

EXCERPT FROM THE MINUTES OF THE 51ST REGULAR SESSION OF THE 18TH SANGGUNIANG PANLUNGSOD, CITY OF GENERAL SANTOS, HELD AT THE SANGGUNIANG PANLUNGSOD SESSION HALL ON TUESDAY, AUGUST 08, 2017.

PRESENT:

Hon. Shirlyn L. Bañas-Nogales	City Vice Mayor & Presiding Officer
Hon. Elizabeth B. Bagonoc	City Councilor
Hon. Alberto D. Pacquiao	City Councilor
Hon. Rosalita T. Nuñez	City Councilor
Hon. Jose Orlando R. Acharon	City Councilor
Hon. Franklin M. Gacal, Jr.	City Councilor
Hon. Shandee Theresa L. Pestaño	City Councilor
Hon. Jose Edmar J. Yumang	City Councilor
Hon. Lourdes F. Casabuena	City Councilor
Hon. Ramon R. Melliza	City Councilor
Hon. Brix T. Tan	City Councilor

ABSENT:

Hon. Dominador S. Lagare, Jr.	City Councilor (OB)
Hon. Vandyke B. Congson	City Councilor (OL)

WHEREAS, Article II, Section 20 of the 1987 Constitution and Republic Act No. 7160 or the Local Government Code of 1991 (1991 LGC) recognize the indispensable role of the private sector in national and local governance.

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

WHEREAS, the 1991 LGC and its Implementing Rules and Regulations (IRR) categorically empower LGUs to enter into Joint Ventures (JVs), a PPP modality, to wit:

Section 35 (1991 LGC). Linkages with People's and Non-governmental Organizations. Local government units may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversity in agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.

Article 66 (1991 LGC IRR). Joint Ventures and Cooperative Programs or Undertakings. LGUs may enter into joint ventures and such other cooperative arrangements with people's organizations, NGOs or the private sector, to engage in the delivery of certain basic services; capability-building and livelihood projects; develop local enterprises designed to improve productivity and income; diversify agriculture; spur rural industrialization; promote ecological balance; and enhance the economic and social well-being of the people.

WHEREAS, the 1991 LGC and its IRR do not define JV and the requirements, conditions and procedures in choosing the private JV partners. The absence of a detailed statute and national framework on LGU JVs and the authority of LGUs to adopt or enact their own LGU JV framework or ordinance have been confirmed by the Department of the Interior and Local Government or DILG (Legal Opinion No. 10, s. 2014, April 8, 2014; Legal Opinion No. 47 s. 2012, July 13, 2012) and the Department of Justice (Opinion No. 18, S. 2012, April 3, 2012). Presidential Executive Order No. 78 (July 4, 2012) also affirmed that LGUs may provide their own JV rules, guidelines and procedures;

WHEREAS, a JV is not a variant under R.A. 6957 as amended by R.A. 7718, popularly known as the "Built-Operate-Transfer Law" or "BOT Law", and is not procurement as defined under R.A. 9184 or the "Government Procurement Reform Act (GPR)," therefore, said statutes do not govern JVs;

WHEREAS, in furtherance of and consistent with local autonomy, fiscal autonomy, the principle of subsidiarity, public good and welfare, general welfare, and full autonomy over proprietary powers, LGUs are free, provided no statute is violated, to adopt their own definition of a JV undertaking and prescribe the requirements, procedures and conditions for local JVs, and incorporate these in an operative framework;

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

NOW, THEREFORE, on the motion of City Councilor Brix T. Tan, duly seconded by City Councilors Elizabeth B. Bagonoc, Shandee Theresa O. Llido – Pestaño and Lourdes F. Casabuena, be it--

RESOLVED, as it is hereby resolved, to enact this Ordinance:

ORDINANCE NO. 28

Series of 2017

AN ORDINANCE INSTITUTIONALIZING THE JOINT-VENTURE (JV) APPROACH TOWARDS DEVELOPMENT IN THE CITY OF GENERAL SANTOS, PRESCRIBING GUIDELINES AND MECHANISM FOR ITS IMPLEMENTATION AND FOR OTHER PURPOSES

Hon. Brix T. Tan – Author/Sponsor
Hon. Shirlyn L. Bañas – Nograles – Co-Author

Section 1. Short Title. - This ordinance shall be known and cited as the "General Santos City Joint-Venture (JV) Ordinance".

