

**JOINT VENTURE AGREEMENT FOR THE  
FINANCING, DEVELOPMENT, REHABILITATION, EXPANSION,  
IMPROVEMENT, OPERATION AND MAINTENANCE OF THE  
WATER SUPPLY OF CITY OF SAN FERNANDO WATER DISTRICT**

This Joint Venture Agreement for the Financing, Development, Rehabilitation, Expansion, Improvement, Operation and Maintenance of the Water Supply of City of San Fernando Water District (hereinafter referred to as the "Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_ 2016 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, Brgy. Sto. Rosario, City of San Fernando, Pampanga, herein represented by its **Chairman, Angelo D. David** and its **General Manager, Jorge P. Gumba**, duly authorized for the purpose of this Agreement by the Board of Directors under Board Resolution No. \_\_\_\_\_, hereinafter referred to as the **CSFWD**;

- and -

**PRIMEWATER INFRASTRUCTURE CORP.**, a corporation organized and existing under the laws of the Republic of the Philippines, with principal business address at 3<sup>rd</sup> Floor, Homeplus Center, Pamplona 3, Las Pinas City, Philippines, herein represented by its **President, Fe T. Rebancos** and its **Assistant Vice-President/Business Development Head, Romeo M. Sabater**, duly authorized for the purpose of this Agreement by its Board of Directors under a Secretary Certificate, hereinafter referred to as **PRIMEWATER**.

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

**RECITALS:**

CSFWD, pursuant to Presidential Decree No. 198, as amended, otherwise known as the Provincial Water Utilities Act of 1973, is responsible for the provision of water supply in the JV Area comprised of the geographic jurisdiction of the City of San Fernando, Pampanga consisting of thirty-five (35) barangays;

CSFWD currently operates in the CSFWD Covered Areas consisting of thirty-one (31) barangays and two (2) adjacent barangays of Sto. Tomas, Pampanga with four (4) unserved barangays;

PRIMEWATER is a wholly-owned Filipino company operating throughout the Philippines and providing support to communities, real estate development companies, water authorities, and local government units for the provision of quality water. It is directly involved in the supply and distribution of water to more than two hundred eighty seven thousand (287,000) service connections/households throughout the country;



PRIMEWATER submitted on 27 November 2015 the unsolicited JV Proposal pursuant to the JV Guidelines to undertake the JV Project with CSFWD, which is the financing, development, rehabilitation, expansion, improvement, operation and maintenance of the water supply in the JV Area;

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"**);

PRIMEWATER's JV Proposal contains the 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);

Pursuant to the JV Guidelines, the JV Proposal was subjected to competitive challenge/selection process;

Pursuant to the JV Guidelines, the JV Project for the financing, development, rehabilitation, expansion, improvement, operation and maintenance of the Water Supply of the JV Area was awarded to PRIMEWATER;

**NOW THEREFORE**, 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 project's real (i.e. not adjusted for inflation) weighted average cost of capital set at [REDACTED] or as may be set by appropriate government regulatory body (hereinafter referred to as "Established Rate").
- 1.1.2 **Basic Tariff** - shall mean the tariff charged to consumers for water supply services including VAT and all other taxes and fees required by law to be indirectly passed on to consumers and including all adjustments made thereon, such as those provided in Section 8.2 hereof, those resulting from Detailed Review, those mandated by the appropriate regulatory authorities, and those due to changes in CPI and PPI.
- 1.1.3 **Closing Date** – shall mean the specified date falling not later than sixty (60) days after a Notice to Proceed is issued and delivered to PRIMEWATER or such date as may be set by the Parties that will permit the fulfillment of conditions precedent specified in Section 11.
- 1.1.4 **CMU** – shall mean the Contract Monitoring Unit, which shall be a unit in CSFWD created in accordance with and having functions described in Section 9 hereof.
- 1.1.5 **Commencement Date** – shall mean the specified date when this Agreement becomes effective as determined under Section 12 hereof or the day after Closing Date.



- 1.1.6. **Concession Rights** - shall mean the rights granted to PRIMEWATER as provided under Section 3 hereof.
- 1.1.7. **Consumer**- shall mean (i) as of the date hereof, any customer of CSFWD or (ii) thereafter, any customer of PRIMEWATER, for the supply of water in the JV Area.
- 1.1.8. **Consumer Price Index or "CPI"** - shall mean, for any year, the Consumer Price Index for that year published by the Philippine Statistics Authority or such successor index as the parties may agree pursuant to Section 8.3.1.
- 1.1.9. **CPI Adjustment** - shall have the meaning given to the term in Section 8.3 hereof.
- 1.1.10. **CSFWD** - shall mean the City of San Fernando Water District, a government-owned and controlled corporation created pursuant to P.D. 198, as amended.
- 1.1.11. **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.
- 1.1.12. **CSFWD Covered Areas** - shall mean the areas within the JV Area that currently enjoys Water Supply Service from CSFWD consisting of thirty-five (35) barangays.
- 1.1.13. **CSFWD Facilities** - shall mean all properties, plants and equipment owned by CSFWD and used by CSFWD in operations in the joint venture area prior to the Commencement Date of the Agreement, the exclusive use of these assets were contributed by CSFWD to the joint venture project, pursuant to Section 2.7.1 hereof.
- 1.1.14. **CSFWD Functions** - shall be as described in Section 2.5.2 hereof.
- 1.1.15. **Detailed Review** - shall have the meaning given to the term in Section 8.4 hereof.
- 1.1.16. **Detailed Review Period** - shall mean the period wherein the CMU shall conduct a Detailed Review being on the last year of the Five-Year Performance Period as described in Section 8.4.1 hereof.
- 1.1.17. **Event of Default** - shall mean an event described in Section 13.1 or 13.2 hereof.
- 1.1.18. **Expiration Date** - shall mean the end of the twenty-five (25) year term of the Agreement, or any extension or renewal thereof.
- 1.1.19. **Expiration Payment** - shall mean the amount due to PRIMEWATER at the Expiration Date of the Agreement, as provided under Section 14.3 hereof.



- 1.1.20. **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 tariff adjustment in order to provide the APR set in accordance with this Agreement.
- 1.1.21. **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.
- 1.1.22. **Five-Year Performance Period** – shall have the meaning given to the term in Section 8.4.1.
- 1.1.23. **Initial Tariff** – shall mean the tariff being imposed by CSFWD to its consumers at closing date.
- 1.1.24. **Investment Recovery Rate** – shall be the quotient derived by dividing (a) the cumulative operating cash flow net of taxes, including changes in working capital, derived from the JV Project, by (b) the cumulative investments made by PRIMEWATER in respect of the JV Project. Revenue Share payments made by PRIMEWATER as defined under Section 2.8, shall not be considered as part of operating cash flow but shall be included as cumulative investments. The Investment Recovery Rate shall be as reflected in the Business Plan submitted by PRIMEWATER.
- 1.1.25. **Joint Venture** - shall mean the contractual Joint Venture between the Parties created by virtue of the Agreement pursuant to the JV Guidelines.
- 1.1.26. **JV Area** - shall mean the concession area of CSFWD, i.e., the San Fernando City, Pampanga, consisting of thirty-five (35) barangays.
- 1.1.27. **Revenue Share** – shall have the meaning to the term given under Section 4.1.1 hereof.
- 1.1.28. **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.
- 1.1.29. **JV Project** – shall mean the financing, development, rehabilitation, expansion, improvement, operation and maintenance of water supply in the Joint Venture Area to be jointly undertaken by PRIMEWATER and CSFWD through a contractual joint venture arrangement for a period of twenty-five (25) years, renewable for another twenty-five (25) years as provided in the Agreement.
- 1.1.30. **JV Proposal** – shall mean the unsolicited proposal submitted by the PRIMEWATER to CSFWD, in accordance with the JV Guidelines, to undertake the Joint Venture Project.



