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ORDINANCE NO. 8346

**AN ORDINANCE** GOVERNING JOINT VENTURES BETWEEN THE CITY OF MANILA AND PRIVATE SECTOR PARTNERS, PROVIDING FOR THE PROCEDURES FOR IDENTIFYING JOINT VENTURE PROJECTS AND SELECTING JOINT VENTURE PARTNERS, INSTITUTING ACCOUNTABILITY MECHANISMS, AND FOR OTHER PURPOSES

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## EXPLANATORY NOTE

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, Section 35 of Republic Act (R.A.) 7160, otherwise known as the Local Government Code of 1991, (1991 LGC) and Article 66 of its Implementing Rules and Regulations (IRR), categorically empower LGUs to enter into Joint Ventures (JVs);

WHEREAS, the 1991 LGC and its IRR, however, do not define what a JV is and do not spell out the particular requirements and conditions, and procedures for identifying JV projects and selecting the private JV partners;

WHEREAS, the absence of a detailed statute and framework on LGU JVs has been confirmed by the Department of Interior and Local Government or DILG (Legal Opinion No. 8, S. 2014, March 6, 2014; Legal Opinion No. 47, S. 2012, July 13, 2012) and the Department of Justice (Opinion No. 18, S. 2012, April 3, 2012);

WHEREAS, a JV is not a variant under R.A. 6957 as amended by R.A. 7718, popularly known as the BOT Law, and does not involve procurement as defined under the R.A. 9184 or the Government Procurement Reform Act (GPRA);

WHEREAS, the JVs by LGUs are excluded from the coverage of the 2013 Revised and 2008 JV Guidelines issued by the National Economic and Development Authority (NEDA);

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

WHEREAS, having a framework defined in an ordinance will ensure and facilitate consistency, integrity, reliability, sustainability, accountability, transparency, and enforceability: NOW, THEREFORE,

Be it ordained by the City Council of Manila, in session assembled, *THAT*:

**SECTION 1. Title.** – This Ordinance shall be known as the **Joint Venture Ordinance of the City of Manila** and cited as the **"Manila JV Ordinance."**

**SEC. 2. Declaration of Policy.** – (a) It is hereby declared that as a policy, the City of Manila shall advance the public good and general welfare and promote the interest of the community and the city within the framework of sustainable and integrated development and effective constructive engagement and meaningful people's participation in local governance.

(b) PPPs in general and JVs in particular shall be pursued by the city consistent with and in furtherance of the vision and mission of the city which state that:

**VISION:** We see Manila as the premier city of the Philippines, mindful of its glorious past and conscious of its exciting future.

**MISSION:** Our mission is to raise the bar on good government, set the pace in social services, empower the poor, foment discipline and order, invite investments, embark on relevant climate change adaptation programs, and in every respect foster an environment fertile for human and institutional development.

**SEC. 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. The city shall determine and identify JV Projects in accordance with its 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, as a partner in a JV agreement, 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;

(d) 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. The city may agree to such terms and conditions in the JV Agreement as will be beneficial and advantageous to the city and its residents;

(e) 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; and

(f) Under Section 22 (c) of the 1991 LGC, no contract may be entered into by the City Mayor on behalf of the city without prior authorization from the *Sanggunian Panlungsod*. The participation of the *Sanggunian Panlungsod* is thus indispensable in the adoption and implementation of a JV arrangement.

**SEC. 4. Rationale for JVs.** – In pursuing JVs, the city shall be guided by the following:

(a) JVs shall be promoted to provide more, better, affordable and timely services to the community. JVs shall be undertaken in furtherance of the city's vision, mission, development and physical framework plan;

(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; and

(d) Procurement of JV Projects must be competitive and must be undertaken through open competitive bidding or competitive challenge, or in certain cases, direct negotiations. Competition must be legitimate, fair and honest. The selection of the private sector partner must be done in compliance with the requirements of competition, transparency and accountability.

**SEC. 5. Rules of Interpretation.** – This Ordinance and the provisions hereof shall be liberally interpreted to accomplish the policy and objectives herein set forth.