Section 2. Declaration of Policy. - It is hereby declared, as a policy, that the CITY OF GENERAL SANTOS shall advance the general welfare and promote the interest of the community and the city within the framework of sustainable and integrated development; and shall ensure the participation of the private sector in local governance through effective and viable Joint-Venture agreements.

- a. The 1987 Constitution recognizes the indispensable role of the private sector in development, encourages private enterprise, and provides incentives to needed investments.

- b. It also states that a local government, as a territorial and political subdivision, enjoys local and fiscal autonomy. Thus, local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes, as well as the power to allocate their resources in accordance with their own priorities.
- c. It also states in Section 18 of the 1991 LGC that the City may acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes.
- d. Moreover, under Section 35 of the LGC, under Rule XIII, Article 66 of its IRR, local government units may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance economic and social well-being of the people.

Section 3. Operative Principles. - The accomplishment of the stated policy shall be guided by the following principles:

- a. The City, pursuant to Sections 1, 2 and 5, Article X of the 1987 Constitution, is a territorial and political subdivision which enjoys local autonomy and fiscal autonomy. Under Section 3, Article X of the 1987 Constitution, local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities.
- b. The general welfare and the public good shall always be promoted and that transparency, public accountability and social accountability mechanisms and approaches shall be integrated in JVs from inception to implementation.
- c. The City exists and operates in its governmental and proprietary capacities thereby making the City an agent of and is therefore accountable to the State and its community.
- d. The City must develop into a self-reliant community, and as such, is in a better position to address and resolve matters that are local in scope.
- e. Under Section 18 of Republic Act No. 7160 or the Local Government Code of 1991 (1991 LGC), the City may acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes.
- f. Under Section 22 © of the 1991 LGC, no contract may be entered into by the City Mayor on behalf of the City without prior authorization from the Sangguniang Panlungsod. The participation of the Sanggunian is thus indispensable in the adoption and implementation of a JV arrangement.

- g. Under Section 22 (d) of the 1991 LGC, the City enjoys full autonomy in the exercise of its proprietary functions and shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, those not otherwise prohibited by law and those which are essential to the promotion of the general welfare.
- h. Under Section 25 (b) of the 1991 LGC, the City may collaborate or cooperate with other LGUs, national government agencies (NGAs), government-owned and controlled corporations (GOCCs), government instrumentalities (Gis) and government corporate entities (GCEs) for the implementation of local JV projects.
- i. The City, under Section 106 of 1991 LGC, is mandated to draw up and implement a comprehensive multi-sectoral development plan. JVs shall be pursued by the City consistent with its infrastructure, development, investment, environmental and governance framework embodied in relevant policies, plans, ordinances and codes.
- j. The City, as a partner in a JV arrangement, may provide money, capital, land, assets, intellectual property, personnel, services, franchise, equity, subsidy or guarantee and use local funds; and the usage thereof for a JV project shall be considered for public use and purpose.

Section 4. Rationale for Joint-Ventures. - In pursuing JVs, the City shall be guided by the following reasons and drivers:

- a. JVs shall be promoted to provide more, better, affordable and timely services to the community.
- b. JVs shall 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 shall encourage the accelerated implementation of local projects, allow for technology transfer, and improved efficiency and quality of service, provide value-for-money and good economic value, enhance economic and social benefits.
- d. Procurement of JV Projects must be competitive and must be undertaken through open competitive bidding or competitive challenge, or in certain cases, limited negotiations. Competition must be legitimate, fair and honest. The selection of the private sector co-venturer must be done in compliance with the requirements of competition, transparency and accountability.

Section 5. Scope of Application.- This Ordinance shall apply to all Joint-Venture Agreements (JVAs) entered into by the City Government with private sector entities to extents as provided herein. The provisions of the Revised National Economic Development Authority (NEDA) Guidelines on Joint Venture Agreements shall also apply suppletorily to the projects undertaken through JVAs.

