

**JOINT VENTURE AGREEMENT
FOR THE PROVISION OF SEPTAGE, SEWERAGE
AND SANITATION SERVICES
FOR THE CITY OF PUERTO PRINCESA**

BY AND AMONG

**CITY GOVERNMENT OF PUERTO PRINCESA
[PP LGU]**

and

**ECO-SYSTEM TECHNOLOGIES, INC.
ECO-SYSTEM TECHNOLOGIES INTERNATIONAL (ESTII), INC.
JCA 1221 HOLDINGS INC.
[PSP]**

This Joint Venture Agreement for the provision of septage, sewerage and sanitation services for the City of Puerto Princesa (the “**Agreement**”) is made this 27th day of September, 2018 by and among:

CITY GOVERNMENT OF PUERTO PRINCESA, a local government unit organized and existing under the laws of the Philippines with principal office at the Puerto Princesa City Hall, Puerto Princesa City, Palawan, represented in this Agreement by the Hon. Lucilo Rodriguez Bayron, City Mayor, duly authorized for the purpose of this Agreement under Sangguniang Panlungsod Resolution No. 1254-2018 dated 24 September 2018 (the “**PP LGU**”)

- and -

ECO-SYSTEM TECHNOLOGIES, INC. (“ESTI”), a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at SKH Mansion, No. 3 V. Victorio Street, Barangay Pleasant Hills, Mandaluyong City, represented in this Agreement by its President, Robert Y. So, and **ECO-SYSTEM TECHNOLOGIES INTERNATIONAL (ESTII), INC. (“ESTII”)**, a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at SKH Mansion, No. 3 V. Victorio Street, Barangay Pleasant Hills, Mandaluyong City, represented in this Agreement by its President, Robert Y. So, and **JCA 1221 HOLDINGS INC. (“JCA”)**, a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at Unit 11A, PDCP Bank Center, Rufino corner Leviste Streets, Salcedo Village, Makati City, 1227, represented in this Agreement by its President, Jehremiah C. Asis (collectively referred to as the “**Private Sector Partner**” or “**PSP**”)

Each of the **PP LGU** and the **PSP, as the case may be**, are singularly referred to as a “**Party**” and collectively referred to as the “**Parties**”.

WITNESSETH: That -

WHEREAS, the **PP LGU** is empowered by the Local Government Code to enter into joint ventures and such other cooperative arrangements for the delivery of certain basic services to promote ecological balance and enhance the economic and social well-being of the people;

WHEREAS, pursuant to Puerto Princesa City Ordinance No. 702 (the “**Puerto Princesa City JV Ordinance**”), the **PP LGU** may enter into joint ventures for the delivery of certain basic services and for developmental projects, including sewerage and environmental management and protection, among others;

WHEREAS, due to the lack of an effective wastewater management program, several bodies of water of Puerto Princesa, particularly the Puerto Princesa Bay, are victims of environmental degradation;

WHEREAS, the provision of an effective sewerage and sanitation service in cities is mandated under the Philippine Clean Water Act of 2004;

WHEREAS, the **PP LGU** intends to undertake various development projects on its coastline and addressing the wastewater issue of the outfalls that pollute the bays is essential to such development;

WHEREAS, the PP LGU has limited financial capability and technical expertise to undertake an effective septage, sewerage and sanitation program for addressing the current wastewater challenges of the City of Puerto Princesa;

WHEREAS, the PSP submitted on 4 May 2018 the Amended and Restated JV Proposal under the framework of the Puerto Princesa City JV Ordinance to undertake the JV Project with the PP LGU, with a total project cost of approximately PhP240,000,000.00;

WHEREAS, a JV – Selection Committee (“**JV-SC**”) was formed pursuant to the requirements of the Puerto Princesa City JV Ordinance;

WHEREAS, in compliance with the requirements of the Puerto Princesa City JV Ordinance, the legal, technical, and financial feasibility of the JV Project was validated and the PP LGU determined that the JV Project was advantageous and beneficial to the PP LGU in that, among others, the Project would result in protecting the environment and improved system efficiencies;