**SEC. 6. Definition of Terms.** – As used in this Ordinance, the following terms shall mean:

(a) *Competitive Selection* - A method of selection of a JV Partner or Partners for JV Projects initiated and solicited by the City based on a transparent criteria, and which is open to participation by any interested party;

(b) *Unsolicited Proposal subject to Swiss Challenge* - An alternative method of selection process of a JV Partner or Partners for JV Projects initiated by private sector proponents wherein third parties or challengers shall be invited to submit comparative proposals to an unsolicited proposal received by the city. 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 PSP/ challenger;

(c) *Contractual JV* - A legal and binding agreement under which the city and its JV Partner/s perform the primary functions and obligations under the JVA without forming a JV Company;

(d) *Cost of JV Project* - The total amount of the contributions of the parties to the JV Project in present value with discount rate.

(e) *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 or proportionately apportioned between the city and PSP. Credit enhancements may include but are not limited to government guarantees on the performance or the obligation of the city under the JVA, subject to existing laws on indirect guarantees. Indirect Guarantees shall refer to an agreement whereby the city assumes full or partial responsibility for or assists in maintaining the financial standing of the PSP or project company in order that the PSP/ project company avoids defaulting on the project loans, subject to fulfillment of the PSP/ project company of its undertakings and obligations under the JVA;

(f) *Direct City Equity* - The subscription by the city of shares of stock or other securities convertible to shares of stock of a JV Company whether such subscription will be paid by money or assets;

(g) *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;

(h) *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 JVA; 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;

(i) *Divestment or Disposition* - The manner or scheme of taking away, divesting or withdrawing of title to property, including shares of stock owned by the city and vesting ownership thereof to a PSP, and vice versa;

(j) *JV Agreement* - A contractual arrangement between the city and its JV Partner referred to in Section 7 hereof;

(k) *JV Company* - A stock corporation, formed by the City and the JV Partner, fifty percent (50%) or less of the outstanding capital stock of which is owned by the city;

(l) *JV Partner or Private Sector Proponent (PSP)* - The private sector entity selected to 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;

(m) *JV Project* - The project or projects of the JV referred to in Section 10 hereof;

(n) *Project Study* - A study prepared by the city in a competitive selection or by 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 study may be in the form of a feasibility study, pre-feasibility study or business plan;

(o) *Public-Private Partnerships (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 the PPP arrangement; and

(p) *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.

**SEC. 7. JV Agreement.** - (a) A Joint Venture Agreement is a contractual arrangement between the city and a JV Partner or a group of private sector entities as JV Partners 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 JVA;

(b) The term of the JVA should be a fixed period not to exceed a maximum of fifty (50) years; and

(c) The city, by mutual agreement in a Government-to-Government arrangement with other Local Government Units (LGUs), National Government Agencies (NGAs), Government Owned or Controlled Corporations (GOCCs), Government Instrumentalities (GIs) and Government Controlled Entities (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.

**SEC. 8. Contributions and Equity.** – (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. On the part of the city, it may grant a franchise, concession, permit an undertaking, delegate or share its proprietary functions, usufruct, right-of-way, equity, subsidy or guarantee, provide cost-sharing and credit enhancement mechanisms, exercise police power, perform devolved powers, expropriate and reclassify and enact or integrate zoning ordinances and extend goodwill. The contribution of the parties shall be subject to third party independent valuation;

(b) The city may allocate a portion of its Internal Revenue Allotment, 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, subject to applicable laws, rules and regulations regarding on any or all of the foregoing;

(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) 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;

(e) Subject to the agreement of the parties, the city may be entitled to a share greater than its contribution or equity;

(f) 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, unless the parties agree that the city will have a greater share in the dividends, profits, income and revenues, and/ or bear a lower proportion of the risks than its proportionate share in the JV; and

(g) For as long as the city is involved in the JV, the PSP shall not sell or transfer its interest in the JV without the express written consent of the City Mayor upon authority of the City Council, provided that the city may sell or transfer its interest in the JV by public auction, subject to the JVA and applicable laws, ordinances, rules and regulations.

