

JOINT VENTURE AGREEMENT
FOR THE PROVISION OF SANITATION SERVICES AND THE FINANCING,
CONSTRUCTION, OPERATION, MAINTENANCE AND EXPANSION OF THE
SEPTAGE COLLECTION AND TREATMENT FACILITIES IN THE
CITY OF SAN FERNANDO, PAMPANGA

This Joint Venture Agreement for the Provision of Sanitation Services and the Financing, Construction, Operation, Maintenance and Expansion of the Septage Collection and Treatment Facilities in **THE CITY OF SAN FERNANDO, PAMPANGA** (the "**Agreement**"), is made this 11th day of September 2020 in San Fernando, Pampanga, by and between:

CITY OF SAN FERNANDO WATER DISTRICT, a government-owned and controlled corporation created pursuant to Presidential Decree No. 198, as amended, with principal business address at B. Mendoza Street, Sto. Rosario, 2000 City of San Fernando, Pampanga, herein represented by its Chairperson, **FERDINAND Z. CAYLAO** and General Manager, **JORGE P. GUMBA**, duly authorized, for the purpose of this Agreement, by the Board of Directors under Board Resolution No. 11 s. of 2020, hereinafter the CSFWD;

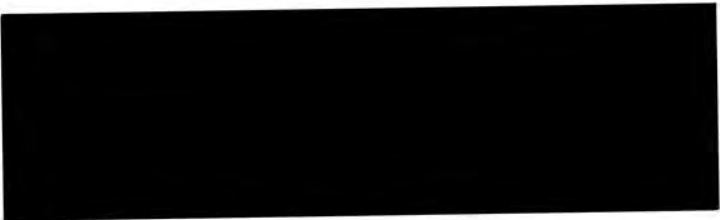

- and -

PRIMEWATER INFRASTRUCTURE CORP., a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at 3rd Floor, Homeplus Center, Pamplona 3, Las Piñas City, Philippines, herein represented by its Vice-President and Business Development Head, **ROMEO M. SABATER**, and its Operations Head, **CEZAR S. ONG**, duly authorized for the purpose of this Agreement by its Board of Directors under a Secretary Certificate, hereinafter the "PRIMEWATER".

CSFWD and PRIMEWATER may be singularly referred to as a "Party" and collectively as the "Parties".

ANTECEDENTS:

- A. CSFWD, pursuant to Presidential Decree No. 198, as amended, otherwise known as the Provincial Water Utilities Act of 1973 ("**P.D. 198**"), is empowered to construct, operate and furnish facilities for the collection, treatment and disposal of sewage, as well as to prescribe and collect rates and other charges for sewer services rendered;

- B. Republic Act No. 9275 or the Philippine Clean Water Act of 2004 ("R.A. 9275") expressly states that "in the case of HUCs, non-HUCs and LGUs where water districts, water utilities and LGU water works have already been constituted and operational, the water supply utility provider shall be responsible for the sewerage facilities and the main lines pursuant to Presidential Decree No. 198 and other relevant laws. In areas where there are no existing facilities, the LGUs, water districts or water utilities may adopt septage management program or other sanitation alternatives";
- C. Pursuant to its mandate under P.D. 198 and R.A. 9275, the CSFWD shall be responsible in providing for the Septage Management Program for **The City of San Fernando, Pampanga**;
- D. Pursuant to Ordinance No. 2018-001 issued by the Local Government of The City of San Fernando, CSFWD was assigned to provide Septage Management Services to the Joint Venture (JV) Area as defined hereunder, as well as given the right to add Environmental Fee to the water bill of its existing and future customers, among others;
- E. PRIMEWATER submitted on May 31, 2019 the unsolicited JV Proposal pursuant to the JV Guidelines to undertake the JV Project with CSFWD, which is the financing, construction, operation, maintenance and expansion of the septage collection and treatment facilities in the JV Area;
- F. Pursuant to the JV Guidelines, the Parties conducted a series of in-depth negotiations on the purpose, terms and conditions, scope and implementation arrangements, as well as all legal, technical, and financial aspects of the JV Project, thereby coming up with an improved JV Proposal (**Annex "A"**);
- G. PRIMEWATER's JV Proposal contains PRIMEWATER's legal, technical, and financial proposal with regard to the JV Project, as revised, following negotiations with CSFWD's Joint Venture Selection Committee ("**JVSC**");
- H. Pursuant to the JV Guidelines, the JV Proposal was subjected to competitive challenge/selection process;
- I. No bidder challenged the JV Proposal within the prescribed period or during competitive challenge;
- J. Pursuant to the JV Guidelines, the JV Project for the provision of sanitation services and the financing, construction, operation, maintenance and expansion of the septage collection and treatment facilities of the JV Area was awarded to PRIMEWATER.
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ACCORDINGLY, in consideration of the foregoing premises and the terms and conditions specified herein, the Parties agree as follows:


Section 1. Definitions and Interpretation

1.1. Definitions

- 1.1.1. **Appropriate Project Return** – shall mean the real return (i.e. not adjusted for inflation) on PRIMEWATER's project cash flows representing PRIMEWATER's weighted average cost of capital set at [REDACTED] or as may be set by the City of San Fernando Local Government or the appropriate government regulatory body.
 - 1.1.2. **Clustered Areas** – shall mean the pertinent areas adjacent to the Host Water District/JV Partnership, and shall include the JV Area as well as other adjacent areas which may further be served under the Clustering Scheme as defined hereunder.
 - 1.1.3. **Commencement Date** – shall mean the specified date when this Agreement becomes effective as provided under Section 10 hereof.
 - 1.1.4. **Concession Rights** – shall mean the rights granted to PRIMEWATER as provided under Section 3 hereof.
 - 1.1.5. **Customer** – shall mean any customer of PRIMEWATER for the supply of water and Septage Management Services in the JV Area, who may be: (i) residential customers; and/or (ii) commercial customers with domestic septic tanks.
 - 1.1.6. **Detailed Review** – shall have the meaning given to the term in Section 8.4 hereof.
 - 1.1.7. **Detailed Review Period** – shall mean the period wherein the CSFWD shall conduct a Detailed Review as described in Section 8.4.1 hereof.
 - 1.1.8. **Environmental Fee** – shall mean the fee for the Septage Management Services provided by PRIMEWATER expressed as a fixed rate per cubic meter of water consumption, which fee may be adjusted from time to time in accordance with Section 8 hereof.
- [REDACTED]
- [REDACTED]

- 1.1.9. **Event of Default** – shall mean an event described in Sections 12.1 and 12.2 hereof.
- 1.1.10. **Expiration Date** – shall mean the end of term of the Agreement described in Section 10 hereof, or any extension or renewal thereof.
- 1.1.11. **Expiration Payment** – shall mean the amount due to PRIMEWATER at the Expiration Date of the Agreement, as provided under Section 11.2 hereof.
- 1.1.12. **Financing Agreements** – shall mean such agreement or agreements as may be entered between PRIMEWATER and its lenders in respect of credit facility or facilities provided to the former to assist in the implementation of the Agreement.
- 1.1.13. **Financial Model** – shall refer to the financial representation of the JV Project's actual historical performance and projected future operations used to determine the required environmental fee adjustment to allow recovery according to the APR set in this Agreement.
- 1.1.14. **Host Water District/JV Partnership** – shall mean the Water District/JV partnership that owns and manages the septage treatment facility to be used for septage treatment and disposal.
- 1.1.15. **Joint Venture** – shall mean the contractual Joint Venture between the Parties created by virtue of the Agreement pursuant to the JV Guidelines.
- 1.1.16. **Just Compensation** – shall mean the amount due to PRIMEWATER after the pre-termination of the Agreement as provided under Section 12.5 hereof.
- 1.1.17. **JV Area** – shall mean the concession area of CSFWD or any expansion thereof, and includes nearby cities/municipalities which desires to avail of, and to which CSFWD may cater, its septage management services, particularly the treatment and disposal of collected septage.
- 1.1.18. **JV Guidelines** – shall mean the 2013 Revised Guidelines and Procedures for Entering into Joint Venture Agreements between Government and Private Entities dated 3 May 2013, issued by the National Economic and Development

Authority pursuant to Section 8 (Joint Venture Agreements) of Executive Order No. 423 dated 30 April 2005.

