



Republic of the
Philippines
OFFICE OF THE SANGGUNIANG BAYAN
Municipality of Bongabong
Province of Oriental Mindoro



EXCERPTS FROM THE MINUTES OF THE THIRTEENTH (13TH) REGULAR SESSION OF THE 11TH SANGGUNIANG BAYAN OF BONGABONG, ORIENTAL MINDORO HELD ON OCTOBER 24, 2022 AT THE SANGGUNIANG BAYAN SESSION HALL, 2ND FLOOR, EXECUTIVE AND LEGISLATIVE BUILDING, POBLACION BONGABONG, ORIENTAL MINDORO

PRESENT:

Hon. RICHARD S. CANDELARIO	VICE-MAYOR Presiding Officer
Hon. JAYSON M. BARCELONA	Member
Hon. NIÑO G. LIWANAG	Member
Hon. VICTORIA BAES-PADULLO	Member
Hon. JOHN MICHAEL K. MALALUAN	Member
Hon. ALFONSO A. MONTALBO	Member
Hon. EVELYN B. ALEA	Member
Hon. AZOR G. MAMENG	Liga ng mga Barangay President
Hon. LOVELY MAE A. ANULAO	S. K. Municipal Federation Vice-President
Hon. MATIGON T. SULIGAN	Indigenous People Mandatory Representative

ABSENT:

Hon. DOLORES U. DE GALA	Member
Hon. MAYNARD M. PANGANIBAN	Member

X-----X

MUNICIPAL ORDINANCE No. 2022-08
Series of 2022

**AN ORDINANCE ENACTING THE JOINT VENTURE CODE OF THE
MUNICIPALITY OF BONGABONG**

Author/Sponsor: Hon. Niño G. Liwanag

Co-authors: HON. JAYSON M. BARCELONA; HON. DOLORES U. DE GALA; HON. VICKY B. PADULLO; HON. JOHN MICHAEL K. MALALUAN; HON. MAYNARD M. PANGANIBAN; HON. ALFONSO A. MONTALBO; HON. EVELYN ALEA

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

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

WHEREAS, the Department of the Interior and Local Government (DILG) Legal Opinion No. 8, S. 2014 declared that "there is no specific statute on PPP nor guidelines on

joint ventures for local governments" and that a "duly enacted local legislation (PPP Code) must be complied with in undertaking (its) PP P projects";

WHEREAS, according to the Department of Justice (DOJ) Opinion No. 18, S. 2012, "x x x local governments may enact their own Public-Private Partnership (PPP) Code or omnibus ordinance outlining, among others, all applicable modalities. x x x A local government, through an enabling ordinance, is free to act to address local concerns, even without an enabling ordinance, provided no statute will be infringed"

WHEREAS, in its Legal Opinion No. 10, S. 2014, the DILG affirmed the above quoted DOJ Opinion and further said that, "the LGUs' discretion x x x is consistent with the state policy of the local autonomy and is in line with the operative principle of decentralization and the national goal of propelling social, and economic growth and development through the active participation of the private sector'.

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, the Municipality of Bongabong is free, provided no statute is violated, to adopt its definition of a joint venture undertaking and prescribe the requirements, procedures and conditions for Municipality of Bongabong joint venture projects, and incorporate these in an operative framework; and

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

NOW THEREFORE, BE IT ORDAINED, by the Sangguniang Bayan in session assembled that:

CHAPTER 1 POLICY AND BASIC PRINCIPLES

Section 1. Short Title. — This Ordinance shall be known as the "**Joint Venture Code of the Municipality of Bongabong.**"

Section 2. Declaration of Policy. —

- (a) It is hereby declared as a policy that the Municipality of Bongabong shall advance the public good and general welfare, and promote the interest of the community and the Municipality of Bongabong within the framework of sustainable and integrated development, effective constructive engagement, and meaningful people's participation in local governance.
- (b) Joint Ventures (JV or JVs) shall be pursued by the Municipality of Bongabong consistent with and in furtherance of its vision and mission which state that:

VISION: "THE CENTER OF ORGANIC FARMING IN ORIENTAL MINDORO"

A community with God loving, well informed, healthy, self-reliant, empowered and vigilant citizenry, who lived in a balanced, attractive and safe environment, and a globally competitive, diversified and environment-friendly economy, under a firm decent, steadfast, progressive leadership with strong public-private partnership".

MISSION: A transparent, just and participative governance with efficient and competitive public servants working together with the civil society for a self-reliant community.

A municipality where its community members are safe and secured, morally upright, academically competent, healthy and economically

productive ensuring the realization of an empowered agri-based community.

An accelerated economy anchored on and sustained through agritourism and engaged in different business enterprises.

An ecologically balanced and hazard-protected habitat supporting the aspirations of the community.

A municipality where its staffing pattern are humble, discipline, dedicated, morally upright, academically competent responsible and God-fearing ensuring the realization of programs and strategies that will increase the outcome of health, education, income, agriculture, transportation, social protection, peace and order, tourism and other services.

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

- (a) The Municipality of Bongabong, 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 governments 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 transparency, public accountability, and social accountability mechanisms and approaches shall be integrated in JVs from inception to implementation.
- (c) The Municipality of Bongabong exists and operates in its governmental and proprietary capacities, thereby making the Municipality of Bongabong an agent of, and is therefore accountable to, the State and its community. The role of the Municipality of Bongabong both as a regulator of a business and as implementer of a proprietary undertaking must be clearly delineated.
- (d) The Municipality of Bongabong 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. The Municipality of Bongabong is under the supervision of the President and under the qualified control of Congress.
- (e) Under Section 18 of Republic Act (R.A.) No. 7160 or the Local Government Code of 1991 (1991 LGC), the Municipality of Bongabong may acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and may apply their resources and assets for productive, developmental, or welfare purposes.
- (f) Under Sections 22(a)(5) and 22(a)(6) of the 1991 LGC, every LGU, as a corporation, has the power to enter into contracts, among others, subject to limitations under the law.
- (g) Under Section 22(c) of the 1991 LGC, no contract may be entered into by the Local Chief Executive on behalf of the Municipality of Bongabong without prior authorization by the Sangguniang Bayan. The participation of the Sanggunian is indispensable in the adoption and implementation of a JV arrangement.
- (h) Under Section 22(d) of the 1991 LGC, the Municipality of Bongabong 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.

- (i) Under Section 25(b) of the 1991 LGC, the Municipality of Bongabong may collaborate or cooperate with other local governments, national government agencies, government owned and controlled corporations, government instrumentalities, and government corporate entities for the implementation of local projects.
- (j) Under the charter of the Municipality of Bongabong, Sections 16, 17, 19 and 129 of the 1991 LGC, and other statutes, the Municipality of Bongabong has been given the responsibility and mandate to exercise devolved and delegated powers.
- (k) The Municipality of Bongabong, under Section 106 of the 1991 LGC, is mandated to draw up and implement a comprehensive multi-sectoral development plan.
- (l) JVs shall be pursued by the Municipality of Bongabong consistent with its infrastructure, development, investment, environmental, and governance framework embodied in relevant policies, plans, ordinances, and codes.
- (m) The Municipality of Bongabong, as a partner in a JV arrangement, may contribute money/ capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing, and the usage thereof for a JV project shall be considered for public use and purpose.
- (n) Under Sections 34, 35 and 36 of the 1991 LGC and in the exercise of its powers, the Municipality of Bongabong may enter into JVs and such other cooperative arrangements with people's and non-governmental organizations (POs and NGOs) to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversity agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people; provide assistance, financial or otherwise, to such POs and NGOs for economic, socially-oriented, environmental, or cultural projects to be implemented within its territorial jurisdiction.
- (o) The Municipality of Bongabong, under Section 3(l) of the 1991 LGC, is duty-bound to ensure the active participation of the private sector in local governance.
- (p) The right of the people to information on matters of public concern is guaranteed under Section 7, Article III of the 1987 Constitution. Furthermore, it is the policy of the State to allow full public disclosure of all its transactions involving public interest such as JV under Section 28, Article II of the 1987 Constitution.
- (q) The people's right to effective and reasonable participation and public trust provision under Section 16, Article XIII and Section 1, Article XI, respectively, of the 1987 Constitution guarantee and empower civil society organizations (CSOs) to have effective and meaningful participation in the regulation and management of JV projects.

