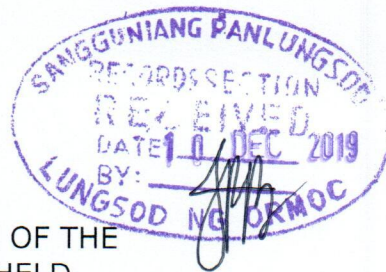


REPUBLIKA NG PILIPINAS  
SANGGUNIANG PANLUNGSOD  
LUNGSOD NG ORMOC



EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE  
FIFTEENTH SANGGUNIANG PANLUNGSOD NG ORMOC HELD  
AT THE SANGGUNIANG PANLUNGSOD SESSION HALL  
ON DECEMBER 06, 2019 IN LIEU OF  
DECEMBER 03, 2019

PRESENT:

Tomas R. Serafica,	(Acting City Vice-Mayor), SP Member, Presiding Officer "Pro-Tempore"
Nolito M. Quilang,	SP Member, 2 <sup>nd</sup> Asst. Majority Floor Leader
Eusebio Gerardo S. Penserga,	SP Member
Vincent L. Rama,	SP Member
Gregorio G. Yrastorza III,	SP Member
Esteban V. Laurente,	Ex-Officio SP Member, Chapter President, Liga ng mga Barangay ng Ormoc
Joan Marbie C. Simbajon,	Ex-Officio SP Member, Chapter President, Panlungsod na Pederasyon ng mga Sangguniang Kabataan ng Ormoc

ON OFFICIAL BUSINESS:

Roiland H. Villasencio,	(Acting City Mayor), SP Member, 1 <sup>st</sup> Asst. Majority Floor Leader
Lalaine A. Marcos,	(O.B -Taiwan), SP Member

ON LEAVE:

Leo Carmelo L. Locsin, Jr.	City Vice Mayor & Presiding Officer
Benjamin S. Pongos, Jr.,	SP Member, Majority Floor Leader
Jasper M. Lucero,	SP Member
Peter M. Rodriguez,	SP Member

**RESOLUTION NO. 2019-150**

**A RESOLUTION GRANTING AUTHORITY TO THE CITY MAYOR RICHARD I. GOMEZ OR THE ACTING CITY MAYOR TO ENTER INTO AND SIGN A MEMORANDUM OF AGREEMENT (MOA) FOR AND ON BEHALF OF THE LOCAL GOVERNMENT UNIT OF ORMOC (LGU-ORMOC), WITH THE ENERGY DEVELOPMENT CORPORATION (EDC) FOR THE ESTABLISHMENT OF TRUST ACCOUNTS FOR THE ACCRUED FINANCIAL BENEFITS FROM THE COMMERCIAL OPERATIONS OF THE 180-MEGAWATT (MW) MAHANAGDONG AND 232.5-MEGAWATT (MW) MALITBOG POWER PLANTS.**

WHEREAS, this Fifteenth Sangguniang Panlungsod was in receipt of an Indorsement dated November 18, 2019 from the Office of the City Mayor, relative to the Memorandum of Agreement (MOA) to be entered into by the Local Government Unit of Ormoc (LGU-Ormoc) with the Energy Development Corporation (EDC) for the establishment of Trust Accounts for the Accrued Financial Benefits from the Commercial Operations of the 180-Megawatt (MW) Mahanagdong and 232.5-Megawatt (MW) Malitbog Power Plants, further requesting that the subject matter be treated as URGENT, a copy of the final MOA is hereto attached as Annex "A" and made an integral part hereof;



WHEREAS, through a letter dated October 04, 2019, the City Planning and Development Coordinator, Engr. Raoul E. Cam, furnished the City Mayor a copy of the draft MOA to be entered into by and between the City Government of Ormoc and the Energy Development Corporation (EDC), a copy of said letter is hereto attached as Annex "B" and made an integral part hereof;

WHEREAS, Energy Regulations (ER) No. 1-94 implementing Section 5 (i) of Republic Act No. 7638, otherwise known as the Department of Energy Act of 1992, grants financial benefits to the host communities of the energy-generation company and/or energy resources;

WHEREAS, Section 66 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and Rule 29 (A) of its Implementing Rules and Regulations (IRR) require all energy generation companies and/or energy resource developers to provide financial benefits equivalent to one centavo per kilowatt-hour (₱ 0.01/kWh) of the total electricity sales to communities hosting energy generating facilities;