WHEREAS, the JV-SC has also determined the following benefits and advantages of pursuing this Project in a joint venture structure as opposed to pursuing a build-operate-transfer arrangement or under the framework of Republic Act No. 9184 (“**RA 9184**”):

1. There is no need for the LGU to raise funds for all of the project cost; private sector bears most of the financial risk. Considering that LGU has limited sources of funds, the joint venture is a faster way to implement the project. In the case of the baywalk, considering the state of environmental degradation and the thrust of Pres. Duterte to improve the environmental conditions of key tourist destinations (e.g., Boracay), there is a need to quickly implement a solution;
2. Technical expertise is provided at no additional cost to the LGU. There will also be opportunity for technology transfer;
3. Construction margins will be more competitive. Public bidding is also an assurance for transparency in pricing;
4. The LGU will have a share in the profit from operations of the facility. Its share can then be used for other projects of the city;
5. Entering into a joint venture arrangement allows the parties to generate other sources of revenue from which the LGU will have a share;
6. The JVC, being a corporation which is a separate legal entity from its owners, has a structure which allows for the protection of the owners’ individual assets from that of the JVC. Furthermore, the JVC (and its purposes) may continue to exist even if one party assigns or divests of its shareholdings; and
7. The private sector partner will provide technical expertise and financial capability to be able to implement a holistic and city-wide sanitation program.

WHEREAS, several negotiation sessions were then undertaken and on 5 July 2018, the PSP and the PP LGU issued a Certificate of Successful Negotiation and Eligibility and conferred upon the PSP the status of original proponent;

WHEREAS, the terms of the joint venture were deemed to be reasonable and economically advantageous and beneficial to the PP LGU in that, among others, (1) the septage fee is in accordance with those provided under City Ordinance No. 737, (2) the sewage fee is affordable given that there is sufficient funding from the environment fee currently being collected and there will be no additional charges to be imposed to the residents of the City of Puerto Princesa for the sewage fee, (3) the PP LGU will have the benefit of up to 1,000 cmd of reuse water which has as estimated effective economic value of P78,912 per day or P29,729.980 per year, (4) the PP LGU will have a commensurate share in the profits of the business activities of the JVC, including revenue from the learning center and sale of reuse water, and (5) it will increase the value of real estate surrounding the baywalk;

WHEREAS, pursuant to the Puerto Princesa City JV Ordinance, the JV Proposal was subjected to competitive challenge, the PSP posted the proposal security, and thereafter the PSP was declared the successful bidder;

WHEREAS, the Sangguniang Panlungsod of PP LGU issued Resolution No. 1254-2018 dated 24 September 2018, authorizing and ratifying the execution, delivery and performance of this Agreement;

WHEREAS, the PP LGU shall provide the site for the Project under a usufructuary arrangement. Under this structure, the Parties are able to minimize the tariffs that shall be charged for the septage and wastewater treatment services to be performed while allowing the PP LGU to maintain ownership of the site, and therefore such arrangement is deemed to be advantageous to the PP LGU and beneficial to the residents of Puerto Princesa;

NOW THEREFORE, in consideration of the foregoing premises and the terms and conditions specified herein, the Parties agree as follows:

ARTICLE I DEFINITION AND INTERPRETATION

Section 1.01. Definitions. Capitalized terms used herein shall have the meanings given in **Schedule 1.01**.