- 1.1.19. **JV Project** – shall mean the Provision of Sanitation Services and the Financing, Construction, Operation, Maintenance and Expansion of the Septage Collection and Treatment Facilities of the JV Area to be jointly undertaken by PRIMEWATER and CSFWD through a contractual joint venture arrangement for a for a term coterminous with the term of the Joint Venture Agreement for the Financing, Development, Rehabilitation, Expansion, Improvement, Operation and Maintenance of the Water Supply of City of San Fernando Water District dated 14 October 2020.
- 1.1.20. **JV Proposal** – shall mean the unsolicited proposal submitted by PRIMEWATER to CSFWD, in accordance with the JV Guidelines, to undertake the Joint Venture Project.
- 1.1.21. **Notice to Proceed** – shall mean the notice issued by CSFWD fifteen (15) days prior to Commencement Date, notifying PRIMEWATER that it may commence the construction of the septage treatment facilities for Septage Management Services of the JV Area.
- 1.1.22. **Notice of Intention to Pre-terminate** – shall mean the notice issued by a party in accordance with Section 12.4 hereof, notifying the other party of the former's intention to terminate/exit from this Agreement.
- 1.1.23. **Performance Bond** – shall have the meaning to the term given in Section 7 hereof.
- 1.1.24. **Pre-termination Date** – shall mean the effective date of valid pre-termination due to an event of default or unforeseen change in circumstances after a pre-termination process, pursuant to Section 12 hereof.
- 1.1.25. **PRIMEWATER** – shall mean Primewater Infrastructure Corp., a domestic corporation created pursuant to the Corporation Code of the Philippines.
- 1.1.26. **PRIMEWATER Facilities** – shall mean all properties, plants and equipment owned and operated by PRIMEWATER in the joint venture area, the exclusive use of such assets is contributed by PRIMEWATER for the purpose of the JV Project, pursuant to Section 2.8.2 hereof.
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- 1.1.27. **Sanitation Business Plan** – this refers to the project's business plan, which shall include the Financial Model, service targets, and other deliverables. This shall be submitted by PRIMEWATER to the CSFWD for the purpose of the Detailed Review.
- 1.1.28. **Sanitation Service** – shall mean the provision of domestic septic tank desludging services at a regular period of once in five years for residential households and establishments that are domestic in nature.
- 1.1.29. **Septage** – the combination of scum, sludge, and liquid that accumulates in domestic septic tanks. It is a mixture of sludge, fatty materials, human feces, and wastewater removed during pumping of an onsite sewage treatment and disposal system. Excluded from this definition are the contents of portable toilets, holding tanks, and grease interceptors.
- 1.1.30. **Septage Management Service** – refers to the comprehensive management of septic tanks and the proper desludging, transporting, treating, and disposing of septic tank contents. The provision of domestic septic tank desludging services shall be at a regular period of once in five (5) years for residential households and establishments that are domestic in nature.
- 1.1.31. **Septage Treatment Facility** – means a stationary facility that treats only domestic septage or sewage in accordance with government standards.
- 1.1.32. **Septic Tank** – a watertight, multi-chambered receptacle that receives sewage from houses or other buildings and is designed to separate and store the solids and partially digest the organic matter in the sewage.
- 1.1.33. **Service Provider** – a public or private entity, operator, or water utility, that is authorized to engage in the collection, desludging, handling, transporting, treating, and disposing of sludge and septage from septic tanks, cesspools, portalets, sewage treatment plants.
- 1.1.34. **CSFWD** – shall mean the City of San Fernando Water District, a government-owned and controlled corporation created pursuant to P.D. 198, as amended.

1.1.35. **CSFWD Board of Directors** – shall mean the members of the Board of Directors of CSFWD duly appointed pursuant to P.D. 198, as amended, acting as a Board pursuant to its by-laws.

1.1.36. **CSFWD Functions** – shall be described in Section 2.6.2 hereof.

1.1.37. **Succeeding Operator** – any such entity, whether a private entity or a government instrumentality, that will operate the Septage Management Services in a portion of or the entire JV Area at any time after the expiration of this Agreement as applicable.

1.1.38. **Term** – shall mean the term coterminous with the term of the Joint Venture Agreement for the Financing, Development, Rehabilitation, Expansion, Improvement, Operation and Maintenance of the Water Supply of City of San Fernando Water District dated 14 October 2020, and renewable for twenty-five (25) years as provided in Section 10 hereof.

1.1.39. **Tipping fee** – shall refer to the amount to be paid by clustered areas to the host water district/JV partnership for the treatment and disposal of septage in the septage treatment facility. This also includes a fee for the reservation of treatment capacity by the host WD/JV partner.

1.2. Interpretation

The Annexes to this Agreement shall form an integral part hereof and references to Annexes shall be Annexes to this Agreement, unless otherwise stated.

The headings of Sections to this Agreement are inserted for convenience of reference only and shall not in any way affect the interpretation of this Agreement.

References to any part or person referred to in this Agreement include references to its respective successors and permitted assigns.

The words "include", "includes", and "including" shall at all times be construed as if followed by the words "without limitation".

Section 2. The Unincorporated Joint Venture

2.1. Establishment of the Unincorporated Joint Venture

- 2.1.1. The Parties hereby establish the unincorporated Joint Venture pursuant to the JV Guidelines to undertake the development of the JV Project.
- 2.1.2. The Parties further agree that their relationship shall be governed by Philippine laws and principles applicable to an unincorporated Joint Venture.

2.2. Business Name

Each party shall use their respective business names for purposes of performing their respective functions as described in this Agreement.

2.3. Business Objective

The general objective of the JV Project is to provide Septage Management Services to the JV Area, in compliance with the Philippine Clean Water Act of 2004. The overall objective is to ensure that human waste is properly collected, treated and disposed.

The specific objectives of the Project are as follows:

- i. To be able to provide regular domestic septic tank desludging services to households and other establishments; and
- ii. To provide for the proper treatment and disposal of collected septage, in order to protect the quality of water resources, and ensure the health and safety of its citizens.

2.4. Joint Venture Relationship

2.4.1. The relationship of the Parties shall be one of joint venturers.

2.4.2. The Parties have entered into this Agreement with the intention that it shall operate between them with fairness and without the detriment to the interest of any of them on the basis of a relationship involving mutual trust, good faith, and confidence and on the understanding that each one has the right to participate in the conduct of the joint venture pursuant to Sections 2.5 and 2.6 of this Agreement and the right to participate in the profits of the joint venture pursuant to Section 2.9 of this Agreement.

2.4.3. The right of the Parties to bind the joint venture and one another, under the principle of mutual agency, shall be pursuant to the explicit provisions of this Agreement, in accordance with the Parties' respective functions, rights, and obligations as enumerated hereunder, and subject to the exceptions, limitation, and indemnifications provided in this Agreement.

2.4.4. The Parties agree to meet quarterly and at any reasonable time upon prior written notice by one Party to the other to discuss the JV Project and all aspects thereof.

2.5. Management and Operational Control of the Project

2.5.1. Strategic Control - CSFWD shall have strategic control of the Joint Venture, which specifically means that it shall have the authority to: (i) in coordination with PRIMEWATER, establish policies of the Joint Venture, (ii) set plans and programs as well as service obligations and targets of the Joint Venture, (iii) set environmental fees to be approved by the City of San Fernando Government or the appropriate government regulatory body in accordance with the provisions of Section 8 of this Agreement, and (iv) review and monitor performance of PRIMEWATER annually in order to determine PRIMEWATER's compliance with its service obligations and targets as well as its obligations under the Agreement.

2.5.2. Operational Control - Except for CSFWD Functions enumerated in Section 2.6.2 hereof and subject to the business policies, plans and programs set by the Joint Venture partners, PRIMEWATER shall have control over the day-to-day operations and management of the Joint Venture activities, which shall be undertaken by and in the name of PRIMEWATER.

2.5.3. PRIMEWATER, to secure the best terms for the JV, is authorized to enter into Financing Agreements as it may deem necessary and/or desirable to obtain financing for the PRIMEWATER Facilities to be used in the JV Project, upon written notice to, but without need of prior approval of CSFWD, subject to compliance with applicable laws and requirements, if any, of the Bangko Sentral ng Pilipinas (BSP) or the financing institution concerned. CSFWD shall sign letter/s of notice or consent, if necessary, in relation to such Financing Agreements deemed necessary by PRIMEWATER or by the financing institution concerned. PRIMEWATER shall have the right to use as collateral or security its rights under this Agreement including the PRIMEWATER Facilities. Provided, that no Financing Agreement entered into by PRIMEWATER shall extend beyond the

term of this Agreement and CSFWD's facilities or any part thereof shall not be used as collateral or security in any Financing Agreements entered into by PRIMEWATER. Provided further, that such Financing Agreements shall be the sole liability and for the exclusive account of PRIMEWATER. For the avoidance of doubt, the availment of said Financing Agreements shall not increase or decrease the total contribution of PRIMEWATER indicated in Section 2.8.2 of this Agreement.

2.6. Functions of the Parties

2.6.1. PRIMEWATER shall manage and operate the Joint Venture. It shall perform the following functions:

- i. Offer to all customers the Sanitation Services, in accordance with a schedule to be coordinated with the Barangays.
- ii. Finance, construct, operate, maintain, and expand the septage collection and treatment facilities and equipment, as required to provide Septage Management Services in the JV Area;
- iii. Submit regular reports to the CSFWD on the progress of the Septage Management Services provision in the area;
- iv. Propose an environmental fee for the provision of Septage Management Services which shall be incorporated in the monthly water bill;
- v. Bill and collect monthly environmental fee; and
- vi. Comply with all requirements to be made with any governmental or instrumentality relative to the transactions/operations under this agreement.

2.6.2. CSFWD shall have the following functions:

- i. Strategic Planning – CSFWD shall review and approve business plans of the Joint Venture that will contain the programs of work, service obligations and targets.
- ii. Business Policy Setting – In coordination with PRIMEWATER, CSFWD shall establish policies in order to ensure that business targets of the Joint Venture are met.