- 1.1.31. **LWUA** - shall mean the Local Water Utilities Administration created under P.D. 198 as amended.
- 1.1.32. **Notice of Intention to Pre-terminate** - shall mean the notice issued by a party in accordance with Section 13.4 hereof, notifying the other party of the former's intention to terminate/exit from this Agreement.
- 1.1.33. **Notice to Proceed** - shall mean the notice issued by CSFWD within sixty (60) days before Closing Date, in accordance with Section 11.1 paragraph (iv), notifying PRIMEWATER that it may commence taking-over the operation of the CSFWD Facilities at a certain date.
- 1.1.34. **Original Investment Recovery and Return Curve** - shall mean the investment recovery and return curve contained in the Initial Financial Model as defined in Section 8.5.
- 1.1.35. **Performance Bond** - shall have the meaning to the term given in Section 6.3 hereof.
- 1.1.36. **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 13 hereof.
- 1.1.37. **Pre-termination Payment** - shall mean the amount due to PRIMEWATER after the pre-termination of the Agreement as provided under Section 13.5.2 hereof.
- 1.1.38. **PRIMEWATER** - shall mean PrimeWater Infrastructure Corp., a domestic corporation created pursuant to the Corporation Code of the Philippines.
- 1.1.39. **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 are contributed by PRIMEWATER for the purpose of the JV Project, pursuant to Section 2.7.2 hereof.
- 1.1.40. **Rewards and Penalties Framework** - shall have the meaning to the term given in Section 8.4.8 hereof.
- 1.1.41. **Succeeding Operator** - Any such entity, whether a private entity or a government instrumentality, that will operate the Water Supply System and/or provide Water Supply Services in a portion of or the entire JV Area at any time after the expiration of this Agreement as applicable.
- 1.1.42. **Term** - shall mean twenty-five (25) years from the Commencement Date, renewable for another twenty-five (25) years as provided in Section 12 hereof.



1.1.43. **Water Supply Services** – shall mean the supply and distribution of piped-in potable water and other related services to consumers in the JV Area.

1.1.44. **Water Supply System** - shall mean all water supply and distribution facilities and waterworks, including production and other wells, water treatment facilities, pumps, pumping stations and pump houses, reservoirs, water mains, pipes, and all water distribution and transmission facilities, land, buildings, and other appurtenant properties, plants and equipment used to provide Water Supply Services to the JV Area.

## 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 and the table of contents 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

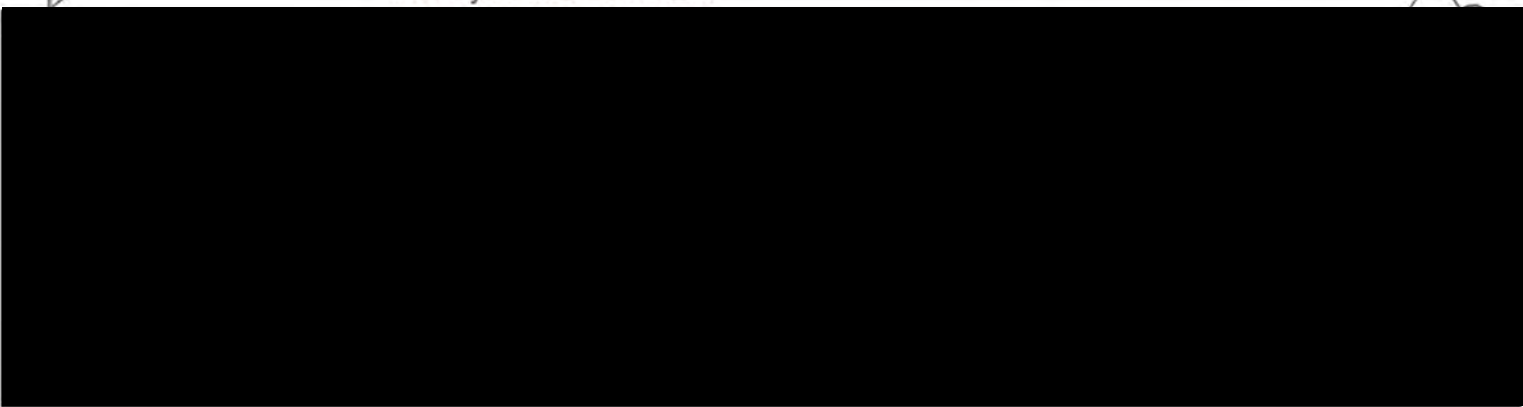
The general objective of the JV Project is primarily to attain the highest possible level of water supply services for, as far as feasibly possible, one hundred percent (100%) of water consumers in the JV Area. More specifically, the goal is to ensure sustainable and balanced water supply that will meet the current and future demands.

The specific objectives of the JV Project are as follows:



- i. To develop new/ additional sustainable water sources to meet long-term water demand;
- ii. To reduce and maintain distribution losses (Non-Revenue Water) to national or industry acceptable levels;
- iii. To expand service coverage within the existing barangays utilizing and improving CSFWD Facilities;
- iv. To ensure, as far as feasibly possible, uninterrupted twenty-four (24) hour water supply to connected consumers;
- v. To ensure that water supplied to consumers comply with prevailing standards on drinking water quality;
- vi. To mitigate tariff impact to Consumers;
- vii. To maintain good and harmonious relationship with water consumers at all times through their improved satisfaction level.
- viii. To protect the environment by ensuring responsible use of groundwater resources, promoting utilization of surface water and providing sound management and protection of watershed.

#### 2.4. Management and Operational Control of the Joint Venture

- 2.4.1. CSFWD shall have the power to: (i) in consultation with PRIMEWATER, establish policies of the Joint Venture and set service obligations and targets of PRIMEWATER, (ii) set tariff in accordance with the provisions of Section 8 of this Agreement, and (iii) 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.
  - 2.4.2. Except for CSFWD functions enumerated in Section 2.5.2 hereof and as may otherwise be expressly provided in this Agreement or subsequently agreed by the Parties, PRIMEWATER, as operator, contractor and agent of CSFWD, shall have management and operational control of the Joint Venture, and all business operations, transactions and activities connected with and related to the JV Project shall be undertaken in the name of PRIMEWATER.
  - 2.4.3. PRIMEWATER is authorized to enter into Financing Agreements as it may deem necessary and/or desirable to obtain financing for the JV Project upon notice to, but without need of prior approval of, CSFWD, subject to compliance with applicable laws and requirements of the Bangko Sentral ng Pilipinas (BSP), if any. Provided, that the CSFWD Facilities or any part thereof shall not be used as collateral or security in any Financing Agreements entered into by PRIMEWATER.
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## 2.5. Functions of the Parties

2.5.1. PRIMEWATER is designated as the operator of the Concession, contractor and agent of CSFWD in the JV Area. It shall perform the following functions:

- (i) Finance, develop, rehabilitate, improve, operate, and maintain all Water Supply System. As such, it will act as facilities Operator and Asset Manager;
- (ii) Bill and collect Tariff from consumers within the JV Area and for this purpose test, mount, dismount and remount, connect, disconnect, and/or reconnect water meters within its jurisdiction;
- (iii) Submit reports and remit Revenue Share to CSFWD as agreed in the JV Agreement; and
- (iv) Such other functions as may be required of PRIMEWATER as operator in the JV Area and in order to fulfill PRIMEWATER's Service Obligations.

