAs must be signed by the City Mayor with prior authorization by the Sanggunian Panlungsod, and the duly authorized representative of the PSP. The direct and ultimate beneficiary of any JVA shall be constituents of the City.



- (d) The regulation of the JV shall be pursuant to the JVA. A duly executed JVA shall be respected and not impaired, and shall be binding on the successor administration pursuant to the provision on corporate succession.
- (e) A JVA with a PSP pertains to the JV activity or project identified in the JVA. No other JVA may be executed for the same activity or project.

SECTION 7. *JV Procedural Requirements* – (a) If the City opts to select a PSP using either Competitive Selection or Competitive Challenge, the City in the Competitive Selection must prepare, and the PSP in the Project Study may be reimbursed by the winning PSP to the City or Original Proponent, as the case may be, subject to the terms of the bidding/challenge.

- (b) There is hereby created a JV – Selection Committee (JV-SC) for purposes of selecting a PSP for a specific JV Project. The JV-SC Members shall be designated by the City Mayor as such composed of the following:
 - (i) Chairperson – At least a third ranking officer of the City;
 - (ii) Secretary – City Legal Office;
 - (iii) The City Treasurer;
 - (iv) The City Planning and Development Officer;
 - (iv) Two (2) representatives from and selected by the Sanggunian Panlungsod

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

The JV-SC with the approval of the Mayor may invite provisional non-voting members from the national government agencies, accredited civil society groups, people's and non-government organizations and the private sector to observe in the proceedings of the JV-SC; and form a support staff composed of employees and staff of the City.

- (c) The JV-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation or evaluation of the Project Study and selection/ tender documents; determination of the minimum designs, performance standards/ specifications, economic parameters or appropriate tariff-setting mechanism; drafting or evaluation of the JVA; publication of the invitation to apply for eligibility and submission of proposal or comparative proposals; defining the eligibility requirements, appropriate from and amount of proposal securities, and schedules of the selection and challenge processes; pre-qualification of prospective PSPs, bidders or challenger; conduct of pre-selection conferences and issuance of supplemental notices; interpretation of the rules regarding the selection process; conduct of the selection or challenge process; evaluation of legal, financial and technical aspects of the proposal; resolution of disputes between PSPs and challengers; defining the appeals mechanisms; and recommendation for the acceptance of the proposal and/ or for the award of the contract.
- (d) All recommendation of the JV-SC shall be submitted to the Mayor for consideration and approval. The Mayor shall approve the tender documents and the draft JVA before they are issued to the prospective PSPs/ bidders.
- (e) All JV contracts must be signed by the Mayor with prior authorization by the Sanggunian Panlungsod.

- (f) During the consideration of the JV Contract by the *Sanggunian Panlungsod*, a public consultation shall be conducted explaining the Project, Contract, accountability mechanism built into the JV arrangement, the benefits and costs of the Project, among other relevant matters.
- (g) After the signing of the JVA by the Mayor, the JV-SC shall issue the Notice of Award to the PSP.

SECTION 8. Competitive Procedures – (a) In the selection of the PSP, there shall be procedures available for the City, i.e, Competitive Selection, Limited Negotiations, and Competitive Challenge.

- (b) The Competitive Selection procedure shall consist of the following steps: advertisement, issuance of instructions and tender documents, conduct of pre-bid conferences, eligibility screening of prospective bidders, receipt and opening of bids, posting of proposal securities, evaluation of bids, post-qualification, and award of contract.
- (c) Where the City has failed to identify an eligible PSP for a desired JV activity or when there is only one qualified bidder after subjecting the same to a competitive selection or bidding or where the desired project is the subject of an unsolicited proposal from a PSP, Limited Negotiations may take place. The negotiations will cover all the technical and financial aspects of the project or activity; provided, that the minimum designs, performance standards/specifications and economic parameters stated in the Feasibility Study and Terms of Reference for the Competitive Selection are complied with. The Mayor shall approve the terms of the Limited Negotiations prior to the award of the contract to the PSP.
- (d) The Competitive Challenge process shall be divided into three (3) Stages, described as:

Stage One/ Unsolicited Proposal – The steps are:

- (i) A PSP submits an unsolicited proposal accompanied by a Project Study to the City for a project JV Project.
- (ii) The JV-SC shall make an initial evaluation of the proposal and determination of the eligibility of the PSP.
- (iii) Upon completion of the initial evaluation, the Mayor, upon recommendation of the JV-SC, shall either issue a certificate of acceptance or non-acceptance of the proposal for purposes of detailed negotiations.
- (iv) If there is more than one unsolicited proposal submitted for the same Project, the Mayor, upon recommendation of the JV-SC, may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and provides the greater advantage and benefits to the community and revenues to the City.

