

**REPUBLIKA NG PILIPINAS
TANGGAPAN NG SANGGUNIANG PANLUNGSOD
LUNGSOD NG BAKOLOD**

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**CITY ORDINANCE NO. 646
May 28, 2013**

AN ORDINANCE GRANTING A LOCAL LEGISLATIVE FRANCHISE TO QUALIFIED PERSON OR ENTITY TO ENGAGE IN THE BUSINESS OF BULK WATER SUPPLY AND WATER DISTRIBUTION SYSTEM IN DESIGNATED AREAS IN THE CITY OF BACOLOD AND FOR OTHER PURPOSES.

WHEREAS, the City of Bacolod has recently been developing relocation communities for settlers affected by projects of the City Government resulting from the continuing economic growth, thus, increase in demand of water supply is foreseen;

WHEREAS, one of the relocation communities now currently established by the City Government is the ARAO-ABADA property situated at Brgy. Granada-Brgy. Vista Alegre, Bacolod City;

WHEREAS, the Bacolod City Water District up to this very moment has not substantially installed the water supply and distribution system thereat to the detriment of the relocatees despite the repeated pleas of the city government;

WHEREAS, in order to comply with its commitment, the City Government needs to engage interested parties to undertake the water supply and distribution system in the said communities;

WHEREAS, under Section 458 (5-vii), of the Local Government Code, the City of Bacolod, subject to existing laws, may establish and provide for the maintenance, repair and operation of an efficient waterworks system to supply water for the inhabitants and to purify the source of the water supply;

WHEREAS, corollary to said power, under Section 458 (3-vii) of the same Code, the City, upon approval by a majority vote of the Sangguniang Panlungsod may grant a franchise to any person, partnership, corporation or cooperative to do business within the city;

WHEREAS, franchise as referred herein, is defined under Section 131 (m) of the Local Government Code, is a right or privilege, affected with public interest which is conferred upon private person or corporations, under such terms and conditions as the government and its political subdivisions may impose in the interest of public welfare, security and safety;



WHEREAS, in order to comply with its sworn obligation of providing the relocatees sufficient water supply and distribution system, the City Government, in the interest of the general welfare, deemed it urgently necessary to exercise the power vested under the afore-cited provisions of the Local Government Code, in line with the Supreme Court's novel pronouncement in the case of Metropolitan Cebu Water District (MCWD) versus Margarita A. Adala, G. R. No. 16894, July 4, 2007, a portion of which is hereunder quoted, to wit: "Since Section 47 of P. D. 198, which vests an "exclusive franchise" upon public utilities, is clearly repugnant to Article XIV, Section 5 of the 1973 Constitution, it is unconstitutional and may not, therefore, be relied upon by petitioner in support of its opposition against respondent's application for CPC and the subsequent grant thereof by the NWRB".

NOW THEREFORE, the Sangguniang Panlungsod in session assembled, hereby ordains:

Section 1 – That a local legislative franchise pursuant to Section 458 (3-vii) of the Local Government Code for the establishment, construction, operation, management and maintenance of its Bulk Water Supply and water distribution system at the ARAO-ABADA resettlement community and other resettlement communities established by the City Government, hereinafter referred to as the "resettlement water system" in the City of Bacolod, is hereby granted to any qualified person or entity in accordance with law which will be hereinafter referred to as the GRANTEE.

Section 2 – That in the event that the GRANTEE is a corporation, the authority herein granted shall extend to the Grantee's affiliate corporation that may be created hereafter. Provided that, the City shall have been duly notified of such creation and operational assumption within thirty (30) days prior to the affiliate's actual operation; and Provided further that GRANTEE shall own a controlling interest in the said affiliate corporation.