2.5.2. CSFWD shall have the following functions:

- (i) Strategic Planning and Policy Setting – in coordination with PRIMEWATER, CSFWD will set service obligations and targets of PRIMEWATER during the Detailed Review Period and shall establish policies in order to ensure that PRIMEWATER meets its service obligations and targets.
- (ii) Asset Management Supervision – CSFWD shall have the authority to inspect, at reasonable hours, the condition of CSFWD Facilities and PRIMEWATER Facilities in order to determine whether said assets are kept in good condition and to enforce compliance measures upon PRIMEWATER to make good its obligation with respect to the management of these assets.
- (iii) Customer Relations – CSFWD shall have the authority to entertain complaints regarding water service and enforce compliance measures upon PRIMEWATER to resolve said complaints. CSFWD shall likewise undertake all activities pertaining to customer relations such as information dissemination, public consultations, and the like.
- (iv) Tariff Setting – as recommended by the CMU, CSFWD Board of Directors shall set Tariff in accordance with the provisions of Section 8 hereof.
- (v) Performance Review and Monitoring – through the CMU, CSFWD Board of Directors shall annually review and monitor the accomplishment of the JV Project's objectives and compliance with set service obligations and targets. Accordingly, CSFWD Board of Directors, through the CMU, shall be authorized to impose rewards



and/or penalties in accordance with a Rewards and Penalties Framework described in Section 8.4.8 hereof.

CSFWD shall exercise such other functions that may not be delegated under PD No. 198, as amended.

2.6. 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 without need of any approval from CSFWD, provided that PRIMEWATER shall execute an undertaking to guarantee all liabilities of the wholly owned subsidiary.

2.7. Contributions of the Parties

2.7.1. CSFWD's primary contribution to the Joint Venture is the exclusive right to use the CSFWD Facilities and the Concession Rights to provide Water Supply and/or operate the Water Supply in the JV Area. These assets have a book value of One Hundred Forty-One Million Six Hundred Twenty-Nine Thousand Five Hundred Pesos (PhP 141,629,500.00) as of April 2016, (after depreciation and unpaid portion of the loan acquired to finance the assets, which unpaid portion shall be absorbed by PRIMEWATER).

2.7.2. PRIMEWATER's primary contribution to the Joint Venture is the capital investment and expertise in the rehabilitation, improvement, operation and maintenance of the Water Supply System in the JV Area. This capital investment amounts to more or less Two Billion Nine Hundred Fifty-Five Million Nine Hundred Seventy-Two Thousand Five Hundred Pesos (PhP 2,955,972,500.00)

2.8. Revenue Share

2.8.1. PRIMEWATER shall be entitled to the profits and shall bear all losses from the operation of the Joint Venture/JV Project.

2.8.2. CSFWD, regardless of losses from the operation of the Joint Venture/JV Project, shall be entitled to:

(i) a Revenue Share as detailed in Section 4.1; and

(ii) an additional Revenue Share equal to the debt service on CSFWD's existing loans beginning on Commencement Date by various creditors (the "CSFWD Loans") pursuant to the



schedule attached herewith as **Annex B**, which schedule was submitted and verified correct by CSFWD and agreed upon by PRIMEWATER before the finalization of negotiations.

## 2.9. Assets of the Joint Venture

Assets of the Joint Venture shall consist of the CSFWD Facilities and the PRIMEWATER Facilities that may be brought in by PRIMEWATER into the Joint Venture.

2.9.1. CSFWD Facilities – Legal title to all CSFWD Facilities shall be retained by CSFWD. CSFWD Facilities shall be immediately turned-over by PRIMEWATER to CSFWD at Pre-termination Date or Expiration Date provided that all amounts due to PRIMEWATER pursuant to this Agreement shall have been paid by CSFWD or the Succeeding Operator in compliance with Section 13 or 14 hereof as the case may be.

2.9.2. PRIMEWATER Facilities - Legal title to PRIMEWATER Facilities shall be in the name of PRIMEWATER during the term of this Agreement.

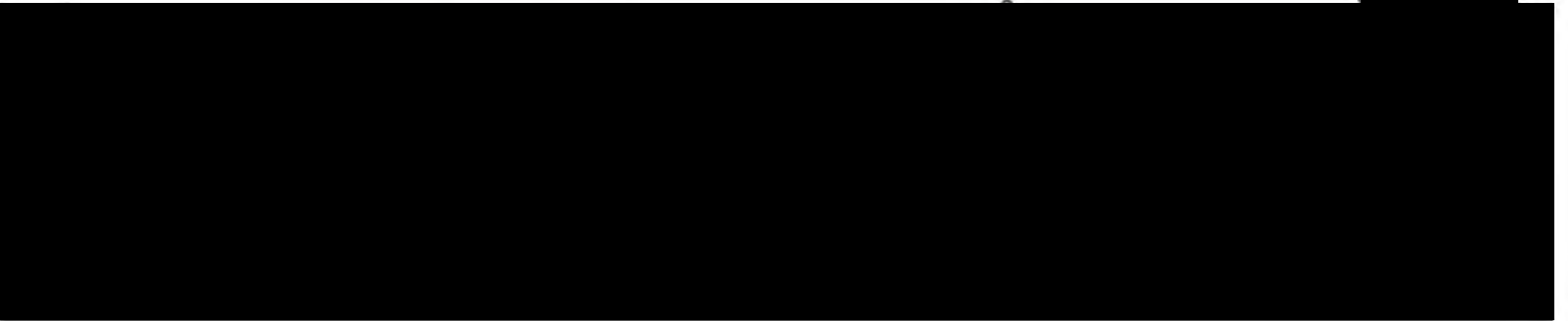
Upon Pre-termination, the Parties hereby agree that PRIMEWATER shall transfer all rights, title, and interest to the PRIMEWATER Facilities to CSFWD provided that just compensation is paid to PRIMEWATER for the PRIMEWATER Facilities pursuant to Section 13 of this Agreement.

At Expiration Date, the Parties hereby agree that PRIMEWATER shall transfer all rights, title, and interest to the PRIMEWATER Facilities to CSFWD provided that all amounts that PRIMEWATER is entitled to receive under this Agreement shall have been received by PRIMEWATER subject to the provisions in Section 14 of this Agreement.

PRIMEWATER shall be responsible for any and all taxes, costs and expenses for the transfer of PRIMEWATER Facilities at the end of the JV Term. However, said taxes, costs and expenses shall be considered recoverable expenses of PRIMEWATER and shall be taken into account in tariff computation of CSFWD.

## **Section 3. Grant of Rights to PRIMEWATER**

Subject to the terms and conditions of this Agreement, CSFWD hereby designates and appoints PRIMEWATER as its contractor/agent for the exercise of rights provided in this Agreement, and grants to PRIMEWATER during the Term of this Agreement the sole and exclusive right to finance, develop, rehabilitate, expand, improve, operate, and maintain the Water Supply System as well as to provide Water Supply in the JV Area including, but not limited to, the right to bill and collect Tariff from Consumers for Water Supply and the right to operate, rehabilitate, and/or decommission the Water.





## Section 4. Payments to CSFWD

### 4.1 Payment of Revenue Share

- 4.1.1. PRIMEWATER shall pay CSFWD, as Revenue Share the amount of Thirty One Million Pesos (PhP31,000,000.00) per annum, increasing by PhP 500,000.00 on year 6 and every year thereafter.

Annual Lease Payments - In consideration for the use of the CSFWD Assets listed in **Annex C**, PRIMEWATER shall pay CSFWD Annual Lease Payments of Two Million Three Hundred Thousand Pesos (PhP 2,300,000.00).

The Revenue Share represents the amount necessary to defray the costs of operating the remaining business and affairs of CSFWD. Such Revenue Share may be adjusted, subject to the agreement of the Parties for any actual, reasonable, and documented budgetary changes and/or changes in CPI, provided that the changes above should have been made applicable to Tariff as well.

The Revenue Share is not for the purpose of PRIMEWATER's acquisition of any license from CSFWD to charge and/or bill and collect Tariff from Consumers for Water Supply Services but such grant represents CSFWD's primary contribution to the Joint Venture as clearly stated in Section 2.7.1 of this Agreement.