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

Section 7. Definition of Terms. - As used in this Ordinance, the following terms shall mean.

- a. City Government- refers to the City Government of General Santos.
- b. Competitive Challenge or Swiss Challenge - an alternative selection process wherein third parties or challengers shall be invited to submit comparative proposals to an unsolicited proposal. Accordingly, the Private Sector Proponent (PSP) that submitted the unsolicited proposal, or the original proponent, is accorded the right to match any superior offers given by a comparative Private Sector Proponent/challenger.
- c. Competitive Selection or Bidding 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.
- d. 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.
- e. 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.
- f. Cost Sharing - the capital expenses made by the City 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.
- g. Credit Enhancement - the direct and indirect support to a development facility by the PSP and/or City, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the JVA. Credit enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved. Credit enhancements may include but are not limited to government guarantees on the performance or the obligation of the City under its contract with the PSP, subject to existing laws on indirect guarantees.
- h. Developmental Projects – City Projects normally financed and operated by the City, 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 City; projects in furtherance of devolution, deconcentration and decentralization; and other infrastructure, social-related and developmental projects as may be authorized by the City.
- i. Direct City Equity - the subscription by the City of shares of stock or other securities convertible to shares of stock of the JV Company whether such subscription will be paid by money or assets.
- j. Direct City Guarantee - an agreement whereby the City guarantees to assume responsibility for the repayment of debt directly incurred by the PSP in implementing the project in case of a loan default.

- k. Direct City Subsidy - an agreement whereby the City shall: (a) defray, pay or shoulder a portion of the JV project cost or the expenses and costs in operating and maintaining the project; (b) condone or postpone any payments due from the PSP; (c) contribute any property or assets to the project; (d) waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/ or (e) waive charges or fees relative to the business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the PSP or operator for such payment, contribution or support.
- l. Divestment or Disposition - the manner or scheme of taking away, depriving, withdrawing of title to a property owned by the City and vesting ownership thereof to a PSP.
- m. Indirect Guarantee - refers to an agreement whereby the City assumes full or partial responsibility for or assists in maintaining the financial standing of the PSP or project company in order that the PSP/project company avoids defaulting on the project loans, subject to fulfillment of the PSP/project company of its undertakings and obligations under the JVA.
- n. 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. The Project Study may be a feasibility study, pre-feasibility study or business case.
- o. JOINT-VENTURE (JV) – shall mean a cooperative partnership between the City Government and private entity/entities in which profits and risks are shared.
- p. 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.
- q. 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 an 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.
- r. 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.
- s. Public-Private Partnerships (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 the PPP arrangement.

- t. 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 whereby the negotiated terms shall be subjected to comparative proposals.

Section 8. Joint-Venture Arrangements. - The arrangements for Joint Venture Agreements are as follows:

- a. A JV, a PPP modality, is a contractual arrangement between the City and a JV 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 JV activity may, subject to the terms of the competitive selection process, include the divestment, disposition or transfer of ownership of the JV activity, asset or project to the PSP or JV partner. The divestment or disposition may take place at the end of the JV period or before the term ends.
- d. The City, by mutual agreement in a Government-to-Government arrangement with other LGUs, NGAs, GOCCs, GIs and GCEs, 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 9. Contributions and Shareholdings. - The contributions and shareholdings of the parties shall be:

- a. The co-venturers or parties to a JV shall contribute money, capital, services, personnel, assets including equipment, land, intellectual property or anything of value, or a combination of any or all of the foregoing to the JV arrangement. The contribution of the City shall be subject to third party independent valuation.
- b. The City may allocate a portion of its Internal Revenue Allotment, real property tax, development fund, regular funds, proceeds from the utilization and development of its national wealth, Special Education Fund when the JV project is education-related, Calamity Fund when the JV project is calamity- or reconstruction-related, and special funds, if appropriate, as its contribution or share in the JV activity. These may be the actual or current funds, or future or monetized value of these funds of the City.
- c. The City may contract a loan, avail of Official Development Assistance, secure grants, issue bonds, debentures, securities, collaterals, and notes the proceeds of which can be earmarked for the JV activity.