Section 1.02. Interpretation. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole, and not to any particular Article, Section, subsection or clause hereof. References herein to an Exhibit, Annex, Schedule, Article, Section, subsection or clause refer to the appropriate Exhibit, Annex, Schedule, Article, Section, subsection or clause hereof. Any definition of or reference to any agreement, instrument, other document, schedule, exhibit, statute, law or regulation (except for Puerto Princesa City Ordinance No. 702, also known as the “Puerto Princesa City JV Ordinance”) herein shall be construed as referring to such agreement, instrument, other document, schedule, annex, exhibit, statute, law or regulation as from time to time amended, supplemented, restated or otherwise modified. Any reference herein to any Person shall include its successors and permitted assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities. Any reference herein to days shall refer to calendar days unless Business Days are specified; references to weeks, months or years shall be to calendar weeks, months or years, respectively, unless Months are specified. All accounting terms used herein and not otherwise defined will have the meanings accorded them under the Accounting Standards and, except as expressly provided herein, all accounting determinations will be made in accordance with such accounting principles in effect from time to time. Any reference to “include” or “including” shall be treated as “including, without limitation”. Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders.

The Schedules and Exhibits to this Agreement shall form an integral part hereof and references to Schedules and Exhibits shall be Schedules and Exhibits 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.

ARTICLE II
THE JOINT VENTURE CORPORATION AND THE JV PROJECT

Section 2.01. Joint Venture Parties as Co-Venturers. The following parties hereby agree to be co-venturers for the establishment of a joint venture company for the provision of septage, sewerage and sanitation services for the City of Puerto Princesa:

1. **City Government of Puerto Princesa (“PP LGU”)** is a local government unit organized and existing under the laws of the Philippines with principal office at the Puerto Princesa City Hall, Puerto Princesa City, Palawan, represented in this Agreement by the Hon. Lucilo Rodriguez Bayron, City Mayor, duly authorized for the purpose of this Agreement under Sangguniang Panlungsod Resolution No. 1254-2018 dated 24 September 2018.
2. **Eco-System Technologies, Inc. (“ESTI”)** is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at SKH Mansion, No. 3 V. Victorio Street, Barangay Pleasant Hills, Mandaluyong City, represented in this Agreement by its President, Robert Y. So. **ESTI** is engaged in the business of providing water and wastewater treatment technology solutions services.
3. **Eco-System Technologies International (ESTII), Inc. (“ESTII”)** is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at SKH Mansion, No. 3 V. Victorio Street, Barangay Pleasant Hills, Mandaluyong City, represented in this Agreement by its President, Robert Y. So. **ESTII** is engaged in the business of constructing, operating and maintaining water and wastewater treatment facilities, providing consultancy services in respect thereof, importing, buying, selling, distributing, marketing at wholesale and retail of goods related to water, water treatment, water distribution or water services and other allied goods.
4. **JCA 1221 Holdings Inc. (“JCA”)** is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at Unit 11A, PDCP Bank Center, Rufino corner Leviste Streets, Salcedo Village, Makati City, 1227, represented in this Agreement by its President, Jehremiah C. Asis. **JCA** is a development and investment holding company with experience in joint ventures with government agencies.

ESTI, ESTII and JCA may establish a special purpose company (the “**PSP SPC**”) that shall act as their investment vehicle in the JVC. Upon formation of the PSP SPC, all obligations of the Private Sector Participant shall be assigned and transferred to the PSP SPC and the PP LGU consents to such assignment in accordance with Section 8 (l) of City Ordinance No. 702 without need of any further act or deed on the part of the PP LGU. The Private Sector Participant shall notify the PP LGU of the incorporation of the PSP SPC and the PSP SPC’s accession of the rights and obligations of the Private Sector Participant in this Agreement. For this purpose, the Private Sector Participant and the PSP SPC shall execute the Deed of Accession in substantially the form of **Schedule 2.01** and submit the same to the PP LGU.

Section 2.02. Formation of a Joint Venture Company; Name; Principal Place of Business; Undivided Pro-Rata Interests in JVC Assets. Immediately after the execution of this Agreement, the PP LGU and the Private Sector Partner, as co-joint venturers, shall create and establish a joint venture company that shall be named “PUERTO PRINCESA WATER RECLAMATION AND LEARNING CENTER, INC.” or such other names that the parties may agree on and will be approved by the Securities and Exchange Commission (the “**JVC**”). The Parties shall execute the charter documents of the JVC in substantially the form of **Exhibit A**. Its principal office shall be in Puerto Princesa, Palawan, or such other place as the Parties may agree upon. The Private Sector Partner may form a special purpose company who will be the shareholder in the JVC.

