




Republic of the Philippines
SANGGUNIANG PANLUNGSOD
City Government of Naga

ORDINANCE NO. 2023-080
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AN ORDINANCE ESTABLISHING JOINT VENTURE GUIDELINES FOR THE IMPLEMENTATION OF THE PAMBANSANG PABAHAY PARA SA PILIPINO (4PH) PROGRAM AND OTHER JOINT VENTURE ENGAGEMENTS IN CITY OF NAGA:-

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Explanatory Note

WHEREAS, the Department of Human Settlements and Urban Development, through Department Circular 2022-004, declared the 4PH Program as a priority program of the Department to target the development of 1,000,000 housing units every year for the next six years starting January 2023;

WHEREAS, the 4PH Program identified Local Government Units as one of the main proponents and major players in the planning, implementation and management of their respective housing projects;

WHEREAS, to help augment resources and expertise to address the 6.5 million housing backlog in the Philippines, Joint Venture Agreements were cited as among the strategic solutions to accelerate the execution of the flagship housing program;

WHEREAS, Naga City is projected to be the site of 7 medium or high-rise condominiums, implemented through the 4PH Program, in partnership with Government Financial Institutions (GFIs) and private developers, necessitating the need to establish guidelines that will serve as basis for approval of these joint ventures;

Therefore, be it ordained by the Sangguniang Panlungsod of Naga, in session assembled, that:

SECTION 1. TITLE. This ordinance shall also be known as the "4PH Ordinance of Naga City";

SECTION 2. LEGAL BASIS. The following provisions of law constitute as the legal basis for the City of Naga to enter into joint venture agreements:

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- a) Section 20, Article 2 of the 1987 Constitution provides that the State recognizes the indispensable role of the private sector as the main engine of national development;
- b) Section 35 of R.A. 7160 and its Implementing Rules and Regulations encourages the participation of the private sector in local governance, particularly in the delivery of basic services, to ensure the viability of local autonomy as an alternative strategy for sustainable development;
- c) Section 16 of R.A. 7160 which grants LGUs full autonomy in the exercise of its proprietary functions and shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, those not otherwise prohibited by law and

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those which are essential to the promotion of the general welfare.

SECTION 3. PURPOSE. This ordinance is intended to specify rules and procedures for the selection, evaluation, and approval of solicited, unsolicited, and alternative joint venture agreements/contracts for the implementation of the 4PH Program and other Joint Venture Projects in the City of Naga.

SECTION 4. DEFINITION OF TERMS. The following terms, as used in this ordinance, shall mean as follows:

- a) *Joint Venture* - is an arrangement whereby a private developer/entity on one hand, and the City Government of Naga, on the other hand, contribute money, capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing, to undertake an investment activity;
- b) *Solicited Joint Venture* - or those joint venture projects identified and developed by the City Government, and for which the City Government will formally solicit or request private sector participation through a tendering and selection process called competitive selection process.
- c) *Unsolicited Joint Venture* - or those joint venture project proposals submitted by the private sector to the City Government on the former's own initiative (not in response to a formal solicitation or request issued by the City Government.

In this type of Joint Venture, if the City Government accepts the project, a negotiation of the Joint Venture Agreement ensues. If the negotiation is successful, the project, as well as the negotiated Joint Venture Agreement, is sent to the Sangguniang Panlungsod of Naga for approval. After which, the tendering proceeds to what is otherwise called as a competitive challenge process.

- d) *Alternative Joint Venture* - In this process, the City Government's role in the project development phase shall be limited to defining project requirements which shall serve as a guide to the proponent in further developing the project proposal.

It shall then be the duty of the project proponent to conduct feasibility study based on the requirements and template provided by the City Government.

SECTION 5. NAGA CITY 4PH COMMITTEE. There is hereby created the Naga City 4PH Committee for the purpose of selecting a Joint Venture Partner (JVP) for the implementation of the 4PH Program in the City of Naga. This committee shall be composed of the following voting members:

Chairperson: Bids and Awards Committee Chairperson
Co-Chairperson: SP Chairperson of Housing Committee
Secretariat: HSDO Department Head
Members: City Administrator

City Planning and Development Officer
City Legal Officer
One Representative from the Urban Poor
Federation
One Representative from the recognized
People's Council

The Committee may invite other members with technical knowledge and expertise to participate, on a non-voting capacity, in its proceedings.