- d. On the part of the City, in addition to the foregoing contributions, it may extend goodwill, free carry, grant a franchise, concession, usufruct, right-of-way, equity, subsidy or guarantee, provide cost-sharing and credit enhancement mechanisms, exercise police power, give tax incentives or tax holidays, perform devolved powers, expropriate and reclassify and enact or integrate zoning ordinances.
- e. The City shall be a minority equity or shareholder while the PSP shall be majority equity or shareholder, except in the case where fifty percent (50%) of the outstanding capital stock or contribution is owned or made by the City. A reasonable percentage of the equity to be provided by the PSP should come from its own resources and not borrowed.
- f. Notwithstanding having only a minority share or equity, the written consent of the City shall be obtained, based on the JVA, prior to any divestment of any asset or facility, dissolution, transfer or sale of share or equity on the part of the PSP, purchases or transactions beyond prescribed thresholds, or other activities which may affect the rights and stake in the Project of the City.
- g. Any cost avoidance or substantial savings that will be made by the City because of and directly attributable to the JV activity may be factored in the computation of the respective shares of the City and the PSP.
- h. For the utilization and development of natural resources located within its jurisdiction, the City shall be entitled to an equitable share which may come in the form of a portion of the benefits, revenues and profits thereof.
- i. The share of each JV party shall be set as fixed or determinable percentages or values either based on an overall or across-the-board assignment of contributions, revenues, profits, losses, risks and functions; or on specific assignment of contributions and functions to each JV party, provided that, the agreed percentage share is maintained and that joint governance is ensured where the City shall have representation in the governing structure based on in proportionate share at the minimum.
- j. Subject to the terms of the competitive selection process and agreement of the parties, the City may be entitled to a share greater than its contribution or equity.
- k. Each party shall be entitled to dividends, profits, income and revenues and will bear the corresponding risks, losses and obligations in proportion to its share, either based on gross or net revenues or income, unless the parties agree that the City will have a greater share in the dividends, profits, income and revenues and/ or bear lower risk and percentage loss than what it contributes to the JV arrangement.
- l. For as long as the City is involved in the JV undertaking, the PSP shall not sell/transfer its interest in the JV Company without the express written consent of the City.

- m. The share or equity of the City in the JV arrangement may be advanced, in full or in part, by the PSP where the PSP shall be paid from the future revenues due the City either by set-off or actual payment.
- n. Any subsidy, guarantee, equity or contingent liability assumed or given by the City must be reflected, disclosed and recognized in the annual appropriations of the City.

Section 10. Joint-Venture Agreements. - The Joint-Venture Agreement (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.

a. The JVA shall contain the following provisions:

- a.1 The date on which the agreement is established, executed, and considered effective;
- a.2 The names, addresses and identification of the parties, including the type of business of each member of the JV;
- a.3 The name under which the JV will do business;
- a.4 The principal place of business of the JV;
- a.5 Clearly defined purpose and objective/s, contractual/agreement mode (whether JV Company/Corporate JV or contractual JV), term and scope of the JV;
- a.6 The term of the JV activity;
- a.7 Total cost of the JV activity, project specifications and features;
- a.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;
- a.9 The establishment of a fund by the parties to finance the work, together with the amount, type (cash, assets, etc.), and valuation of committed contributions of each party and when such contributions will be made, with the fund being deposited in a special bank account under dual control and all progress payments and other revenues being deposited in such account. If the equity/contribution of the private sector is to be borrowed, a statement that the government guarantee for said loan will be extended or not;
- a.10 Procedure for additional capital infusions, if required, and a statement that the City Government guarantee for loans to be incurred by the private sector in case the additional contribution of the private sector is to be borrowed will be extended or not;