Section 3-A Acronyms. The following acronyms are used in this ordinance, to wit;

JV – Joint Venture

JV-SC – Joint Venture Selection Committee

CSO – Civil Society Organization

PO – People Organization

NGO – Non-Government Organization

PPP – Public Private Partnership

PSP – Private Sector Partner

IAESP – Invitation to Apply for Eligibility and to Submit Proposal

CMU – Contract Management Unit

LGC – Local Government Code

Section 4. Rationale for JVs. — JVs shall be promoted to provide better, affordable, and timely services to the community. In pursuing JVs, the Municipality of Bongabong shall be guided by the following reasons and drivers:

- (a) JV projects shall be undertaken in furtherance of the Municipality of Bongabong development and physical framework plan.
- (b) The JV project is an essential part of the overall local development plan of the Municipality of Bongabong. Infrastructure and regulatory reform shall be achieved by: (i) encouraging performance-based management of the delivery of public services applying commercial principles and incentives whenever possible; (ii) introducing competition in and for the market; and (iii) involving users and stakeholders in the decision-making process.
- (c) JV projects should be adopted to address a public need. Under the principle of "additionality," the increased economic benefits to consumer welfare of having needed public services and infrastructure is now accessible because of the JV project, rather than having to wait until the Municipality of Bongabong could provide the public services much later. JVs would also encourage the accelerated implementation of local projects.
- (d) JV projects can be adopted to avoid costs and public borrowing. By contracting with the private sector to undertake a new infrastructure project, scarce Municipality of Bongabong capital budgets can be directed to other priority sectors such as social services, education, and health care.
- (e) The JV project allows for technology transfer and improved efficiency and quality of service. These could be valuable contributions of the private sector in local governance.
- (f) JV projects should be feasible and affordable. The need for the project, broad level project costs estimation, and indicative commercial viability should be demonstrated. The assessment of affordability shall be the cornerstone for all JV projects, both to the Municipality of Bongabong and the general public.
- (g) JV projects should be bankable. High participation costs, unreasonable risk transfer, or lengthy and complex contract negotiations must be avoided. A cost recovery pricing policy attractive to the private sector must be in place; Provided, That the same will not be disadvantageous to government and public interest.
- (h) JV projects should provide value-for-money and good economic value as far as practicable, including allocation of risks to the party best able to control, manage, mitigate, or insure these risks, and maximization of the benefits of private sector efficiency, expertise, flexibility, and innovation.
- (i) JV projects must provide economic and social benefits and should be evaluated on this basis rather than on purely financial considerations. The Municipality of Bongabong remains responsible for services provided to the public, without necessarily being responsible for corresponding investment.
- (j) JV projects must give consideration for empowerment of Filipino citizens as a strategy for economic growth and sustainability, and must thus provide for the participation of local investors to the furthest extent practicable given the nature of the project. The

Municipality of Bongabong shall also ensure the hiring and employment of local labor in JV projects.

- (k) Procurement of JV projects must be competitive and must be undertaken through open competitive bidding. Competition must be legitimate, fair, and honest. In the field of government contract law, competition requires, not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, the same undertaking, but also that it be legitimate, fair and honest, and not designed to injure or defraud the government. Where competitive bidding cannot be applied, a competitive process ensuring both transparency and economically efficient outcome must be employed.
- (l) The regulation of JVs shall be pursuant to the JV contract and exercised by the appropriate regulatory authority. A duly executed and legal JV contract shall be respected and not impaired, and shall be binding on the successor administration pursuant to the provision on corporate succession. Procedures, activities, and steps duly undertaken by the Local Chief Executive, the JV - Selection Committee (JV-SC), and Sangguniang Bayan 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 Municipality of Bongabong and the private sector participants (PSP or PSPs) or JV partner as to the substance of agreements signed, certifications issued, resolutions issued, and procedures undertaken.
- (m) To provide efficient public service, the Municipality of Bongabong must ensure, through stronger performance management and guidance, proper implementation of JV contracts that will result in value for money, on-time delivery of quality services to the public, achievement of government policy goals, all within sustainable end integrated development.

CHAPTER 2 JOINT VENTURE PROJECTS

Section 5. Joint Venture. — A joint venture is an arrangement whereby a private sector entity or a group of private sector entities on one hand, and an LGU or a group of LGUs on the other hand, contribute money, capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing, to undertake an investment activity. The JV involves a community or pooling of interests in the performance of an investment activity, and each party shall have the right to direct and govern the policies in connection therewith with the intention of sharing both profits and risks and losses, subject to agreement by the parties.

The goal of the JV's investment activity shall be specific and shall facilitate private sector initiative in a particular industry or sector. The activity shall eventually be transferred to either the private sector entity or group of private sector entities, under competitive market conditions, or to the LGU or group of LGUs.

A JV may be undertaken either through: (i) the formation of a JV company, incorporated and registered under the Revised Corporation Code of the Philippines (R.A. No. 11232), its Implementing Rules and Regulations (IRR), and Securities and Exchange Commission (SEC) rules and regulations; or (ii) the execution of a JV contract under which the parties shall perform the functions and obligations, and derive their respective rights without the need to form a JV company.

The determination of the appropriateness and viability of the JV mode shall be specified, explained, and justified in the feasibility or project study weighing all the relevant value drivers and reasons for pursuing a JV project.

Parties to the JV arrangement shall 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 or generating revenues: Provided, That the recovery of private investments shall not be through availability payments: Provided further, that for the purposes of this Ordinance, availability payment shall refer to payments made by the Municipality of

Bongabong over the lifetime of a contract in return for the PSP making the infrastructure available.

In case of a JV company, ownership and nationality requirements under the Constitution and other pertinent laws should be complied with; provided, that the Municipality of Bongabong's equity contribution in the JV Company shall be fifty percent (50%) or less of the outstanding capital stock of the latter. The Municipality of Bongabong's contribution shall be subject to a third-party independent valuation, depending on the nature of the contribution.

No JV project shall bear the name of any past or incumbent local official.

Section 6. JV Projects. — The Municipality of Bongabong, through the appropriate and viable JV mode, may undertake developmental projects, including but not limited to, singly or with other related components, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroad and r transport systems, land reclamation projects, industrial estates or townships, commercial/ real estates, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other development projects.

Section 7. List of JV Priority Projects. — The Municipality of Bongabong shall identify specific priority development projects in its Comprehensive Development Plan (CDP), Local Development Investment Plan, and Annual Investment Plan that may be undertaken under the JV modality.

Section 8. Government-to-Government Joint LGU JV Undertakings. — The Municipality of Bongabong by mutual agreement in a Government-to-Government arrangement with other LGUs, national government agencies, government-owned and controlled corporations, government instrumentalities, and government corporate entities, may implement JV projects for projects located within the Municipality of Bongabong's territory or those projects that will benefit the Municipality of Bongabong and its community even if the project site is outside the Municipality of Bongabong's territory; Provided, That the collaborating or partner government entity jointly undertakes with the Municipality of Bongabong the selection of the PSP for the joint LGU JV project.

Section 9. Approval of Projects. — All projects to be implemented in accordance with this Ordinance shall be evaluated and approved by the Sangguniang Bayan prior to the conduct of competitive selection; Provided, that in the case of unsolicited JVs, no original proponent status shall be conferred without the approval of the Sangguniang Bayan. The JV project shall be evaluated on its technical, financial, economic, legal, and institutional aspects. The Sangguniang Bayan shall likewise ensure that the project is compliant with existing laws, rules, regulations, and related issuances.

CHAPTER 3 SELECTION PROCEDURES

RULE 1 SELECTION COMMITTEE

Section 10. JV Selection Committee. - There is hereby created the Municipality of Bongabong JVSC for purposes of selecting a PSP for a specific JV project. The JV-SC, to be constituted and convened by the Local Chief Executive, shall be composed of the following voting members:

- (a) Chairperson — the Municipal Administrator or in his absence, any Department head as may be designated by the Municipal Mayor.
- (b) The Municipal Treasurer;
- (c) The Municipal Planning and Development Coordinator;
- (d) The Municipal Legal Officer, if any;

- (e) One (1) representative from and selected by the Sangguniang Bayan, designated in an appropriate resolution; and
- (f) Two (2) representatives from and chosen by the accredited CSOs, POs, and NGOs who are members of the local development council of the Municipality.

In the case of LGUs that do not have legal officers, item (d) will not apply. However, the municipality may seek legal advice from either an external legal advisor or the provincial legal officer to assist the JV-SC.

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 shall be assisted by a Secretariat to be headed by the Municipal Planning and Development Coordinator.