**SEC. 9. Terms and Conditions of the JV Agreement. –**

(a) As far as practicable, the JVA shall contain the following provisions:

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, which shall be anywhere in the City of Manila;
5. The JV Project and the purposes of the JV and term of the JV;
6. The JV Vehicle;
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 JVA is in the name of all members;
9. The amount, kind, description (cash, personal or real property) and valuation of committed contributions of each party and when such contributions will be made and procedure for additional capital infusions, if required;
10. The participation of the parties and percentage in which profits, revenues, risks and losses are shared, in proportion to their contributions, unless otherwise provided in the JVA. The amount of contribution by the parties can be increased or decreased, depending on the contributions of equipment or expertise;
11. 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 and the selection of the Managing Director, Secretary and Treasurer and other officers of the JV;
12. Specified termination/liquidation of the JV Company, buy-out provisions, and details on the transfer of ownership of the JV 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;
13. Procedure for divestment and disposition;
14. Alternative Dispute Resolution and Arbitration;
15. Anti-Corruption warranties; and
16. Compliance with applicable laws, rules and regulations.

(b) All JVAs must be signed by the City Mayor with prior authorization by the *Sanggunian Panlungsod*, and the duly authorized representative of the PSP;

(c) Any amendment or supplement to a JVA, which if effected will not violate the policy on competition and fairness, after award and signing of JVA shall undergo approval by the City Mayor with prior authorization by the *Sanggunian Panlungsod*. Non-compliance with the corresponding approval process stated shall render the amendment or supplement null and void; and

(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.

**SEC. 10. JV Projects.** – (a) The city, regardless of the cost, may undertake infrastructure, development or social service-related projects which are traditionally or not traditionally provided or supplied by the city.

(b) The city may enter into JV agreements for power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, sewerage, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housings, buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and school facilities, sewerage, drainage, dredging, prisons, and hospitals and health services, memorial parks and services, parking structures and traffic management, material testing, zoos, parks and plazas, sports, leisure gaming and recreational facilities cockpits, theaters, among other projects and business purposes. The city can also undertake JVs for any of the devolved activities under Section 17 of the 1991 LGC;

(c) The city may identify specific priority projects enumerated in its comprehensive multi-sectoral development plan, and development and physical framework plan for JV arrangements.

(d) 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, through a duly enacted ordinance, 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. 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;

(e) Procurements made by the city using public/ city funds shall be subject to the RA 9184 and its Revised Implementing Rules and Regulations. Procurements made by the PSP using private funds or by the JV Company shall not be covered by said statute; and

(f) 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.

**SEC. 11. JV Vehicle.** – (a) The city and the PSP have the option to implement the JV through a Contractual JV (Unincorporated JV), or establish a JV Company (Incorporated Company).

(b) The JV Company may be formed by the city and the PSP under the following parameters:

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;
2. Ownership and nationality requirements under the Constitution and other pertinent laws should be complied with;
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;
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
5. The JV Company should stipulate a fixed period for term of existence not to exceed a maximum of fifty (50) years.

**SEC. 12. Project Study.** – A Project Study for a JV Project must be prepared. It shall be the responsibility of the city to prepare the Project Study in case of Competitive Selection, and that of the PSP for unsolicited proposals subject to Swiss Challenge.

The costs of preparing the Project Study may be reimbursed by the winning PSP to the city or to the Original Proponent, as the case may be, subject to the terms of the Competitive Selection or Swiss Challenge.

**SEC. 13. Joint Venture Selection Committee.** - There is hereby created a JV Selection Committee (JV-SC) for purposes of selecting a JV Partner or PSP for a specific JV Project.

(a) The JV-SC shall be composed of the following:

- i. Chairperson – The Secretary to the Mayor, the City Administrator or any other official to be selected by the City Mayor;
- ii. Secretary – City Legal Officer;
- iii. Member - The City Treasurer;
- iv. Member - The City Planning and Development Officer;
- v. Member – The City Engineer;
- vi. Member - Two (2) representatives from and selected by the *Sanggunian Panlungsod*; and
- vii. Regular Non-Voting Member - Two (2) representatives from and chosen by the Mayor from the civil society groups, people's and non-governmental organizations who are members of the City Development Council.

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 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 or technical working group composed of employees and staff of the city.

(b) The JV-SC shall be responsible for the identification of JV Projects and for all aspects of the pre-selection and selection of the JV partners, including, among others, the preparation or evaluation of the Project Study; 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 JVA; and

(c) All recommendations 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.