- 4.1.2. PRIMEWATER shall pay the amortizations, principal and interest, of existing loans extended to CSFWD beginning Commencement Date by various creditors (the "CSFWD Loans") pursuant to the schedule attached herewith as **Annex B**, which schedule was submitted and verified correct by CSFWD and agreed upon by PRIMEWATER before the finalization of negotiations. CSFWD shall treat such payments as additional Revenue Share.

### 4.2 Remittances, Delays

- 4.2.1. PRIMEWATER shall pay CSFWD the amount equivalent to one sixth (1/6) of the annual Revenue Share and Annual Lease Payments on Commencement Date and on or before the fifteenth (15th) day of every 2 months thereafter.
- 4.2.2. PRIMEWATER shall remit to CSFWD such amounts equivalent to the amortizations, principal and interest, of existing loans of CSFWD listed in **Annex "B"** hereof within two weeks before said amortizations fall due. CSFWD shall in turn pay said amortizations, principal, and interest on or before due date of the same not later than 3<sup>rd</sup> day of the following month.
- 4.2.3. 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.

## **Section 5. Service Obligations of PRIMEWATER**

### **5.1. Service Obligations**

- 5.1.1. *Service Coverage* – PRIMEWATER shall provide Water Supply Services to as many Consumers in the JV Area as practicable by providing Water Supply Services to all connected Consumers in the CSFWD Covered Areas and by making additional connections sufficient to meet the coverage targets set out in the improved/revised JV Proposal.
- 5.1.2. *Provision of Continuous Water Supply to all Connected Consumers* – Within 3 years from Commencement Date, PRIMEWATER shall ensure, as far as feasibly possible, that all connected Consumers will enjoy uninterrupted 24- hour water supply, subject to interruptions due to reasonable causes as determined by the CMU and, when possible, upon 24 hours prior notice.
- 5.1.3. *Drinking Water Standards* – Within 3 years from Commencement Date, the PRIMEWATER shall continue to ensure that the water supplied to Consumers complies with the standards set by the Philippine National Standards for Drinking Water of 2007 (PNSDW) or with such prevailing standards on drinking water quality issued by the Department of Health or such other governmental agency of the Philippines that is tasked with issuing such standards.
- 5.1.4. *Provision of UV Treatment* – As required by CSFWD, PRIMEWATER agrees to provide UV treatment services on its twenty eight (28) deep wells with UV treatment facility existing as of date of this Agreement. Provided that: the corresponding expense per cubic meter shall not exceed PhP 2.50, the latter representing the amount determined by CSFWD as reasonable under the circumstances, which expense shall form part of PRIMEWATER's recoverable expenses that shall be considered in the computation of tariff.
- 5.1.5. *Customer Service* – PRIMEWATER shall, at all times, provide acceptable customer service standards to its Consumers and strictly comply with the Customer Service Handbook to be submitted to and approved by the CMU within 1 year from Commencement Date and updated every Detailed Review Period. The Customer Service Handbook shall contain, among other things, timeline for responding to consumer inquiries/complaints, notices for interruption in water supply, procedures on bills payment and rules on disconnection.
- 5.1.6. *Compliance with KPIs and BEMs* – In order to mitigate tariff impact to Consumers, PRIMEWATER shall ensure that Key Performance Indicators and Business Efficiency Measures to be agreed upon by the Parties within one (1) year from Commencement Date and



updated/adjusted every Detailed Review Period shall consistently be complied with.

- 5.1.7. *International Standard Organization (ISO) Certification* – PRIMEWATER shall assist CSFWD in its endeavor to have an ISO Certification on Quality Management System (ISO 9001:2008).
- 5.1.8. *Watershed Management and Protection Program* - PRIMEWATER shall support CSFWD in its environmental protection and watershed management program with regard to the development, protection and management of the JV areas' watershed, water resources and protected areas in relation to the JV project.

The service obligations shall be subject to the approval of tariff increases indicated herein or arrived at in accordance with the tariff setting mechanism provided in this Agreement; or the issuance by the proper government authorities of the necessary permits and approvals to enable PRIMEWATER to perform its service obligations, such as, but not limited to, water permits; or changes in circumstances that affect the performance of such service obligations, such as, but not limited to, changes in projections for population growth or demand.

Failure of PRIMEWATER to meet any of the service obligations enumerated above without reasonable cause/s on the dates or during the periods agreed upon may entitle CSFWD to forfeit 12% of the Performance Bond pursuant to Section 5.3 of this Agreement unless such failure is due to justifiable causes to be determined by the CMU.

## 5.2. Revisions to Service Obligations

During the Detailed Review Period, the CSFWD Board through the CMU, 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 the CSFWD Board through the CMU, 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 in the event that required tariff increases did not materialize, or the necessary permits and approvals are not issued, or changes in circumstances affecting the performance of such service obligations take place.

## 5.3. Penalty for Failure to Comply with Service Obligations

- 5.3.1. The Contract Monitoring Unit (CMU) to be established pursuant to Section 9 hereof shall, within one month after each anniversary date of the Commencement Date, issue a report on PRIMEWATER's compliance with any or all of the service obligations enumerated in Section 5.1 of this Agreement during the one year period preceding such anniversary date (for service obligations under Sections 5.1.3, 5.1.4, 5.1.6 and 5.1.5 as applicable) and/or as of such anniversary date (for service obligations under Sections 5.1.1, 5.1.2, and 5.1.5 as applicable).



- 5.3.2. PRIMEWATER shall have sixty (60) days from receipt of the written notice to cure its deficiency in the performance of its service obligations as noted by the CMU or to provide the CMU with justifications for such deficiency. However, deficiencies in the performance of its service obligation under Section 5.1.3 shall be cured and rectified immediately upon written notice.
- 5.3.3. Failure of PRIMEWATER to cure said deficiency or provide justifications for such deficiency to the satisfaction of the CMU shall entitle CSFWD to, immediately after the sixty-day period, impose a penalty on PRIMEWATER for the latter's failure to perform any or all of its service obligations, which penalty shall be equivalent to twelve percent (12%) of the Performance Bond through the forfeiture of said amount from PRIMEWATER's Performance Bond.
- 5.3.4. The Performance Bond shall be renewed by PRIMEWATER in full amount within 60 days after it has been reduced for payment of penalty as provided in this Section 5.3.
- 5.3.5. For the avoidance of doubt, the imposition of a penalty for PRIMEWATER's failure to perform a particular service obligation shall not be oftener than once a year.
- 5.3.6. In the event that the deficiency is clearly not rectifiable within a period of one year, as determined by the CMU upon recommendation of PRIMEWATER, PRIMEWATER will be allowed, after penalties are imposed, to submit its best scenario case on a catch up plan on service obligations within a reasonable period to be specified by the CMU. The catch up plan shall be subject to the approval of the CMU, which approval shall not be unreasonably withheld. As soon as the catch up plan is approved by the CMU, the new service obligations shall be made applicable.

## **Section 6. Other Obligations of PRIMEWATER**

### **6.1. Taxes**

- 6.1.1. *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. However, these shall form part of PRIMEWATER's recoverable expenses that are considered in the computation of tariff.
- 6.1.2. *Taxes/Charges on the Operation of the Joint Venture* – PRIMEWATER shall be responsible for all income and 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 statutorily imposed taxes and charges arising from its operation of the Joint Venture. However, these shall form part of PRIMEWATER's recoverable expenses that are considered in the computation of tariff.



6.1.3 *Taxes/Charges for the Transfer of Property* – PRIMEWATER shall be responsible for any and all taxes, costs and expenses for the transfer of PRIMEWATER Facilities at the end of the JV Term. Said taxes, costs and expenses shall be considered recoverable expenses of PRIMEWATER and shall be taken into account in tariff computation.