The JV-SC, with the approval of the Local Chief Executive, may invite the following to observe on a non-voting capacity in its proceedings:

- (a) One (1) technical officer knowledgeable with aspects of requirements of the project from a concerned regulatory body, who is to be invited by the Municipality of Bongabong on a project-to-project basis;
- (b) One (1) representative from the Commission on Audit;
- (c) One (1) representative from the DILG regional office or field units;
- (d) One (1) representative from the National Economic and Development Authority (NEDA) regional office;
- (e) One (1) representative from the PPP Center; and
- (f) Two (2) representatives from the private sector.

The JV-SC may, with the approval of the Local Chief Executive, form a support staff composed of employees and staff of the Municipality of Bongabong.

The JV-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others:

- (a) the preparation of the feasibility or project study and selection/ tender documents;
- (b) determination of the minimum designs, performance standards/ specifications, economic parameters, and reasonable rate of return or tariff-setting mechanism appropriate to the JV project;
- (c) drafting or evaluation of the JV contract;
- (d) publication of the invitation to apply for eligibility and submission of proposals or comparative proposals;
- (e) defining the eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge processes;
- (f) pre-qualification of prospective PSPs, bidders, or challengers;
- (g) conduct of pre-selection conferences and issuance of supplemental notices;
- (h) interpretation of the rules regarding the selection process;
- (i) conduct of the selection or challenge process;
- (j) evaluation of the legal, financial and technical aspects of the proposals;
- (k) resolution of disputes between PSPs and challengers;

- (l) defining the appeals mechanisms; and
- (m) recommendation for the acceptance of the proposal and/ or for the award of the contract.

RULE 2 SOLICITED JOINT VENTURE PROJECTS

Article 1 Selection/Tender Documents

Section 11. *Selection/Tender Documents.* — The Municipality of Bongabong JV-SC shall prepare the selection/ tender documents which shall include the following:

- (a) Instructions to PSPs;
- (b) Minimum design, performance standards/specifications, key performance indicators, and other financial and economic parameters, where applicable, among others;
- (c) Feasibility study or a business case/ pre-feasibility study of the project, which, at the minimum, shall contain the following: (i) market study; (ii) technical analysis; (iii) legal analysis; (iv) environmental impact assessment; (v) social Impact assessment; (vi) project costs (investment costs, operation and maintenance expenses); (vii) economic analysis; (viii) financial analysis; (ix) implementation plan; and (x) risk analysis (identification and mitigating measures);
- (d) Draft contract reflecting the terms and conditions in undertaking the JV, including, among others, the contractual obligations of the contracting parties and the ownership of the JV project or property after the termination of the JV agreement and other provisions as provident in Section 14 herein;
- (e) Selection form reflecting the required Information to properly evaluate the technical and financial proposal;
- (f) Forms of technical and financial proposals and performance securities; and
- (g) Other documents as may be required by the Municipality of Bongabong and other requirements of concerned regulatory agencies as may be pertinent or applicable to the JV.

Section 12. *Instructions to PSPs.* — The instructions to PSPs, which establish the rules of the selection process, shall be clear, comprehensive, and fair to all PSPs, and shall, as far as necessary and practicable, include the following information:

- (a) General description and objectives of the JV project
- (b) Proposal submission procedures and requirements, which shall Include information on the manner of proposal submission, the number of copies of the technical and financial proposal to be submitted, where the proposals are to be submitted, the deadline for the submission of proposals, and permissible mode of transmission of technical and financial proposals, etc.;
- (c) Cost of eligibility and bidding documents;
- (d) Amount and form of proposal security and proposal security validity period;
- (e) Milestones;
- (f) Method, parameters, and criteria for the evaluation of the proposals;

- (g) Minimum amount of equity of the PSP;
- (h) Requirements of concerned regulatory bodies/agencies as may be pertinent or applicable to the JV project;
- (i) Revenue sharing arrangement, if any; and
- (j) Nationality and ownership requirements as required by law.

Section 13. Minimum Designs, Performance Standards/Specifications and Economic Parameters.

- Minimum design and performance standards/ specifications, including key performance indicators and appropriate environmental standards by the Department of Environment and Natural Resources (DENR), and standards by the concerned regulatory agencies as may be pertinent or applicable to the JV project, shall be clearly defined and shall refer to the desired quantity and quality of the outputs of the JV project and should state that non-conformity with any of these minimum requirements shall render the proposals as nonresponsive.

Likewise, for the purposes of evaluating proposals, the following economic parameters, among others, and where applicable, shall be prescribed:

- (a) Discount rate, foreign exchange rate, and inflation factor;
- (b) Maximum period of project construction;
- (c) Fixed term and price indices to be used in the adjustments of tolls/ fees/ rentals/ charges, if applicable; and
- (d) Minimum period of repayment, if applicable.

Section 14. Draft Contract. — The draft contract should clearly define the basic and legal relationship between the parties and their rights and responsibilities including specific government undertakings to be provided by the Municipality of Bongabong relative to the JV project, if any. Specifically, the draft contract shall also contain provisions on the following matters:

- (a) The date on which the agreement is established, executed, and considered affective;
- (b) The names, addresses, and identification of the parties, including the type of business of each party to the JV;
- (c) The name under which the JV company. If any, will do business;
- (d) The principal place of business of the JV company, if any;
- (e) Clearly defined purpose and objective/ s, contractual/ agreement mode (whether JV company/ corporate JV or contractual JV), term and scope of the JV contract;
- (f) Estimated cost of the JV project, project specifications, and features;
- (g) Minimum designs, performance standards/ specifications, key performance indicators, and other financial and economic parameters, where applicable;
- (h) The relationship between the parties, management roles of each party In the JV project, 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;
- (i) 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 PSP is to be borrowed, a statement that there shall be no government guarantee for said loan;

- (j) Procedure for additional capital infusions, if required, and a statement that there shall be no government guarantee for loans to be incurred by the PSP in case the additional contribution of the PSP is to be borrowed;
- (k) In contractual JVs, a declaration of the participation of the parties and percentage in which profits and losses are shared, which can be increased or decreased, depending on the agreement of the parties;
- (l) Specified termination/ liquidation of the JV company, buy-out provisions, and details on the transfer of ownership of the JV 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 JV agreement;
- (m) 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. 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;
- (n) Implementation milestones, regular meeting schedules, financial and periodic JV, and progress reporting procedure;
- (o) Establishment of a JV bank account, and the appointment of a certified public accountant and lawyer;
- (p) Provide for the of licenses in the name of the JV or each co-venturer, as required;
- (q) Type of insurance carried by the JV and clearly defined liabilities to be insured against by each participant;
- (r) 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;
- (s) Confidentiality of trade Information passed between the co-venturers;
- (t) Ownership or retention of patents, technology, and consultant reports;
- (u) Performance security requirements of the project and the bonding obligations of the coventurers;
- (v) Undivided pro-rata interests held by the co-venturers on all assets of the JV;
- (w) Restriction regarding assignment of PSP's undivided pro-rata interests in assets of the JV;
- (x) 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;

- (y) Indemnification and liquidated damages;
- (z) Performance and warranty bonds;
- (aa) Minimum insurance coverage;
- (bb) Acceptance tests and procedures;
- (cc) Validity of the performance security, warranty period, and procedures;
- (dd) 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;
- (ee) The manner and procedures for the resolution of warranty against corruption;
- (ff) Compliance with all other laws, rules and regulations, including those related to social and environmental safeguards;
- (gg) Procedure and/or period for withdrawal by the Municipality of Bongabong of its contribution to the JV, or exit divestment by the Municipality of Bongabong of its interest in the JV, and substitution or addition of parties;
- (hh) Payout of funds;
- (ii) Alternative dispute resolution (ADR), pursuant to EO No. 78 dated 04 July 2012, to avoid management impasses that may produce deadlock or litigation;
- (jj) Provision defining how user fees, quality of public service, and other matters affecting public interest shall be regulated;
- (kk) Creation of a Contract Management Unit (CMU);
- (ll) Procedures for monitoring the JV project; and
- (mm) Procedures for amendments to the JV agreement.

Article 2 **Invitation to Apply for Eligibility** **and Submission of Proposals**

Section 15. *Publication of Invitation to Apply for Eligibility and to Submit a Proposal (IAESP).* — Prior to issuance/ publication of the IAESP, the Municipality of Bongabong shall submit a copy of the draft JV agreement, instructions to PSP, and minimum designs, performance standards/ specifications and economic parameters to the Sangguniang Bayan and the PPP Center, for information.

The IAESPs shall be advertised once in a newspaper of general nationwide circulation, and posted continuously for a period of seven (7) calendar days, starting on date of advertisement, at the following:

- a) Website of the Municipality of Bongabong if available; and
- b) Website of the Municipality of Bongabong's service provider, if any; and
- c) Any conspicuous place within the premises of the Municipality of Bongabong's procuring entity.