In the formation of an incorporated JVC, the Parties as co-venturers shall hold undivided pro-rata interests on all assets of the JVC.

Section 2.03. Primary Purpose, Scope of JVC. Subject to any conforming changes as may be required by the SEC, the primary purpose and scope of the JVC shall be to act as operator, contractor and/or agent of the PP LGU in providing septage, sewerage, and sanitation services and in relation thereto shall be responsible for the development, construction, operation, and maintenance of sewage and/or septage treatment plants which may also act as a tourist attraction and learning center for environmental protection in accordance with the Joint Venture Agreement dated 27 September 2018 among the City Government of Puerto Princesa, Palawan, Eco-System Technologies, Inc., Eco-System Technologies International (ESTII), Inc., JCA 1221 Holdings Inc. and any amendments or supplements thereto, and undertake related activities.

Section 2.04. Objectives of JV Project. The general objective of the JV Project is to provide sewage, septage and sanitation services for the City of Puerto Princesa in compliance with the requirements of the Philippine Clean Water Act of 2004 and the protection of the environment, particularly the bay of Puerto Princesa, by cleaning wastewater for potential reuse via a facility that utilizes proven technology.

The specific objectives of the JV Project are as follows:

- i. To develop, construct, operate, and maintain a sewage and/or septage treatment plant, the first of which shall be the ieSSTP-PP;
- ii. To produce effluent that is acceptable for water re-use in non-potable applications;
- iii. To develop and design the facility in such a way that a museum or learning center can be incorporated into the design of the administrative building of the facility;
- iv. To minimize tariff impact to consumers;
- v. To maintain good and harmonious relationship with consumers at all times through their improved satisfaction level; and
- vi. To protect the environment by ensuring and promoting proper wastewater treatment and management and responsible use of water resources.

The Project, its design, and phases of construction and completion, is more particularly detailed in **Schedule 2.04**.

Section 2.05. Project and Facility Specifications and Features. The Project shall have the following technical details:

- Daily sewerage treatment capacity: 2,000 cmd
- Daily septage treatment capacity: 70 cmd
- Effluent quality: compliant with DENR Administrative Order No. 2016-08, and may be fit for re-use for non-potable applications.

The Project shall be designed to accept and treat both domestic and commercial wastewater following certain influent design parameters and characteristics for the combined septage and sewerage facility.

In addition to the septage and sewerage treatment facilities, the Project will have a learning center lounge. A hydroponic garden will be incorporated in the design to showcase the fitness of the effluent for watering plants and for fish/aquaculture. The garden may also have a playground/activity area for visitors and tourists.

The Facilities shall utilize SBR (Sequence Batch Reactor) technology that shall have at least a 10-year warranty on its diffusers and decanter where the equipment provider shall replace the diffusers and the decanter free of charge for any defect that may occur within the 10-year warranty period.

In the event that there shall be upgrades in the technology for the Facilities, the Parties shall discuss in good faith whether the JVC shall avail of these upgrades with due consideration for the additional capital expenditures and possible adjustments to the Septage Fee or the Sewerage Fee.

Section 2.06. Corporate Term. The JVC shall have an initial term of fifty (50) years. In the event that the Service Agreement is terminated prior to the expiration of the term of the JVC, or if this Agreement is terminated for causes allowed under this Agreement, the PP LGU and the Private Sector Partner shall proceed to dissolve the JVC in accordance with applicable law and the terms of this Agreement.

The term of the JV activity shall be as provided in **Article XIII (Term of this Agreement)**.

Section 2.07. Implementation Milestones.

(a) The JV Project shall have the following implementation milestones:

1. Incorporation of the JVC
2. Procurement of Business Requirements (Permits and Licenses)
3. Detailed Engineering Design
4. Procurement
5. Earthworks and Civil Engineering
6. Structural Engineering and Construction of Facility Buildings
7. Installation of Process Equipment
8. Commissioning
9. Commencement of Operations of ieSSTP-PP
10. Construction of Other Outfalls

(b) The JVC shall, at the end of each phase of the Cooperation Period as set under the Expansion Study (as defined below), use all reasonable endeavors to make the Services available to inhabitants in the Service Area.