SECTION 6. DUTIES OF THE 4PH COMMITTEE. The Committee shall be responsible for all aspects of the pre-selection and selection process including, among others:

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- a) The preparation of the feasibility or project study and selection/tender documents;
 - b) Determination of the minimum designs, performance standards or specifications, economic parameters, and reasonable rate of return or tariff-setting mechanism appropriate to the Joint Venture Project;
 - c) Drafting or evaluation of the Joint Venture Contract;
 - d) Publication of the invitation to apply for eligibility and submission of proposals or comparative proposals;
 - e) Defining the eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge processes;
 - f) Pre-qualification of prospective private sector partners (PSPs), bidders, or challengers;
 - g) Conduct of pre-selections conferences and issuance of supplemental notices;
 - h) Interpretation of rules regarding the selection process;
 - i) Conduct of selection or challenge process;
 - j) Evaluation of the legal, financial and technical aspects of the proposals;
 - k) Resolution of disputes between PSPs and challengers;
 - l) Defining the appeals mechanisms;
 - m) Recommendation of the acceptance of the proposal and/or for the award of the contract;
 - n) Such other responsibilities to facilitate the implementation of the 4PH Program in the City of Naga and the selection of Joint Venture Partners.
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SECTION 7. ELIGIBILITY OF JOINT VENTURE PARTNERS (JVP). Any individual, partnership, corporation or firm, or consortium, whether local or foreign, may participate, subject to the requirements set below:

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- a) Legal Requirement - The Joint Venture Partner (JVP) shall comply with the nationality and ownership requirements under the Constitution and other applicable laws and issuances.
 - b) Technical Requirement - The Joint Venture Partner must have completed a similar or related project whose value must be at least 50% of the cost of the Joint Venture 4PH Project within the relevant period as determined by the 4PH Committee. The proponent shall submit a statement of all its ongoing and completed government and private contracts similar to the Housing Program, including

contracts awarded but not yet started, if any. For clarity, one project is sufficient to meet this requirement.

- c) Financial Capability - the 4PH Committee shall determine, before evaluation of the eligibility, the minimum amount of equity needed for the Joint Venture. For this purpose, the following documents shall be submitted by the proponent:

i. Audited financial statements for the past three (3) calendar years. If the proponent is Filipino, the financial statements must be stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions;

ii. Latest tax returns.

Financial capability shall be measured in terms of:

i. Proof of ability of the proponent to provide a minimum amount of equity to the Joint Venture, measured in terms of the net worth of the company, or a deposit equivalent to the minimum equity required set aside or ear-marked for the 4PH Joint Venture Project;

ii. A letter 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 Joint Venture Partner is one of its current clients, and is in good financial standing.

SECTION 8. COMPETITIVE SELECTION PROCESS. The 4PH Committee shall submit copies of the draft JV Agreement, Instructions to Proponents, Minimum Designs, Performance Standards/Specifications, and Economic Parameters and, upon approval by the Sangguniang Panlungsod of Naga, shall undergo with the following general procedures:

- a) **PUBLICATION** - An Invitation to Apply for Eligibility and to Submit a Proposal shall be advertised once in a newspaper of general nationwide circulation, and posted continuously for a period of seven (7) calendar days, starting on date of advertisement, at the City's Website, Social Media Pages, and other conspicuous places within the premises of City Government Buildings and Facilities;

Proponents shall be given at least thirty (30) calendar days from the last date of publication to the Invitation to apply for eligibility and submit a proposal. The 4PH Committee may adjust the said period as may be appropriate for the nature, scope, size, and complexity of the Joint Venture, provided that the principles of transparency, competition, and accountability are observed.

- b) **EVALUATION OF ELIGIBILITY** - The 4PH Committee shall, within a period of Fifteen (15) calendar days after the deadline set for submission of the eligibility documents, complete the evaluation of the eligibility documents and determine which among the proponents are eligible or ineligible. Accordingly, the 4PH Committee shall duly inform the

eligible proponents within seven (7) calendar days after approval thereof. Ineligible proponents shall be similarly given notice of such ineligibility, stating therein the grounds for ineligibility within the same period.