PSPs shall be given at least thirty (30) calendar days from the last date of publication of the IAESP to apply for eligibility and to submit a proposal. Notwithstanding, the Municipality of Bongabong may adjust said period as may be appropriate for the nature, scope, size, and complexity of the JV project, provided that the principles of transparency, competition, and accountability are observed.

Article 3 Qualification of PSP's

Section 16. *Who may participate.* — Any individual, partnership, corporation or firm, or consortium, whether local or foreign, may participate, subject to the requirements set below.

Section 17. *Eligibility Requirements.* —

- (a) **Legal Requirements.** — If the JV requires a public utility franchise, the PSP must be duly registered with the SEC and be at least sixty percent (60%) Filipino-owned. For projects other than these, PSPs shall comply with nationality and ownership requirements under the Constitution and other applicable laws and issuances.

For JV activities to be operated by the PSP or a facility operator where operation of the facility does not require a public utility franchise, the PSP or facility operator concessionaire may be Filipino or foreign-owned, as maybe allowed under applicable laws, rules, and regulations.

- (b) **Technical Requirements.** — The PSP must have completed a project similar or related to the JV whose value, adjusted to current prices using the Philippine Statistics Agency (PSA), Consumer Price Index (CPI), must be at least fifty percent (50%) of the cost of the JV subject of the selection process within the relevant period as determined by the Municipality of Bongabong. The PSP shall submit a statement of all its ongoing and completed government and private contracts similar or related to the JV subject of the selection process, including contracts awarded but not yet started, if any. For clarity, one project is sufficient to meet this requirement.
- (c) **Financial Capability** — The Municipality of Bongabong shall determine, before evaluation of eligibility, the minimum amount of equity needed for the JV. For this purpose, the following documents shall be submitted by the PSP:

- (i) Audited financial statements for the past three (3) calendar years. If the PSP is Filipino, the audited financial statements to be submitted must be stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions; and
- (ii) Latest tax returns, if the PSP is Filipino.

Financial capability shall be measured in terms of:

- (i) proof of ability of the PSP to provide a minimum amount of equity to the JV, measured in terms of the net worth of the company, or a deposit equivalent to the minimum equity required set aside or ear-marked for the JV project; and
- (ii) a letter from a domestic universal/commercial bank, or an international bank with a subsidiary/ branch in the Philippines, or any international bank recognized by the Bangko Sentral ng Pilipinas (BSP), attesting that the PSP is one of its current clients, and is in good financial standing.
- (d) In case of consortia, all member-entities of the PSP shall also submit the above legal, technical, and financial eligibility requirements to determine the overall capability of the consortia for the JV undertaking.

(e) Acceptance of Criteria and Waiver of Rights to Enjoin JV. — In addition to the above, all PSPs shall be required to submit, as part of their qualification documents, a statement stipulating that the PSP:

- (i) has accepted the qualification criteria established by the Municipality of Bongabong 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 Municipality of Bongabong or its JVSC to prevent or restrain the qualification proceedings related thereto, the award of the contract to a successful PSP, and the carrying out of the awarded contract. However, such waiver shall be without prejudice to the right of a disqualified or losing PSP to question the lawfulness of its disqualification or the rejection of its proposal by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

The Municipality of Bongabong may require the PSP to submit additional documents or information necessary as required under existing laws, rules, and regulations.

Section 18. *Eligible and Ineligible.* — The Municipality of Bongabong, through its JV-SC, shall within a period of fifteen (15) calendar days after the deadline set for the submission of the eligibility documents, complete the evaluation of the eligibility documents of the PSP, and determine which among them are "eligible" and "ineligible." Accordingly, the JV-SC shall duly inform the eligible PSPs within seven (7) calendar days after approval thereof. Ineligible PSPs shall be similarly given notice of such ineligibility, stating therein the grounds for ineligibility within the same period.

Section 19. *Issuance of Tender Documents.* — The Municipality of Bongabong shall make available the related competitive selection documents to all eligible PSPs as soon as practicable to provide respective PSPs ample time to examine the same and to prepare their respective proposals prior to the date of opening of the proposals. The time period from the last day of the issuance of tender documents to the date of opening of the proposal shall not exceed sixty (60) calendar days for JV facility/ project costing Five Hundred Million Pesos (PhP 500 Million) and above, and thirty (30) calendar days for JV facility/ project costing less than Five Hundred Million Pesos (PhP 500 Million).

The proposal parameters for the JV project should be transparent and fair. It should not, in any way, be tailor-made for or meant to favor or give advantage to a particular PSP.

Article 4 **Supplemental Competitive Selection** **Bulletins and Pre-Selection Conferences**

Section 20. *Responsibility of the PSP.* — The PSP shall be solely responsible for having taken all the necessary steps to carefully examine and acquaint himself with the requirements and terms and conditions of the selection documents with respect to the cost, duration, and execution/ operation of the project as it affects the preparation and submission of its proposal. The Municipality of Bongabong shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective PSP out of data furnished or indicated in the competitive selection documents.

Section 21. *Supplemental Notices.* A PSP may submit a written request to the Municipality of Bongabong on or before the pre-selection conference as to the meaning of any data or requirements or any part of the selection documents. Any substantive interpretation given by the Municipality of Bongabong shall be issued in the form of a Supplemental Notice, and furnished to all PSPs. The Municipality of Bongabong may also issue Supplemental Notices to all PSPs at any time for purposes of clarifying any provisions of the selection documents, provided that the same are issued within a reasonable period to allow all PSPs to consider the same in the preparation of their proposals. Receipt of all Supplemental Notices shall be duly

acknowledged by each PSP prior to the submission of his proposal and shall be so indicated in the proposal.

Section 22. Pre-Selection Conference. - For JV activities with facility/ project cost amounting to less than Five Hundred Million Pesos (PhP 500 Million), a pre-selection conference shall be conducted by the Municipality of Bongabong JV-SC at least fifteen (15) calendar days before the deadline for the submission of proposals. For JV activities with facility/ project cost amounting to Five Hundred Million Peso (PhP 500 Million) and above, the pre-selection conference shall be conducted at least thirty (30) calendar days before the deadline for the submission of proposals. Notwithstanding, the Municipality of Bongabong JVSC may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed JV; Provided, That the principles of transparency, competition, and accountability are observed.

**Article 5
Submission and Receipt of Proposals**

Section 23. Requirements for Submission of Proposals. — PSPs shall be required to submit their proposals on or before the deadline stipulated in the "Instructions to PSPs." For eligible PSPs, proposals shall be submitted in two (2) separate sealed envelopes, the first being the technical proposal and the second the financial proposal.

The technical proposal shall contain the following, as applicable:

- (a) Compliance statements with regard to the technical parameters as stated in the tender documents;
- (b) Operational feasibility;
- (c) Technical soundness, including proposed project timeline;
- (d) Preliminary environmental assessment;
- (e) Cost of the JV project;
- (f) Proposal security in the form as required by the Municipality of Bongabong 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, or any combination thereof payable to the Municipality of Bongabong concerned in accordance with the following schedule:

Total Contribution of the PSP As Estimated by the LGU	Required Proposal Security
Less than Php 5.0 Billion	2.0% of the PSP's contribution as estimated by the Municipality of Bongabong
PhP 5.0 Billion to less than PhP 10.0 Billion	1.5% of the PSP's contribution as estimated by the Municipality of Bongabong
PhP 10.0 Billion and more	1.0% of the PSP's contribution as estimated by the Municipality of Bongabong

- (g) Other documents to support the PSP's technical proposal, as may be required by the Municipality of Bongabong.

The financial proposal shall contain the following, as the case may be:

- (a) Compliance statements with regard to the financial parameters stated in the tender documents;
- (b) Proposed cost of the JV, operation and maintenance cost, the amount of equity to be infused and debt to be obtained for the project, sources of financing, and all other related costs; and
- (c) Financial proposal corresponding to the parameters set by the Municipality of Bongabong.

The Municipality of Bongabong is not precluded from specifying other requirements for the technical and financial proposals that are best suited for the specific JV.

Section 24. *Submission of Late Proposals.* - Proposals submitted after the deadline for submission prescribed in the "Instructions to PSPs" shall be considered late and shall be returned unopened.

Article 6

Opening and Evaluation of Proposals

Section 25. *Opening of the Envelope for the Technical Proposal.* — At the date and time of the proposal opening stipulated in the "Instructions to PSPs," the Municipality of Bongabong JVSC shall open only the first envelope containing technical proposal and ascertain the following:

- (a) whether the same is complete in terms of the data/ information required under Section 23 above; and
- (b) whether the same is accompanied by the required proposal security in the prescribed form, amount, and period of validity.