(c) The JVC shall conduct a detailed study on the provision of additional sewerage facilities to the City of Puerto Princesa (the “**Expansion Study**”) within three (3) years from the Commencement Date, with a view to constructing additional sewerage/outfall capture facilities for all outfalls in the Service Area.

Section 2.08. Functions and Rights of JVC. The JVC shall perform the following functions:

1. Develop, construct, operate, and maintain a sewage and/or septage treatment plants to provide septage, sewerage, and sanitation services for the benefit of the PP LGU and Puerto Princesa City in general. The first facility to be constructed shall be the ieSSTP-PP, a combined septage and sewerage facility located at the Puerto Princesa Baywalk;
2. Act as agent, operator and contractor of the PP LGU for the provision of septage, sewerage and sanitation services for the City of Puerto Princesa;
3. Prepare, process, apply for tariff adjustments and approvals;

4. Bill and collect tariff and for this purpose may engage the services of the PPCWD and enter into agreements with PPCWD therefor;
5. Submit reports and remit revenue share in the form of dividends from the JVC to PP LGU;
6. Be responsible for customer relations such as entertaining complaints from customers, information dissemination, public consultations, and the like, in relation to the septage, sewerage and sanitation services that the JVC shall provide; and
7. Such other functions as may be required as contractor, operator and agent (to the extent allowed by applicable law) to fully fulfill the mandate of the PP LGU in terms of the provision of septage, sewerage, and sanitation services.

In relation to the foregoing and for purposes of implementing this Agreement, the JVC may, in its absolute discretion:

- i. enter into such contracts for the provision or purchase of any services or assets as it considers necessary;
- ii. hire or appoint such persons or organizations to provide advice including accountants, engineers, lawyers and other professionals and specialists;
- iii. procure such loans, debentures or other forms of borrowings, subject to Section 3.04, provided that no borrowings shall mature beyond the Term of this Agreement; and
- iv. perform such other acts as it considers necessary for the JVC to comply with its obligations under this Agreement.

Section 2.09. Functions of the PP LGU. The PP LGU shall have the following functions:

- i. Strategic Planning and Policy Setting – In coordination with and subject to the agreement of the Private Sector Partner, PP LGU will set service obligations and targets of the JVC and shall establish policies, pass and implement municipal ordinances, and do such other acts and deeds in order to ensure that the JVC meets its service obligations and target. The initial service obligations and targets are set forth in Article V – Service Obligations. The same shall be subject to updating in accordance with the guidelines set therein.
- ii. Coordination with the PPCWD – The PP LGU shall assist in securing a Memorandum of Agreement with the Puerto Princesa City Water District for the latter to utilize the septage services of the JVC and act as billing and collection agent of the JVC and otherwise designating the JVC as the PPCWD’s agent, contractor, and operator for the purposes of implementing Section 11 of City Ordinance No. 737. The Memorandum of Agreement shall be in substantially the form of **Exhibit B**.
- iii. Coordination with DENR – The PP LGU shall coordinate with DENR on the implementation of the Philippine Clean Water Act of 2004 and other applicable laws and regulations for the audit of compliance by commercial establishments with environmental laws.
- iv. Project Sites – The PP LGU shall provide sites or grant land use rights for the septage and/or sewerage facilities (such as the ieSSTP-PP) as selected by the JVC under terms and conditions to be agreed between the JVC and the PP LGU.
- v. Others. – The PP LGU shall exercise such other functions for the provision of septage, sewage and sanitation services that may not be delegated under the law.