6.1.4 *Value Added Tax (VAT) on the Operation of the Joint Venture* – As a concession to the consumers, PRIMEWATER shall not increase the initial tariff on account of VAT on the first year of its operations. Thereafter, PRIMEWATER shall increase initial tariff to pass on the applicable VAT to the consumers and remit the same to the BIR, as provided by law.

For the avoidance of doubt, the term “initial tariff” means the tariff imposed by CSFWD as of Closing Date.

6.1.5 *Taxes on the Operation of CSFWD* - CSFWD shall only shoulder taxes and charges on its activities that specifically pertain to its own operations, such as its receipt of Revenue Share and the functions of the CMU and the Board of Directors as enumerated in this Agreement.

6.1.6 *Repairs to CSFWD Leased Assets* – All reasonable costs and expenses relative to any necessary repairs and maintenance to CSFWD Leased Assets listed in **Annex D** hereof shall be borne by PRIMEWATER.

## 6.2. 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. For CSFWD Facilities, Insurance shall be obtained from the Government Service Insurance System (GSIS) and CSFWD shall be named as the irrevocable beneficiary under policies pertaining thereto.

## 6.3. Performance Bond

6.3.1. At the Commencement Date or every Commencement Date Anniversary, as the case may be, PRIMEWATER shall deliver a Performance Bond to CSFWD, in order to guarantee proper and timely performance of the following obligations: (a) payment of Revenue Share, (b) performance of Service Obligations.

6.3.2. The Performance Bond shall be based on Revenue Share for one year as projected in the Financial Model or as required under the JV Guidelines, whichever is higher.

6.3.3. The Performance Bond shall be renewed annually, no later than 30 days before the expiration date of such Performance Bond and adjusted for changes in projections.



6.3.4. 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 sixty (60) days after it has been fully utilized.

6.3.5. 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.

#### 6.4. Reporting Obligations

6.4.1. *Report on Service Obligations* – In order for the CMU to timely monitor the compliance of PRIMEWATER with its Service Obligations, PRIMEWATER shall prepare and submit a report to the CMU of its compliance with its Service Obligation within one hundred twenty (120) days after the end of each calendar year in such form and having such data as the CMU may require.

6.4.2. *LWUA Reportorial Requirements* – PRIMEWATER shall also submit a monthly data sheet to the CMU in the format and information required by LWUA.

6.4.3. *Financial Information*- Not later than the 15<sup>th</sup> of May, PRIMEWATER shall submit to the CMU its financial statements for the JV Project accompanied by a schedule of revenues, operating expenses, capital expenditures, and changes in working capital, except to the extent that such details are proprietary in the reasonable opinion of PRIMEWATER.

#### 6.5. Condition of Assets upon Turn-over to CSFWD

Upon the pre-termination or termination of this Agreement, PRIMEWATER shall ensure that all assets of the Joint Venture to be turned-over to CSFWD in accordance with Sections 13 and 14 hereof shall be compliant with the existing operational standards of LWUA or the appropriate regulatory agency at the time the turn-over shall take place.

### Section 7. **Obligations of CSFWD**

#### 7.1. Cooperation with PRIMEWATER

Subject to the provisions of this Agreement, the CSFWD undertakes to use its best efforts to ensure that PRIMEWATER shall be able to perform its obligations under this Agreement.

CSFWD shall, at no extra cost to PRIMEWATER, offer all reasonable assistance to PRIMEWATER, in making all necessary applications and in carrying out all other necessary acts at the requisite time and in requisite form to obtain and maintain such Approvals as may be necessary for PRIMEWATER to perform its obligations under this Agreement.



## 7.2. Functions of the CSFWD

CSFWD will retain functions that CSFWD Board may not delegate by contract, as provided under Section 30 of P.D. No. 198 as amended. In addition to these, CSFWD shall perform the functions stated in Section 2.5 hereof.

## Section 8. **Tariff**

### 8.1. General Principles

- 8.1.1. Tariffs shall ensure that all project costs are recoverable during the Joint Venture Term, earning a reasonable rate of return on investment equal to 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 Tariffs per LWUA guidelines.
  - a. Prudent costs are expenditures that are incurred in a discrete, cautious, practical, and careful manner such that these do not deviate in a material way 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 water supply services. Accordingly, expenses that are not relevant in the provision of water supply 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 tariffs of water districts, as specified in Sections 37 and 63 of P.D. No. 198, as amended and Letter of Instruction 700 dated June 1, 1978, are complied.

### 8.2. Agreed Tariff Rates

- 8.2.1. The Parties agree that on Commencement Date, there shall be no increase on Initial Tariff. Accordingly, initial tariff shall already cover the Value Added Tax.
- 8.2.2. The parties agreed that for the first five (5) years there shall be an increase in basic tariff of 47% for all blocks and consumer categories of which 12% shall account for the VAT not passed on initially. This shall be implemented on a staggered basis:

1 <sup>st</sup> year	0%
2 <sup>nd</sup> year	12% (for VAT)
3 <sup>rd</sup> year	35%



- 8.2.3. The parties further agree to the following subsequent adjustments to basic tariff for all blocks and consumer categories:

6 <sup>th</sup> year	30%
9 <sup>th</sup> year	10%
11 <sup>th</sup> year	6.3%

- 8.2.4. For the avoidance of doubt, the above increases on basic tariff shall also be applied on all adjustments made thereon as well as on the applicable Value Added Tax.

For the avoidance of doubt, the foregoing tariff increases were arrived at using available assumptions applicable in the current situation. Should any of these assumptions change, the resulting tariff increase shall also change.

8.3. Adjustment due to Changes in Consumer Price Index and Power Price Index

- 8.3.1. Effective on the 1st year anniversary of the Commencement Date and thereafter, there will be an automatic percentage adjustment in Total Tariff and Basic Tariff equal to: (i) the change in the consumer price index (CPI) and (ii) the change in applicable power price index (PPI) as published by the Philippine Government and made available through <http://www.census.gov.ph/business/price-indices/cpi-index>. The relevant CPI shall be the relevant monthly index for All Items, as referenced from Table 1. Monthly Consumer Price Index for All Income Households in the Philippines by Commodity Group (2006=100). The relevant PPI shall be the relevant monthly index for Housing, Water, Electricity, Gas, and other Fuels as referenced from Table 1. Monthly Consumer Price Index for All Income Households in the Philippines by Commodity Group (2006=100).

Should the above index be replaced or cease to be published, the Parties agree to utilize such new Index as may be published, preferably by the Philippine Government, to represent the cost of living in All Income Households in the Philippines.

- 8.3.2. Adjustment from changes in Regional CPI and PPI shall be automatic and shall consist of a multiplier applied to the Tariff for each consumer category calculated as follows:

$$\text{Multiplier} = 70\% \times [(CPI_{\text{Current}} \text{ divided by } CPI_{\text{LastYear}})] + 30\% \times [(PPI_{\text{Current}} \text{ divided by } PPI_{\text{LastYear}})]$$

- 8.3.3. The CSFWD Board, through the Contract Monitoring Unit, shall be notified of the adjustment from changes in CPI and PPI one month prior to its automatic implementation. The said adjustment shall become operative within seven (7) days after posting in a public place in accordance with Section 63 of P.D. No. 198, as amended.



