



Republic of the Philippines
Tanggapan ng Sangguniang Panlungsod
2/F City Hall Bldg., J. Miranda Ave., Con. Peq., Naga City
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ORDINANCE NO. 2019-034
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PRESCRIBING THE TERMS OF REFERENCE (TOR) THAT WILL GOVERN THE IMPLEMENTATION OF THE WASTE-TO-ENERGY (WtE) PROJECT OF THE CITY GOVERNMENT OF NAGA, AND FOR OTHER PURPOSES:-

Author: Honorable City Councilor Mila S.D. Raquid Arroyo 

EXPLANATORY NOTE

In pursuit of the City Government of Naga's commitment to protect the environment and conserve it for the generations to come, and in compliance with pertinent national laws particularly Republic Act No. 9003, the City Government of Naga, in April 2017, approved the implementation of a P260-million sanitary landfill-cum-waste-to-energy facility in San Isidro, Naga City, and in November 2017, it was granted an Environmental Compliance Certificate (ECC) by the Department of Environment and Natural Resources (DENR) for the said project.

The aforementioned facility will occupy 4.85 of the 10-hectare property of the city government in the area, and is projected to handle a maximum of 508,064 cubic meters of municipal solid waste for at least 10 years from the time it starts operation by 2019.

In order to ensure that the solid waste disposal and management program of the City Government will indeed be continuing and sustainable, the city government shall pursue a Waste-to-Energy (WtE) project as it is the only means by which the City may be able to effectively and sustainably dispose and manage its solid waste.


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Sponsor: Honorable City Councilor Mila S.D. Raquid Arroyo 

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

SECTION 1. Short Title - This Ordinance shall be known as the "Waste-to-Energy (WtE) Ordinance of Naga City."

 **SECTION 2. Declaration of Policy and Purpose** – (a) Consistent with its 10-year Comprehensive Development Plan (CDP) and the 10-year Solid Waste Management Plan (SWMP), as well as existing national laws, the City Government of Naga shall promote sustainable solid waste management aimed at protecting public health and the environment through solid waste avoidance, volume reduction and waste minimization measures before collection, treatment and disposal in appropriate and environmentally-sound solid waste management facilities in accordance with ecologically sustainable development practices. For the purpose, one key strategy that shall be pursued is the implementation of WtE solutions that will complement and make use of its SLF.

 (b) In pursuit of the foregoing, the City Government shall invite investors interested in implementing WtE solutions under a joint venture arrangement.

SECTION 3. Definition of Terms - As used in this Ordinance, the following terms shall mean:

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- (a) **CGN** - refers to the City Government of Naga in the province of Camarines Sur;
- (b) **Waste-to-Energy (WtE) Facility** - refers to a component of the Sanitary Landfill located in Barangay San Isidro that seeks to convert municipal solid waste into energy using thermal incineration technology approved by appropriate government entities, preferably the dual combustion system;
- (c) **Unsolicited Proposal** - refers to WtE project proposals submitted to the CGN within ninety (90) days after the publication of this Ordinance without a formal solicitation issued by the City;
- (d) **Competitive Challenge or Swiss Challenge** - refers to a selection process wherein third parties or challengers shall be invited to submit better WtE proposals than the Original Proponent. Accordingly, the proponent who submitted the chosen unsolicited proposal, is accorded the right to match any superior offers given by the chosen challenger;
- (e) **Competitive Negotiation** - refers to the process where the CGN negotiates, based on this Ordinance, with eligible and qualified proponents of WtE unsolicited proposals to arrive at the best combination of quality and price;
- (f) **Original Proponent (OP)** - refers to the proponent of the unsolicited WtE proposal chosen by the CGN through Competitive Negotiation;
- (g) **Challenger WtE Proposal/s** - refers to the proposal/s submitted within sixty (60) days after the publication of the CGN's Notice to Challenge;
- (h) **Chosen Challenger** - refers to the proponent who submitted the WtE proposal which surpassed the proposal of the Original Proponent;
- (i) **Joint Venture Partner (JVP)** - refers to the proponent whose WtE proposal emerged as the winner after the final stage of the Swiss Challenge process;
- (j) **Cost Sharing** - refers to the City's portion of capital expenses associated with the establishment of an infrastructure development facility such as the provision of space, access, infrastructure, right-of-way, and support financing of the project if necessary;
- (k) **Credit Enhancement** - refers to direct and indirect support that CGN may extend to the JVP which may include but are not limited to CGN's assistance in improving or maintaining the financial standing of the JVP for purposes of financing arrangements for the WtE project;
- (l) **Feasibility or Project Study (FS)** - A study accompanying a WtE proposal showing the basis and assumptions of such proposal;
- (m) **Draft Joint Venture Contract (DJVC)** - the draft Joint Venture Contract, accompanying the WtE Proposal, containing all the proponent's proposed terms and conditions of the joint venture agreement between the CGN and the JVP;
- (n) **Joint Venture Contract (JVC)** - the contract between the GCN and the JVP containing all the terms and conditions of the relationship between them in the implementation of the WtE Project and the operations of the WtE Facility signed