**SEC. 14. Solicited Proposal through Competitive Selection.** - The city may solicit proposal for JV Projects through Competitive Selection. This involves:

- a. Preparation of bid / tender documents which shall include the following:
  - (i) Instructions to Bidders;
  - (ii) Terms of Reference
  - (iii) Draft JVA reflecting the respective undertakings of the contracting parties;
  - (iv) Bid Form reflecting the required information to properly evaluate the bid proposal;
  - (v) Forms of bid and performance securities;
  - (vi) Requirements and timelines/milestones of concerned Agencies in granting of franchise, if applicable; and
  - (vii) Other documents as may be deemed necessary by the JV-SC.

- b. Publication of Invitation to pre-qualify and bid for a particular project;

The Chairman of the JV-SC shall cause to be published, once every week for two (2) consecutive weeks, in at least one (1) newspaper of general circulation, a notice inviting all prospective PSPs to pre-qualify and bid for the JV Project. Said invitation should also be posted in two (2) conspicuous places in the city and in the website of the city, if available, during the period stated above.

- c. Requirements for Prequalification of PSPs. To pre-qualify, a prospective PSP must comply with the following requirements:

- (i) Legal Requirements

For JV projects which require a public utility Franchise for its operation, and where the PSP and Facility Operator are one and the same entity, the PSPs must be Filipinos or, if corporations, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos, or, if a consortium of local, foreign, or local and foreign firms, Filipinos must have at least sixty percent (60%) interest in said consortium.

For JV projects requiring a public utility Franchise for its operation but where the PSP and Facility Operator may be two separate and independent entities, the Facility Operator must be a Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos.

For JV projects that do not require a public utility Franchise for its operation, the prospective PSP or the Facility Operator may be Filipino or foreign-owned.

In case the prospective PSP is a consortium, the members or participants thereof shall be disclosed during the pre-qualification stage and shall undergo pre-qualification. Further, the members or participants thereof shall execute an undertaking in favor of the city that if awarded the JVA, they shall bind themselves to be jointly and severally liable for the obligations of the PSP under the JVA.

However, if members of the consortium organize themselves as a corporation registered under Philippine laws, such corporation shall execute such an undertaking binding itself to be liable for the obligations of the PSP under the JVA, which shall substitute or be in lieu of the undertaking submitted by the members or participants of the consortium.

For purposes of pre-qualification, the Contractor proposed to be engaged by the PSP to undertake the Construction of the JV Project must be duly licensed and accredited by the Philippine Contractors Accreditation Board (PCAB), in the case of a Filipino Contractor, or by an equivalent accreditation institution in the Contractor's country of origin, in the case of a foreign Contractor. Once the PSP is awarded the project, such foreign Contractor must secure a license and accreditation from the PCAB.

- (ii) Experience or Track Record - The prospective PSP must possess adequate experience in terms of Firm and Key Personnel Experience.
- (iii) Financial Capability - The prospective PSP must have adequate capability to sustain the financing requirements for the detailed engineering design, Construction and/or operation and maintenance phases of the project, as the case may be.

The city shall determine on a project-to-project basis the detailed legal, financial, experience and other qualifications or criteria it requires for a particular project.

d. Determination of Pre-qualified prospective PSP's.

The city, through its JV-SC, shall, within a period of thirty (30) calendar days after the deadline set for the submission of the pre-qualification documents, determine which among prospective PSP's are "pre-qualified" or "disqualified". Accordingly, the JV-SC shall duly inform the prospective PSP's who have been pre-qualified within seven (7) calendar days after approval thereof. A certificate of Pre-qualification shall be issued for this purpose. Disqualified proponents shall likewise be informed stating therein the grounds for their disqualification within the same period. Those disqualified may appeal the disqualification within five (5) calendar days from receipt of the notice of disqualification to the Mayor.

The bidding process will be suspended while the appeal is being evaluated. The Mayor or his authorized representative, as the case may be, shall act on the appeal within thirty (30) working days from receipt of the appeal and upon filing of a non-refundable appeal fee in an amount equivalent to no less than one-half of one percent (0.5 %) of the Project Cost. The decision of the Mayor or his authorized representative on the appeal shall be final and immediately executory.