WHEREAS, pursuant to Rule 29 (A) of the IRR, twenty-five percent (25%) of the ₱ 0.01/kWh of the total electricity sales shall be set aside for the Development and Livelihood Fund (DLF) and another twenty-five percent (25%) of the ₱ 0.01/kWh of the total electricity sales shall be set aside for the Reforestation, Watershed Management, Health and Environment Enhancement Fund (RWMHEEF) for use by the host region, province, city or municipality and barangay, which are required to establish corresponding trust accounts;

WHEREAS, the subject MOA provides for the establishment and administration of separate trust accounts for the DLF and RWMHEEF that shall accrue based on the electricity sales of the GenCo as financial benefit to LGU-Ormoc as host city;

WHEREAS, in a letter dated November 14, 2019, the Office of the City Legal Officer has communicated that the Office has already reviewed the draft MOA and finds nothing legally objectionable thereto;

WHEREAS, in the same aforementioned letter, the Office of the City Legal Officer further suggested that the same be endorsed to this Sanggunian for authority to enter into and sign the agreement in behalf of LGU-Ormoc pursuant to the provisions of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, a copy of said letter is hereto attached as Annex "C" and made an integral part hereof;

WHEREAS, this Sanggunian finds this MOA in order, pursuant to the provisions of Section 455, Paragraph (b) (1) (vi) of Republic Act 7160, otherwise known as the Local Government Code of 1991, which authorizes the City Mayor to represent the city in all its business transactions and sign in its behalf all bonds, contracts and obligations, and such other documents upon authority of the Sangguniang Panlungsod concerned pursuant to law or ordinance;

WHEREAS, the MOA clearly and plainly encapsulates the terms and conditions of the agreement of the parties thereto, and this Sanggunian finds that the same will indeed immensely benefit the City of Ormoc and its constituents in terms of acceleration of socio-economic development, and therefore, most deserving of this august Body's utmost support and favorable consideration;

WHEREFORE, on motion of SP Member Nolito M. Quilang, Vice-Chairman, Committee on Laws and Ordinances, severally seconded by SP Members Vincent L. Rama, Gregorio G. Yrastorza III, Esteban V. Laurente and Joan Marbie C. Simbajon; be it



RESOLVED, AS IT IS HEREBY RESOLVED, to pass a RESOLUTION GRANTING AUTHORITY TO THE CITY MAYOR RICHARD I. GOMEZ OR THE ACTING CITY MAYOR TO ENTER INTO AND SIGN A MEMORANDUM OF AGREEMENT (MOA) FOR AND ON BEHALF OF THE LOCAL GOVERNMENT UNIT OF ORMOC (LGU-ORMOC), WITH THE ENERGY DEVELOPMENT CORPORATION (EDC) FOR THE ESTABLISHMENT OF TRUST ACCOUNTS FOR THE ACCRUED FINANCIAL BENEFITS FROM THE COMMERCIAL OPERATIONS OF THE 180-MEGAWATT (MW) MAHANAGDONG AND 232.5-MEGAWATT (MW) MALITBOG POWER PLANTS;


ADOPTED, December 06, 2019.

RESOLVED, FURTHER, that a copy of the final and notarized Memorandum of Agreement (MOA) be furnished to this Sanggunian for its information and files;


RESOLVED, FINALLY, to furnish copies of this resolution each to the City Mayor of Ormoc Richard I. Gomez, the City Administrator, Mr. Vincent L. Ennas; the City Legal Officer, Atty. Josephine Mejia-Romero; the City Planning & Development Coordinator; the Energy Development Corporation; the City Local Government Operations Officer-DILG and other offices concerned for their information and guidance;

CARRIED UNANIMOUSLY.

I HEREBY CERTIFY to the correctness of the foregoing resolution.

  
MARIA ANTONIETA G. CO HAT  
Secretary to the  
Sangguniang Panlungsod

ATTESTED:

  
TOMAS R. SERAFICA  
(Acting City Vice Mayor)  
SP Member  
Presiding Officer "Pro-Tempore"

Annex "A"

**MEMORANDUM OF AGREEMENT  
Between the Energy Development Corporation  
and the Ormoc City, Province of Leyte**

*(For the Establishment of Trust Accounts for the Accrued Financial Benefits  
from the Commercial Operations of the 180-MW Mahanagdong  
and 232.5-MW Malitbog Geothermal Power Plants)*

**KNOW ALL MEN BY THESE PRESENTS:**

This Memorandum of Agreement (the "**Agreement**"), made and entered into by and between:

**ENERGY DEVELOPMENT CORPORATION**, a private corporation duly organized and existing under the laws of the Philippines, with principal office address at 38th Floor One Corporate Centre, Meralco Avenue corner Julia Vargas Avenue, Ortigas Center, Pasig City, duly represented by its **Head for Facility Operations – Leyte Area, Estanislao M. Pialago, Jr.**, hereinafter, referred to as "**EDC**" or the "**GenCo**".

and

**ORMOC CITY**, a local government unit of the Republic of the Philippines, with office address at City Hall, Ormoc City, Leyte, duly represented herein by its **Mayor, Richard I. Gomez**, per Sangguniang Panlungsod Resolution No. xx, Series of 2019, and hereinafter referred to as the "**Host Beneficiary**".

**EDC** and the **Host Beneficiary** shall hereinafter be collectively referred to as "**Parties**" and individually as a "**Party**".

**WITNESSETH: That**

**WHEREAS**, Energy Regulations ("**ER**") No. 1-94 implementing Section 5(i) of Republic Act No. 7638, otherwise known as the "Department of Energy Act of 1992" ("**RA 7638**"), grants financial benefits to the host communities of the energy-generation company and/or energy resources;

**WHEREAS**, Section 66 of R. A. No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" ("**RA 9136**") and Rule 29(A) of its Implementing Rules and Regulations ("**EPIRA-IRR**") require all energy generation companies and/or energy resource developers to provide financial benefits equivalent to one centavo per kilowatt-hour ("**₱0.01/kWh**") of the total electricity sales to communities hosting energy generating facilities;

**WHEREAS**, pursuant to Rule 29(A) of the EPIRA-IRR, twenty five percent (25%) of the ₱0.01/kWh of the total electricity sales shall be set aside for the Development and Livelihood Fund ("**DLF**") and another twenty five percent (25%) of the ₱0.01/kWh of the total electricity sales shall be set aside for the Reforestation, Watershed Management, Health and Environment Enhancement Fund ("**RWMHEEF**") for use by the host region, province, city or municipality and barangay, which are required to establish the corresponding trust accounts;



WHEREAS, in accordance with Republic Act No. 8371 ("RA 8371") also known as "The Indigenous Peoples' Rights Act of 1997", the Department of Energy ("DOE") promulgated Department Circular No. DC2018-03-0005 on 20 March 2018 recognizing the rights of the Indigenous Cultural Communities ("ICCs") and Indigenous Peoples ("IPs") over their ancestral domain and the natural resources therein, including rights over a reasonable share in the DLF and RWMHEEF components of the ER 1-94 funds;

WHEREAS, on 7 August 2018, the DOE issued Department Circular No. DC2018-08-0021, amending for the purpose Rule 29(A) of the EPIRA-IRR, to accelerate socio-economic development and to have a more effective and efficient utilization of the funds and to enforce the immediate provision of benefits to host communities;

WHEREAS, pursuant to Section 6 of DC2018-08-0021, the financial benefits shall be allocated in the following manner:

"Section 6. Allocation and Application of Financial Benefits Fund.

xxx xxx xxx

6.2. Twenty-five percent (25%) of one-centavo per kilowatt-hour (P0.0025/kWh) for Development and Livelihood Fund ("DLF"); and Twenty-five percent (25%) of one centavo per kilowatt-hour (P0.0025/kWh) for Reforestation, Watershed Management, Health and/or Environment Enhancement Fund ("RWMHEEF");

The DLF and RWMHEEF shall be allocated in the following manner:

6.2.1. Community and People Affected	- 5%
6.2.2. Host Barangay/s	- 20%
6.2.3. Host Municipality/ies or City/ies	- 35% ✓
6.2.4. Host Province/s	- 30%
6.2.5. Host ICCs/IPs	- 5%
6.2.6. Host Region	- 5%

xxx xxx xxx

In the absence of Community and People Affected, funds allocated for the same shall form part of the fund for the Host Barangay.

In the absence of ICCs/IPs, the funds allocated for the same shall form part of the fund for the Host Region. xxx"

NOW, THEREFORE, in view of the foregoing, the Parties hereby stipulate and agree as follows:

#### Section I. Scope of Agreement

This Agreement shall cover the establishment and administration of separate trust accounts for DLF and RWMHEEF, that shall accrue based on the electricity sales of the GenCo as financial benefit to the host LGUs ("Financial Benefits").