by the City Mayor with prior authority from, and duly ratified by, the Sangguniang Panlungsod;

- (o) **Municipal Solid Waste (MSW)** - Commonly known as trash, garbage, refuse or rubbish, or all and any waste type consisting of everyday items that are discarded by the public, and has the following characteristics:
 - (i) Moisture content of around 20.4 % at 4 hours air-dry for biodegradable waste only
 - (ii) Volume of at least 75 tons per day
 - (iii) Deliveries of MSW will take place 8-16 hours per day
 - (iv) The MSW shall include around 1.6 tons of hospital waste; and 1 ton of electronic and other hazardous wastes.
- (p) **Sanitary Land Fill (SLF)** - refers to CGN's sanitary land fill facility located in Barangay San Isidro, Naga City.

Section 4. Authorities - Section 35 of the 1991 LGC and Article 62 of the Implementing Rules and Regulations of the 1991 LGC shall be the governing law, the Law on Partnerships of the Civil Code of the Philippines and other pertinent and appropriate national issuances shall apply together with this Ordinance to guide the development and implementation of the WtE Project;

SECTION 5. The Naga City WtE Project - The Naga City Waste-to-Energy (WtE) Project will be co-located within the San Isidro SLF occupying 4.85 has. of the 10-hectare property of the CGN and is projected to handle around 508,064 cubic meters of municipal solid waste for the next 10 years.

SECTION 6. General Requirements - The following considerations shall guide the CGN in the selection of the best WtE proposal:

- 6.1 The WtE project shall be carried out at the least possible cost to the city government under a joint-venture arrangement;
- 6.2 The WtE project shall make use of a two-hectare lot within the CGN's 10-hectare property hosting the SLF;
- 6.3 The preferred technology is thermal incineration, preferably the dual combustion system, approved by the DOE;
- 6.4 The JVP has put up a forfeitable performance bond equivalent to Ten Million Pesos (P10,000,000.00);
- 6.5 The WtE facility shall be able to process a minimum of 75 tons of municipal solid waste per day.
- 6.6 The WtE facility shall generate the highest energy conversion efficiency among the various proponents.
- 6.7 The proponent shall comply with the pre-operational conditions established by the NSWMC under Section 5 of Resolution No. 669, series of 2016.
- 6.8 The proponent must have been operating a WtE facility anywhere in the world for at least one year.
- 6.8 The WtE solution must include an efficient waste segregation technology for recyclable or reusable material recovery.
- 6.9. The operation of the WtE facility shall not result in loss of livelihood by the waste segregator/MRF volunteers of the CGN;

6.10. The proposal must specify a project completion period of not more than two (2) years from date of ratification of the JVC. Any change in this provision shall be approved by resolution of the Sangguniang Panlungsod.

6.11 The proponent must specify the process or period within which the technological know-how in operating and maintaining the facility shall be transferred to CGN or GCN-designated personnel which shall not exceed five (5) years from the time the operation of the facility commences.

SECTION 7. CGN Equity. The two-hectare lot and the MSW described under Section 6(a)(ii) and Section 3(o), respectively, shall be the primary equity of CGN to the Project. All other costs related to the Project shall be borne by the JVP.