- a.11 A declaration of the participation of the parties and percentage in which profits and losses are shared, in proportion to the contributions of the party to the working fund. The amount of contribution of funds by the parties can be increased or decreased, depending on the contributions of equipment or expertise;
- a.12 The formation of a governing board or equivalent structure in the case of a Contractual JV and a board of directors in case of a Company JV;
- a.13 Specified termination/liquidation of the JV Company, buy-activity/facility including provisions on what happens to the JV's assets after the expiration of the JV agreement or end of the JV period. If equity other than cash is to be contributed, a statement as to how the property will be valued and the ownership of the property during and after the effectivity of the JVA;
- a.14 Designation of one of the parties as general manager of the project, with authority to bind the JV Company/Partnership/Parties; or, in the alternative, the constitution of a management committee, with a provision for remuneration. The basic management structure, management duties, other duties of the co-venturers and procedures to be followed in dealing with unusual situations or problems that may develop should be specified;
- a.15 Implementation milestones, regular meeting schedules, financial and periodic JV and progress reporting procedure;
- a.16 Establishment of a JV bank account, and the appointment of a chartered accountant and lawyer, if required;
- a.17 Provide for the acquisition of licenses in the name of the JV or each co-venturer, as required;
- a.18 Type of insurance carried by the JV and clearly defined liabilities to be insured against by each participant;
- a.19 Definition of items which are to be considered as costs to the JV for the purpose of determining profit or loss and a description of items which are not reimbursable to members of the JV and specified division of the profits and, risks and losses;
- a.20 Confidentiality of trade information passed between the co-venturers;
- a.21 Ownership or retention of patents, technology, and consultant reports;
- a.22 Performance security requirements of the project and the bonding obligations of the co-venturers;
- a.23 Undivided pro-rata interests held by the co-venturers on all assets of the JV;

- a.24 Restriction regarding assignment of private sector participant's undivided pro-rata interests in assets of the JV;
- a.25 Cost recovery scheme, including payment to the government of royalties/rights, the form/description and amount of earnings (cash, asset, etc.), whether it is in absolute amounts or variable, and the period and timing such earnings or payment shall be received. In case of non-cash payment or payment in form of asset, a statement/provision on how it will be valued, the minimum value of the asset, and the determination/selection of asset such as how and who will determine/select the asset;
- a.26 Indemnification and liquidated damages;
- a.27 Performance and warranty bonds;
- a.28 Minimum insurance coverage;
- a.29 Acceptance tests and procedures;
- a.30 Validity of the performance security, warranty and procedures;
- a.31 Grounds for and effects of contract termination/default including modes for settling disputes, procedure for handling guarantees, defects and insurance after termination, and threshold (in terms of amount, time/period, or both) for which non- payment or delay in payment and delay in starting the project/s shall be grounds for termination/rescission of the JV contract/agreement;
- a.32 Anti-Corruption warranties and the manner and procedures for the resolution of warranty against corruption;
- a.33 Compliance with all other laws, rules and regulations;
- a.34 Procedure and/or period for withdrawal by the government entity of its contribution to the JV, or exit divestment by the Government Entity of its interest in the JV, and Substitution or addition of parties;
- a.35 Payout of funds;
- a.36 Alternative Dispute Resolution;
- a.37 Disputes arbitration clause; and
- b. All JVAs must be signed by the City Mayor with prior authorization by the Sangguniang Panlungsod, and the duly authorized representative of the PSP. The direct and ultimate beneficiary of any JVA shall be the constituents of the City.
- c. The City Mayor shall not proceed with the award and signing of the contract if there are material deviations from the parameters and terms and conditions set forth in the proposal/tender documents that tend to increase the financial exposure, liabilities and risks of the City or any other factors that would cause disadvantage to government and any deviation that will cause prejudice to losing PSPs.

- d. Any amendment to a JVA, which if effected will not violate the policy on competition and fairness and does not materially affect the substance of the JVA, after award and signing of contract shall undergo approval by the City Mayor with prior authorization by the Sangguniang Panlungsod. Non-compliance with the corresponding approval process stated shall render the amendment null and void.
- e. 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. Procedures, activities and steps duly undertaken by the City Mayor, PPP-SC, and Sangguniang Panlungsod 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 City and the PSPs as to the substance of agreements signed, certifications issued, resolutions issued and procedures undertaken.
- f. While the JVA is already valid, perfected and enforceable, the JVA may be submitted for judicial, executive or administrative confirmation from the courts or appropriate government institutions.
- g. A JVA with a PSP pertains to the JV activity or project identified in the JVA.