#### 8.4. Detailed Review

- 8.4.1. The CMU shall conduct a Detailed Review on the last year of the Five (5) Year Performance Period to include annual monitoring. For the avoidance of doubt, the first Five (5) Year Performance Period commences on the Commencement Date and ends on the day before the fifth (5<sup>th</sup>) year anniversary of the Commencement Date. The next Five- Year Performance Review Period commences on the fifth (5<sup>th</sup>) anniversary of the Commencement Date and ends on the day before the tenth (10<sup>th</sup>) anniversary of the Commencement Date, and so on and so forth.
- 8.4.2. For each Detailed Review, PRIMEWATER shall submit a Business Plan covering the Joint Venture Term, updated as necessary to reflect prevailing and expected conditions, and which shall include proposed adjustments to the Tariff, determined in accordance with the terms of this Agreement. Projections in the 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 CMU 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 be used in succeeding periods.
- 8.4.4. The CMU 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 in prior period.
- 8.4.5. Performance shall be evaluated to determine whether targets for the past five (5) Year Performance Period have been achieved.
- 8.4.6. Thereafter, the proposed Tariff adjustment shall be evaluated, confirmed or otherwise determined using the Business Plan submitted by PRIMEWATER to the CMU at Closing Date, 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 the Tariff shall adhere to Section 8.5 (Investment Recovery and Return Curve), unless mutually agreed. Further to Sections 5.1 and 5.2, the CMU, with due consultation with PRIMEWATER, may alter the service obligations in case the tariff adjustments as required under this Agreement to meet such service obligations are deemed unaffordable.
- 8.4.8. The CMU shall likewise grant rewards and/or impose penalties for PRIMEWATER's performance pursuant to the Rewards and



Penalties Framework to be developed by PRIMEWATER and the CMU within 1 year from Commencement Date.

- 8.4.9. Adjustments to Tariff determined by the CMU shall be presented to the CSFWD Board. The CSFWD Board shall review the recommendation of the CMU and shall promulgate a resolution approving, denying or modifying the said recommendations within 30 days upon receipt thereof. The recommended tariff of the CMU shall be deemed approved if CSFWD Board fails to promulgate a resolution within the thirty day period.
- 8.4.10. Upon approval of the CSFWD Board, the same shall be submitted to the appropriate regulatory body for further review and approval.
- 8.4.11. In case an adjustment to Tariff has been approved by the appropriate regulatory body, the CSFWD Board through the CMU shall order publication of Tariff, as adjusted. The said Tariff, as adjusted shall become operative within seven (7) days after posting in a public place in accordance with Section 63 of P.D. No. 198, as amended.
- 8.4.12. 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 <sup>st</sup> Month
2	Detailed Review by CMU and Finalization of Business Plan by CMU and Arrive at Indicative Tariff	2nd to 3rd Month
3	CMU Recommendation , CSFWD Board Review & Resolution on Adjusted Tariff	3rd Month
4	Posting and Publication of Petition, Public Hearings on Indicative Tariff	4 <sup>th</sup> Month
5	Review by the Appropriate Regulatory Body	5 <sup>th</sup> to 11 <sup>th</sup> Month
6	Publication of Approved Adjustments, if any	12 <sup>th</sup> month
7	Implementation	1 <sup>st</sup> Day of the Following Year

- 8.4.13. If necessary, the tariffs established under this Agreement shall be subject to review by and appeal to appropriate regulatory authorities.

8.5. Investment Recovery and Return Curve

The Parties recognize that the tariff increases indicated in Section 8.2 hereof will allow PRIMEWATER to recover its investment and earn a reasonable return thereon at a pace represented graphically through an investment recovery and return curve (the "Original Investment Recovery



and Return Curve") that is derived following assumptions used for the JV Proposal.

The Parties hereby agree that any adjustment to tariff pursuant to a Detailed Review shall hereinafter be set such that the Original Investment Recovery and Return Curve is largely adhered to (provided also that the original set of service obligations are adhered to and being met) and that the Business Plan will show that the Investment Recovery Rate at the end of the succeeding Five (5) Year Performance Period is at least achieved.

#### **Section 9. Contract Monitoring Unit**

- 9.1 A Contract Monitoring Unit (CMU) shall be composed of such personnel appointed by the General Manager and approved by the CSFWD Board pursuant to existing Civil Service Commission policy, necessary to perform the functions of said Unit as specified herein. The CMU shall be headed automatically by the General Manager. The CMU shall likewise perform any and all other functions relative to the conduct of CSFWD's operations or in the pursuit of any legitimate businesses, provided that said business does not encroach with the activities contemplated in this JVA.
- 9.2 Except as otherwise provided herein, the CMU shall operate independently under the authority and supervision of the CSFWD Board.
- 9.3 The annual operating budget of the CMU shall be sourced from the CSFWD funds.

#### **Section 10. Transitional Arrangements**

##### **10.1. Retirement of CSFWD Employees**

- 10.1.1. Prior to Closing Date, CSFWD shall have finalized a plan acceptable to PRIMEWATER with regard to the right sizing of CSFWD through a re-organization or a voluntary retirement program. At such date as the Parties may agree, CSFWD shall have undertaken the necessary steps for such right sizing program including, but not limited to, executing agreements with the CSFWD employees who wish to be voluntarily retired (the "Retired Employees").
- 10.1.2. PRIMEWATER hereby commits to support CSFWD's right sizing program through the payment of the Retired Employees' retirement package or provision to the Retired Employees of a financial assistance package, as follows:
  - a) For Permanent Employees – Payment to these employees of retirement package or financial assistance package equivalent to two (2) months latest salary for every year of service.
  - b) For Non-Permanent Employees – Payment to these employees of a livelihood assistance package equivalent to one (1) month latest gross pay for every year of service.
- 10.1.3. At such date as the Parties may agree, PRIMEWATER shall pay each of the Retired Employees their respective retirement packages or their financial assistance packages.



To facilitate the foregoing and for purposes of PRIMEWATER's feasibility study, prior to the finalization of negotiations, CSFWD shall have delivered to PRIMEWATER a list of Retired Employees and the corresponding two (2) months' salary for every year of service of each Retired Employee. This list shall be agreed to by PRIMEWATER and shall be the basis of provision by PRIMEWATER of a retirement package/financial assistance package.

- 10.1.4. PRIMEWATER will automatically absorb CSFWD employees who choose not to retire and agree to be absorbed by PRIMEWATER (the "Non-retiring Employees").

Prior to finalization of negotiations, CSFWD shall provide PRIMEWATER with a list containing the names, salaries and allowances pertaining to the Non-retiring Employees. This list shall be agreed to by PRIMEWATER and shall be the basis of determining the employees that PRIMEWATER will absorb.

- 10.1.5. The principle of continuity of service and non-diminution of salaries and benefits shall apply to all absorbed Non-retiring Employees. The years of service in CSFWD of the Non-retiring Employees shall be considered by PRIMEWATER in counting length of service of the Non-retiring Employees.

10.2. Operations during the period from Closing Date to Commencement Date

- 10.2.1. From Closing Date until Commencement Date, CSFWD shall conduct its business and operations in the usual and ordinary course and in a manner consistent with past best practice. It shall obtain an arrangement in writing with a sufficient number of Retired Employees to enable it to maintain the workforce necessary for it to conduct its business and operations during the said period. Certified true copies of said arrangement shall be furnished to PRIMEWATER on Notice to Proceed.

- 10.2.2. CSFWD shall not undertake any new loans, procure any major capital expenditures, employ new personnel, or otherwise make any decision that would substantially affect CSFWD operations and finances without prior disclosure and concurrence of PRIMEWATER.

10.3. CSFWD Other Liabilities

- 10.3.1. All other liabilities of CSFWD other than the CSFWD Loans, whether not specified in this Agreement shall be for the account of CSFWD prior to Closing Date.

- 10.3.2. In the event that PRIMEWATER discovers that CSFWD has unpaid loans or liabilities other than what has been declared by CSFWD to PRIMEWATER and agreed to be borne by PRIMEWATER, and if PRIMEWATER is forced to pay any such loans or liabilities of CSFWD to prevent disruption of operations, the amount paid by PRIMEWATER shall be considered as a loan extended to CSFWD by PRIMEWATER and shall be offset against the Revenue Share



immediately payable and subsequently payable, until the same is fully paid. PRIMEWATER's payment of CSFWD's loans and/or liabilities as aforementioned and the offsetting thereof against the Revenue Share shall neither relieve CSFWD from its liability resulting from the misrepresentation nor shall it result to a waiver of PRIMEWATER's right to pre-terminate the Agreement or to resort to such other rights available to PRIMEWATER in law or equity.