SECTION 8. WtE Screening and Evaluation Committee (WtE SEC) - (a) Composition. For purposes of screening and evaluation of proposals under this Ordinance, the WtE Screening and Evaluation Committee is hereby created composed of the following:

- | | |
|---------------|--|
| Chairperson - | The City Administrator |
| Members - | 1) The City Budget Officer |
| | 2) The City Planning and Development Coordinator; |
| | 3) The City Engineer |
| | 4) The City Environment and Natural Resources Officer |
| | 5) The Solid Waste Management Officer |
| | 6) 2 Representatives from the Naga City People's Council |

The Head of the Naga City Bids and Awards Committee Secretariat will serve as non-voting secretary of the WtE SEC.

A quorum of the WtE SEC shall be composed of a simple majority of all members. The Chairperson shall vote only in case of a tie.

To help carry out its functions, the WtE SEC may invite non-voting members from the national government agencies, regulatory agencies, NEDA, DILG, CASURECO II, the local chapter of the Institute of Integrated Electrical Engineers of the Philippines, etc., and may form a technical working group (TWG) composed of employees of the GCN;

(b) Functions. The WtE SEC shall undertake and perform the following:

1. Issue such rules and regulations as it may deem appropriate and consistent with the provisions hereof to facilitate implementation of this Ordinance;
2. Receive and evaluate all proposals submitted under this Ordinance;
3. Submit to the City Mayor, copy furnished the Sangguniang Panlungsod, the following:
 - a. the list of proponents who submitted their proposals within the reglementary period;
 - b. the list of proponents who qualified in the preliminary screening process.
4. Present to the City Mayor, copy furnished the Sangguniang Panlungsod, its comparative evaluation of the proposals who qualified under the preliminary screening process;

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5. Present to the City Mayor and the Sangguniang Panlungsod the Draft Joint Venture Contract with the Original Proponent;
6. Issue notice for Challenger Proposals;
7. Submit to the City Mayor, copy furnished the Sangguniang Panlungsod, the list of challenger proposals received within the reglementary period, if any;
8. Present to the City Mayor, copy furnished the Sangguniang Panlungsod, its evaluation of the challenger proposal/s, if any;

In the performance of its functions, the WtE SEC has authority to issue supplemental notices, conduct the pre-qualification, selection and challenge processes; and resolve disputes between WtE proponents.

The WtE SEC shall also recommend to the Sangguniang Panlungsod measures necessary to fill up policy gaps, if any, in the implementation of this Ordinance.

All reports/documents or information submitted by the WtE SEC shall be duly certified by its Chairperson.

- (c) The WtE SEC shall be assisted by relevant agencies of the national government that may be called upon to assist the city government pursuant to Section 3(k) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

SECTION 9. Process and Procedure - Towards the attainment of the purposes of this Ordinance, the following processes and procedures shall ensue:

9.1. Submission and Acceptance of Unsolicited Proposals - Within ninety (90) days after the publication of this Ordinance, interested proponents shall submit their respective proposals to the WtE SEC. Proposals not accompanied with a Project Feasibility Study and Draft Joint Venture Contract shall not be admitted;

9.2. Within five (5) days after the expiration of the period for acceptance of original proposals under this Ordinance, the WtE SEC shall submit to the City Mayor, copy furnished the Sangguniang Panlungsod, the list of proponents who submitted their proposals within the reglementary period. If no proposals are received, the WtE SEC shall inform the City Mayor, copy furnished the Sangguniang Panlungsod;

9.3. Within thirty (30) days after the expiration of the period for acceptance of original proposals under this Ordinance, the WtE SEC shall present to the City Mayor, copy furnished the Sangguniang Panlungsod, the result of the preliminary evaluation and selection process and the list of the proponents who passed the process, if any;

9.4. The WtE SEC shall have ten (10) days within which to evaluate each of the proposals that qualified under the preliminary evaluation and selection process;

9.5. After the evaluation of the qualified proposals, the WtE shall present to the City Mayor, copy furnished the Sangguniang Panlungsod, a comparative evaluation report on all the qualified proposals and submit the Draft Joint Venture

Contract with the chosen proponent. These documents shall be posted in the bulletin board of the City Hall;