e. Acceptance of Criteria and Waiver of Rights to Enjoin Project

All prospective PSP's shall be required to submit, as part of their qualification documents, a statement stipulating that the bidder: (i) has accepted the qualification criteria established by the JV-SC, and (ii) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the city or its JV-SC, or any of its officials to prevent or restrain the qualification process or any proceedings related thereto, the holding of a bidding or any proceedings related thereto, the negotiation of and award of the JVA to a successful bidder, and the carrying out of the awarded JVA. Such waiver shall, however, be without prejudice to the right of a disqualified or losing bidder to question the lawfulness of its disqualification or the rejection of its bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

f. Issuance of Tender Documents

The JV-SC shall make available the related bid documents to all pre-qualified bidders upon completion of pre-qualification evaluation and issuance of notice of pre-qualification/ disqualification to provide respective bidders ample time to examine the same and to prepare their respective bids prior to the date of opening of bids.

g. Pre-bid Conference

A pre-bid conference shall also be conducted by the city at least thirty (30) calendar days before the deadline for the submission of bids to clarify any provisions, requirements and/or terms and conditions of the bidding documents and/ or any other matter that the prospective bidders may raise.

Nothing stated at the pre-bid conference shall modify any provisions or terms and conditions of the bidding documents unless such is made as a written amendment thereto by the city. Any amendments shall be issued by the city to all bidders within a reasonable time to allow them to consider the same in the preparation of their bids and shall be duly acknowledged by each bidder prior to the submission of his bid and shall be so indicated in his bid. A summary of the pre-bid conference proceedings shall also be issued to all prospective bidders by the city. Attendance to the pre-bid conference by prospective bidders shall not be mandatory.

h. Requirements for Bid Submission, (Qualification Requirements, Technical and Financial Proposals)

Bidders shall be required to submit their bids on or before the deadline stipulated in the "Instructions to Bidders". They shall be marked "Do Not Open Before (date and time of opening of bids)". The envelopes shall be appropriately labeled as Qualification Requirements, Technical Proposal and Financial Proposal.

- (i) The **Qualification Requirements** shall be those stated in Section 14 (c) hereof. Pre-qualified PSP's shall submit the Certificate of Pre-qualification as the qualification requirement.

- (ii) The **Technical Proposal** shall contain the following requirements, as may be deemed necessary by the City:
- (1) Acceptance/Compliance statements with regard to all terms and conditions in the tender documents including those with regard to financial parameters and any changes which were made thereto by the city prior to bid submission.
  - (2) Operational feasibility of the project, which shall indicate the proposed organization, methods and procedures for the operation and maintenance of the project under bidding;
  - (3) Technical soundness/preliminary engineering design, including proposed project timeline;
  - (4) Preliminary environmental assessment, which shall indicate the probable adverse effects of the project on the environment and the corresponding mitigating measures to be adopted;
  - (5) Project Cost;
  - (6) Bid Security. The city shall determine which form of Bid Security it will require which may be in cash, certified check, manager's check, letter of credit, or bank draft/ guarantee issued by a reputable local/foreign bank, or a surety bond callable on demand issued by the Government Service Insurance System (GSIS) or an entity duly registered and recognized by the office of the Insurance Commissioner and acceptable to the city, or any combination thereof payable to the city concerned based on the total Project Cost (as indicated by the prospective PSP) in accordance with the following schedules:

<b>PROJECT COST</b> <i>(as estimated by the Agency/LGU or proposed by the Project Proponent)</i>	<b>REQUIRED BID SECURITY</b>
Less than PhP 100 million	3% of the Project Cost
PhP 100 million to less than PhP 500 million	2.5 % of the Project Cost or PhP 3,000,000.00, whichever is higher
PhP 500 million to less than PhP 1 billion	2% of the Project Cost or PhP12,500,000.00, whichever is higher
PhP 1 billion to less than PhP 5 billion	1.5% of the Project Cost or PhP20,000,000.00, whichever is higher
PhP 5 billion or higher	1% of the Project Cost or PhP75,000,000.00, whichever is higher

The city shall determine whether the Bid Security shall be issued by a local bank, an international bank, or both. In case the bid security is issued by an international bank, said security has to be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the BSP.

The posting of the bid security is for the purpose of guaranteeing that the PSP shall enter into JVA with the city within the time prescribed therefore.

Bids and bid securities shall be valid for a period to be prescribed by the city concerned in the bidding documents but in no case beyond one hundred and eighty (180) calendar days from the date of opening of bids. The actual amount of bid security to be posted by the bidders will be fixed by the concerned city prior to bidding. Said actual amount shall not be less than the amount prescribed in the above schedule.