**ARTICLE III
CORPORATE STRUCTURE AND FINANCING OF JVC**

Section 3.01. Authorized Capital Stock; Establishment of the JVC Fund; Sharing of Profits, Risks and Losses. The authorized capital stock of the JVC shall be Pesos Two Hundred Forty Million (PhP240,000,000.00) divided into Two Million One Hundred Fifty Thousand (2,150,000) Class A Common Shares, each common share with a par value of PhP100.00 per share, and Two Hundred Fifty Thousand (250,000) Class B Common Shares, each Class B common share with a par value of PhP100.00 per share.

The Parties shall establish the JVC fund, which shall include the initial subscription upon incorporation as follows:

Shareholder	Number of Shares and Amount Subscribed	Initial Paid-In Capital Upon Incorporation
Private Sector Participant/PSP SPC	2,150,000 Class A Common Shares; PhP215,000,000	PhP215,000,000
PP LGU (including nominee incorporator and director)	250,000 Class B Common Shares; PhP25,000,000.00	PhP25,000,000.00

The shareholders shall share the profits, risks and losses of the JVC in accordance with their respective shareholdings in the JVC, as determined by the contribution of the Parties which can be increased or decreased accordingly as the requirements of the JVC may dictate.

Section 3.02. Payment for Subscription. The PP LGU shall pay the sum of Pesos Twenty Five Million (PhP25,000,000.00), while the Private Sector Partner shall pay the sum of Pesos Two Hundred Fifteen Million (PhP215,000,000) as full payment of their respective subscription to the JVC.

Section 3.03. Right of First Refusal. Each shareholder grants the other shareholder a right of first refusal to any transfer or disposition of its shares in the JVC. In consideration of the requirement under Section 8(1) of the Puerto Princesa City JV Ordinance, for as long as the PP LGU is involved in the JV undertaking, the Private Sector Partner shall not sell or transfer its interest in the JVC (including its undivided pro-rata interests in the assets of the JVC) without the express written consent of the PP LGU.

This provision shall apply in case of substitution of parties to this Agreement.

Section 3.04. Financing; Cost of JV Activity; Capital Contributions and Infusions; City Government Guarantee. The JVC shall finance the JV Project primarily from the equity contributions of the Private Sector Partner and the PP LGU. After the equity contributions are exhausted, unless the same is not economically feasible, efficient or practical, capital expenditures of the JVC shall be funded from the following order of priority: internally generated funds of the JVC (subject to the parties having recovered their initial investment and an acceptable return having been made), debt financing, then additional capital contributions. The initial estimated project cost is Pesos Two Hundred Forty Million (PhP240,000,000.00), as more particularly described in **Schedule 3.04**.

In connection herewith, the JVC may only obtain loans for the expansion phase of the JV Project in such amount as may be necessary for the construction, rehabilitation and operation and other undertakings contemplated therefor (the "**Loan**"). For this purpose, the JVC may, if required by the lender, create a lien over the assets, rights and obligations of the JVC, including all rights of the JVC to the Service Agreement, the Interim Land Use Agreement, the Deed of Usufruct, and this Agreement in consultation with the PP LGU.

The JVC agrees to assume sole liability for, and to keep the PP LGU free and harmless from liability arising from the Loan. The Private Sector Partner shall also keep the PP LGU free and harmless from liability arising from the Loan. The PP LGU undertakes to cooperate with the JVC to ensure the success of obtaining such financing. In this connection, if and should the lender require the Private Sector Partner and the PP LGU to pledge their shares in the JVC as security for the Loan, the PP LGU and the Private Sector Partner shall forthwith comply with such requirement.

In the event that capital contributions will be required, the following principles shall be observed:

- i. capital contributions shall be pro-rata to the current shareholdings of the Private Sector Partner and the PP LGU in the JVC;
- ii. if the infusion of the additional investment will require increasing the capital stock of the JVC, then the JVC shall so increase its capital stock; and
- iii. if one shareholder of the JVC is unable to contribute its pro-rata share in the capital call, then the other shareholder shall have the discretion to either (a) cancel making its share of the investment, or (b) invest all of the additional capital required. In case the other shareholder shall proceed with the investment, the non-contributing shareholder shall waive its pre-emptive rights to any increase in the capital stock of the JVC.