9.6. Within five (5) days from submission of the WtE SEC's comparative evaluation report, the City Mayor shall transmit to the Sangguniang Panlungsod the Draft JVC which will be submitted for challenger proposals and directing the WtE SEC to issue the Notice for Challenger Proposals;

9.7. Within five (5) days from receipt of the City Mayor's directive to the WtE, the latter shall issue the Notice for Submission of Challenger Proposal/s and cause the publication thereof in a newspaper of general circulation in the city;

9.8. Proponents who submitted original unsolicited proposals are disqualified to submit challenger proposals. No Challenger proposal shall be admitted without the accompanying Feasibility Study and Draft JVC;

9.9. Within five (5) days after the lapse of the period granted for submission of challenger proposals, the WtE SEC shall submit the Submit to the City Mayor, copy furnished the Sangguniang Panlungsod, the list of challenger proposals submitted within the reglementary period;

9.10 Within thirty (30) days after the lapse of the period granted for submission of Challenger Proposals, the WtE SEC shall submit to the City Mayor, copy furnished the Sangguniang Panlungsod, the result of its evaluation of the challenger proposal/s;

9.11 In the event that the Challenger Proposal is found to be better than the Original Proposal, the City Mayor shall give the Original Proponent fifteen (15) days from receipt of Notice to Match within which to submit a matching offer;

9.12 If the Original Proponent is able to match the Challenger Proposal, the WtE SEC shall submit to the City Mayor, copy furnished the Sangguniang Panlungsod, the draft JVC for consideration by the City Mayor;

9.13 Within five (5) days after the WtE SEC submitted its final recommended Draft JVC, the City Mayor shall manifest to the Sangguniang Panlungsod whether or not he is ready to sign the JVC, thereby requesting authority to sign the same, otherwise, the City Mayor shall manifest his reasons therefor;

9.14 Prior to giving authority to the City Mayor to sign the JVC with the JVP, the Sangguniang Panlungsod shall conduct a public consultation/hearing to discuss and explain to the public the WtE Project, the JV Contract, accountability mechanisms built into the JV arrangement, and the benefits and costs of the WtE Project, among other relevant matters.

9.15 After the City Mayor has signed the WtE JVC and the ratification thereof by the Sangguniang Panlungsod, and upon deposit of the performance bond as required under Section 6 (iv) of this Ordinance, the City Mayor shall issue the Notice of Award and Notice to Proceed to the WtE JVP.

SECTION 10. The WtE Proposal - The WtE proposal that will be admitted by the WtE SEC shall consist of the following:

10.1 Prequalification Proposal – The following guidelines shall be used in determining the qualification of WtE proponents;

10.1.a Any individual, partnership, corporation or firm, whether Filipino or foreign, including consortia of local, foreign or local and foreign firms may submit its proposal under this Ordinance.

If the proponent is a consortium, the members or participants thereof shall be disclosed in the application. Further, the members or participants thereof shall execute an undertaking in favor of CGN binding themselves jointly and severally liable for the obligations of the proponent if awarded the JVC.

10.1.b The proposal is accompanied with the following:

- 10.1.b.i Project Feasibility Study;
- 10.1.b.ii Draft JVC;

10.1.c Entities with existing tax arrears with the government, national or local, are disqualified. This eligibility requirement also applies to their affiliates or subsidiaries.

10.1.d If the proponent proposes to engage a contractor in putting up the WtE facility, the contractor must be disclosed and must be duly licensed and accredited by the Philippine Contractors Accreditation Board (PCAB) or by an equivalent accreditation institution in the Contractor's country of origin in case of foreign contractors. In case of the latter, the WtE proposal must be accompanied with an undertaking executed by it binding itself to secure a license and accreditation from the PCAB before undertaking the project.

10.1.e Experience and Track Record - The proponent must possess adequate experience in terms of the following:

10.1.e.i. Proponent Track record and experience – The proponent, or any of its members in case of a consortium, must have been operating a WtE facility anywhere in the world for at least one year;

In case of a consortium, the equity interest/contribution of each member, the prospective contractors, if any, and the description of the respective roles said members and contractors shall play or undertake in the project, shall be specified in the proposal.

A list of the projects including the description, status, investments made, project cost shall likewise be specified in the proposal. At least one of these projects should have a project cost of at least 50% of the proposed WtE facility.