Section 11. Joint-Venture Projects.-

- a. The City, regardless of the cost, may undertake developmental projects.
- b. JVs may be undertaken for the delivery of certain basic services, capability-building and livelihood projects, to develop local enterprises designed to improve productivity and income, diversity agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.
- c. In particular, the City may enter into JV arrangements for developmental projects such as but not limited to 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 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 as 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.

- d. The City shall identify specific priority developmental projects enumerated in its comprehensive multi-sectoral development plan, and development and physical framework plan for JV arrangements.
- e. Parties to a JV jointly undertake an activity in order to accomplish either an integrated or multi-use arrangement or specific goal or purpose with the end view of serving the public good, 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.
- f. In case of a project or activity requiring a franchise, concession or license to operate, the winning PSP, in case of a contractual JV, shall automatically be granted by the City the franchise or license or permit to jointly operate and maintain the facility with the City, including the collection of tolls, fees, rentals, and other charges in accordance with the schedules stipulated in the approved JVA. In case a JV Company is formed, the franchise, concession or license shall be automatically granted to the JV Company. Upon the signing of the JVA by the Mayor pursuant to the authority given by the Sangguniang Panlungsod, the franchise, concession or license is deemed awarded to the winning PSP, in case of a contractual JV, or the JV company. The original franchise period as stipulated in the JVA may be extended, as may be authorized by the City, provided that the total franchise period shall not exceed fifty (50) years.
- g. Procurement made by the City using public funds shall be subject to the GPRA and its Revised Implementing Rules and Regulations. Procurement made by the PSP using private funds shall not be covered by said statute.
- h. The revenues, funds, expenditures and contributions of the City shall be subject to the audit examination by the Commission on Audit (COA). Revenues, funds, expenditures and contributions of the PSP shall be subject to audit by a private auditing firm.

Section 12. Joint-Venture Vehicle. - The City and the PSP shall have the option to implement the JV activity through a Contractual or Unincorporated JV, or establish a JV or Incorporated Company.

- a. The JV Company shall be formed by the City and the PSP under the following parameters:
 - a.1 The JV Company shall be incorporated and registered as a stock corporation in accordance with the provisions of Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, as amended, and the prevailing and applicable rules and regulations promulgated by the Securities and Exchange Commission;
 - a.2 Ownership and nationality requirements under the Constitution and other pertinent laws should be complied with;
 - a.3 The City shall be represented in the Board of the JV Company in proportion to its investment unless more seats are allotted for the City;

- a.4 The JV Company shall be permitted to derive income from the activities authorized under the JVA during the term thereof. The City and the PSP shall be entitled to receive dividends each year from the net profits that would constitute portion of the unrestricted retained earnings of the company in each year in accordance with the JVA; and
- a.5 The JV Company should stipulate a fixed period for term of existence not to exceed a maximum of fifty (50) years.

Section 13. Joint-Venture 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 Competitive Challenge approach must submit a Project Study. The costs of preparing 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. The City shall form a JV Selection Committee for purposes of selecting PSP for specific JV projects. Their responsibilities shall be enumerated in the ordinance.
- c. All recommendations of the JV-SC shall be submitted to the City Mayor for consideration and approval. The City Mayor shall approve the tender documents and the draft JVA before they are issued to the prospective PSPs/ bidders.
- d. All JVAs must be signed by the City Mayor with prior authorization by the Sanggunian Panlungsod.
- e. During the consideration of the draft JVA by the Sangguniang Panlungsod, a public consultation/ hearing shall be conducted explaining the JV Project, draft JVA, accountability mechanisms built into the JV arrangement, the benefits and costs of the JV Project, among other relevant matters.
- f. After the signing of the JVA by the City Mayor, the JV-SC shall issue the Notice of Award to the PSP.

