

Joint ventures: Building smarter partnerships for complex construction

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In today's construction landscape, where projects are bigger, risks are higher, and timelines are tighter, few companies can go it alone forever. That's why joint ventures (JVs) have become a go-to structure for tackling high-stakes development. A well-structured JV lets companies combine forces, with more bonding capacity, broader expertise, and shared risk — all of which are critical to success in major construction. But without thoughtful planning and clear agreements, a JV can just as easily become a source of confusion, conflict, or even litigation. In this article, we break down the building blocks of a successful JV — from alignment and negotiation to the details that keep everyone on track.

Companies have increasingly found that due diligence before any documents are signed or ground is broken is absolutely essential to ensure compatible values, goals, and management styles. Once the parties agree to proceed, senior leadership from both parties typically meet regularly to define roles and responsibilities in an effort to encourage efficiency and accountability.

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To enhance the odds of success, this process typically involves four key steps:

- **Identify Strengths and Expertise:** Each company assesses its core competencies including financial strength, leveraging existing client relationships, key construction skills, and project administration and management experience.
- **Negotiation:** Senior leadership negotiates how these strengths are best allocated within the JV. This includes determining who would be assigned client communication, project management, site supervision,

specific construction tasks, administration, procurement, and financial management.

- **JV Agreement:** A joint venture is based upon a formal, written contract commonly referred to as a joint venture agreement or JVA. This document outlines specific responsibilities, deliverables, and timelines, with a goal to minimize potential conflicts and overlaps (*more below*).
- **Independent Legal Counsel:** Each party in a JV should retain their own experienced construction attorney to draft and negotiate an agreement that is legally sound, represents an arms-length transaction and protects their interests.

The JVA should include clear procedures for resolving disputes, such as mediation, arbitration, or litigation.

Joint ventures proceed under a plethora of different forms. The choice depends upon the goals of the parties. For example, is the goal for a single project, or instead to form a new business relationship to pursue multiple projects? A joint venture format can be a simple partnership agreement, or (especially on large projects) it is not uncommon to form a limited liability company (LLC) to execute the project.

If the JV is formed via partnership, the collaboration is spelled out in a comprehensive partnership agreement. Alternatively, by an operating agreement (if the JV is an LLC). This crucial document governs all aspects of the JV. For clarity, it a *contract* in itself, separate from the construction contract with the client (the project owner), and could be a lump-sum, cost-plus, GMP, or design-build contract.

Key elements of a JVA include:

- **Purpose:** The specific project the JV is formed to undertake.

- **Scope of Work:** Detailed description of the project(s) and allocation of the scope to each party.
- **Roles/Responsibilities:** Clear assignment of primary and secondary responsibilities for each partner often defined in a matrix of responsibilities.
- **Management Structure:** How decisions will be made (e.g., voting rights, management committee).
- **Capital Contributions:** Each party's percentage share (financial, risk, and reward) and what each partner will contribute financially.
- **Financial Transparency:** The JV agreement should have detailed and transparent accounting procedures to ensure that all parties are aware of the financial standing of the JV.
- **Profit and Loss Sharing:** How revenues and expenses will be divided.
- **Changes:** Procedures for handling changes, including pricing and approval.
- **Liability:** How liabilities will be allocated among the partners (keep in mind that the agreement with clients will likely require joint and several liability).
- **Subcontractors/Subconsultants.** Define which party has responsibility to retain and manage these.
- **Diversity and Local Engagement:** To the extent required in the client contract, it is critical to allocate responsibility for minority-owned or local firms to meet community expectations and diversity goals.
- **Indemnification:** Specifies which party is responsible for which losses.
- **Performance and Payment Bonds (if any):** Guarantees that the JV will complete the work and pay its subcontractors: specify if both or one party is responsible to obtain them.
- **Insurance:** Crucial to consider what insurance policies each member has, what insurance the JV will need for the project(s), and how these policies interact.
- **Accounting and Financial Reporting:** How finances will be managed and reported.
- **Intellectual Property:** Ownership and use of any intellectual property developed during the project.
- **Confidentiality:** Protection of sensitive information.
- **Non-Competition:** Restrictions on partners competing with the JV during the project.
- **Exit Strategy:** How the JV will be dissolved upon project completion or termination.
- **Termination:** Conditions under which the JV can be terminated.
- **Default:** Procedures in case one partner fails to meet its obligations.
- **Dispute Resolution:** Procedures for resolving disagreements (e.g., mediation, arbitration, litigation). Consider retaining a neutral-third party to issue expedited binding or non-binding decisions to keep the project moving.
- **Other Key Terms from Client Agreement.** Be sure to address any special issues. For example, environmental, sustainability, neighbor access and license agreements.

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The most critical points in a joint venture ensure that all stakeholders are involved, and that there are clear channels of communication and ways of resolving any disputes. Among the important points to accomplish this task, firms should consider:

- **Early and Frequent Communication:** Regular meetings, progress reports, and open communication channels between the client, the JV, and all stakeholders are important.
- **Designated Points of Contact:** Establish clear lines of communication with designated representatives from the client and the JV helps to avoid confusion and ensures that information flows efficiently.
- **Technology Integration:** Consider use of (a) Building Information Modeling (BIM) to collaborate effectively, enhance coordination and reduce errors and/or (b) a comprehensive cloud-based project management software system to maintain meticulous records of all project activities, including meeting minutes, submittals, change orders, payment requisitions with supporting documentation, inspections and sign-offs; this provides a clear history of the project and can help resolve disputes based on facts.
- **Dispute Resolution Mechanisms:** The JVA should include clear procedures for resolving disputes, such as mediation, arbitration, or litigation. It is usually best to avoid potential stalemates (each party has a 50-50 vote) that can cause delays. As noted above, consider retaining a neutral-third party to issue expedited binding or non-binding decisions to keep the project moving.

Joint ventures are becoming more common to the success of major development and construction projects. A well-crafted JV makes all the parties' obligations clear and is a shared playbook for solving problems before they stall progress. Get this right, and you've got a foundation that can hold up under real-world pressure, just like the projects you're hired to construct.

About the author



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