10.1.e.ii Key Personnel Experience - The key personnel of the proponent and its contractors must have sufficient experience in the relevant aspects and schemes similar or related to WtE facility;

10.1.f Financial Capability - The proponent must have adequate capability to sustain the financing requirements for the detailed engineering design,

construction, and operation and maintenance phases of the project. The following shall be submitted as proof of this requirement:

- 10.1.f.i. A letter testimonial from a domestic universal/commercial bank or an international bank with a subsidiary/branch in the Philippines or any international bank recognized by the BSP attesting that the proponent and/or members of the consortium are banking with them or that they are in good financial standing and/or are qualified to obtain credit accommodations from such banks to finance the WtE project, or
- 10.1.f.ii. An undertaking from the proponent's contractors/suppliers, if any, that they are ready to supply and provide the materials/equipment and undertake the works required and as contained in the WtE proposal;
- 10.1.f.iii. Audited financial statements (Balance Sheet, Income Statement and Auditor's Report), stamped "received" by the BIR or its duly accredited and authorized institutions, or its equivalents in the proponent's country of registration for calendar year 2017 or 2018 showing, among others, the proponent's, or any of its members' in case of consortium, total and current assets and liabilities.

10.2 Technical Proposal. The Technical Proposal shall be submitted in a sealed envelope. Only pre-qualified proponents shall be subjected to Technical Evaluation. The "Technical Proposal" shall contain the following requirements:

10.2.a. Operational feasibility of the project, which shall indicate the proposed organization, methods and procedures for the operation and maintenance of the project. Among others, it should include the signed conceptual design and description of the proponent's planned business use and activities, features and amenities, to include:

- (1) Description of business activities
- (2) Architect's design perspective
- (3) Site Plan, including a description of spaces to be used
- (4) Initial volumes or throughput at start-up
- (5) Planned volumes at full utilization
- (6) Estimated timeframe to reach full utilization

10.2.b. Technical soundness/preliminary engineering design, including proposed project timeline. Among others, it should include the following:

- (1) Complete set of building plans (architectural, structural, mechanical, electrical and sanitary plans)
- (2) Bill of Materials and Specifications
- (3) Signed work plan and schedule including major development milestones, timetable and the schedule of the capital investment commitment

10.2.c. Preliminary environmental assessment, which shall indicate the probable adverse effects of the project on the environment and

the corresponding mitigating measures to be adopted. Among others, it should include signed solid waste, waste water and air pollution control management plans.

10.3 The Financial Proposal. The Financial Proposal shall contain the following:

10.3.a. Project Cost, operation and maintenance cost, and all other related costs as shown in the projected balance sheet and income statement for the first 10 years of operation, and the projected ROI and schedule of return.

10.3. b. Project financing scheme. For this purpose, the CGN may guarantee loans that the proponent may obtain to finance the project provided that the loan shall primarily be secured by a lien on the WtE equipment and machineries that the JVP shall put up in accordance with the JVC;

10.3. c. Financial Cost and ROI of CGN:

10.3. c.i The tipping fee to be paid by CGN for every ton of municipal solid waste accepted by the WTE facility,

10.3. c.ii The present value of proposed payments to CGN as its share in revenues derived from energy sales during the period covered by the contract, and

10.3. c.iii The proposed Corporate Social Responsibility (CSR) budget for the host community of Barangay San Isidro.

SECTION 11. Evaluation Criteria- The evaluation of proposals shall be undertaken in two (2) stages.

(a) First Stage: Technical evaluation. CGN shall evaluate the technical proposals of the proponents in accordance with the following criteria:

(i) Technical soundness of the preliminary engineering design – Forty Percent (40%)

- The technical design will be evaluated based on the existing facility being operated by the proponent, but suited to be capable of processing at least seventy-five (75) tons of municipal solid waste daily and similar to CGN's MSW.

(ii) Operational feasibility – Thirty Percent (30%)

- The proposed organization, methods, and procedures for operating and maintaining the completed facility must be well defined.

(iii) Environmental Standards - Thirty Percent (30%)

- The proposed design and the technology of the project to be used must be in accordance with the environmental standards set forth by the Department of Environment and Natural Resources (DENR). Any possible adverse effects on the environment as a consequence of the project must be properly identified, including the corresponding corrective/mitigating measures to be adopted.