- iii. Customer Relations – CSFWD shall assist PRIMEWATER in undertaking all activities pertaining to customer relations relative to Septage Management Services such as information dissemination, public consultations, and the like.
- iv. Environmental Fee Setting – CSFWD Board of Directors shall set the environmental fee in accordance with the provisions of Section 8 hereof and Ordinance No. 2018-001 of the City of San Fernando.
- v. Performance Review and Monitoring – CSFWD shall annually review and monitor the accomplishment of the JV Project's objectives and compliance with set service obligations and targets.
- vi. Asset Management Supervision – CSFWD shall have the authority to inspect, at reasonable hours, the condition of PRIMEWATER Facilities in order to determine whether said assets are kept in good serviceable condition and to enforce compliance measures upon PRIMEWATER to make good its obligation with respect to the management of these assets.
- vii. CSFWD shall have the authority to inspect PRIMEWATER's books solely for the purpose of determining the loans/financings and other costs obtained in relation to the JV Project, and subject to prior notice to PRIMEWATER, which inspection shall be conducted on reasonable hours on business days.
- viii. CSFWD shall actively assist PRIMEWATER in the Information and Education Campaign (IEC) in the Area in order to encourage residents to avail of the Septage Management Services as well as to comply with the Code of Sanitation standards for the proper construction and maintenance of septic tanks.

2.7. Parties to the Unincorporated Joint Venture

The parties to the unincorporated Joint Venture shall be the Parties to this Agreement, or any subsidiary, successor or assignee of PRIMEWATER subject to the approval of CSFWD, which approval shall not be unreasonably withheld.

Provided that: PRIMEWATER may, at any time upon the commencement of this Agreement, form a wholly owned subsidiary for the purpose of the JV Project, in which case, said wholly owned subsidiary shall immediately

substitute PRIMEWATER as a party to this Agreement and to the unincorporated joint venture upon written notice of PRIMEWATER to CSFWD. Provided further, PRIMEWATER shall guarantee the technical, financial and all other obligations and commitments of its subsidiary under the JVA.

2.8. Contributions of the Parties

2.8.1. CSFWD's contributions to the Joint Venture are the rights conferred to CSFWD by virtue of P.D. 198 and the City of San Fernando under *The City of San Fernando Ordinance No. 2018-001* wherein CSFWD was assigned to provide Septage Management Services to the JV Area as well as given the right to add Environmental Fee to the water bill of its existing and future consumers, and the billing and collection system. These assets have a book value of Seven Hundred Forty Seven Thousand Five Hundred Pesos (PhP747,500.00) as of as of June 30, 2020, attached herewith as **Annex "B"**.

2.8.2. PRIMEWATER's primary contribution to the Joint Venture is its capital investment, estimated to have a present value of One Hundred Forty Five Million Three Hundred Twenty Eight Thousand Ninety Six Pesos and 73/100 (PhP 145,328,096.73), and a total value of Two Hundred Sixty Million Nineteen Thousand Seven Hundred Eighteen Pesos and 10/100 (PhP 260,019,718.10) to be invested over the term of this Agreement, as well as the expertise in the development, construction, operation, maintenance, and expansion of facilities required for septage management.

2.9. Profit and Loss Sharing Scheme

2.9.1. After payment of the Joint Venture Share to CSFWD, PRIMEWATER shall be entitled to the remaining profits and shall bear any and all losses from the operation of the Joint Venture/ JV Project.

2.9.2. CSFWD shall be entitled to a JV Share of Two Million Pesos (PhP2,000,000.00) per year from the start of commercial operations, increasing by Fifty Thousand Pesos (PhP50,000.00) every year starting on the second year of commercial operations.

For the avoidance of doubt, the start of commercial operations shall mean such date when the PRIMEWATER Facilities for Septage Management Services shall start operations as

determined by PRIMEWATER upon written notice to CSFWD of such date and readiness to accept septage for proper treatment.

2.9.3. PRIMEWATER shall pay CSFWD the amount equivalent to one-sixth (1/6) of the annual JV Share on the first day of commercial operations and on or before the fifteenth (15th) day of every 2 months thereafter.

2.9.4. The JV Share of CSFWD represents the amount necessary to defray the costs of operating the business and affairs of CSFWD as stated under this Agreement. Such JV Share may be adjusted, subject to the agreement of the Parties for any actual, reasonable, and documented budgetary changes, provided that the changes above should be made applicable to the Environmental Fee as well.

The JV Share of CSFWD is not for the purpose of PRIMEWATER's acquisition of any license from CSFWD to charge and/or bill and collect Environmental Fee from Customers for Septage Management Services but such grant represents CSFWD's primary contribution to the Joint Venture as clearly stated in Section 2.8.1 of this Agreement.

CSFWD has the right to use the JV Share as it sees fit, such as in the procurement of assets for CSFWD's exclusive benefit; provided that: such use will not be in conflict with the JV Project; provided further that: such use is subject to relevant laws, rules and regulations on disbursement of public funds.

2.9.5. Failure to pay any of the amount discussed hereunder on their scheduled due dates, without justifiable causes, shall render PRIMEWATER liable to pay a penalty based on the amount due at the rate of 1% per month. Penalty accruing to CSFWD shall be without prejudice to its right to take the payment of the amount due, including any penalty thereon, from the Performance Bond, which shall be renewed by PRIMEWATER in full amount within 30 days after it has been fully utilized for payment of the unpaid charges and penalties.

2.10. Assets of the Joint Venture

Assets of the Joint Venture shall consist of the PRIMEWATER Facilities that will be brought in by PRIMEWATER into the Joint Venture. Legal title to all these facilities shall be in the name of PRIMEWATER. PRIMEWATER shall retain the title to all the facilities that it will put up in this Joint Venture subject to the provisions of Section 11 and 12 hereof.

Section 3. Grant of Concession Rights

Subject to the terms and conditions of this Agreement, CSFWD hereby grants to PRIMEWATER, or any of its assignees or successors-in-interest, during the Term of this Agreement, the right to exercise CSFWD's rights under P.D. 198 and *The City of San Fernando Ordinance No. 2018-001* to provide Septage Management Services to its existing and future consumers in the JV Area as well as the right to bill and collect environmental fee for such services.

CSFWD further grants PRIMEWATER the right to provide Septage Management Services to the consumers of neighboring cities and/or municipalities, and accordingly use Septage Management Facilities in the JV Area for such purpose, subject to the payment of the necessary tipping fees to PRIMEWATER, which tipping fees shall be considered as revenues of PRIMEWATER from the JV Project and, as such, shall be taken into account in the computation of Environmental Fee of the Consumers of the JV Area.

Section 4. Service Obligations of PRIMEWATER

PRIMEWATER shall provide Septage Management Services to the JV Area, in accordance with the following conditions:

- 4.1. PRIMEWATER shall provide the CSFWD with the list of households and establishments to be served every year such that Septage Management Services will be offered to CSFWD customers of the JV Area once every five years, provided that the following Customers shall be considered served:
 - 4.1.1. Those who refused the services of PRIMEWATER;
 - 4.1.2. Those who do not have septic tanks;
 - 4.1.3. Those who have been notified by PRIMEWATER of the service for three (3) consecutive times but fail or refuse to avail the service;
 - 4.1.4. Those whose septic tanks cannot be physically accessed by the desludging equipment because of road limitations; and
 - 4.1.5. Those who, despite diligent effort, have not been served by PRIMEWATER due to circumstances beyond its control.

- 4.2. Septage Management Services shall be scheduled for each barangay provided, that, opening and closing of septic tank manholes shall be the responsibility of the property owners. PRIMEWATER shall ensure compliance with the DOH's *Operations Manual on the Rules and Regulations Governing Domestic Sludge and Septage* as may be issued and/or revised from time to time.
- 4.3. PRIMEWATER shall ensure that standards for wastewater treatment shall be complied with at all times. In the event of any non-compliance of the Septage Treatment Facility with the DENR standards, PRIMEWATER shall immediately address, upon notice, the cause of the non-compliance, otherwise PRIMEWATER shall be liable for any effect. The CSFWD will not be liable for any non-compliance with environmental laws arising out of this Agreement. PRIMEWATER also commits that the Septage Treatment Facility shall be applied to ISO 14001:2015 (Environmental Management Systems) within five years from the commencement of commercial operations.
- 4.4. PRIMEWATER shall entertain emergency requests for domestic septic tank desludging, subject to payment of applicable fees.
- 4.5. PRIMEWATER shall provide, operate and maintain a fleet of desludging trucks in accordance with the Sanitation Code, and in such numbers sufficient to meet its service obligations in this Agreement.
- 4.6. PRIMEWATER shall provide a report on its Septage Management Services provision every quarter to the CSFWD.
- 4.7. Penalty for Failure to Comply with Service Obligation to Serve Specified Barangays:
- 4.7.1. The CSFWD shall, within one month after each anniversary date of the Commencement Date, issue a report on PRIMEWATER's compliance with its service obligation to serve the barangays included in its submitted list as described in Section 4.1.
- 4.7.2. PRIMEWATER shall have sixty (60) days from written notice to cure any deficiency in the performance of said service obligation as noted by the CSFWD or to provide the CSFWD with justifications for such deficiency.
- 4.7.3. Failure of PRIMEWATER to cure said deficiency or provide justifications for such deficiency to the satisfaction of the

CSFWD shall entitle CSFWD to, immediately after the lapse of the sixty (60) day period from written notice to cure, impose a penalty on PRIMEWATER for the latter's failure to perform said service obligation, which penalty shall be equivalent to twelve percent (12%) of the Performance Bond through the forfeiture of said amount from PRIMEWATER's Performance Bond.