The PP LGU may, in its sole and absolute discretion, guarantee or grant subsidies for any financing obtained by the JVC for the construction and operation of the Facilities.

Section 3.05. Costs to the JVC; No Reimbursement to JVC Parties. The expenses which can be treated as costs to the JVC for the purpose of determining profit or loss shall include but not limited to the following operating expenses: salaries and wages, administrative expenses, management and professional fees, taxes and insurance, and SSTP operating expenses. After the equity contributions to fund the JVC, there shall be no items that are reimbursable to the Parties in their capacity as shareholders of the JVC.

Section 3.06. Cost Recovery / Payout of Funds. Dividends shall be declared out of the unrestricted retained earnings and shall be payable at such time and in such manner and in such amounts as the Board of Directors and stockholders respectively shall determine. No dividends shall be declared which would impair the capital of the Corporation.

All shares shall enjoy the same dividend rights regardless of their class.

ARTICLE IV GOVERNANCE STRUCTURE OF JVC; MANAGEMENT STRUCTURE, ROLES AND DUTIES

Section 4.01. Management Structure. The JVC, as a corporation with an independent and separate legal identity, shall have its Board of Directors that shall act as the governing board. The JVC, through its management team, shall manage and operate the project. The management team may enter into such agreements as, in its business discretion exercised in good faith, will be deemed to be beneficial to the company. The board of directors of the JVC shall appoint the management team.

Section 4.02. Formation of the Board of Directors; Remuneration. The Board of Directors of the JVC shall be composed of five (5) members. The PP LGU shall always be entitled to nominate at least one (1) member regardless of its percentage of shareholding, and the PSP shall be entitled to nominate four (4) members.

The Parties hereby agree to vote their respective shares to ensure the election of the nominees of the PP LGU and the PSP as allocated above. The Parties further agree that it shall not vote for the election, removal or replacement of any director unless at the request of the party that nominated the nominee director.

The PP LGU shall designate its then incumbent Mayor (or other designated person) to act as the PP LGU's representative to the Board of Directors of the JVC. Once designated, such person shall act as member of the Board of Directors of the JVC for the relevant term unless sooner replaced in accordance with the terms of this Agreement.

The initial roster of the members of the Board of Directors shall be as follows:

Jehremiah C. Asis
Katherine Anne F. Asis
Arnel M. Pedrosa
Robert Y. So
Beatriz K. So

In accordance with the provisions of the Corporation Code, the Board of Directors and when necessary, with the approval of the shareholders of the JVC, shall have the authority to bind the JVC.

Except for reasonable per diems, the members of the Board of Directors, as such, shall be entitled to receive only such compensation as may be granted to them by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special meeting of the stockholders. In no case shall the total yearly compensation of all directors, in their capacity as directors, exceed 10% of the net income before income tax of the JVC during the preceding year.

Section 4.03. Quorum. At least a majority of the directors must be present to constitute a quorum of the Board of Directors.

Section 4.04. Directors' Indemnification. The JVC shall to the fullest extent permitted by applicable law, indemnify and hold each member of the Board of Directors free and harmless against all losses, expenses and damages sustained by him in connection with, or as a result of, any legal action brought by or against him on account of his being a director of the JVC; provided, that the director's conduct, act or omission giving rise to such legal action was undertaken by him in good faith and on the reasonable belief that said conduct, act or omission was in the best interest of the JVC.

Section 4.05. Regular and Special Board Meeting Schedules and Venue; Issue Resolution. The Board of Directors shall meet regularly every quarter. Special meetings shall be arranged as may be required. Board meetings shall be convened and held at the principal office of the JVC, unless a majority of the members of the Board of Directors agree on a different location in or outside the Philippines.

Any issue or problem which may arise in the course of the operations or management of the JVC shall be resolved or dealt with in a regular or special board meeting called for the purpose.