#### Section II. Responsibilities of the Parties

1. EDC shall:

- 1.1. Establish separate interest bearing current accounts held in trust for ER 1-94 purposes, specifically the DLF and RWMHEEF remittances to the **Host Beneficiary** ("EDC ER 1-94 Accounts");
- 1.2. Directly remit to the **Host Beneficiary** twenty-five percent (25%) of the ₱0.01/kWh for DLF; and twenty-five percent (25%) of the ₱0.01/kWh for RWMHEEF, as Financial Benefits of the host local government units in the manner set forth in Section 6 of DC2018-08-0021;
- 1.3. Remit the Financial Benefits quarterly in accordance with the following:
  - 1.3.1. The Financial Benefits accruing from the billing period 26 October 2018 to 25 December 2018 shall be directly remitted on \_\_\_\_\_.
  - 1.3.2. For the succeeding quarterly billing periods, the remittance shall be made within fifteen (15) calendar days after the end of each billing quarter.
- 1.4. Deposit the quarterly remittance to the corresponding EDC ER 1-94 Accounts, in the event that the host beneficiaries fail to submit and comply with the requirements under Section 7.3 of DC2018-08-0021;
- 1.5. Require the **Host Beneficiary** to issue an Official Receipt ("OR") corresponding to the quarterly remittance by EDC of the Financial Benefits which shall include the following information:
  - i. Name of LGU/Beneficiary: **Ormoc City**
  - ii. Payor: **Energy Development Corporation**
  - iii. Nature of Collection / Period Covered by Collection: **Remittance of ER 1-94 Proceeds (DLF) for \_\_ Quarter 20\_\_**
  - iv. Total Amount (in Figures):
  - v. Amount in Words:
- 1.6. Subject to the post-audit to be conducted by the DOE, reflect and apply in the immediate succeeding remittance any adjustments as a result of such post-audit by the DOE.

2. The **Host Beneficiary** shall:

- 2.1. Establish separate trust accounts for DLF and RWMHEEF;
  - 2.1.1. If the **Host Beneficiary** has existing DLF and RWMHEEF Trust Accounts:

The **Host Beneficiary** shall request the Authorized Government Depository Bank (AGDB) to adopt the account names stated below and subsequently issue a certification of the said accounts, its status and current available balance.

Ormoc City - EDC (Mahanagdong) - DLF (ER 1-94)  
Ormoc City - EDC (Malitbog) - DLF (ER 1-94)  
Ormoc City - EDC (Mahanagdong) - RWMHEEF (ER 1-94)  
Ormoc City - EDC (Malitbog) - RWMHEEF (ER 1-94)



2.1.2. If the **Host Beneficiary** does not have existing Trust Accounts:

HB shall establish trust accounts specific for DLF and RWMHEEF, under the following account names:

- Ormoc City - EDC (Mahanagdong) - DLF (ER 1-94)
- Ormoc City - EDC (Malitbog) - DLF (ER 1-94)
- Ormoc City - EDC (Mahanagdong) - RWMHEEF (ER 1-94)
- Ormoc City - EDC (Malitbog) - RWMHEEF (ER 1-94)

Within fifteen (15) days upon establishment of the trust accounts, HB shall furnish **EDC** copies of documents as proof of establishment thereof.

2.2. Pursuant to Section 10 of DC2018-08-0021, submit to **EDC** its Annual Work Program ("AWP") containing the list of tangible projects to be implemented within the reference year. The AWP shall be supported by a Resolution from its Sanggunian, certifying that said list of tangible projects is in accordance with its local development plans.

2.3. Submit to **EDC** within fifteen (15) days after the end of every calendar year, the implementation status of the tangible projects contained in the AWP vis-à-vis the utilization of the Financial Benefits in order for **EDC** to verify and validate the utilization of the Financial Benefits.

2.3. Accept remittances of the Financial Benefits, which are deemed certified, and issue ORs corresponding to the quarterly remittances. Said remittance shall still be subject to post-audit by the DOE; and

2.4. Disburse the funds from the DLF and RWMHEEF in accordance with the AWP. Such disbursements shall be subject to government accounting and post-audit by the Commission on Audit ("COA").

### **Section III. Effectivity of Agreement**

This Agreement shall take effect immediately upon signing by both Parties and shall remain valid and effective unless revoked, modified and/or amended.

### **Section IV. Amendments**

Any amendment or modification of this Agreement will only be effective upon written consent by the Parties.