- 4.7.4. In the event that the deficiency is clearly not rectifiable within a period of one year, PRIMEWATER will be allowed, after the penalty is imposed, to submit its best scenario case on a catch-up plan on said service obligation within a reasonable period to be specified by the CSFWD. The catch-up plan shall be subject to the approval of the CSFWD, which approval shall not be unreasonably withheld. As soon as the catch-up plan is approved by the CSFWD, the new service obligation with regard to barangays to be served shall be made applicable.
- 4.8. PRIMEWATER shall conduct regular asset management on the Septage Management Facilities and the desludging trucks to ensure that upon expiration or pre-termination of this Agreement, all assets of the Joint Venture to be turned-over to CSFWD in accordance with Section 11 and 12 hereof shall be in serviceable condition and compliant with the existing operational standards set by the appropriate government agency.
- 4.9. During the Detailed Review Period, CSFWD, through the CSFWD Board, based on the Business Plan submitted by PRIMEWATER, shall determine whether changes to Service Obligations of PRIMEWATER are in order. The revised Service Obligations, as determined by CSFWD, through the CSFWD Board, shall take effect on the first day of the Five-Year Performance Period immediately succeeding the Detailed Review Period.

Changes to Service Obligations are in order upon mutual agreement of both parties in the event that the required environmental fee adjustments do not materialize, or the necessary permits and approvals are not issued, or changes in circumstances affecting the performance of such service obligations take place.

- 4.10. PRIMEWATER shall, at all times, provide customer service standards acceptable to LWUA, NWRB, Local Government Unit, or appropriate regulatory authority, as the case may be, to its Customers and strictly comply with the Customer Service Handbook to be submitted to and approved by the CSFWD prior to the execution of this Agreement and may be updated every Detailed Review Period. The Customer Service Handbook shall contain, among other things, timeline for responding to Customer's inquiries/complaints, procedures on bills payment, etc.

Section 5. Taxes and Other Charges

5.1. Taxes

- 5.1.1. *Taxes/Charges on the Execution of this Agreement* – PRIMEWATER shall be responsible for all documentary stamp taxes and such other taxes and charges arising from the execution of this Agreement and such other agreements and instruments executed pursuant to this Agreement. For the avoidance of doubt, these shall form part of PRIMEWATER's expenses that are considered in the computation of tariff.
- 5.1.2. *Taxes/Charges on the Operation of the Joint Venture* – PRIMEWATER shall be responsible for all withholding taxes, customs and import duties, real property taxes on the Joint Venture facilities, other local taxes, capital gains tax and other transfer taxes and other forms of taxes and charges arising from its operation of the Joint Venture. In the event that a tax assessment, accruing and payable after the Commencement Date, is imposed on the Joint Venture, PRIMEWATER shall shoulder the same. For the avoidance of doubt, these shall form part of PRIMEWATER's expenses that are considered in the computation of tariff.
- 5.1.3. *Value Added Tax (VAT) on the Operation of the Joint Venture* – As a concession to the Customers, PRIMEWATER shall not increase the Environmental Fees on account of VAT on the first year of its operation. However, PRIMEWATER shall, on the second year of operation, pass on the applicable VAT to the Customers and remit the same to the BIR, as provided by law.
- 5.1.4. *Taxes on the Operation of CSFWD* – CSFWD shall only shoulder taxes and charges, including franchise taxes, that specifically pertain to its own operations, such as receipt of JV Share and functions of the CSFWD under this Agreement.

5.2. Payments to Local Government

PRIMEWATER shall pay any and all fees required by the Local Government Unit (LGU) in relation to the operation of the Septage Management Services. For the avoidance of doubt, these shall form part of PRIMEWATER's expenses that are considered in the computation of tariff.

5.3 Insurance

PRIMEWATER shall, at its own cost, obtain and maintain in force sufficient insurance cover in such amounts and in such form as are reasonably customary in the industry. Insurance proceeds obtained by PRIMEWATER shall be used to restore the PRIMEWATER Facilities to their original state before the loss. For the avoidance of doubt, these shall form part of PRIMEWATER's expenses that are considered in the computation of tariff.

Section 6. Reporting Obligations of PRIMEWATER

- 6.1. *Report on Service Obligations* – In order for the CSFWD to timely monitor the compliance of PRIMEWATER with its Service Obligations, PRIMEWATER shall prepare and timely submit, without need of demand, regular reports, and such other reports as deemed necessary, to the CSFWD of its compliance with its Service Obligation on or before the 10th of the following month in such form and having such data as the CSFWD may require. The format and content of the report and the frequency of submission shall be at the option of CSFWD.
- 6.2. *Financial Information* - Not later than the 15th of May of every year, PRIMEWATER shall submit to the CSFWD its certified annual financial statements of the JV Project accompanied by a schedule of revenues, operating expenses, capital expenditures, and changes in working capital, certified correct by PRIMEWATER Comptroller except to the extent that such details are proprietary in the reasonable opinion of PRIMEWATER..
- 6.3. *Other Information* – The CSFWD Board of Directors reserves the right to request for other relevant information or reports at any time if the requirements arise.

Section 7. Performance Bond

- 7.1. Prior to Commencement Date or every Commencement Date Anniversary, as the case may be, PRIMEWATER shall deliver a Performance Bond to CSFWD in the form of a Surety Bond from an insurance company accredited by the Insurance Commission, in order to guarantee proper and timely performance of PRIMEWATER's obligations hereunder and to cover for damages and expenses incurred by CSFWD in case of a PRIMEWATER Event of Default as discussed in Section 12.1 hereof.
- 7.2. The Performance Bond shall be based on JV Share for one year or in the amount required under the JV Guidelines based on yearly CAPEX as stated in Annex A or as adjusted during Detailed Review, whichever is higher.
- 7.3. The Performance Bond shall be renewed annually, no later than thirty (30) days before the expiration date of such Performance Bond and adjusted for changes in projections for CAPEX.
- 7.4. In the event CSFWD makes a call and collects against the Performance Bond under this Agreement, PRIMEWATER shall replenish or renew the Performance Bond for the required full amount of the Performance Bond within thirty (30) days after it has been fully utilized.
- 7.5. Twelve (12) months after the end of the Term of this Agreement, or its extension, unless there is any accrued liability under the Performance Bond, CSFWD shall undertake with due expedition such action as PRIMEWATER may reasonably request to assist PRIMEWATER in procuring the release of the Performance Bond which remains outstanding.

Section 8. Environmental Fee

8.1. General Principles

- 8.1.1. Environmental Fees shall ensure that all project costs of PRIMEWATER are recoverable during the term of the joint venture agreement, with a reasonable return on investment based on the Appropriate Project Return (APR) set for the relevant period.
- 8.1.2. Notwithstanding any provision under this section, only reasonable, prudent, legitimate, and efficient costs shall be recognized as recoverable cost from Environmental Fees per guidelines or other issuances by the City of San Fernando Government or the appropriate government regulatory body.

- a. Prudent costs are expenditures that are incurred in a discreet, cautious, practical, and careful manner such that these do not deviate in a material way from costs of related expenditures of septage management service providers having the same business climate and under similar conditions.
- b. Legitimate costs are expenditures that are incurred in the course of carrying out the business of providing septage management services. Accordingly, expenses that are not relevant in the provision of septage management services in the service area or those that are incurred for projects outside of the JV Area should be ring-fenced and excluded from the computation of tariff.
- c. Efficient costs are expenditures that are capable of achieving the desired results with the minimum use of resources, time, and effort.

8.1.3. Substantial and procedural requirements for approval of Environmental Fees as provided for under relevant issuances of the City of San Fernando Government, pursuant to the provisions of Section 7 of Republic Act No. 9275 and its Implementing Rules and Regulations, must be complied.

- 8.2. PRIMEWATER shall, at the start of operations of the Septage Management Services, impose and collect Environmental Fee amounting to PhP 2.99 for every cubic meter of water consumption, inclusive of VAT for the first year, and PhP 2.99 for every cubic meter of water consumption, exclusive of VAT from the second year onwards. This is applicable to all residential, institutional and commercial customers.

The Environmental Fee shall be bundled with and reflected as a separate item in the monthly water bill of CSFWD customers. However, no penalty shall be imposed in EF in case the customer has incurred delay in payment thereof.

In any event that PRIMEWATER and CSFWD agree to accept septage from any nearby municipality, city or water district for treatment and disposal the Parties hereby agree to immediately review the Environmental Fees as presently charged and collected, subject to the provisions of Section 8.4 hereof.

Should there be a supervening extraordinary change in the prices of fuel, power and the materials used for the services covered under this Agreement, the Parties hereby agree to immediately review the Environmental Fees and conduct the Detailed Review to ensure that the

Environmental Fees remain responsive to the septage management requirements of the JV Area and shall ensure the continuous provision of septage management services in the JV Area.

8.3. PRIMEWATER shall charge and collect applicable fees for:

- (a) Emergency requests for septic tank desludging services within The City of San Fernando for CSFWD connected customers shall be free of charge only once within a five-year period; provided that, the concerned customer is updated with his/her payments for the water bill and environmental fee;
- (b) Emergency requests for septic tank desludging services within The City of San Fernando for other residential households not connected to CSFWD, fees as may be determined by CSFWD taking into consideration the actual cost, distance, difficulty and volume of septage as well as the prevailing industry rates. The fees are exclusive of value added taxes and other applicable taxes in all cases.