- c) **ISSUANCE OF TENDER DOCUMENTS** - The 4PH Committee shall make available the competitive selection documents to all eligible proponents as soon as practicable to provide proponents ample time to examine the same and to prepare their respective proposals prior to the date of opening of proposals. The time period from the last day of issuance of tender documents to the date of opening of proposals shall not exceed Sixty (60) calendar days.

The proposal parameters for the Joint Venture Project should be transparent and fair. It should not, in any way, be tailor-made for or meant to favor or give advantage to a particular Joint Venture Proponent.

- d) **SUBMISSION AND RECEIPT OF PROPOSALS** - Proponents shall be required to submit their technical and financial proposals strictly in accordance with the minimum standards and instructions prescribed by the 4PH Committee, including compliance to the deadlines imposed therein.

Proposals submitted after the deadline provided in the instructions shall be considered late and shall be returned unopened.

- e) **OPENING AND EVALUATION OF PROPOSALS** -

- i. The technical aspect of the proposal shall first be evaluated to assess the technical, operational, environmental, and financing viability of the proposal vis-à-vis the prescribed requirements and criteria/minimum standards, and basic parameters prescribed in the competitive selection documents;
- ii. The evaluation of the financial proposal shall involve the assessment and comparison of the financial proposals against the financial parameters stated in the tender documents and proposal parameters set forth by the 4PH Committee;
- iii. The 4PH Committee shall complete the evaluation of the technical proposal and financial proposals within Sixty (60) calendar days from the date the proposals were opened. It shall be the duty of the 4PH Committee shall notify the proponents and inform them of the date, time, and place for the opening of the proposals following the procedures and guidelines to be set forth by the 4PH Committee.

- f) **AWARD AND APPROVAL OF CONTRACT** -

- i. Within seven (7) calendar days from the date the evaluation procedure is completed, the 4PH Committee shall submit to the Sangguniang Panlungsod of Naga the recommendation of award detailing the evaluation/assessment report on its decision regarding the evaluation proposals, and explain in clear terms the basis of its recommendations;
- ii. If the Sangguniang Panlungod of Naga approves the recommendation, it shall issue the resolution authorizing

the City Mayor to enter into the Joint Venture Contract with the proponent for the implementation of the 4PH Program.

SECTION 9. COMPETITIVE CHALLENGE PROCESS. All unsolicited proposals for the implementation of the 4PH Program shall be accompanied by a Feasibility or Project Study and draft Joint Venture contract; and shall go through the following general procedure:

- a) **EVALUATION** - The 4PH Committee shall make an initial evaluation to determine the completeness of the unsolicited proposal, the eligibility of the proponent pursuant to Section 6 of this Ordinance, and the consistency of the terms of the draft Joint Venture Contract with the provisions of this Ordinance and the 4PH Program guidelines.

Upon completion of the initial evaluation, the City Mayor shall either issue a letter of acceptance or non-acceptance of the proposal. An acceptance shall not bind the City Government of Naga to enter into the Joint Venture with the proponent, but shall mean that authorization is given to proceed with the detailed negotiations on the terms and conditions of the Joint Venture. In case of non-acceptance, the proponent shall be informed of the reasons/grounds for non-acceptance.

- b) **NEGOTIATION** - the 4PH Committee shall negotiate with the proponent and agree on the terms and conditions of the project as well as its legal, technical, and financial aspects. Negotiation shall not exceed sixty (60) calendar days.

Within seven (7) days after successful negotiation, the 4PH Committee shall submit the negotiated contract to the Sangguniang Panlungsod of Naga for approval through a resolution which also authorizes the City Mayor to enter into the Joint Venture on behalf of the City Government of Naga. The issuance of the resolution commences the activities for the solicitation for comparative proposals;

- c) **INVITATION FOR COMPARATIVE PROPOSALS** - the 4PH Committee shall publish the invitation for comparative proposals in the same manner provided under Section 7.a. of this Ordinance. Prospective comparative challengers shall be given 90 calendar days from the issuance of tender/bidding documents, to be prepared by the 4PH Committee, to develop and submit comparative proposals. If no comparative proposal is received by the City Government, the Joint Venture project shall be immediately awarded to the original proponent.

- d) **SWISS CHALLENGE PROPER** - The procedure for the determination of eligibility of comparative proponents, submission and receipt of proposals, opening and evaluation of proposals shall follow the same procedure provided under Section 7 of this Ordinance.