Stage Two/ Detailed Negotiations – The steps are:

- (i) The parties shall negotiate and agree on the terms and conditions of the JV Project concerning its technical and financial aspects.
- (ii) Once negotiations are successful, the Parties shall issue a joint certification stating that an agreement has been reached and specifying the eligibility of the PSP and the technical and financial aspects of the JV Project as agreed upon.

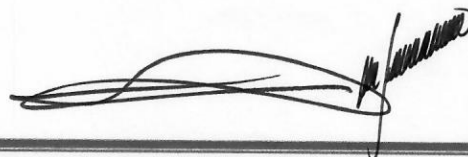
- (iii) The issuance of the certification commences the activities for the solicitation for comparative proposals.
- (iv) However, should negotiations not result to an agreement acceptable to both parties, the City shall have the option to reject the Proposal by informing the PSP in writing stating the grounds for rejection and thereafter may accept a new proposal from other PSPs, decide to pursue the proposed activity through other PPP Modalities or subject the PPP to a Competitive Selection.

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

- (i) The JV-SC shall prepare the tender documents. The eligibility criteria used in determining the eligibility of the private sector entity shall be the same as those stated in the tender documents. Property information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents.
 - (ii) The Mayor shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposal.
 - (iii) The JV-SC shall publish the invitation for comparative proposal.
 - (iv) The PSP or Original Proponent shall post the proposal security at the date of the first day of the publication of the invitation for comparative proposals.
 - (v) In the evaluation of proposals, the best offer shall be determined to include the original proposal of the PSP. If the City determines that an offer made by a comparative PSP or challenger other than the negotiated terms with original proponent is superior or more advantageous offer. Should no matching offer be received within the stated period, the JV Project shall be awarded to the comparative PSP submitting the most advantageous proposal. If a matching offer is received within the prescribed period, the Project shall be awarded to the original proponent. If no comparative proposal is received by the City, the JV Project shall be immediately awarded to the original proponent.
 - (vi) In the event that the Original Proponent is not able to match the superior offer of the challenger, the winning challenger shall reimburse, within 30 days from issuance of the notice of award, the original proponent the cost of preparing the project study, provided, that this reimbursement arrangement and the cost of preparing of the project study are expressly stated in the terms of reference for the competitive challenge, and that the JV-SC has determined that the cost is reasonable.
- (e) The Mayor. Upon recommendation of the JV-SC, shall have the authority to adopt and prescribe the appropriate schedules and timelines for each PSP selection process: provided, that the periods are reasonable and will not undermine free competition transparency and accountability.

SECTION 9. *Alternative Dispute Resolution* – All JVAs of the City shall include a provision on the use of Alternative Dispute Resolution (ADR) mechanism in resolving disputes arising from the JVA. All controversies in connection with JV undertakings and projects of the City shall likewise be addressed using ADR.

SECTION 10. *Confirmation of Executed JV Contracts* – JV contracts entered into prior to the enactment of this ordinance and have been executed with approval by the Sanggunian Panlungsod as well as the JV Company incorporated pursuant thereto enjoy the presumption of regularity and validity and are hereby ratified and confirmed.



SECTION 11. *Implementing Rules* – While this Ordinance and the provisions hereof are already operative upon its effectivity, the Mayor may issue the appropriate and relevant rules and regulation for the proper implementation of this Ordinance and its provisions.

SECTION 12. *Application of Other PPP Laws and Regulations* – Whenever relevant and appropriate as determined by the Mayor and in the absence of a specific provision to the contrary, the provision of the BOT Law, GPRA, Executive Order No. 301 (26 July 1987), COA Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the 2008 or 2013 JV Guidelines adopted by the NEDA shall APPLY IN A SUPPLEMENTARY MANNER.

Section 13. *Separability Clause* – If, for any reason, any section or provision of this Ordinance or any part thereof, or application of such section, provision or portion is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

Section 14. *Repealing Clause* – All ordinance and resolutions or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed or modified accordingly.

Section 15. *Effectivity* – This Ordinance shall take effect fifteen (15) days after its posting in two conspicuous places within the City.


UNANIMOUSLY APPROVED this 25th day of March 2015.

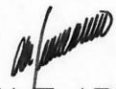
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April 13, 2015

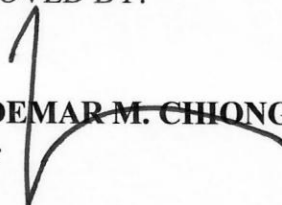
I HEREBY CERTIFY to the correctness of the afore-quoted Ordinance taken from the minutes on file.

ATTESTED BY:


DELEIN R. SEÑOR
Vice Mayor/Presiding Officer


DELZA T. ARELLANO
Secretary to the Sanggunian

APPROVED BY:


VALDEMAR M. CHONG
Mayor