8.4. Detailed Review

- 8.4.1. CSFWD shall conduct the First Detailed Review two (2) years after the commencement of operations. Succeeding Detailed Review shall be conducted every after five (5) years thereafter based on the respective succeeding Five-Year Performance. For purposes of convenience and efficiency, succeeding Detailed Review under this Agreement shall be simultaneous with the conduct of Detailed Review under the Joint Venture Agreement between CSFWD and PRIMEWATER for Water Supply.

In any event that PRIMEWATER and CSFWD agree to accept septage from another nearby municipality, city or water district for treatment and disposal, the Parties hereby agree to immediately conduct a Special Detailed Review to commence on the date and time as mutually agreed upon and cover any possible adjustment of tipping fees and all matters as with any regular Detailed Review.

- 8.4.2. For each Detailed Review, PRIMEWATER shall submit a Sanitation Business Plan covering the Joint Venture Term, updated as necessary to reflect prevailing and expected conditions, and which shall include proposed adjustments to the Environmental Fee, determined in accordance with the terms of this Agreement. Projections in the Sanitation Business Plan shall be prepared in constant Philippine Pesos as of the first year of the succeeding Five-Year Performance Period. Past years' historical numbers shall be adjusted using the relevant actual Consumer Price Indices

and restated to Philippine Pesos as of the first year of the succeeding Five-Year Performance Period.

- 8.4.3. The Detailed Review shall be conducted and the adjustments to Environmental Fee shall be determined and implemented in accordance with the parameters and procedures set herein. CSFWD shall review actual historical performance of PRIMEWATER and determine the accuracy of declared revenues, the accuracy, reasonableness, prudence and efficiency of declared CAPEX and OPEX, including proper treatment of input and output VAT and other taxes, in order to determine projections to represent figures for prior periods.
- 8.4.4. The CSFWD shall assess the revised assumptions for accuracy of projected revenue, for accuracy, reasonableness, prudence and efficiency of projected CAPEX and OPEX, including proper treatment of input and output VAT and other taxes, in order to determine necessary adjustments to be made to projections for succeeding periods.
- 8.4.5. Performance shall be evaluated to determine whether targets for the past Performance Period have been achieved.
- 8.4.6. Thereafter, the proposed Environmental Fee adjustment shall be evaluated, confirmed or otherwise determined using the Sanitation Business Plan for the relevant review period submitted by PRIMEWATER to the CSFWD, such that PRIMEWATER will be able to recover all investments in the JV Project using APRs set until the end of the Term of the Joint Venture.
- 8.4.7. Adjustments to Environmental Fee shall be presented to the CSFWD Board. The CSFWD Board shall review the recommendation and shall promulgate a resolution approving, denying or modifying the said recommendations within sixty (60) days upon receipt thereof. The recommended environmental fee shall be deemed approved if CSFWD Board fails to promulgate a resolution within the sixty-day period.
- 8.4.8. Upon approval of the CSFWD Board, the same shall be submitted to the City of San Fernando Government or the appropriate government regulatory body for further review and approval.
- 8.4.9. In case an adjustment to the Environmental Fee has been approved by the City of San Fernando Government or the appropriate government regulatory body, the CSFWD Board shall order publication of Environmental Fee, as adjusted. The said

Environmental Fee, as adjusted, shall become operative within seven (7) days after posting in conspicuous public places or for a period as may be provided for under relevant issuances by the City of San Fernando Government or the appropriate government regulatory body.

8.4.10. The Detailed Review shall follow the time frame set forth below:

STEP	ITEM	MONTH
1	Submission of Formal Petition for Review and Proposed Business Plan and Financial Model by PRIMEWATER	End of 1 st Month
2	Detailed Review by the Parties, Finalization of Business Plan, and Determination of Indicative Tariff	2nd to 3rd Month
3	Joint Recommendation, CSFWD Board of Directors' Review & Resolution on Adjusted Tariff	3rd Month
4	Posting and Publication of Petition, Public Hearings on Indicative Tariff	4 th Month
5	Review by the City of San Fernando Government or the appropriate government regulatory body	5 th to 11 th Month
6	Publication of Approved Adjustments, if any	12 th month
7	Implementation	1 st Day of the Following Year

8.4.11. If necessary, the environmental fee established under this Agreement shall be subject to review by and appeal to the City of San Fernando Government or the appropriate government regulatory body.

Section 9. Conditions Precedent

9.1. In General

The obligations of the Parties under this Agreement are subject to the satisfaction at Commencement Date of the following conditions:

- i. No order, statute, rule, regulation, executive order, injunction, stay, decree or restraining order shall have been enacted, entered, promulgated or enforced by any court of competent jurisdiction or governmental or instrumentality having jurisdiction over the matter that

restrains, prohibits or declares illegal the consummation of the transactions contemplated herein;

- ii. No action, suit, inquiry or proceeding shall have been instituted or threatened by any governmental or instrumentality having jurisdiction over the matter that seeks to restrain, prohibit or declare illegal the consummation of the transaction contemplated herein;
- iii. All approvals required to be obtained from, and all notices, declarations, reports or filings required to be made with, any governmental or instrumentality in connection with the consummation of the transactions contemplated herein, shall have been made or obtained;
- iv. Notice to Proceed has been issued by CSFWD to PRIMEWATER fifteen (15) days prior to Commencement Date; and
- v. An ordinance shall have been issued by the City of San Fernando Government mandating provision of Septage Management Services in the JV Area, requiring Customers to desludge septic tanks every five (5) years, and authorizing CSFWD or PRIMEWATER to charge and collect Environmental Fee and b) the imposition and collection of Environmental Fee and the amount thereof has been approved by the City of San Fernando Government or the appropriate government regulatory body.

Section 10. Term of this Agreement

This Agreement shall commence thirty (30) days from the date of execution of this Agreement and shall be effective and binding between the parties for a term coterminous with the term of the Joint Venture Agreement for the Financing, Development, Rehabilitation, Expansion, Improvement, Operation and Maintenance of the Water Supply of City of San Fernando Water District dated 14 October 2016, renewable for twenty-five (25) years, at the option of both parties; Provided, however, that the parties during the cooperation period may extend this Agreement any time under such terms and condition as the parties may agree.

Section 11. Expiration of the Agreement

- 11.1. At the Expiration Date, the Parties hereby agree that all rights, title, and interest to the PRIMEWATER Facilities shall automatically transfer to the CSFWD. Thus, proper documentation, if any, shall be executed by the Parties to effect the transfer. Provided, that PRIMEWATER has fully recovered its reasonable costs and the APR thereon.

The cost of tax on the transfer of PRIMEWATER Facilities to CSFWD shall be subject to further discussion in the final detailed review.

- 11.2. In the event that at Expiration Date, PRIMEWATER has not fully recovered its reasonable costs and the APR thereon pursuant to the provisions of this Agreement due to causes such as, but not limited to, significant change in project assumptions or change in law, rule, or order, PRIMEWATER shall be paid an Expiration Payment equal to any such unrecovered amount expressed in current prices. For purposes of determining the unrecovered amount, the Parties shall jointly appoint an independent auditor, the costs of which shall be shared equally by the Parties.
- 11.3. Payment may be made by CSFWD to PRIMEWATER either through one (1) a lump sum payment delivered to PRIMEWATER not later than forty-five (45) days after the Expiration Date or (2) through the delivery to PRIMEWATER within forty-five (45) days of a Promissory Note guaranteeing the payment within one (1) year of the Expiration Payment with interest thereon at twelve percent (12%) per annum.
- 11.4. Pending delivery of the lump sum payment or promissory note referred to in Section 11.3 above, PRIMEWATER Facilities existing as of the Expiration Date shall remain with PRIMEWATER and PRIMEWATER shall have the right to charge reasonable amounts per annum for the use of the PRIMEWATER Facilities by CSFWD and Other Customers, the total amount of which shall in no case be less than the annual straight-line depreciation of the depreciated replacement cost of PRIMEWATER's Facilities as of Expiration Date.

Section 12. Pre-termination of Agreement

12.1. Pre-termination by CSFWD for PRIMEWATER's Event of Default

Each of the following, if not caused by a default of CSFWD under this Agreement or Force Majeure shall, if not cured within the period permitted, be considered as a PRIMEWATER's Event of Default which shall entitle CSFWD to issue a Notice of Intention to Pre-terminate:

- i. The commencement of any action for the dissolution or liquidation of PRIMEWATER except for the purposes of amalgamation or reconstruction on terms approved in advance by CSFWD in writing;
- ii. The occurrence of a material breach by PRIMEWATER of its obligations under this Agreement, which has continued unremedied for a period of sixty (60) days or extension thereof as may be agreed by both parties after receipt of official written notice from

CSFWD. For the avoidance of doubt, a material breach shall be of a kind or to a degree that, in the reasonable opinion of the CSFWD Board as recommended by the CSFWD would jeopardize the provision of Septage Management Services to the JV Areas; and

- iii. Any representation or warranty made by PRIMEWATER in this Agreement proving to have been materially incorrect when made such that PRIMEWATER's ability to perform its obligations under this Agreement is materially and adversely affected.