Section 14. Joint-Venture Selection Committee. - A JV Selection Committee (JV-SC) shall be created for purposes of selecting a PSP for a specific JV Project. The JV-SC, to be constituted and convened by the City Mayor, shall be composed of the following:

- a. Chairperson – At least a third ranking officer of the City Government to be appointed by the City Mayor;
- b. Secretary – City Legal Officer;
- c. The City Engineer- Member;
- d. The City Treasurer- Member;
- e. The City Planning and Development Coordinator-Member;

- f. Local Economic Investment Promotion Officer-Member;
- g. One (1) public officer knowledgeable in the management/operation of the project to be appointed by the City Mayor- Member
- h. One (1) technical officer knowledgeable with the technical aspects or requirements of the project, duly designated and appointed by the City Mayor on a project-to-project basis- Member (Provisional), and;
- i. Two (2) representatives from and chosen by the accredited civil society groups, people's and non-governmental organizations who are members of the City Development Council- Observers

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

The JV-SC with the approval of the City Mayor may invite provisional non-voting members from the national government agencies, regulatory agencies, NEDA, DILG, COA 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.

Section 15. Responsibility of the Joint-Venture Selection Committee. -

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 proposals or comparative proposals; defining the eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge processes; pre-qualification of prospective PSPs, bidders or challengers; 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 the legal, financial and technical aspects of the proposals; 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.

Section 16. 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:
 - c.1 fails to identify an eligible PSP for a desired JV activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding, or

- c.2 considers a project or activity either through competitive selection or competitive challenge where an indispensable or integral component thereof has already been subjected to a competitive process by the appropriate administrative agency, government instrumentality or government-owned and controlled corporation which gives the PSP/offerer a vested and exclusive right over that component without which, the PPP Project cannot be implemented as envisioned, Limited Negotiations may take place.

The negotiations will cover all the technical and financial aspects of the JV project or activity; provided, that the minimum designs, performance standards/specifications and economic parameters stated in the Feasibility or Project Study and Terms of Reference for the Competitive Selection are complied with. The City Mayor shall approve the terms of the Limited Negotiations prior to the award of the contract to the PSP. Under the 2nd instance, the City shall publish a notice to the public prior to the start of the negotiations, and if pursued under Competitive Challenge, the 3rd stage as defined below may be dispensed with.

- d. The Competitive Challenge process shall be divided into three (3) Stages, described as:

- d.1 Stage One/ Unsolicited Proposal – The steps are:

- i. A PSP submits an unsolicited proposal accompanied by a Project Study and draft JV Agreement to the City for a projected JV Project.
- ii. The JV-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 JV Agreement with this Ordinance, and the appropriateness of the JV modality.
- iii. Upon completion of the initial evaluation, the City 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. Upon the issuance of the certificate of acceptance, the PSP is ipso facto conferred original proponent status and no other proposal for the same project may be subjected to the competitive challenge process.
- iv. If there is more than one unsolicited proposal submitted for the same JV Project, the City 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.

- d.2 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 JV Project to a Competitive Selection.

d.3 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. Proprietary 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 City Mayor shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.
- iii. The JV-SC shall publish the invitation for comparative proposals.
- 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 in the amount and form stated in the tender documents.
- 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 to the City 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 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 JV 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 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 City Mayor through an executive order, 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 17. Joint-Venture Regulatory Authority.-

a. There shall be a JV Regulatory Authority (JV-RA) which shall be composed of the following:

- a.1 Chairperson – The City Mayor or the City Administrator if so designated by the Mayor;
- a.2 Vice-Chairperson –Vice-Mayor or a member of the Sangguniang Panlungsod to be chosen by the Sanggunian as evidenced by an appropriate resolution;
- a.3 Two (2) representatives from the Sangguniang Panlungsod Committee on Trade, Commerce and Industry, and Committee on Finance, Ways and Means, and Appropriations;
- a.4 City Legal Officer;
- a.5 City Treasurer;
- a.6 City Planning and Development Officer;
- a.7 City Economic Management Cooperative and Development Office (CEMCDO)
- a.8 Two (2) representatives from the accredited civil society groups, people’s and non-governmental organizations who are members of the City Development Council. These representatives shall not be the same representatives in the JV-SC.