Section 3 – That the grant of this local legislative franchise is subject to the following conditions:

- a) Compliance by the grantee or of its affiliate to any and all laws, rules and regulations, either national or local relative to the operation of the business herein contemplated and subject of the grant of the franchise;
- b) The payment of relevant fees/taxes that may be required by existing laws in the operation of said business;
- c) Subject to existing laws, rules and regulations the grantee or its affiliate is hereby authorized to impose such reasonable and competitive water tariff to its consumers;



- d) The grantee or its affiliate, in the interest of environmental protection, water sustainability and preservation shall undertake projects toward this end;
- e) Establishment of the approved water system shall be commenced within a period of THIRTY (30) DAYS from the date of approval hereof; and
- f) Subject to reasonable or justifiable delay that may be incurred in the construction of the approved water system, the same shall be completed and made operational not exceeding eight (8) months from the date of approval hereof;
- g) GRANTEE shall pay to the Bacolod City Water District the amount of NOT LESS than P0.50 per cubic meter as production assessment fee;
- h) The water tariff to be collected by GRANTEE shall not exceed the water tariff collected by the Bacolod City Water District from its concessioners;
- i) Grantee shall be under the supervision of the Bacolod City Water District if the latter so consents;
- j) After the lapse of TWENTY FIVE (25) years after the approval hereof, Grantee shall turn over to the Bacolod City Water District any and all improvements/facilities it may have introduced in the course of its operation of the Bulk Water supply and distribution system if the latter so consents.

Accordingly, the failure of the GRANTEE to abide to any of the above-mentioned conditions shall serve as ground/s for the revocation of this local legislative franchise.

Section 4 – That the City Government of Bacolod, shall render assistance to the grantee or its affiliate in complying with all the requirements related to the efficient operation of the business and the securing of permits from the pertinent government agencies, and the acquisition of right-of-ways for its transmission and secondary lines, either through negotiation or the exercise of the City Government's power of eminent domain. Likewise, the use of governmental properties/land within the City of Bacolod whereby the City has supervisory or administrative oversight shall be granted to the franchisee for the sole purpose of water impounding and reservoir. Any request for such assistance shall not be unreasonably withheld. Towards this end, Franchisee shall provide the City a royalty in an amount equivalent to NOT LESS than two percent (2%) of its sales net of value added tax and other operational expenses. Such royalty fee shall be remitted to the City Government on top of any and all taxes required under the City's tax ordinance within fifteen (15) days after the end of each quarter.



Section 5 – That the City authorizes grantee or its affiliate the use of the City's existing water rights, if any, over all sources of water as issued by the National Water Resources Board. Grantee or its affiliate shall assist the City in determining and developing other water sources, surface or ground water, and apply and facilitate in behalf of the City the securing of water rights over the same in the name of the City Government of Bacolod.

Section 6 – This ordinance shall take effect upon its approval.

CARRIED BY THE VOTE OF:

Affirmative :
Councilors : El Cid M. Familiaran, Homer Q. Bais, Catalino T. Alisbo, Em L. Ang, Dindo C. Ramos, Elmer T. Sy, Caesar Z. Distrito, Mona Dia G. Jardin, Keith Emmanuel L. Ramos.

Negative : None.

Absent : None.

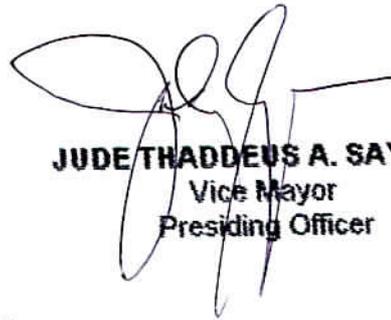
Official Leave : Councilors Roberto M. Rojas, Al Victor A. Espino and Carlos Jose V. Lopez.

Abstention : Councilors Archie S. Baribar and Sonya M. Verdeflor.

Author : Councilor Dindo C. Ramos

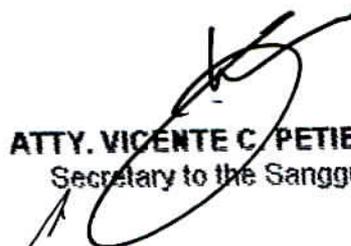
Passed : May 28, 2013 (151st Regular Session).

Comments : Passed.



JUDE THADDEUS A. SAYSON
Vice Mayor
Presiding Officer

ATTESTED:



ATTY. VICENTE C. PETIERRE III
Secretary to the Sanggunian

APPROVED: June 14, 2013.



EVELIO R. LEONARDIA
City Mayor

VCP/HPL/jbz

SP
LEGISLATIVE SERVICES SECTION
DATE 6/20/13 TIME 11:00 AM
BY: Ganon