#### 10.4. CSFWD Revenues/Receivables

10.4.1. CSFWD shall retain the right to all revenues accruing prior to Commencement Date.

10.4.2. Upon Commencement Date, PRIMEWATER shall have the right to collect, using CSFWD original receipts, all accounts receivables of the CSFWD and shall remit to CSFWD such amounts collected thereon. CSFWD shall, in turn, pay PRIMEWATER a collection fee amounting to three percent (3%) of amounts collected for accounts that have been outstanding for less than sixty (60) days and five percent (5%) of amounts collected for accounts that have been outstanding for sixty (60) days and more.

#### 10.5. CSFWD Inventory

Prior to Closing Date, CSFWD shall have furnished PRIMEWATER with a schedule of its inventory on hand as of that date and the cost of each inventory item. At Closing Date, PRIMEWATER shall inform CSFWD of the inventory items that PRIMEWATER intends to use in its operations. PRIMEWATER shall be given a period to conduct its due diligence on these inventory items to determine which can be used in its operation. These inventories shall form part of the contribution of CSFWD. CSFWD shall deliver these inventory items without cost to PRIMEWATER.

#### 10.6. CSFWD Facilities

Prior to consummation of negotiations, CSFWD shall have furnished PRIMEWATER with an inventory of all the CSFWD Facilities, an asset condition report, a pipe network map and assessment, and a PPE maintenance report, all certified correct for the relevant date. At Closing Date, CSFWD shall certify that there has been no material change in the aforementioned reports as of even date.

### **Section 11. Conditions Precedent**

#### 11.1. In General

The obligations of the Parties under this Agreement are subject to the satisfaction at or prior to Closing 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 regulatory authority or instrumentality having jurisdiction over the matter that restrains, prohibits or declares illegal



the consummation of the transactions contemplated herein,

- ii. no action, suit, injury or proceeding shall have been instituted or threatened by any governmental or regulatory authority 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 regulatory authority 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 within sixty (60) days prior to Closing Date;

#### 11.2. Conditions to Obligations of CSFWD

The obligations of CSFWD to effect the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing Date of the following additional conditions, unless such conditions are waived by CSFWD:

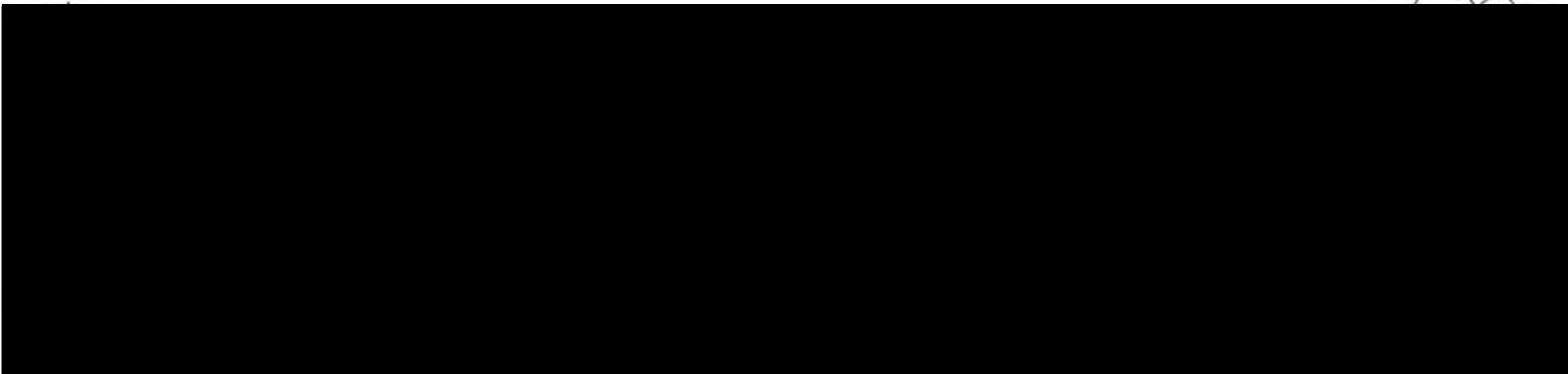
- i. PRIMEWATER shall have performed in all material respects the obligations required under this Agreement to be performed by it at or prior to the Closing Date;
- ii. the representations and warranties of PRIMEWATER contained herein is true and correct in all material respects at and as of the Closing Date as if made at and as of such date except to the extent that a different time is specifically stated in any such representation and warranty;
- iii. a certificate shall have been delivered to CSFWD by PRIMEWATER, dated as of the Closing Date, from a duly authorized office of PRIMEWATER to the effect that the representations and warranties of PRIMEWATER contained in this Agreement are true and correct in all material respects as of the Closing Date;
- iv. Original Copy of the Secretary's Certificate certifying that a resolution is adopted by the Board of Directors of PRIMEWATER authorizing the execution, delivery and performance of this Agreement shall have been delivered to CSFWD by PRIMEWATER as of Closing Date;

#### 11.3. Conditions to Obligations of PRIMEWATER

The obligations of PRIMEWATER to effect the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing Date of the following additional conditions, unless such conditions are waived by PRIMEWATER:

- i. CSFWD shall have performed in all material respects the obligations required under this Agreement to be performed by it at or prior to the Closing Date;



- ii. the representations and warranties of CSFWD contained herein is true and correct in all material respects at and as of the Closing Date as if made at and as of such date except to the extent that a different time is specifically stated in any such representation and warranty;
  - iii. a certificate shall have been delivered to PRIMEWATER by CSFWD, dated as of the Closing Date, from a duly authorized representative of CSFWD to the effect that the representations and warranties of CSFWD contained in this Agreement are true and correct in all material respects as of the Closing Date;
  - iv. Certified true copies of resolutions adopted by the Board of Directors of CSFWD authorizing the execution, delivery and performance of this Agreement shall have been delivered to PRIMEWATER by CSFWD as of Closing Date;
  - v. a favorable opinion on the legality and enforceability of this Agreement shall have been issued by the Office of the Government Corporate Counsel and delivered to PRIMEWATER on Closing Date;
  - vi. Certification as to the concurrence of the appropriate regulatory body or bodies on the application of the tariff setting mechanism contained herein to the JV Project shall have been issued;
  - vii. The following documents shall have been delivered by CSFWD to PRIMEWATER as of Closing Date:
    - a) Historical and Current Data on the following Operational Aspects – production of wells, water quality, billed volume, customer list, service levels;
    - b) Historical and Current Data on the following Financial Parameters – audited financial statements, accounts receivables with aging, accounts payables with aging, guarantees and deposits on hand, including meter deposits;
    - c) Historical and Current Data on the following Technical Parameters – property, plant, and equipment (PPE) inventory with condition report, PPE maintenance report, pipe network map and assessment (3 years)
  - viii. Proof of written notice to all CSFWD creditors of the existence of this Agreement;
  - ix. Proof that CSFWD will endeavor to restructure its loans with the Bank of the Philippine Islands and Philippine National Bank, wherein the repayment schedule of said loans will be extended to ten (10) years.
- 



## **Section 12. Term of this Agreement**

This Agreement shall commence the day after the Closing Date and shall be for a term of twenty-five (25) years from Commencement Date, renewable for another twenty-five (25) years under such terms and conditions as the parties may agree.

The parties shall agree on the terms of the extension of this Agreement at least five (5) years from the expiration of the initial twenty-five (25) year-term.

## **Section 13. Pre-termination of Agreement**

### **13.1. Pre-termination by CSFWD for PRIMEWATER 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 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 un-remedied for a period of ninety (90) days or extension thereof as maybe 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 CMU would jeopardize the provision of Water Supply Services to the JV Areas.
- 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.