(7) Other documents as may be required by the JV-SC to support the bidder's technical proposal.

(iii) The "Financial Proposal" shall contain the Financial bid based on the parameters set by the city which may include the following, among others:

- (1) JV Project Cost
- (2) The proposed contribution of the bidder and of the city to the total JV Project Cost
- (3) The proposed equity sharing between the bidder and the city
- (4) Project Financing Scheme.

i. Submission of Late Bids

Bids submitted after the deadline for submission prescribed in the "Instructions to Bidders" shall be considered late and shall be returned unopened.

j. Opening of the Envelope for Qualification of Bidder

At the date and time stipulated in the "Instructions to Bidders", the JV-SC shall open the envelope and ascertain whether the same is complete in terms of the information required. Such information shall be recorded at the time, including the names and addresses of required witnesses. All bidders or their representatives present at the opening of the first envelopes shall sign a register of the opening of the qualification envelope.

k. Evaluation of Qualification Requirements

The qualification documents will first be evaluated prior to the opening of the technical proposal. The city shall inform bidders whether they are qualified or disqualified, and for the latter, the reasons for disqualification, within ten (10) calendar days. Only qualified bidders shall be allowed to participate in the bid evaluation. Disqualified bidders shall be informed of the grounds of disqualification and their technical and financial proposals returned unopened.

l. Rejection of Bids

Incomplete information on any of the envelopes and/or non-compliance with the bid security requirements shall be grounds for automatic rejection of bids.

m. Opening of the Envelope for the Technical Proposal

At the date and time of bid opening, as stipulated in the "Instructions to Bidders", the JV-SC shall open only the technical proposal and ascertain whether the same is complete in terms of the data/information required under and whether the same is accompanied by the required bid security in the prescribed form, amount and period of validity. Such information shall be recorded at the time, including the names and addresses of required witnesses. All bidders or their representatives present at the opening of the first envelopes shall sign a register of the bid opening.

n. Opening of the Envelope for the Financial Proposal

Only those bidders whose technical proposal passed the evaluation criteria as prescribed shall have their financial proposal opened for further evaluation. Those who failed the evaluation of the technical proposal shall not be considered further, and the JV-SC shall return their financial proposals unopened together with the reasons for their disqualification from the bidding.

Once the bidders who have qualified for the evaluation of the financial proposal have been determined, the JV-SC shall notify said bidders of the date, time and place of the opening of the envelopes for the financial proposal. The opening thereof shall follow the same procedures prescribed for the opening of the previous envelopes.

The JV-SC may opt to simultaneously open and evaluate the technical and financial proposals, provided all PSPs/ bidders are notified of the procedure prior to the opening of the envelopes.

o. Withdrawal and/or Modification of Bids

Withdrawal and/or modification of bids may be allowed upon written notice by the bidder concerned to the City prior to the time and date set for the opening of bids (opening of first envelopes) as specified in the "Instructions to Bidders". No bids shall be modified or withdrawn after the time prescribed to open bids. Bid modifications received after said period shall be considered late and will be returned unopened. Withdrawal of bids after the bid opening date shall cause the forfeiture of the bidder's bid security.

p. Right to Reject All Bids

The city reserves the right to reject any or all bids, waive any minor defects therein and accept the offer it deems most advantageous to the Government.

q. Direct Negotiations.

Direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder:

- (i) If, after advertisement, only one prospective PSP applies for pre-qualification and it meets the pre-qualification requirements, after which, it is required to submit a bid/ proposal which is subsequently found by the city to be complying;
- (ii) If, after advertisement, more than one prospective PSP applied for pre-qualification but only one meets the pre-qualification requirements, after which it submits a bid proposal that is found by the city to be complying;

(iii) If, after pre-qualification of more than one prospective PSP, only one submits a bid which is found by the city to be complying; and

(iv) If, after pre-qualification, more than one prospective PSP submit bids but only one is found by the city to be complying;

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 Project Study and Terms of Reference for the Competitive Selection are complied with. The Mayor shall approve the terms of the Direct Negotiations prior to the award of the JVA to the PSP.