12.2. Pre-termination by PRIMEWATER for CSFWD's Event of Default

Each of the following, if not caused by a default of PRIMEWATER under this Agreement or Force Majeure shall, if not cured within the period permitted, be an CSFWD's Event of Default which shall entitle PRIMEWATER to issue a Notice of Intention to Pre-terminate:

- i. Any failure by CSFWD to take reasonable action within six (6) months from date of submission of PRIMEWATER's proposed Five (5)-Year Business Plan; provided that, if upon submission of CSFWD's Approved Environmental Fee Adjustment to the City of San Fernando Government or the appropriate government regulatory body, the latter withholds, fails to issue a favourable review or approval, or otherwise revokes CSFWD's Approved Environmental Fee Adjustment within six (6) months, the same shall be a ground for a revision of PRIMEWATER's five (5)-year business plan.
- ii. A material breach by CSFWD of any of its obligations under this Agreement which has continued un-remedied for sixty (60) days or extension thereof as may be agreed by both parties, after notice thereof has been given to it by PRIMEWATER. For the avoidance of doubt, a material breach shall be of a kind or to a degree that will prevent PRIMEWATER from carrying out its responsibilities under this Agreement; and
- iii. Any representation or warranty made by CSFWD in this Agreement proving to have been materially incorrect when made such that CSFWD's ability to perform its obligations under this Agreement is materially and adversely affected.

12.3. Unforeseen Change of Circumstances

- 12.3.1. The rights and obligations of the parties set out in this Agreement represent the parties' positions relative to each other on the basis of the circumstances existing at the date hereof

and on the basis of the common view the parties have of the way those circumstances shall develop until the end of the Term of this Agreement. The parties agree and acknowledge that neither seeks to benefit unduly from any unforeseen development of circumstances that actually occurs. Accordingly, the parties hereby declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interest of either of them and agree to jointly defend their respective interests as set out in this Agreement. If in the course of performance of this Agreement or as a result of any change in law or in the interpretation or administration thereof, or any change in assumptions, circumstances or financial conditions from those existing at the time this Agreement was entered into, or inability of either party without fault or negligence on its part to fulfill certain commitments provided under this Agreement, unfairness to any party is disclosed or anticipated or the financial viability of this Agreement is adversely affected, then the parties shall use their best endeavors to agree upon such action, execute supplemental or amendatory agreements or enter into alternative arrangements as may be necessary or equitable to remove the cause or causes of the same.

- 12.3.2. If the parties have failed to reach a mutual solution within ninety (90) days of the commencement of such discussions, either party may issue a Notice of Intention to Pre-terminate.

12.4. Pre-termination Procedure

Any Notice of Intention to Pre-terminate shall specify the materially adverse action, Unforeseen Change of Circumstances, PRIMEWATER's Event of Default, or CSFWD's Event of Default as applicable. Following the issuing of a Notice of Intention to Pre-terminate, the parties shall enter into discussions, to agree on mutually satisfactory terms on which to continue or pre-terminate this Agreement. If the parties have failed to reach a mutual solution within ninety (90) days, the Parties shall submit the issue to arbitration as stated in Section 16.2 of this Agreement.

- 12.4.1 The Parties agree that upon pre-termination or expiration of the JVA, both Parties will ensure that there will be no disruption in the provision of Septage Management Services to the JV Area. The Parties commit to a smooth turnover of the operations and management of the Septage Management Facilities.

In case of expiration of the JVA, the Parties shall, five (5) years prior to such date of expiration, prepare a transition plan which shall

contain, among other things, the hiring and training of additional CSFWD personnel for purposes of taking over the operation and management of the septage facilities and equipment and/or the finding of a qualified replacement operator.

12.4.2 In case of a pre-termination of the JVA, the Parties commit as follows:

A. If the pre-termination is due to an event of default of PRIMEWATER:

- i. CSFWD shall have the right of first refusal whether to pay just compensation to, and acquire the assets of PRIMEWATER pursuant to Section 12.5 of the JVA. In the event CSFWD chose not to pay the just compensation and acquire said assets, PRIMEWATER shall continue to operate the Septage Management Facilities and provide Septage Management Services to customers on a month-to-month basis, in accordance with the terms of the JVA, until such time that a replacement operator is ready to take-over the said operations and assume all rights and obligations of PRIMEWATER under the JVA. PRIMEWATER shall, at its own cost, find a qualified replacement operator, and commits to complete the process thereof the soonest possible time.
- ii. In the case of the above, CSFWD shall forfeit PRIMEWATER's Performance Bond to answer for all actual, reasonable, and documented charges and expenses incurred by CSFWD prior to turn-over of operations to a Succeeding Operator, such as the costs of finding said Succeeding Operator. If the Performance Bond is insufficient, PRIMEWATER shall pay CSFWD the deficiency within five (5) days upon receipt of written notice of deficiency in such form acceptable to both Parties. The damages and expenses referred to above shall be deducted from the liquidated damages payable to CSFWD upon turn-over of operations to Succeeding Operator.
- iii. In case of a take-over by a Succeeding Operator, the latter shall pay CSFWD's liquidated damages representing twenty five percent (25%) of the Just Compensation, less any damages and expenses already paid by PRIMEWATER. The remaining

amounts shall be delivered to PRIMEWATER as payment for the PRIMEWATER Facilities.

- iv. PRIMEWATER shall provide training to CSFWD personnel and/or CSFWD's replacement operator to ensure a smooth transition of the operations and maintenance of the Septage Treatment Plant and vacuum trucks.

B. If the pre-termination is due to an unforeseen change in circumstances or an event of default of CSFWD:

- i. PRIMEWATER shall exert its best efforts to continue the operations of the Septage Management Facilities and provide Septage Management Services to customers on a month-to-month basis, in accordance with the terms of the JVA, until such time that CSFWD or a replacement operator is ready to take-over the said operations. The date upon which CSFWD or a replacement operator shall take-over the said operations shall be communicated in writing to PRIMEWATER one month prior to such date.
- ii. CSFWD shall exert its best efforts to take-over the operations of the Septage Management Facilities and the provision of Septage Management Services or to find a qualified replacement operator at the soonest possible time.
- iii. In avoidance of doubt, in cases contemplated in above items, the Parties shall continue to exercise their respective duties and obligations and be entitled to all their respective rights under the JVA until such time that CSFWD or a qualified replacement operator shall have taken-over the operations of the Septage Management Facilities and the provision of Septage Management Services.

C. For avoidance of doubt, in cases contemplated in above items A and B, the Parties shall continue to exercise their respective duties and obligations and be entitled to all their respective rights under the Agreement until such time that CSFWD or a Succeeding Operator shall have taken over the operations of the Septage Management Services and the provision of Septage Management Services to Customers.

- 12.5. Transfer of Assets Upon Pre-termination, Just Compensation – The Parties hereby agree that PRIMEWATER shall transfer all rights, title, and interest to the PRIMEWATER Facilities to CSFWD, except for those PRIMEWATER Facilities that the CSFWD does not want to utilize, provided that just compensation (the “Just Compensation”) is paid to PRIMEWATER as follows:

12.5.1. Just Compensation

At Pre-termination Date, PRIMEWATER shall be entitled to a Just Compensation as follows:

- i. In case of CSFWD’s Event of Default, the Just Compensation shall be equal to the depreciated replacement cost of PRIMEWATER Facilities plus a percentage thereof representing PRIMEWATER’s implied real weighted average cost of capital reckoned as of commencement date of the Joint Venture.
- ii. In case of Unforeseen Change of Circumstances, the Just Compensation shall be equal to the depreciated replacement cost of PRIMEWATER Facilities.
- iii. In case of PRIMEWATER’s Event of Default and CSFWD chose to pay just compensation to, and acquire the assets of PRIMEWATER, the Just Compensation shall be equal to seventy-five percent (75%) of the depreciated replacement cost of PRIMEWATER Facilities. The amount representing twenty-five percent (25%) of the depreciated replacement cost of PRIMEWATER Facilities shall constitute liquidated damages in favor of CSFWD and shall no longer be recovered by PRIMEWATER.

The depreciated replacement cost shall be based on property values and useful lives as of the date of turn-over of PRIMEWATER operations to CSFWD or a replacement operator.

12.5.2. Payment of Just Compensation

Payment of Just Compensation may be made by CSFWD to PRIMEWATER either through: (1) a lump sum payment delivered to PRIMEWATER not later than ninety (90) days after the Pre-termination or on the date of turn-over of PRIMEWATER operations to CSFWD or a replacement operator, whichever is later; or (2) through the delivery to PRIMEWATER, within thirty (30) days or on the date of turn-over of PRIMEWATER operations to CSFWD or a replacement operator, whichever is later, of a Promissory Note guaranteeing the payment within one (1) year of the Pre-Termination with interest thereon at twelve percent (12%) per annum, in which case full payment of Just Compensation shall be deemed to have been received after all amounts due under the Promissory Note have been collected in full by PRIMEWATER.

12.5.3. For purposes of determining the depreciated replacement cost of PRIMEWATER facilities, as applicable, the Parties shall jointly appoint an independent auditor, the costs of which shall be shared equally by the Parties.

12.6. Pending full payment of the Just Compensation, PRIMEWATER Facilities existing as of the Pre-termination Date shall remain with PRIMEWATER and PRIMEWATER shall have the right to charge reasonable amounts for the use of the PRIMEWATER Facilities by CSFWD and Other Customers, the total amount of which shall in no case be less than PRIMEWATER's periodic loan amortizations on its loans taken for the procurement of its assets or the annual straight-line depreciation of PRIMEWATER's assets using replacement costs as of pre-termination date, whichever is higher.