All PSPs, or their representatives, present at the opening of the envelopes containing the technical proposal shall sign a register of the proposal opening.

Section 26. *Evaluation of the Technical Proposal.* — The evaluation of the first envelope containing the technical proposal shall involve the assessment of the technical, operational, environmental, and financing viability of the proposal, vis-a'-vis the prescribed requirements and criteria/ minimum standards, and basic parameters prescribed in the competitive selection documents.

The Municipality of Bongabong JV-SC shall complete the evaluation of the technical proposal within thirty (30) calendar days from the date the proposals are opened. Only those proposals that have been determined to have positively passed the evaluation of the technical proposal shall be qualified and considered for the evaluation of the financial proposal.

Section 27. *Opening of the Envelope for the Financial Proposal.* — Only the financial proposals of PSPs who passed the evaluation described in this Code, shall be opened for further evaluation. The financial proposals tendered by PSPs who failed the technical proposal evaluation under Section 26 of this Code, shall not be considered further, and shall be returned unopened, together with a notice stating the reasons for disqualification from further consideration.

The Municipality of Bongabong JV-SC shall notify the PSPs qualifying for the second stage of evaluation of the date, time, and place of the opening of the envelopes for the financial proposal. The opening thereof shall follow the same procedure prescribed for the opening of the envelopes containing technical proposals.

Section 28. *Evaluation of the Financial Proposal.* — The evaluation of the financial proposal shall involve the assessment and comparison of the financial proposals against the financial parameters stated in the tender documents and proposal parameters set by the Municipality of Bongabong JV-

SC. The proposed financing plan must show that the same adequately meets the costs relative to the JV. The evaluation of financial proposals shall be completed by the JV-SC within fifteen (15) calendar days.

Section 29. Simultaneous Evaluation of the Technical and Financial Proposals. - In cases where the nature of the JV project shall warrant the appreciation of both the technical and financial proposals as a whole in order to determine the best proposal, simultaneous evaluation of the technical and financial proposals may be resorted to: Provided, that said evaluation procedure is subject to the determination of the Local Chief Executive and is explicitly stated in the proposal documents. Simultaneous evaluation of the technical and financial proposals shall be completed within thirty (30) calendar days from the date the proposals are opened.

Section 30. Prescriptive periods. — The periods stated for the evaluation of the technical and financial proposals are prescriptive. The Municipality of Bongabong JV-SC may adjust said periods as may be appropriate for the nature, scope, size, and complexity of the proposed JV, provided that the principles of transparency, competition, and accountability are observed.

Section 31. Rejection of proposals. — Non-compliance to the information required on either the first or second envelope shall be grounds for rejection of proposals.

Section 32. Withdrawal and/or modification of proposals. - Withdrawal and/ or modification of proposals may be allowed upon written notice by the PSP concerned, to the Municipality of Bongabong prior to the time and date set for the opening of the envelope containing the technical proposal as specified in the "Instructions to PSPs." No proposals shall thereafter be modified or withdrawn. Proposal modifications received after said period shall be considered late and will be returned unopened. Withdrawal of proposals after the proposal opening date shall cause the forfeiture of the PSP's proposal security.

Section 33. Right to reject all proposals. — The Municipality of Bongabong reserves the right to reject any or all proposals, waive any minor defects therein and accept the offer It deems most advantageous to the government.

Section 34. Breaking tie bids. — In case tie bids occur under competitive selection or competitive challenge, the procedure for breaking tie bids shall be done through drawing of lots or similar methods that are non-discretionary and non-discriminatory such that it is based on sheer luck or chance.

Section 35. Simultaneous or Single-stage Qualification and Bidding. — In the exigency of service, the Municipality of Bongabong may opt to do a simultaneous qualification instead of a pre-qualification of proponents. In case of simultaneous qualification, the publication of the invitation, following the requirements in Articles 2, 3, and 4 of Rule 2 hereof, shall be for the submission of qualification requirements and bid proposals. The bidders shall be asked to submit their proposal in three (3) envelopes; the first envelope — the qualification documents corresponding to the requirements so stated in Section 17 herein; the second envelope — the technical proposal; and the third envelope — the financial proposal. The requirements for bid submission are covered under Article 5 of Rule 2 hereof. The period for the preparation of the qualification documents shall be subsumed under the time allotted for bid preparation.

Article 7 Award and Approval of Contract

Section 36. Recommendation to Award. — Within seven (7) calendar days from the date the evaluation procedure adopted is completed, the Municipality of Bongabong JV-SC shall submit

the recommendation of award to the Local Chief Executive. The JV-SC shall include as part of its recommendation, a detailed evaluation/ assessment report on its decision regarding the evaluation of the proposals, and explain in clear terms the basis of its recommendations.

Section 37. Decision to Award. — Within seven (7) calendar days from the submission by Municipality of Bongabong JV-SC of the recommendation to award, the Local Chief Executive

shall approve or reject the same. The approval shall be manifested by signing and issuing the "Notice of Award" to the winning PSP within seven (7) calendar days from approval thereof. All participating PSPs shall be informed of the award in writing. Such decision shall be made available to the public upon request.

Section 38. Notice of Award. — The "Notice of Award" to be issued by the Local Chief Executive shall contain, among others, an instruction to the winning PSP to comply with conditions precedent for the execution of the JV agreement and to submit compliance statements with regard thereto, within thirty (30) calendar days from receipt of the "Notice of Award", unless otherwise specified or extended by the Local Chief Executive. Conditions precedent for the execution of the contract shall include, among others, the posting of a performance security in favor of the Municipality of Bongabong, proof of commitment of the required equity contribution, and proof of firm commitments from reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project. The Municipality of Bongabong shall determine which form of performance security it will require, which may be in the form of cash, bank draft, or guarantee confirmed by a local bank (in the case of foreign bidders bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond callable on demand issued by Government Service Insurance System (GSIS), or by a surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof, in accordance with the following schedules:

- (a) Cash, manager's check, irrevocable letter of credit, bank draft — a minimum of two percent (2%) of the PSP's contribution to the JV.
- (b) Bank Guarantee — a minimum of five percent (5%) of the PSP's contribution to the JV.
- (c) Surety Bond — a minimum of ten percent (10%) of the PSP's contribution to the JV.

Failure to comply with the conditions precedent for the execution of the contract within the prescribed thirty (30)-calendar day period or as specified or extended by the Local Chief Executive will result in confiscation of the proposal security. Within seven (7) calendar days from receipt of the compliance statements from the winning PSP, the Local Chief Executive shall determine the sufficiency of the same and notify the winning PSP accordingly.

Section 39. Validity and Return of Proposal and Performance Securities. — The execution of the JV agreement shall be made within the period of the validity of the proposal security. The required proposal security shall be valid for a reasonable period, but in no case beyond one hundred eighty (180) calendar days following the opening of the proposals. Proposal securities shall be returned to the winning PSP and unsuccessful PSPs upon signing of the JV agreement by the winning PSP.

The performance security shall be valid within the period one (1) year after the expiration of the JV agreement or end of the JV period, or as may be stipulated in the JV agreement. Upon certification by the Local Chief Executive that there are no claims filed against the winning PSP after the expiration of the JV agreement or end of the JV period, the performance security shall be released by the former. As may be agreed upon in the JV agreement, a portion of the performance security shall be released upon compliance with corresponding milestones.

Section 40. Extension of Validity of Proposals. — When an extension of validity of proposals is considered necessary, those who submitted proposals shall be requested in writing, to extend the validity of their proposals before the expiration date of the same. However, PSPs shall not be allowed to modify or revise the price or other substantial aspect of their proposals. PSPs shall have the right to refuse such an extension without forfeiting their proposal security. As a condition of the extension of the validity of their proposals, participating PSPs must correspondingly extend the validity of their proposal security.

Section 41. Single Responsive Bid. — A single and responsive bid shall be considered for award if it falls under any of the following circumstances:

- (a) If after advertisement, only a single PSP submits eligibility documents within the deadline stipulated in the IAESP, and it meets the eligibility requirements, after which it submits a bid which is responsive to the technical and financial requirements;
- (b) If after advertisement, more than one PSP submits eligibility documents in accordance with the Rule 2, Article 3 of this Ordinance, but only one PSP meets the eligibility requirements, after which it submits a bid which is responsive to the technical and financial requirements;
- (c) If after the eligibility check, more than one PSP meets the eligibility requirements but only one PSP submits a bid, and its bid is found to be responsive to the technical and financial requirements; or
- (d) If after qualification/ evaluation of proposals, only one PSP meets the technical requirements but is not able to comply with financial requirements, after which a negotiation on the financial terms/ proposal in accordance with Section 43 hereof is conducted and is successful.