Any disqualified bidder may appeal the disqualification of the JV-SC to the Mayor or his authorized representative, within fifteen (15) working days from receipt of the notice of disqualification. The Mayor or his authorized representative shall act on the appeal within forty-five (45) working days from receipt thereof. The decision of the Mayor or his authorized representative shall be final and immediately executory.

**SEC. 15. Unsolicited Proposal subject to Swiss Challenge. -**

This process shall be divided into three (3) Stages, described as:

**Stage One/ Unsolicited Proposal – The steps are:**

i. A PSP submits an unsolicited proposal to the city for a projected JV Project.

For an unsolicited proposal to be considered by the city, the proponent has to submit a complete proposal, which shall include a cover letter, project study which should indicate relevant assumptions, company profile, the draft JVA and other documents that are needed even if proprietary in nature. The cover letter shall indicate the basic information on the Unsolicited Proposal such as its expected output and outcome, implementation period, and general description of the new concept or technology, among others, and shall include the company profile of the unsolicited proponent. The project study, draft JVA, and other documents that are needed even if proprietary in nature shall be submitted in a sealed envelope. The city shall acknowledge receipt of the proposal within seven (7) calendar days and advise the proponent whether the proposal is complete or incomplete within thirty (30) calendar days from submission thereof. If incomplete, the city shall return to the proponent its submission indicating what information is lacking or necessary and the city may entertain thereafter other same or similar project proposal.

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 are more than one unsolicited proposals submitted for the same JV 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 under Stage Three hereof.

In the event that the Original Proponent has an exclusive franchise or concession, such as a power service contract, water rights, and mining contracts/ rights, granted or awarded by the responsible national government agency, without which the JV project or activity cannot be undertaken without the participation or consent of the Original Proponent-Franchise Holder, subjecting the unsolicited proposal to challenge under Stage Three hereof need not be undertaken. In which case, the Competitive/ Swiss Challenge process is deemed complete.

- 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 or JV Project to a Competitive Selection.

**Stage Three/ Swiss Challenge – The steps are:**

- i. The JV-SC shall prepare the tender documents. The eligibility criteria used in determining the eligibility of the PSP 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 Mayor shall approve all tender documents including the draft JVA before the publication of the invitation for comparative proposals.
- iii. The JV-SC shall publish the invitation for comparative proposals at least once a week for two consecutive weeks in at least one (1) newspaper of general circulation. Said invitation shall also be posted in two conspicuous places in the city and in the official website of the City, if available.
- iv. The 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 that 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.

**SEC. 16. Recommendation to Award.** - Within three (3) calendar days from the date the financial evaluation shall have been completed, the JV-SC will submit to the City Mayor a recommendation of award. The JV-SC will prepare and submit a detailed evaluation/assessment report on its decision regarding the evaluation of the bids and explain in clear terms the basis of its recommendations.

**SEC. 17. Decision to Award.** - Within three (3) calendar days from the submission by the JV-SC of the recommendation to award, the City Mayor shall decide on the award. The approval shall be manifested by signing and issuing the "Notice of Award" to the winning PSP within five (5) calendar days from approval thereof.

All unsuccessful bidders shall be informed in writing of the decision of the City Mayor to award the project to the winning PSP. Such decision shall be made available to the public when requested.

**SEC. 18. Notice of Award.** - The "Notice of Award", which is issued by the City Mayor, shall indicate, among others, that the winning PSP must submit within twenty (20) calendar days from official receipt of the "Notice of Award" the following:

1. Prescribed performance security;
2. Proof of commitment of the required equity contribution, as specified by the JV-SC;
3. Proof of firm commitments from reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project;
4. In the case of a consortium, the agreement indicating that the members are jointly and severally liable for the obligations of the PSP under the contract; or
5. In case a special purpose company (SPC) is formed for purposes of undertaking the project, proof of registration in accordance with Philippine laws; or
6. Such other conditions imposed by the JV-SC.

Failure to submit the requirements within the prescribed twenty (20)-calendar day period will result in confiscation of the bid security. Within five (5) calendar days upon receipt of the foregoing requirements for award, the City Mayor, upon recommendation of the JV-SC, shall determine and notify the winning bidder of its compliance of all the conditions stated in the said notice.

**SEC. 19. Public Dissemination of Bidding Results.** - The JV-SC shall post the notice of award and/or bidding results once every week for two (2) consecutive weeks, in at least one (1) newspaper of general circulation. Said notice of award/bidding results should also be posted in two (2) conspicuous places in the City and in the website of the City, if available, during the period stated above.