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

The JV-RA with the approval of the City Mayor may invite third party experts to attend its meetings to act as advisors and observers. Such third party experts may represent national government agencies, regulatory agencies, the NEDA, the DILG, COA, private sector, non-governmental organizations and civic groups.

The JV-RA may form a support staff composed of employees and personnel of the City. The JV-RA may also engage consultants hired pursuant to law.

b. The JV-RA, on behalf of the City, 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). Aside from these, the JV-RA shall be responsible for setting and monitoring the tariff, and administering the subsidy pursuant to the JVA.

Section 18. Accountability Mechanisms. - Before commencing their functions, each member of the JV-SC and JV-RA shall sign a Code of Conduct, which shall guide each member in the performance of their duties as such.

Such Code of Conduct shall require each member to, among others:

- a. act at all times in accordance with relevant legislation and regulations;
- b. act at all times with fidelity, honesty, integrity and in the best interests of the City and its constituents;
- c. recognize the public's right to access to information in accordance with law;
- d. not misuse his or her position and privileges of a member of the JV-SC and JV-RA, whether or not such will prejudice the interest of the public, the PSP, or any third person;
- e. to take the utmost care in ensuring reasonable protection of the records of each JV project, and to not disclose any confidential and proprietary information to persons without a need to know such information, or in violation of any non-disclosure requirements under law or contract;
- f. carry out his or her duties with the skill and care expected from a person of knowledge and experience, and to exercise prudent judgment;
- g. forthwith report to the appropriate authorities any act of negligence, fraud, corruption, misuse of government funds, failure or refusal to perform duties, or any other act which may constitute a crime or offense, or which is prejudicial to the public interest, in the selection of the PSP and implementation of a JVA;
- h. forthwith declare any personal or business interest that he or she, or any of his or her relatives within the fourth degree of affinity or consanguinity, may have in any business of a PSP, in which case, the official or representative shall no longer be a member of the JV-SC and JV-RA;
- i. forthwith declare any conflict of interest, insofar as the JV Project is concerned, that he or she may have or will have, in which case, the official or representative shall no longer be a member of the JV-SC and JV-RA;
- j. not vote or act in a particular way on any matter in consideration of any offer, promise, gift or present, from a member of the public, government, a political party, social group or non-governmental organization, or any stakeholder or potential stakeholder;
- k. not receive any gift or anything else of value which is or may be viewed as aimed at influencing or directing his or her vote or actions; and
- l. to disclose immediately to the JV-SC or JV-RA as the case may be, any attempted inducement that may be construed as aimed at influencing or directing his or her acts as a member of the JV-SC and JV-RA.

The City 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, City, national government agencies, regulatory agencies, and PSP.

Section 19. Alternative Dispute Resolution. - All JVAs of the City shall include a provision on the use of Alternative Dispute Resolution (ADR) mechanisms 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 20. Implementing Rules. - While this Code and the provisions hereof are already operative upon the Code's effectivity, the City Mayor may issue the appropriate and relevant rules and regulation for the proper implementation of the Code or its provisions.

Section 21. Application of Other PPP Laws and Regulations. - Whenever relevant and appropriate as determined by the City Mayor and in the absence of a specific provision to the contrary, upon recommendation of the JV-SC and JV-RA as the case may be, the provisions 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 suppletory manner.

Section 22. Separability Clause. - If, for any reason, any section or provision of this Code or any part thereof, or the application of such section, provision or portion is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

Section 23. Repealing Clause. - All ordinances and resolutions or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed or modified accordingly.

Section 24. Effectivity Clause. - This Ordinance shall take effect fifteen (15) days following its publication in a local newspaper of general circulation in the City of General Santos.

Enacted by the 18th Sangguniang Panlungsod, City of General Santos, on its 51st Regular Session held on August 08, 2017.

CERTIFIED CORRECT:

ATTY. ROSENDO A. ROQUE
Secretary to the Sanggunian

ATTESTED BY:

SHIRLYN L. BAÑAS - NOGRALES
City Vice Mayor and Presiding Officer

Approved by His Honor, the City Mayor on _____, 2017.

RONNEL C. RIVERA
City Mayor