### **13.2. Pre-termination by PRIMEWATER for CSFWD 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 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 and tariff adjustment; provided that, if upon submission of CSFWD's Approved Tariff Adjustment to the appropriate regulatory body, the latter withholds, fails to issue a favorable review or approval, or otherwise revokes CSFWD's Approved Tariff Adjustment within six (6) months, the same shall be a ground for a revision of PRIMEWATER's 5-year business plan.



- ii. A material breach by CSFWD of any of its obligations under this Agreement which has continued un-remedied for ninety (90) days 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.

### 13.3. Unforeseen Change of Circumstances

13.3.1. 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.

13.3.2. 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.

### 13.4. Pre-termination Procedure

Any Notice of Intention to Pre-terminate shall specify the materially adverse action, Unforeseen Change of Circumstances, PRIMEWATER Event of Default, or CSFWD 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 18 of this Agreement.

13.5 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 provided that just compensation (the "Just Compensation") is paid to PRIMEWATER as follows:

13.5.1. JV Loan Balance – Following Pre-termination, the then-outstanding amount of all JV Loans taken out for the procurement of PRIMEWATER Facilities, including the short-term portion thereof (the "Loan Balance") shall be fully paid by CSFWD and/or the succeeding Operator of the Water Supply System. For this purpose, CSFWD shall have the right to inspect, during office hours on one day notice, PRIMEWATER records for the purpose of determining and ascertaining the correct amount of the Loan Balance.

13.5.2. Pre-termination Payment

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

- (i) In case of a CSFWD Event of Default, the Pre-termination Payment 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 date of submission of JV Proposal, less the Loan Balance.
- (ii) In case of Unforeseen Change of Circumstances, the Pre-termination Payment shall be equal to the depreciated replacement cost of PRIMEWATER Facilities less the Loan Balance.
- (iii) In case of a PRIMEWATER Event of Default, the Pre-termination Payment shall be equal to seventy-five percent (75%) of the depreciated replacement cost of PRIMEWATER Facilities less the Loan Balance on its loans taken for the procurement of its assets. The amount representing twenty-five percent (25%) of the net book value of PRIMEWATER Facilities shall constitute liquidated damages in favor of CSFWD and shall no longer be recovered by PRIMEWATER.

13.5.3 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 90 days after the Pre-termination or (2) through the delivery to PRIMEWATER within thirty (30) days of a Promissory Note guaranteeing the payment within 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.

13.5.4 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.



- 13.6. 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.
- 13.7. 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.
- 13.8. For the avoidance of doubt, PRIMEWATER's obligation for the payment of Revenue Share and Additional Revenue Share shall cease to exist as of pre-termination date. As such, any loan amortizations and balances as of pre-termination date of CSFWD loans shall remain solely for the account of the CSFWD.

#### **Section 14. Expiration of the Agreement**

- 14.1. Transfer of Assets upon Expiration - At Expiration Date, the Parties hereby agree that PRIMEWATER shall transfer all rights, title, and interest to the PRIMEWATER Facilities, to CSFWD provided that all amounts that PRIMEWATER is entitled to receive under this Agreement shall have been received by PRIMEWATER.
- 14.2. In the event that at Expiration Date, PRIMEWATER has not received such amounts it is entitled to receive pursuant to the provisions of this Agreement, PRIMEWATER shall be paid an Expiration Payment equal to any such unrecovered amount expressed in current prices, as determined using the Financial Model. 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.
- 14.3. Payment of Expiration Payment 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/Expiration Date or (2) through the delivery to PRIMEWATER within thirty (30) days of a Promissory Note guaranteeing the payment within 1 year of the Expiration Payment with interest thereon at twelve percent (12%) per annum, to be taken from the Concession revenues of CSFWD or the succeeding Operator.
- 14.4. Pending full payment of the Expiration Payment, PRIMEWATER shall retain ownership of PRIMEWATER Facilities and 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 approximate the



straight-line depreciation of the replacement cost of the subject PRIMEWATER Facilities for the same period.

## **Section 15. 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 16. Liability and Indemnification**

### **16.1. 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 any 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 and any violation of its representations and warranties, except to the extent that such injury, damage or loss is attributable to a negligent or intentional act or omission of the party seeking to be indemnified.

### **16.2. 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 its relative degree of fault.

## **Section 17. 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, shortage or unavailability of equipment, materials or labor or restriction or limitation upon the use thereof, brownouts extending to more than one (1) day, any event which cannot be insured by any reputable insurance company.

## **Section 18. Dispute Resolution**

### **18.1. Amicable Settlement**

18.1.1. 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.

18.1.2. 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.

### **18.2. Arbitration**

18.2.1. All disputes arising in connection with this Agreement, which are not settled in an amicable manner, shall be finally settled in accordance with Republic Act No. 9285 (Alternative Dispute Resolution Act of 2004) by one (1) arbitrator the appointment of whom shall be sought from the Integrated Bar of the Philippines (IBP) or the Philippine Dispute Resolution Center Inc. (PDRCI). The parties shall mutually agree on the arbitrator so designated by the IBP or the PDRCI.

18.2.2. The arbitration proceedings shall be exclusively held in any place in Metro Manila where the Philippine dispute center is located.

## **Section 19. Miscellaneous Provisions**

### **19.1. 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 15 and the decisions, awards and pursuant remedies contemplated thereunder shall be valid and enforceable against that party.

19.2. 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.

19.3. 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.

19.4. 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 and the Concession Rights or the other contents of this Agreement.

19.5. Separability

If any part or parts of this Agreement are agreed by the parties or declared by any competent tribunal to be invalid, other parts 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.

19.6. 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  
B. Mendoza Street,  
Brgy. Sto Rosario  
City of San Fernando, Pampanga



To CSFWD:

General Manager  
B. Mendoza Street,  
Brgy. Sto Rosario  
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.

19.7. Assignment of Rights

Either Party may assign its rights and obligations under this Agreement subject to prior 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.

19.8 Applicable Law

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

**IN WITNESS WHEREOF**, this Agreement has been executed by the duly authorized representatives of the parties hereto on the day, month and year first above written at \_\_\_\_\_.

**CITY OF SAN FERNANDO  
WATER DISTRICT**

*Represented by:*

[REDACTED]

**ANGELO D. DAVID**  
Chairman

[REDACTED]

**JORGE P. GUMBA**  
General Manager

**PRIMEWATER  
INFRASTRUCTURE CORP.**

*Represented by:*

[REDACTED]

**FE T. REBANCOS**  
President

[REDACTED]

**ROMEO M. SABATER**  
Assistant Vice President/  
Business Development Head

SIGNED IN THE PRESENCE OF:

\_\_\_\_\_  
Witness

54



ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)  
City of San Fernando, Pampanga ) S.S.

BEFORE ME, a Notary Public for and in the above jurisdiction this 14 day of OCT 2016, personally appeared:

NAME	VALID I.D.	DATE/PLACE OF ISSUE
ANGELO D. DAVID		
JORGE P. GUMBA		
FE T. REBANCOS		
ROMEO M. SABATER		

all known to me and to known to be the same persons who executed the foregoing instrument which they acknowledged before me, are their free and voluntary act and deed, and of the Corporations in whose behalf they have acknowledged the same.

WITNESS MY HAND AND SEAL this 14 day of OCT 2016 at City of San Fernando, Pampanga

Doc. No. 412 ;  
Page No. 84 ;  
Book No. XXXI ;  
Series of 2016.

**PATERYO S. SOLIMAN**  
NOTARY PUBLIC  
UNIT: DECEMBER 31 2016  
PTR No. 2413023 1/8/16 CSP  
BP No. 102346 1/2/16  
ROLL No. 18314  
NOTARIAL COMM. No. 18-1F