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If another qualified comparative proponent submits a superior counter-financial proposal, and it is accepted by the 4PH Committee, both the original proponent and the best-ranked comparative proponent shall be required to offer their best and final financial bid using the same bid parameter within a period of Thirty (30) calendar days from receipt of notice. Both bids shall be opened at the same time and neither of them shall have information on the bid of the other. The winning bid shall be determined based on the best financial proposal submitted.

- e) **AWARD AND APPROVAL** - Within seven (7) calendar days from the date of completion of the swiss challenge, the 4PH Committee shall submit the recommendation to the Sangguniang Panlungsod of Naga for confirmation of authority to the City Mayor to enter into the Joint Venture with the original proponent or a new authority for the successful challenger.

SECTION 10. ALTERNATIVE JOINT VENTURE PROCESS - Under this process, the City Government's role in project development phase shall be limited to defining project requirements which shall serve as a guide to the proponent in further developing the project proposal. Such requirements would consist of: *Project Description, Objectives, Scope, Period of Joint Venture, Minimum Performance Standards and Specifications, Economic and Financial Viability Indicators and their Corresponding Hurdle Rates, Government Contributions, and a Draft Joint Venture Agreement.*

It shall be the task of the proponent to conduct the feasibility study, in accordance with the project requirements and template provided by the 4PH Committee.

- a) **SELECTION PROCESS** - The City Government of Naga shall publish an *Invitation to Apply for Eligibility and Submit Proposal* which shall additionally include an invitation to submit a feasibility study based on the project requirements identified by the 4PH Committee. The same eligibility requirements provided for under Section 7 of this Ordinance shall apply for proponents under this selection process.
- b) **EVALUATION AND AWARD OF CONTRACTS** - the succeeding procedures for the evaluation and award of contracts shall follow the same procedures provided for under the competitive selection process discussed in Section 8 of this Ordinance, as applicable.

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SECTION 11. ALTERNATIVE DISPUTE RESOLUTION. The Joint Venture Contract to be entered into with the proponent shall include a provision on the use of ADR mechanisms in expeditiously resolving disputes arising from the Joint Venture Contract. ADR mechanisms shall include mediation, conciliation, and the establishment of a Project Dispute Resolution Board to be composed of three (3) members jointly selected and agreed upon by the City Government and the Joint Venture Partner.

SECTION 12. SUPPLEMENTARY GUIDELINES. National guidelines and issuances from relevant National Government Agencies, such as the DILG, PPP Center, whenever relevant and appropriate as determined

by the 4PH committee, and in the absence of a specific provision to the contrary, shall apply in a suppletory manner.

SECTION 13. APPLICATION TO OTHER JOINT VENTURE PROJECTS. The guidelines discussed in this ordinance may also be used in implementing other projects, through joint ventures, identified under the City's Development Plans and Investment Programs, as may be warranted.

The City Mayor may issue appropriate and relevant rules and regulations for the proper implementation of joint venture projects, including issuance of relevant mechanisms to ensure transparent and accountable engagement of the City Government with private partners.

SECTION 14. FUNDING. The amount necessary to carry out the provisions of this ordinance shall be incorporated in the City's Annual Budget beginning FY 2024.

SECTION 15. SEPARABILITY CLAUSE. If, for any reason, any section or provision of this ordinance or any part thereof, is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

SECTION 16. REPEALING CLAUSE. All ordinances and resolutions or parts thereof inconsistent with the provisions of this ordinance are hereby repealed or modified accordingly.

SECTION 17. EFFECTIVITY. This code shall take effect immediately upon approval and compliance with the publication and posting requirements under the Local Government Code.

ENACTED: July 18, 2022.

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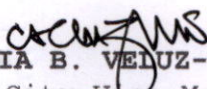
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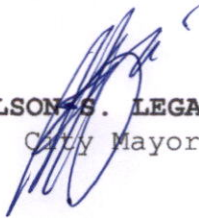
WE HEREBY CERTIFY to the correctness of the foregoing ordinance.



GIL A. DE LA TORRE
Secretary to the
Sangguniang Panlungsod


CECILIA B. VELUZ-DE ASIS
City Vice Mayor
& Presiding Officer

APPROVED:


NELSON S. LEGACION
City Mayor 7/17/23