2018 Forum on Construction Law Annual Meeting
Taking Care of Business: A Mini-MBA Program for the Construction Lawyer

WORKSHOP 501B
JOINT VENTURE CONSIDERATIONS
TOPICS OF DISCUSSION

- THRESHOLD ISSUES
- TEAMING AGREEMENT
- SINGLE PROJECT vs. ONGOING
- TYPE AND STRUCTURE OF ENTITY
- ADMINISTRATIVE
- WHAT ENTITIES TO USE AS MEMBERS?
- TIMING OF FORMATION
- LINE ITEM vs. INTEGRATED

- MANAGEMENT, GOVERNANCE AND DECISION MAKING
- FINANCE AND ACCOUNTING
- TAX
- EQUITY AND CAPITAL INVESTMENT
- COMPENSATION/DISTRIBUTIONS
- EQUITY RESOURCES AND SYSTEMS
- DISPUTE RESOLUTION
THRESHOLD ISSUES

- Why Joint Venture?
- Is management on board?
- Any surety issues?
- Any anti-trust issues?
- Partner due diligence
TEAMING AGREEMENT

- When should a Teaming Agreement be in place?
- What should be covered by a Teaming Agreement?
  - Short form vs. long form
  - Typical Provisions
SINGLE PROJECT vs. ONGOING

- Ongoing entities have additional issues
  - Jurisdiction
  - Competition
  - Termination
  - Intellectual property
TYPE AND STRUCTURE OF ENTITY

- JV vs. LLC vs. LP vs. PS vs. Corporation vs. ?
- Liability shield
- Any Guaranties or other required credit support required
- Tax differences
- Licensing
- “Sub-LLC” structure
ADMINISTRATIVE

- What state to form in?
- Who forms the entity?
- When to form? Name registration
- Licensing
TIMING OF FORMATION

- How effective is a “No Entity” clause?
- How long should you operate under Teaming Agreement?
- Entity formation itself triggers obligations
- Formation vs. Dissolution
LINE ITEM vs. INTEGRATED

- Line Item
- Integrated
- Hybrid
MANAGEMENT, GOVERNANCE AND DECISION MAKING

- Member vs. board level vs. officer
- Officer authority often limited
- Need to clearly specify who makes what decision
- Titles matter
- Who appoints which officers?
  - Who is their employer?
- Fiduciary Duty
FINANCE AND ACCOUNTING

- Bank accounts/banking relationship
- Accounting
- Audits
- Any “consolidation” issues
- Profit take-up/write downs
- Project controls
- Equity contributions
- Safety
TAX

- Get tax input early (and often)
- Tax elections
- Tax matters partner
- Tax return preparation
- International issues
- “Other” taxes
EQUITY AND CAPITAL INVESTMENT

- Specify capital contributions up front
- How will cash calls be determined?
- Is capital contributed on a pro-rata basis?
- Capital call security
- What happens when capital calls are not met?
- Parent Guaranties/Cross-Indemnity of JV Agreement
COMPENSATION/DISTRIBUTIONS

- Pro-rata
- Scope split
- When to make cash distributions?
- Any “Management Fee”?
- Any “Success Fee”?
ENTITY RESOURCES AND SYSTEMS

- How will the entity get resources?
- How to compensate Partners for contributed resources?
- What systems will the entity use?
DISPUTE RESOLUTION

- Steps involved in the process
- What is exempt from dispute resolution?
- How to deal with deadlocks?
- Interim decision is often a final decision
THANK YOU!

(Appplause here)