Section 42. Prospective Bidder/s Compliant with the Technical Requirements. — In case of a single technically qualified PSP but is not able to comply with financial requirements or, in case of technically qualified PSPs but are not able to comply with financial requirements, the Municipality of Bongabong may conduct negotiation on the financial terms/ proposal in accordance with the next Section.

Section 43. Negotiation on the Financial Terms/Proposal under the Competitive Selection Process. — In case the PSPs, whose technical proposals are rated "passed", are not able to comply with the financial requirements, the Municipality of Bongabong JV-SC shall request said PSPs to submit their new financial proposals. Thereafter, the Municipality of Bongabong shall notify and negotiate with the PSP on the financial proposal/ terms with the most advantageous financial proposal. The technical proposal shall remain valid and binding. In the event the Municipality of Bongabong fails to successfully negotiate with said PSP within thirty (30) calendar days reckoned from the date of notification, the Municipality of Bongabong shall negotiate with the next ranked most advantageous financial proposal, and so on and so forth, until a successful negotiation has been concluded.

In case of a single technically qualified PSP, the Municipality of Bongabong may conduct negotiation on the financial terms or on the financial proposal and shall conclude said negotiation within thirty (30) calendar days. The technical proposal shall remain valid and binding.

In the event that there is no successful negotiation, the Municipality of Bongabong shall conduct another competitive selection.

Section 44. Failure of Competitive Selection. — There shall be a failure of competitive selection in any of the following instances:

- (a) No prospective PSP/s is/ are eligible;
- (b) No bids or proposals are received;
- (c) No prospective PSP/s is/ are able to comply with technical requirements; or
- (d) No successful negotiation on the financial terms/ proposal, as provided under Section 43 hereof

In the event of a failed competitive selection brought about by instances stipulated above, the Municipality of Bongabong shall review the Terms of Reference (TOR)/ bidding documents and conduct another competitive selection.

Section 45. Execution/ Approval of the JV Agreement. — The authorized signatory/ies of the winning PSP and the Municipality of Bongabong, shall execute and sign the JV agreement, within seven (7) calendar days after the Local Chief Executive notifies the winning PSP of its compliance to the conditions or requirements precedent to the execution of the contract.

Consistent with Article 1159 of the New Civil Code, said JV agreement is considered the law between the parties, and the parties shall perform their respective representations, obligations, and undertakings thereunder with utmost good faith, with a view to attaining the objective thereof.

In the event of refusal, inability, or failure of the winning PSP to enter into contract with the Municipality of Bongabong within the time provided therefore, the Municipality of Bongabong shall forfeit its proposal security. In such event, the Municipality of Bongabong shall consider the PSP with the next-ranked complying proposal as the winning PSP, and notify said PSP accordingly. If the next ranked complying PSP shall likewise refuse or fail to enter into contract with the Municipality of Bongabong, its proposal security shall likewise be forfeited and the Municipality of Bongabong shall consider the next ranked complying proposal, and so on, until a contract shall have been entered into. In the event that the Municipality of Bongabong is unable to execute the contract with any of the complying PSPs, a failure of competitive selection will be declared and the JV may be subjected to a competitive selection again.

Section 46. *Other Approvals for Contract.* — The entity tasked under the JV agreement shall, as may be required under existing laws, rules, and regulations, secure any and all other approvals for the contract, or the implementation thereof, from government agencies or bodies including the regulator, in the case of public utility projects. This includes securing the necessary and appropriate environmental clearances from the DENR prior to actual project implementation. The DENR shall act on the environmental clearance of the JV within the timeframe prescribed and following the guidelines of the DENR Administrative Order No. 96-37 and subsequent guidelines as may be issued from time to time. The Municipality of Bongabong may provide the necessary assistance to its JV partner in securing all the required clearances. The contract shall provide milestones in securing such other approvals required for the implementation of the contract.

Prior to the execution of the JV agreement, the local legal office, as the chief legal counsel of Municipality of Bongabong, shall issue the corresponding counsel's opinion. In case the Municipality of Bongabong does not have its own counsel, it may seek legal opinion from the legal counsel of the provincial government.

Section 47. *Presidential Approval, When Required.* — Subject to the charter of the Municipality of Bongabong, no further higher approval is necessary, unless the same is required by law to be acted upon by the President of the Philippines. In which case, as deemed applicable, the provisions of existing laws, guidelines, rules and regulations shall be followed and adhered to by the Municipality of Bongabong.

Section 48. *Contract Effectivity.* — The JV contract shall be effective upon signing thereof by the Local Chief Executive unless another date is stipulated therein.

RULE 3
UNSOLICITED JOINT VENTURE PROJECTS
Article 1
Receipt and Initial Evaluation
of the Unsolicited Proposal

Section 49. *Submission of Complete Unsolicited JV Proposal.* — A PSP submits an unsolicited proposal accompanied by a Feasibility or Project Study and draft JV contract to the Municipality of Bongabong for a projected JV project.

Section 50. *Receipt and Evaluation of the Unsolicited JV Proposal.* — If there is more than one unsolicited proposal submitted for the same project, the Municipality of Bongabong, upon recommendation of its JV-SC, may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and provides greater advantage and benefits to the community and revenues to the Municipality of Bongabong.

The JV-SC shall make an initial evaluation to determine the completeness of the unsolicited proposal, the eligibility of the PSP pursuant to Section 17, the necessity for the proposed project, the consistency of the terms of the draft JV contract with the Municipality of Bongabong PPP Code, and the appropriateness of the project under a JV modality. The initial evaluation shall be completed within thirty (30) calendar days upon submission of the documents by the PSP including the eligibility requirements; Provided, that a longer period

may be allowed as determined by the Municipality of Bongabong considering the complexity of the project but shall in no case exceed sixty (60) calendar days.

Upon completion of the initial evaluation, the Head of the Municipality of Bongabong shall issue either a letter of acceptance or non-acceptance of the proposal. An acceptance shall not bind the Municipality of Bongabong to enter into the JV activity, but shall mean that authorization is given to proceed with detailed negotiations on the terms and conditions of the JV activity. In case of non-acceptance, the private sector entity shall be informed of the reasons/ grounds for non- acceptance.

Article 2 Detailed Negotiation

Section 51. *Negotiation with the PSP.* — The Municipality of Bongabong and the PSP (Parties, for brevity) shall negotiate and agree on the terms and conditions of the project as well as all of its legal, technical, and financial aspects. The negotiation shall be completed within thirty (30) calendar days upon acceptance by the Municipality of Bongabong of the proposal; Provided, That a longer period may be allowed as determined by the Municipality of Bongabong considering the complexity of the project but shall in no case exceed ninety (90) calendar days.

Within seven (7) days after the successful negotiation, the JV-SC shall submit the negotiated contract to the Sangguniang Bayan for approval. Such approval shall be issued in the form of a resolution which also authorizes the Local Chief Executive to enter into the JV contract on behalf of the Municipality of Bongabong. Once approval has been obtained, the Head of the Municipality of Bongabong and the authorized representative of the private sector entity shall issue a signed certification providing that:

- (a) An agreement has been reached by both parties and that both agree to submit the proposal to competitive challenge;
- (b) The Municipality of Bongabong has found the PSP and the technical and financial aspects of the project, as agreed upon, eligible; and
- (c) The Municipality of Bongabong confers to the PSP the original proponent (OP) status.

The issuance of the certification commences the activities for the solicitation for comparative proposals.

However, should negotiations not result to an agreement acceptable to both parties, the Municipality of Bongabong shall have the option to reject the proposal by informing the PSP, in writing, the grounds for rejection. Thereafter, the Municipality of Bongabong may accept other proposals from PSPs or decide to pursue the proposed activity through other means of procurement.

Article 3 Competitive or Swiss Challenge Proper

Section 52. *Tender Documents.* — 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.

The Local Chief Executive shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.

Section 53. *Invitation for Comparative Proposals.* — The JV-SC shall publish the invitation for comparative proposals. Prospective comparative PSPs or challengers shall be given at least one hundred twenty (120) calendar days from the issuance of tender/ bidding documents to develop and submit comparative proposals. If no comparative proposal is received by the Municipality of Bongabong, the JV project shall be immediately awarded to the OP.