12.7. No pre-termination of this Agreement shall relieve the defaulting Party of its liabilities and obligations hereunder and the non-defaulting Party may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligations, conditions or undertakings under this Agreement, and the rights given hereunder shall be in addition to all other remedies available to the Parties either at law, in equity or otherwise for the breach of this Agreement.

12.8. For the avoidance of doubt, PRIMEWATER's obligation for the payment of JV Share shall cease to exist as of pre-termination date.

Section 13. Confidentiality

Each of the parties, their employees, third party contractors, auditors, professionals, consultants and agents shall hold in confidence all documents and other information whether technical or commercial supplied to it by or on behalf of the other party relating to the financing, design, construction, insurance, operation, maintenance and management of the Joint Venture in the course of this Agreement, and shall not publish or otherwise disclose or use the same for its own purposes otherwise than as may be required by the laws of Philippines or to perform its obligations under this Agreement. This Section shall not apply to information:

- i. Already in the public domain otherwise than by breach of this Agreement;
- ii. Already in the possession of the receiving party before it was received from the other party in the course of this Agreement and which was not obtained under any obligation of confidentiality; or
- iii. Obtained from a third party who is free to divulge the same and which was not obtained under any obligation of confidentiality.

Section 14. Liability and Indemnification

14.1. Cross Indemnity

Each party shall indemnify, defend and hold harmless the other party from and against, all liabilities, damages, losses, expenses and claims of any nature whatsoever for personal injury and for damage to or loss of any property arising out of or in any way connected with the indemnifying party's performance of this Agreement except to the extent that such personal injury, damage or loss is attributable to a negligent or intentional act or omission of the party seeking to be indemnified.

14.2. Joint Responsibility

In the event that any loss or damage is caused only in part by the negligent or intentional act or omission of CSFWD and in part by the act or omission of PRIMEWATER, each party shall be liable to the other party, only in proportion to each party's relative degree of fault.

Section 15. Force Majeure

The Parties shall not be liable for losses or damages caused by Force majeure. Force majeure shall be limited to acts of God or any event or circumstance, or a

combination of events or circumstances, which are unforeseen and beyond the reasonable control of the Parties or which, though foreseeable, could not have been prevented or avoided by reasonable diligence and which result in either Party being unable to perform or being delayed in performing, in whole or in part, its obligations under this Agreement. The term "*force majeure*" as used herein includes, but is not limited to, any act of God, fire, flood, storm, earthquake or seismic disturbance, act of war (whether or not declared), act or omission of any court or government agency, act of public enemies of the Republic of the Philippines, sabotage, rebellion, revolution, civil commotion, strike, lockout, boycott or other industrial disturbance or labor dispute lasting for more than thirty (30) days, shortage or unavailability of equipment, materials or labor or restriction or limitation upon the use thereof, any event which cannot be insured by any reputable insurance company, any change in the political, financial or economic condition in the Philippines which will materially and adversely affect or delay the development of the Project, or any other reason, condition, event or cause which is unforeseen or beyond the reasonable control of PRIMEWATER.

Section 16. Dispute Resolution

16.1. Amicable Settlement

- 16.1.1. If any dispute arises in connection with the Agreement, either party may give thirty (30) days prior notice to the other party of the same, whereupon the parties shall meet promptly and in good faith attempt to reach an amicable settlement.
- 16.1.2. If the parties are unable to settle such dispute within thirty (30) days from service of such the written notice, the dispute may be submitted for arbitration.

16.2. Arbitration

- 16.2.1. Any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination, or invalidity thereof shall be settled by arbitration in accordance with the Philippine Dispute Resolution Centre, Inc. (PDRCI) Rules presently in force which rules are deemed incorporated by reference in this clause.
- 16.2.2. The number of arbitrators shall be three (3). Within seven (7) days from notice by either party, the Parties shall each appoint one (1) arbitrator and the arbitrators appointed by them shall appoint the third arbitrator within the same period. Failure to make such appointment by either party, the PDRCI shall appoint the Arbitrator for that party.

- 16.2.3. The place of arbitration shall be in Metro Manila, Philippines where an office of the PDRCI is located, and the language to be used shall be English.
- 16.2.4. The fees for arbitration shall be advanced by the Party invoking arbitration but shall be reimbursed by the Party adjudged as liable by the arbitrators. The award rendered by the arbitration shall be final and binding upon both Parties concerned.

Section 17. Services outside JV Area

The Parties hereby agree that PRIMEWATER, upon approval of CSFWD, may render Septage Management Services to neighbouring towns, cities, or municipalities that may not have the resources to put up their own Septage Treatment Facilities, provided that, the ability of PRIMEWATER to perform its obligations for the JV Area shall not be affected. Septage collection and treatment fees to be collected from such neighboring towns, cities, or municipalities shall be agreed between CSFWD and PRIMEWATER.

Upon the expiration or pre-termination of this Agreement subject to the provisions of Sections 11 or 12 hereof, CSFWD or a qualified Succeeding Operator, as the case may be, shall operate the Septage Management Facilities and continue the provision of Septage Management Services to such neighbouring towns, cities, or municipalities under mutually agreeable terms and conditions.

Section 18. Miscellaneous Provisions

18.1. Representations and Warranties

Each party hereby represents and warrants that:

- i. It is duly existing pursuant to the laws and regulation of Philippines;
- ii. It has full corporate power and absolute authority to execute, deliver and perform this Agreement and that its representatives are fully authorized by its Board of Directors to execute, deliver and perform this Agreement;
- iii. It carries on its business in accordance with the applicable laws and regulations of Philippines and, to that party's knowledge, there are no proceedings pending or threatened for the dissolution of that party such as would materially adversely affect that party's performance of its obligations under this Agreement;

- iv. It is fully entitled and capable of entering into the dispute resolution procedures under Section 16 and the decisions, awards and remedies contemplated thereunder shall be valid and enforceable against that party.

18.2. Primacy of the Agreement

This Agreement shall govern all aspects of, and all contractual relationships relating to, the joint venture as between the parties. PRIMEWATER shall ensure that the provisions of all agreements relating to the Joint Venture are consistent with the terms hereof. In the event of conflict between this Agreement and any agreement on a matter affecting the parties, including all questions of interpretation, this Agreement shall prevail.

18.3. Variations in Writing

All additions, changes, modifications, revisions, amendments and variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of each of the parties.

18.4. Amendments; Waivers

All additions, changes, modifications, revisions, amendments and variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of each of the parties.

None of the provisions of this Agreement shall be deemed waived by either party except when such waiver is given in writing. The failure by either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

18.5. Entire Agreement

This Agreement, including the Annexes attached hereto, represents the entire agreement between the parties in relation to the subject matter thereof and supersedes any or all previous agreements or arrangements, whether oral or written, between the parties in respect of the Joint Venture or the other contents of this Agreement.

18.6. Separability

If any part or parts of this Agreement is/are declared by any competent authority or tribunal to be invalid, all other parts not affected shall remain valid and enforceable.

None of the provisions of this Agreement shall be deemed waived by either party except when such waiver is given in writing. The failure by either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

18.7. Notices

All notices required under the terms and provisions hereof shall be in writing and shall be delivered by telecopy, overnight courier service, certified or registered, first class mail, with postage prepaid, or by personal delivery of written notice as follows:

To PRIMEWATER:

Branch Manager
Primewater – City of San Fernando
B. Mendoza Street, Sto. Rosario, 2000, City of San
Fernando, Pampanga

To CSFWD:

General Manager
City of San Fernando Water District
B. Mendoza Street, Sto. Rosario, 2000, City of San
Fernando, Pampanga

or to such other address as designated in writing.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by telecopy, or on the date seven days after dispatch by certified or registered mail if mailed.

18.8. Assignment of Rights

Subject to the provisions of Sections 2.5.3 and 2.7 of this Agreement, either Party may assign its rights and obligations under this Agreement subject to prior written consent which consent shall not be unreasonably withheld, provided that, the Assignee/s or Transferee/s hereof shall comply with the terms and conditions of this Agreement.

18.9. Data Sharing Agreement

To better allow PRIMEWATER to perform its service obligations under this Agreement, the Parties hereby agree into data sharing in relation to the personal data of CSFWD's existing consumers for the purpose of transferring and migrating the billing and collections, and customer service functions to PRIMEWATER. All personal data of CSFWD's existing customers shall be stored in PRIMEWATER's database and communications system to be accessed by PRIMEWATER's authorized employees only.

Upon the expiration of this Agreement, or any extension thereof, Primewater shall turnover within a reasonable period of time to CSFWD the personal data of all Consumers in the JV Area.

Primewater's Branch Manager shall act as the Branch Data Protection Officer, who shall act on any information request or complaints filed by a Consumer in strict observance of the provisions of Republic Act No. 10173, or the Data Privacy Act of 2012, its Implementing Rules and Regulations, or any issuance of the National Privacy Commission. Any Consumer may request for a copy of his/her personal data in writing, addressed to PRIMEWATER's Branch Manager.

18.10. Applicable Law

This Agreement shall be construed and governed by the laws of the Republic of the Philippines.