To pass the first stage of evaluation, a bidder must score an aggregate of at least 80% from the above criteria.

Only proposals that have passed the first stage of evaluation shall be qualified and considered for the second stage of evaluation.

(b) Second Stage: Financial Evaluation. The financial evaluation shall be based on the following performance criteria:

- (i) Project Financing – Fifteen Percent (10%)
 - The proposed financing plan should positively show that the same could adequately meet the construction cost and schedules as well as the operating and maintenance costs requirements of the project.
- (ii) Tipping fee to be paid by CGN for every ton of MSW accepted by the facility, which shall not be far from P1,000/per ton - 30%
- (iii) The percentage of residuals per ton of MSW accepted by the facility – 40%
 - The proposal with the lowest amount of residual shall earn the perfect point.
- (iv) Present value of proposed payments to CGN as its share from gross revenues derived from energy sales during the contract period – 10%
 - The proposal with the highest proposed payment to CGN shall earn the perfect point.
- (v) CSR budget for the host community of Barangay San Isidro – 10%
 - The proposal with the highest proposed amount shall earn the perfect point.

SECTION 12. Reservations. The CGN reserves the right to reject any or all proposals, waive any minor deficiencies therein and accept the offer it deems most advantageous to the City of Naga.

SECTION 13. The Joint Venture Contract (JVC) - the JVC shall cover the following: (i) the construction and completion of a WTE facility within two (2) years from receipt of the Notice to Proceed from the City Mayor, unless a different period is approved by Resolution of the Sangguniang Panlungsod, and (ii) its operation and maintenance over the specified period.

SECTION 14. Contracting, Regulation and Contract Management – The pertinent provisions of DILG Memorandum Circular No. 2016-120 shall apply suppletorily to this Ordinance in the preparation and approval of the JV Contract, the regulatory framework that will govern it, as well as the management of its implementation.

SECTION 15. Other Provisions - (a) The JVP, with the assistance of CGN, shall be responsible for securing all required permits, regional or national, to implement the project.

(b) The JVP shall hire at least eighty percent (80%) of its workers, from construction to operation, from among the registered voters of Naga City. Any number less than this shall be with the concurrence of the CGN. For this purpose, the list of the names and addresses of all its employees shall be submitted to the City Government of Naga at the beginning of each year from ratification of the JVC.

(c) The JVP shall not contract out or sub-contract construction of the WtE Project or any part thereof to any contractor/entity blacklisted by any government agency.

(d) In the event the JVP is unable to complete the project within the period agreed upon with the CGN, all improvement within the SLF premises shall become the property of the CGN.

(e) All permanent improvements introduced by the JVP within the premises of the SLF shall be fully turned over to the CGN upon expiration of the contract, unless an extension is agreed upon with written notice from the JVP to the CGN at least ninety (90) days prior to expiration.

SECTION 16. 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.

SECTION 17. Repealing Clause. - All ordinances and resolutions or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed or modified accordingly.

SECTION 18. Effectivity. - This Ordinance shall take effect fifteen (15) days after its posting in two conspicuous places within the City and publication in a newspaper of general circulation in Naga City and Camarines Sur.


ENACTED: May 7, 2019


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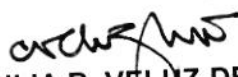
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WE HEREBY CERTIFY to the correctness of the foregoing ordinance.

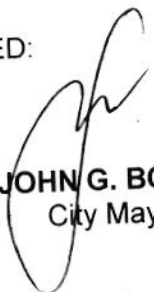

GIL A. DE LA TORRE
Secretary to the
Sangguniang Panlungsod

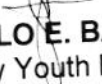

ANDREA NIKOLE R. ABANTE
City Youth Secretary to the
Sangguniang Panlungsod


CECILIA B. VELUZ-DE ASIS
City Councilor &
Acting Presiding Officer


ALIJAH Z. SERRANO
City Youth Vice Mayor &
Presiding Officer

APPROVED:


JOHN G. BONGAT
City Mayor


JAN CARLO E. BAGASBAS
City Youth Mayor