Section 54. *Evaluation of Comparative Proposals.* — The procedure for the determination of eligibility of comparative proponents/PSPs, Issuance of supplemental competitive selection bulletins and pre-selection conferences, submission and receipt of proposals, opening and evaluation of proposals shall follow the procedure stipulated under Rule2.

If another qualified comparative PSP submits a superior counter-financial proposal, and it is accepted by the JV-SC, both the OP and the best-ranked comparative proponent shall be required to offer their best and final financial bid using the same bid parameter within a period not exceeding thirty (30) calendar days from the receipt of notice. Both bids shall be opened at the same time and neither of them shall have information on the bid of the other. The winning bid shall be determined based on the best financial proposal submitted.

Within seven (7) calendar days from the date of completion of the competitive challenge, the JV-SC shall submit the recommendation of award to the Local Chief Executive. Succeeding activities shall be in accordance with appropriate sections of Rule 2.

Section 55. *Posting of Bid Bond by the OP.* — The OP 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.

RULE 4 ALTERNATIVE JOINT VENTURE PROCESS

Section 56. *Alternative JV Process.* — Under the alternative JV process, the Municipality of Bongabong's role in project development phase shall be limited to defining project requirements which shall serve as a guide to the PSP in further developing the project proposal. Such project requirements would consist of, but are not limited to:

- (a) Project description;
- (b) Project objectives;
- (c) Project scope (geographic coverage, population coverage);
- (d) Period of the Joint Venture;
- (e) Minimum performance standards and specifications and key performance indicators;
- (f) Economic and financial viability indicators and their corresponding hurdle rates;
- (g) Government contributions; and
- (h) Draft Joint Venture Agreement.

It shall be the task of the PSP to conduct the feasibility study based on the above requirements and according to a template² that shall be provided by the Municipality of Bongabong. The template shall describe the contents of the feasibility which shall, at the minimum, consist of the following:

- (a) Market study;
- (b) Technical analysis;
- (c) Legal analysis;
- (d) Environmental impact assessment;
- (e) Social impact assessment;
- (f) Project costs (Investment costs, operation and maintenance expenses);
- (g) Economic analysis;
- (h) Financial analysis;
- (i) Implementation plan; and
- (j) Risk analysis (identification of risk and mitigating measures).

Section 57. Selection Process. - The Municipality of Bongabong shall publish an IAESP which shall additionally include the invitation to submit a feasibility study based on the project requirements as stated in Section 56. The succeeding selection process as described in the following table shall be conducted in accordance with the provisions under Rule II, as applicable:

ALTERNATIVE JOINT VENTURE SELECTION PROCESS	
PROCESS	RESPONSIBLE PARTY
1. Submission of pre-qualification documents and project proposal	Private Proponent
2. Short-listing of re-qualified bidders	JV-SC
3. Conduct of pre-bid meetings with short-listed proponents	JV-SC
4. Publishing the Instructions to Bidders and the final JV agreement	JV-SC
5. Submission of financial bids	Pre-Qualified PSP
6. Evaluation of financial bids based on the bid parameter	JV-SC
7. Selection of winning bidder	JV-SC
8. Approval of Joint Venture and JV Partner	Local Sanggunian
9. Signing of JV	Local Chief Executive (LCE) and Winning PSP

CHAPTER 4 APPEALS MECHANISM

Section 58. Appeals During the Pre-Qualification Stage. - PSPs found ineligible by the JVSC during the pre-qualification stage may appeal their ineligibility to the Local Chief Executive or his authorized representative, within seven (7) calendar days from receipt of the notice of ineligibility. The selection process will be suspended for a maximum period of thirty (30) calendar days while the appeal is being evaluated. The Local Chief Executive or his authorized representative shall act on the appeal within the thirty (30) calendar-day period of suspension of the selection process. The decision of the Local Chief Executive, or his authorized representative, on the appeal shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied, and the selection process will proceed.

Section 59. Appeals After the Competitive Selection Process. — Decisions of the JV-SC with respect to conduct of the competitive selection process may be appealed in writing to the Local Chief Executive concerned: Provided, however, that a prior motion for reconsideration should have been filed by the party concerned seven (7) days from notice the JV-SC recommendation, and the same has been resolved by the JV-SC within fifteen (15) days from the filing of the same. The appeal must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the JV-SC denying its motion for reconsideration. The Local Chief Executive shall resolve the appeal within fifteen (15) days from receipt thereof. An appeal may be made by filing a verified position paper with the Local Chief Executive concerned, accompanied by the payment of a non-refundable appeal fee. The non-refundable appeal fee shall be in an amount equivalent to no less than one half (1/2) of one percent (1 %) of the project cost.

CHAPTER 5 REGULATION AND CONTRACT MANAGEMENT

Section 60. Regulation of Tolls/Fees/Rentals/Charges. — Pursuant to Section 154 and 155 of the Local Government Code, the Sangguniang Bayan shall prescribe the terms and conditions and fix the rates for the imposition of tolls/ fees/ rentals/ charges. Such regulation shall be in consultation with the concerned stakeholders.

Section 61. Contract Management Unit. — The CMU created under this Code shall ensure the successful implementation of the JV project. It shall likewise perform the following functions:

- (a) Develop the contract management manual as contemplated in Section 62 hereof;
- (b) Manage the day-to-day implementation of the JV contract pursuant to the contract management manual;
- (c) Monitor and measure performance of the JV partner against the contract's key performance indicators;
- (d) Report issues encountered during implementation of the contract to the Local Chief Executives and Sangguniang Bayan;
- (e) Act as the administrator of documents and correspondence relating to the JV project and JV contract;
- (f) Evaluate requests for amendment/ s to the JV contract; and
- (g) Such other functions as may be necessary for the successful implementation of the JV project.

For purposes of executing this Code, the CMU may be formed by the Local Chief Executive through an Executive Order composed of the following qualified employees of the Municipality of Bongabong:

- (a) Project team leader, who holds a permanent position in the Municipality of Bongabong;
- (b) Technical representative;
- (c) Financial representative;
- (d) Legal representative; and
- (e) Other relevant personnel as may be assigned by the Local Chief Executive.

The Municipality of Bongabong may supplement the CMU with external consultants who shall assist the CMU in the performance of their duties.

The CMU may seek the assistance of the PPP Center for guidance on the performance of its functions under this Code.

Section 62. Contract Management Manual. — The CMU shall prepare a contract management manual for each executed JV contract. The contract management manual is a tool that will be used by the CMU to plan the accomplishment of each and every obligation under the JV contract. At the minimum, this manual shall identify the following:

- (a) A description of the JV project and its history;
- (b) The CMU and their roles in the execution of the manual;
- (c) The obligations of the parties as provided in the JV contract, including the responsible person/ s for each obligation;
- (d) The targeted due dates for the accomplishment of each obligation;
- (e) The optimal sequencing of the accomplishments of the obligations (e.g., Gantt chart, PERT-COM);
- (f) The assessment of the risk of not meeting each obligation and the risk mitigating measure/s;
- (g) The protocols for reporting and monitoring of the accomplishment of each obligation, performance against KPIs, and of contingent liabilities;
- (h) The protocols for resolving issues and disputes that may arise during project implementation; and
- (i) The documents and correspondences that must be retained by the Municipality of Bongabong, including the protocols for storage, logging, accountability, disclosure, and access by the parties and the public.

In drafting the contract management manual, the CMU may seek the assistance of external experts such as contract management specialists and the PPP Center.

The contract management manual shall be submitted to the Local Chief Executive for approval within thirty (30) calendar days from the execution of a JV contract; Provided, that for outstanding JV contracts executed prior to the effectivity of this Code, the contract management manual shall be submitted to the Local Chief Executive within one hundred and twenty days (120) days from the effectivity of this Code and the provisions of this Code shall apply *mutatis mutandis*.

The CMU may propose the revision of the contract management manual at any time during the life of the JV project, subject to the approval of the Local Chief Executive.

Section 63. *Post-Award Conference.* — Immediately after the JV contract is awarded, the Local Chief Executive shall convene a post-award conference to ensure that the Municipality of Bongabong and JV

partner have a clear and mutual understanding of the terms and conditions of the JV contract and to determine the responsibilities of parties. Notice of the post-award conference shall be sent by the LCE at least five (5) working days before the scheduled date thereof.

The post-award conference shall be attended by the members of the Sangguniang Bayan, the CMU, and key personnel of the JV partner. The Local Chief Executive may also invite other concerned parties such as DILG regional offices or field units and the PPP Center to attend the conference.