IN WITNESS WHEREOF, the parties hereto through their authorized representative have signed this Agreement this ____ day of _____, 2020 at _____.

CITY OF SAN FERNANDO
WATER DISTRICT

Represented by:

PRIMEWATER
INFRASTRUCTURE CORP.

Represented by:

FERDINAND Z. CAYLAO
Chairman of the Board of Directors

ROMEO M. SABATER
Vice-President and Business
Development Head

JORGE P. GUMBA
General Manager

CEZAR S. ONG
Operations Head

Signed in the presence of:

JOSÉ L. TULIO
Treasurer of the Board of Directors
City of San Fernando Water District

MARILAIN AGNES PINKY A. SUMALABE
Legal Counsel
Primewater Infrastructure Corp.

ACKNOWLEDGEMENT

Republic of the Philippines)

) S.S

CITY OF SAN FERNANDO, PAMPANGA

BEFORE ME, a Notary Public for and in _____ City, Philippines,
this _____ day of 31 SEP 2020 2020, the following personally appeared with
their respective Competent Evidence of Identity, to wit:

Name

Competent Evidence of Identity

FERDINAND Z. CAYLAO
JORGE P. GUMBA
ROMEO M. SABATER
CEZAR S. ONG

known to me and to me known to be the same persons who executed this Joint
Venture Agreement consisting of thirty-eight (38) pages, including this page and
acknowledged to me that the same are their free and voluntary act and deed and
that of the corporations which they represent.

WITNESS MY HAND AND SEAL on the date and place first above written

Doc. No. 01
Page No. 2
Book No. XXII
Series of 2020.

VICTOR B. ROQUE
Notary Public
Until December 31, 2021
Roll of Atty. No. 35650
PTR No. SF 3569010 Jan. 2, 2020
APP No. 095639 Nov. 27, 2019
Notarial Commission No. 21-20
City of San Fernando, Pampanga



CITY OF SAN FERNANDO WATER DISTRICT

B. Mendoza St., Sto. Rosario,
City of San Fernando, Pampanga
Tel. Nos.: (045) 961.3546 / 961.5804 / 963-3729 (trunklines)

EXCERPTS FROM THE MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE CITY OF SAN FERNANDO WATER DISTRICT (CSFWD) HELD ON JANUARY 16, 2020 AT CSFWD BOARD ROOM, CITY OF SAN FERNANDO, PAMPANGA

BOARD RESOLUTION NO. 11

Series of 2020

AUTHORIZING THE CHAIRPERSON OF THE BOARD FERDINAND Z. CAYLAO AND GENERAL MANAGER JORGE P. GUMBA TO EXECUTE AND SIGN THE JOINT VENTURE AGREEMENT FOR THE "PROVISION OF SANITATION SERVICES AND THE FINANCING, CONSTRUCTION, OPERATION, MAINTENANCE AND EXPANSION OF SEPTAGE COLLECTION AND TREATMENT FACILITIES IN THE CITY OF SAN FERNANDO, PAMPANGA

WHEREAS, there are various laws that govern the need for implementation of septage management system in protecting the groundwater reservoir such as the Clean Water Act of 2004, Supreme Court Mandamus, PD 198 and the recent City Ordinance No. 2018-01;

WHEREAS, the City of San Fernando Water District (CSFWD) was directed by the city thru its ordinance to construct the septage management system in which a formation of joint venture was found to be the most applicable and suitable mode;

WHEREAS, the Annex B of the 2013 NEDA Guidelines on Public Private Partnership was adopted based on the unsolicited proposal received from the private proponent;

WHEREAS, the JVSC underwent the thorough process of selection based on the existing guideline wherein no challenger or another proponent made comparative proposal, thus the original proponent, Primewater Infrastructure Corp. was declared the winning proponent;

WHEREAS, the Office of the Government Corporate Counsel (OGCC) responded on the affirmative to the request for counsel's opinion allowing the CSFWD to proceed with signing the contract, a requisite prior to signing the Joint Venture Agreement (JVA) ;

NOW THEREFORE, on motion made and duly seconded, be it RESOLVED, as it is hereby RESOLVED that Chairperson Ferdinand Z. Caylao and the General Manager Jorge P. Gumba be authorized to execute and sign the Joint Venture Agreement for the Provision of Sanitation

Board Resolution No. 11 Series 2020



CITY OF SAN FERNANDO WATER DISTRICT

B. Mendoza St., Sto. Rosario
City of San Fernando, Pampanga
Tel. Nos.: (045) 961.3546 / 961.5804 / 963-3729 (trunklines)

Services and the Financing, Construction, Operation, Maintenance and Expansion of Septage Collection and Treatment Facilities in the City of San Fernando, Pampanga.

Approved this 16th day of January 2020.

~~FERDINAND Z. CAYTAO~~

Chairperson

~~SONIA P. SOTO~~

Vice-Chairperson

~~BENEDITO H. ALDANA~~

Secretary

~~JOSE L. TULIO~~

/ Treasurer

FELICITAS S. MAGLALANG

Member

Board Resolution No. 11, Series 2020

REPUBLIC OF THE PHILIPPINES)
CITY OF QUEZON CITY) ss.

SECRETARY'S CERTIFICATE

I, **TIMOTHY JOSEPH M. MENDOZA** of legal age, Filipino citizen, with office address at UGF Worldwide Corporate Center, Shaw Boulevard, Mandaluyong City, after having been sworn to in accordance with law, hereby depose and state that:

1. I am the elected and incumbent Corporate Secretary of **PRIMEWATER INFRASTRUCTURE CORP.** (the "**Corporation**"), a corporation duly organized and existing under Philippine laws, with principal office located at 3rd Floor Homeplus Centre, Alabang-Zapote Road, Pamplona III, Las Piñas City.
2. At the special meeting of the Board of Directors of the Corporation, on 08 September 2020, during which a quorum was present and acting throughout, the following resolutions were unanimously approved and adopted, to wit:

"**WHEREAS**, the CITY OF SAN FERNANDO WATER DISTRICT ("**CSFWD**") is providing septage management services in the City of San Fernando, Pampanga (the "**JV Area**");

"**WHEREAS**, pursuant to the 2013 Revised Guidelines and Procedures for entering into Joint Venture Agreements between Government and Private Entities issued by the National Economic and Development Authority (the "**2013 JV Guidelines**"), **PRIMEWATER INFRASTRUCTURE CORP.** (the "**Corporation**") submitted an unsolicited joint venture proposal to CSFWD for the financing, construction, operation, maintenance and expansion of the septage collection and treatment facilities in the JV Area (the "**Project**");

"**WHEREAS**, after compliance with the requirements on negotiated joint ventures under the 2013 JV Guidelines, CSFWD awarded the Project to the Corporation;

"**NOW, THEREFORE, RESOLVED**, that the Corporation be authorized to enter into a Joint Venture Agreement (the "**Agreement**") with CSFWD over the Project, and the following be authorized, as they are hereby authorized, to jointly sign, execute and deliver the Agreement (the "**Authorized Representatives**");

Name	Position
Romeo M. Sabater	Business Development Head
Cezar S. Ong	North Luzon Operations Head

"**RESOLVED FURTHER**, that any and all actions taken prior to this date by any of the Authorized Representatives in connection with the negotiation of the Agreement, and any other contracts, agreements or documents entered thereto, are hereby ratified;

"RESOLVED FINALLY, that the foregoing resolutions shall continue and remain in full force and effect until revoked or amended by subsequent resolutions of the Board of Directors."

3. The foregoing resolutions have not been changed, modified, amended and are in full force and effect as of the date hereof.

(Signature page follows.)

IN WITNESS WHEREOF, this certification has been signed this 9th day of September,
2020 in QUEZON CITY

TIMOTHY JOSEPH M. MENDOZA
Corporate Secretary

SUBSCRIBED AND SWORN to before me on this 9th day of 2020 2020,
affiant exhibiting to me his _____
and valid until _____
issued by _____ on _____

Doc. No. 474;
Page No. 97;
Book No. 211;
Series of 2020.

ATTY. MARILAINÉ AGNES PINKY A. SUMALABE
NOTARY PUBLIC UNTIL DECEMBER 31, 2021
PENTHOUSE SUITE, J & S BUILDING
NO. 104 KALAYAAN AVENUE, QUEZON CITY
IBP O.R. No. 113778/1-14-20
PTR No. 9414939C/1-15-20; ROLL NO. 69677
MCLE COMPLIANCE NO. VI-0003151/4-14-2022



CITY OF SAN FERNANDO WATER DISTRICT

B. Mendoza St., Sto. Rosario,
City of San Fernando, Pampanga
Tel. Nos.: (045) 961.3546 / 961.5804 / 963-3729 (trunklines)

ANNEX "B"

CERTIFICATE OF CSFWD'S CONTRIBUTION *Based on the 2020 Financial Statements*

This is to certify that the City of San Fernando Water District (CSFWD)'s contribution as of June 30, 2020 based on the Financial Statements is Seven Hundred Forty Seven Thousand Five Hundred Pesos (PhP 747,500.00) computed as follows:

Billing and Collection System	-	PhP 747,500.00
*As per Independent Valuation -		PhP 5,250,000.00

This Certification is being issued for purposes of determining the basis of CSFWD's contribution to the JV.

Signed this 9th day of September 2020.

Certified by:

JORGE P. GUMBA
General Manager