### **Section V. General Provisions**

1. **Governing Law.** This Agreement shall be governed by, construed, and interpreted according to the laws of the Republic of the Philippines.
2. **Dispute Resolution.** In the event of any dispute between the Parties, the Parties shall attempt, for a period of thirty (30) days after receipt by one Party of a written notice from the other Party of the existence of a dispute, to settle such dispute in the first instance by mutual discussions. If the dispute is not settled by mutual discussions, the Parties agree to submit

such dispute in the appropriate courts of Pasig City, Metro Manila, to the exclusion of all other courts. During the pendency of any proceedings under this Article 6.2, the Parties (i) shall continue to perform their respective obligations under this Agreement and comply with the terms and conditions of this Agreement that are not in dispute, and (ii) neither Party shall exercise any other remedy hereunder arising by virtue of the matters in dispute. Nothing in this Article 6.2 shall prevent any Party from seeking interim injunctive or other provisional relief as may be available under applicable laws.

3. **Non-waiver.** The failure of either Party to insist on one or more instances on the strict performance of any of the covenants and conditions of this Agreement, or to exercise any right or option herein contained, shall not be construed as a waiver of said covenant, condition, right, or option. No waiver shall be deemed to have been made by a Party unless reduced in writing.
4. **Survival.** The provisions of this Agreement which are specifically stated to survive or whose operation or nature necessarily requires survival after the expiration or termination of this Agreement shall so survive such expiration or termination.
5. **Severability Provisions.** Should any provision of this Agreement be held invalid by any competent court, the same shall apply only to the provision involved and the remainder hereof remains valid and enforceable.
6. **Sole Understanding.** This Agreement supersedes all prior agreements and contracts, both written and oral, between the Parties. The Parties specifically agree that this Agreement is the sole understanding between them concerning the terms and conditions described herein.
7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original, but all of which, taken together, shall be considered one and the same agreement.

IN WITNESS WHEREOF, the Parties hereby set their hands this \_\_\_\_\_ day of \_\_\_\_\_, Two Thousand Nineteen in \_\_\_\_\_.

ENERGY DEVELOPMENT  
CORPORATION

By:

ESTANISLAO M. PIALAGO  
Head, Facility Operations - Leyte Area

ORMOC CITY  
PROVINCE OF LEYTE

By:

RICHARD I. GOMEZ  
Mayor

Signed in the presence of:

\_\_\_\_\_



ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES )  
\_\_\_\_\_ ) S. S.

BEFORE ME, this \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_  
personally appeared:

Name	Designation	Party	ID & Number
Estanislao M. Pialago, Jr.	Head, Facility Operations - Leyte Area	Energy Development Corporation	
Richard I. Gomez	Mayor	Ormoc City, Leyte	

This instrument which consists of six (6) pages, including this page on which this acknowledgment is written, has been signed by the above Parties and their instrumental witnesses on each and every page thereof and sealed with my notarial seal.

WITNESS MY HAND and SEAL, at the place and on the date first above written.

NOTARY PUBLIC

Doc. No. \_\_\_\_\_  
Page No. \_\_\_\_\_  
Book No. \_\_\_\_\_  
Series of 2019 \_\_\_\_\_





Republic of the Philippines  
**CITY PLANNING AND DEVELOPMENT OFFICE**  
Ormoc City

OFFICE OF THE CITY MAYOR  
**RECEIVED**  
DATE: 06/19  
TIME: 5:0  
SIGNATURE: [Signature]

*Annex "B"*

October 4, 2019

Hon. **RICHARD I. GOMEZ, MBA**  
City Mayor  
Ormoc City

Dear Mayor Gomez,

We are furnishing you herewith the draft Memorandum of Agreement (MOA) by and between the City Government of Ormoc and Energy Development Corporation (EDC) for the Establishment of Trust Accounts for the Accrued Financial Benefits from the Commercial Operations of the 180-MW Mahanagdong and 232.5 MW Malitbog Power Plants.

It is respectfully requested that this be endorsed after review from the City Legal Office to the Sangguniang Panlungsod for the passage of a resolution authorizing the Honorable City Mayor to enter and sign the said MOA.

Thank you very much.

Very truly yours,

  
**RAOUL E. CAM, CE, EnP, MPA**  
City Planning & Dev't. Coordinator



2nd Floor, New City Hall Building,  
Aunubing St., Cogon, Ormoc City  
planningormoc@gmail.com



(053) 560 - 8140 loc. 1060-65, 67-68  
(053) 832 - 8888 loc. 1060-65, 67-68  
(053) 255 - 2521 loc. 1060-65, 67-68