Section 64. *Post-Contract Review.* — A post-contract review shall be conducted at the end of a contract period, which shall include a post-contract analysis, evaluation and reporting of the JV project, the JV partner's performance, and the Municipality of Bongabong's contract management system. The post-contract review shall likewise include a financial audit of the entire JV project and determination of good practices and lessons learned. Municipality of Bongabong policies and procedures shall be updated where required. Notwithstanding the requirement herein, if the JV contract is subject to renewal or extension, the post-contract review shall be conducted within a reasonable time before the deadline for such renewal or extension.

Section 65. *Amendments to the JV Agreement.* — Any amendment to a JV Agreement after award and signing of contract may be allowed by the Local Chief Executive; Provided, That:

- (a) There is no impact on the basic parameters, terms and conditions as approved by the Sangguniang Bayan; or
- (b) There is no increase in the agreed fees, tolls and charges or a decrease in the Municipality of Bongabong's revenue or profit share derived from the project, except as may be allowed under a parametric formula in the contract itself; or
- (c) There is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Municipality of Bongabong obligations under the contract; or
- (d) There is no additional government undertaking, or increase in the financial exposure of the Municipality of Bongabong under the project.

Upon due diligence and recommendation of the Local Chief Executive, amendments to the JV agreement not covered by the above instances shall undergo approval by the Sangguniang Bayan in terms of the impacts on the financial exposure of the Municipality of Bongabong, performance standards, and service charges.

Failure to secure clearance/ approval of the Local Chief Executive or the Sangguniang Bayan as provided in this Section shall render the contract amendment void. The Municipality of

Bongabong shall report to the Sangguniang Bayan and the PPP Center on any contract amendments, including those approved by the Local Chief Executive.

Section 66. *Alternative Dispute Resolution (ADR).* — All JV contracts of the Municipality of Bongabong shall include a provision on the use of ADR mechanisms in resolving disputes arising from the JV contract. ADR mechanisms may include mediation, conciliation, and the establishment of a Project Dispute Resolution Board.

CHAPTER 8 ACCOUNTABILITY, INFORMATION, EDUCATION AND MONITORING

Section 67. *Code of Conduct.* — Members of the JV-SC and CMU and the contract manager, in the performance of their duties, shall act at all times in accordance with R.A. No. 6713 or the "Code of Conduct and Ethical Standards for Public Officials and Employees" and other related laws, rules, and regulations;

Section 68. *Disciplinary Action.* — Violation of this Code and the Code of Conduct insofar as the Municipality of Bongabong's elective officials are concerned shall constitute a ground for disciplinary action or amount to loss of confidence under the 1991 LGC and relevant laws, and with regards local appointive officials, such violation shall render them administratively liable. Officials may also be rendered criminally liable under applicable laws and ordinances. Representatives of the PSP shall be held liable for damages, offenses, and crimes depending on the nature of their participation and involvement in the unlawful act or omission.

Section 69. *Liability.* — The Municipality of Bongabong and its officials, in undertaking a JV project, selecting a JV partner and implementing a JV contract, shall not be exempt from liability for death or injury to persons or damage to property. Failure to respect a duly-executed JV Contract by successor officials shall render them liable without prejudice to the application of Alternative Dispute Resolution mechanisms under Section 66 hereof.

Section 70. *Social Accountability.* — The Municipality of Bongabong 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, Municipality of Bongabong, national government agencies, regulatory agencies, and JV partner.

Section 71. *Transparency and Right to Information.* — The JV Contract, feasibility or project studies, bidding documents, terms of reference, results of the PSP selection process, Code of Conduct, contract management manual, minutes of the post-award conference, and other relevant documents and instruments shall be posted in two conspicuous places of the Municipality of Bongabong and uploaded in a dedicated website of the Municipality of Bongabong which can be freely accessed by the public. The Municipality of Bongabong shall also implement a strategic communication plan addressed to all stakeholders.

Section 72. *Capability-Building Program.* — The Municipality of Bongabong shall design and implement a continuing education and capacity-building program on JV for its officials and the members of the JV-SC and CMU.

The Municipality of Bongabong shall also undertake a comprehensive and sustained education and governance campaign aimed at informing all stakeholders and CSOs, POs, and NGOs about JV projects of the Municipality of Bongabong and allowing them to participate in the overall JV program of the Municipality of Bongabong. The program shall include strategic and annual evaluation and planning sessions, workshops, seminars, focus-group discussions on JV, market opportunities, projects, management of contracts and regulation of JV, and other JV-related topics.

The Municipality of Bongabong may tap consultants to assist them in implementing JV and in building capability for JV.

Section 73. *Monitoring and Governance Audit Program.* — The Municipality of Bongabong, in order to ensure transparency and accountability, shall encourage CSOs, POs, NGOs, and civic aggrupations to establish a JV monitoring, evaluation, and governance audit body functionally and fiscally independent from the Municipality of Bongabong and other government institutions.

Section 74. *Technical and Financial Assistance.* — The Department of Finance, Department of Budget and Management, NEDA, Office of the Solicitor General, and the PPP Center may extend technical and financial assistance to the Municipality of Bongabong assistance may be embodied in a memorandum of understanding or agreement. The DILG may also provide trainings and capacity-building activities to the Municipality of Bongabong.

CHAPTER 7 FINAL PROVISIONS

Section 75. *Appropriations.* — To carry out the provisions of this Code, the initial amount of One Hundred Thousand Pesos (Php 100,000.00) shall be appropriated. Thereafter, such sums as may be necessary for the continuous implementation of this Code shall be included in the annual budget of the Municipality of Bongabong.

Section 76. *Implementing Rules.* — While this Code and the provisions hereof are already operative upon the Code's effectivity, the Local Chief Executive may issue the appropriate and relevant rules and regulation for the proper implementation of the Code or its provisions, including the issuance of relevant mechanisms to ensure competition, manuals, guidelines, sample contracts and bid documents, JV indexes and comparators, and performance scorecards.

Section 77. *Confirmation of Executed JV Contracts and Procedures Commenced.* - JV contracts entered into prior to the enactment of this JV Code in strict compliance with the provisions hereof are hereby confirmed.

JV contracts entered into prior to the enactment of this JV Code without strictly complying with the applicable procedures set forth herein for the selection of the PSP shall be considered as negotiated agreement this Code which must be subjected to competitive challenge; Provided, That after publication and no expression of interest is submitted by an interested qualified party at the designated time, the subject JV contract shall be deemed perfected, and vested and contractual rights shall continue to subsist and operate.

JV contracts entered into prior to the enactment of this JV Code may be amended; Provided, That the terms of the original JV contract for amendments, or the amendments do not tend to increase the financial exposure, liabilities, and risks of the Municipality of Bongabong or any other factors that would cause disadvantage to Municipality of Bongabong and any deviation that will cause prejudice to losing PSPs; Provided further, That the amendments are approved by the Local Chief Executive with prior authorization from the Sangguniang Bayan, and the revised terms are approved or confirmed by the Sangguniang Bayan through the enactment of an ordinance.

Procedures and steps commenced and undertaken for the selection of, and statuses and rights conferred on a PSP prior to the effectivity of this Ordinance shall be operative, confirmed, and recognized, and shall henceforth be continued under this Ordinance.

Section 78. *Application of Other PPP / JV Laws and Regulation.* — Whenever relevant and appropriate as determined by the Local Chief Executive, upon recommendation of the JV-SC, and in the absence of a specific provision to the contrary, other relevant laws and guidelines may apply in a suppletory manner.

Section 79. *Authority of Component LGUs.* - The authority of component LGUs to enact their respective JV ordinances, and to implement JV projects is hereby recognized by the Municipality of Bongabong.

The Municipality of Bongabong encourages the component LGUs on their own or in partnership with other LGUs and national government agencies, government-owned and controlled corporations, government instrumentalities, state universities and colleges and government financial institutions to pursue JV as a development strategy and implement JV projects that shall serve the general welfare and the public good.

Section 80. *Repealing Clause.* — All ordinances, resolutions, other issuances, and their provisions inconsistent or contrary with this Ordinance are hereby repealed or modified accordingly.

Section 81. *Separability Clause.* — If any provision of this Ordinance is declared unlawful or unconstitutional, any provision not affected thereby remain in full force and effect.

Section 82. *Effectivity.* — This Ordinance shall take effect fifteen (15) days after its posting in at least three conspicuous places in the municipality.

Certified true:

Atty. EDUARDO M. MAGSINO
Secretary to the Sanggunian

Certified to have been approved:

Hon. RICHARD S. CANDELARIO
Vice-Mayor and Presiding Officer

Approved:

Hon. ELEGIO A. MALALUAN, O.D.
Municipal Mayor
Date: _____