**SEC. 20. Execution of the JVA.** - The authorized signatory(ies) of the winning bidder and the City Mayor shall execute and sign the JVA for the project within five (5) calendar days from receipt by the winning bidder of the notice from the City Mayor that all conditions stated in the Notice of Award have been complied with.

In the event of refusal, inability or failure of the winning bidder to enter into JVA with the city within the time provided therefore, the city shall forfeit its bid security. In such an event, the city shall consider the bidder with the next ranked complying bid. If the same shall likewise refuse or fail to enter into a JVA with the city, its bid security shall likewise be forfeited and the city shall consider the next ranked complying bid, and so on until a JVA shall have been entered into. In the event that the city is unable to execute the JVA with any of the complying bidders, a failure of bidding will be declared and the project may be subjected to a re-bidding.

**SEC. 21. Submission and Ratification of the JVA.** - Within five (5) days from the signing of the JVA, the original signed JVA shall be submitted to the *Sangguniang Panlungsod* for ratification by simple majority.

During the consideration of the JVA by the *Sangguniang Panlungsod*, a public consultation shall be conducted explaining the JV Project, JVA, accountability mechanisms built into the JV arrangement, the benefits and costs of the JV Project, among other relevant matters.

The JVA shall be effective upon ratification thereof by the *Sangguniang Panlungsod*, unless another date is stipulated therein.

**SEC. 22. Notice to Commence.** - The city, when deemed necessary, shall issue the "Notice to Commence Implementation" of the project to the winning bidder within a reasonable period to be determined by the JV-SC and stated in the contract.

**SEC. 23. Schedule and Timelines.** - The Mayor, upon recommendation of the JV-SC, shall have the authority to adopt, prescribe, or modify 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.

**SEC. 24. JV Regulatory Authority.** - (a) There shall be a JV Regulatory Authority (JV-RA) which shall be composed of the following:

- Chairperson - The City Mayor
- Vice-Chairperson - The Vice-Mayor
- Executive Director - The Chairman of the JV-SC
- Members - The City Legal Officer
- The City Treasurer
- The City Engineer
- The City Accountant
- Two (2) representatives for the *Sangguniang Panlungsod* to be chosen by the *Sangguniang Panlungsod*

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 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.

**SEC. 25. *Accountability Mechanisms.*** - (a) 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.

(b) 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.

**SEC. 26. *Implementing Rules.*** - While this Ordinance and the provisions hereof are already operative upon the Ordinance's effectivity, the Mayor, upon recommendation of the JV-SC, may issue the appropriate and relevant rules and regulation for the proper implementation of this Ordinance or its provisions.

**SEC. 27. *Application of Other Laws and Regulations.*** - Whenever relevant and appropriate and in the absence of a specific provision to the contrary, the provisions of the BOT Law, the Corporation Code of the Philippines, the New Civil Code, 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.

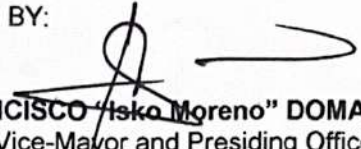
**SEC. 28. *Separability Clause.*** - If, for any reason, any section or provision of this Ordinance or any part thereof, or the application of such section, provision or portion is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

**SEC. 29. *Repealing Clause.*** - All ordinances and resolutions or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed or modified accordingly.


**SEC. 30. *Effectivity Clause.*** - This Ordinance shall take effect fifteen (15) days after its posting in two conspicuous places within the city.

This Ordinance was finally enacted by the City Council of Manila on May 6, 2014.


PRESIDED BY:

  
**FRANCISCO "Isko Moreno" DOMAGOSO**  
Vice-Mayor and Presiding Officer  
City Council, Manila


ATTESTED:

  
**LUCH R. GEMPIS, JR.**  
City Government Department Head III  
(Secretary to the City Council)

APPROVED BY HIS HONOR, THE MAYOR, ON MAY 13, 2014

  
**JOSEPH EJERCITO ESTRADA**  
Mayor -  
City of Manila

ATTESTED:

  
**EDWARD S. SERAPIO**  
City Government Department Head III  
(Secretary to the Mayor)

EZB: acl/jhb/rmd/jok