Section 4.06. Officers; Designation of General Manager. The officers shall be nominated by, removed or replaced in the sole discretion of the Parties exercisable through their respective nominees to the Board of Directors by notice to all the Parties, as follows:

<u>Nominating Shareholder</u>	<u>Position</u>
PSP	Chairman of the Board
PP LGU	Vice Chairman
PSP	President
PSP	Corporate Secretary
PSP	Treasurer

The Parties hereby agree to cause their nominee directors to vote to ensure the election of the officers as allocated above. The Parties further agree that it shall not cause their nominee directors to vote for the election, removal or replacement of any officer unless at the request of the party that nominated the officer.

For purposes of identifying who shall be the General Manager, it shall be the person designated by the President of the JVC upon commencement of operations.

Section 4.07. Term, Removal and Election of Directors and Officers. The term of office of a director or officer shall be one (1) year, unless said director or officer is nominated and elected to serve the remainder of the term of a previously elected director or officer who passed away, resigned, became ill or in any manner incapacitated to hold said post, in which case the subsequent director or officer shall serve for the remainder of the term of his predecessor.

Vacancies in the Board of Directors arising from death, disability, resignation or incapacity of any director shall be filled by the nominating Party entitled to such representation.

Any director nominated by any Party (except the PP LGU) may be removed upon the request of such Party at any time, with or without cause. A director who has performed any act or omission which results or may result in substantial prejudice to the JVC may be removed by majority vote of the Board of Directors, and such vacancy shall be filled by the nominating Party entitled to such representation.

Section 4.08. Management Support of PSP. Prior to the Service Agreement Commencement Date, the JVC shall enter into a management consultancy agreement with the PSP pursuant to which the PSP shall provide management, operations and maintenance consultancy services to the JVC. The management consultancy agreement shall be on an arms-length basis (including for the fees that may be paid) and shall have the basic terms set out in **Exhibit C – Management Consultancy**.

Section 4.09. Special Authority to Obtain Permits and Licenses. Where necessary or practicable for purposes of implementing the JV Project, the JVC shall obtain permits and licenses in its name.

Section 4.10. Appointment of an Accountant. The JVC shall appoint a reputable accounting firm as its external auditor.

Section 4.11. Appointment of a Lawyer. The JVC may, in its absolute discretion, hire or appoint such persons or organizations to provide advice, including lawyers.

Section 4.12. Establishment of Bank Accounts of the JVC. As soon as reasonably practicable after the establishment of the JVC, the JVC shall establish its own bank accounts with such signatories and corresponding signing authorities as the Board of Directors of the JVC

shall determine. The initial capital contributions, progress payments, and other revenues shall be deposited into these accounts.

ARTICLE V SERVICE OBLIGATIONS

Section 5.01. Service Obligations of the JVC.

1. *Primary Service Obligation.* The JVC shall provide Services through the ieSSTP-PP.
2. *Additional Sewerage Facilities.* The JVC shall conduct a detailed study on the provision of additional sewerage facilities to the City of Puerto Princesa (the “Expansion Study”) within three (3) years from the Service Agreement Commencement Date, with a view to constructing additional sewerage/outfall capture facilities for all outfalls in Puerto Princesa. Upon completion of the study, the PP LGU and the PSP shall then discuss the implementation program guided by the following principles:
 - a. Priority shall be given to areas which have severe environmental damage and/or have been identified for development (e.g., as new tourist destinations).
 - b. The rate impact to the consumers shall be socially acceptable under circumstances then prevailing, including with reference to applicable benchmarks for rates charged by Maynilad Water Services Inc. and Manila Water Company Inc.
 - c. Ensuring a reasonable return for the additional investment that the Private Sector Partner may be required to make for the capital expenditures to build the additional facilities.
 - d. The PP LGU shall ensure the availability of the site for the new facilities in accordance with the specifications set by the JVC.
3. *Additional Facilities.* The construction and operation of additional facilities shall be subject to the conditions that (a) the same shall be financially viable in the reasonable determination of the JVC, (b) the issuance by the proper government authorities of the necessary permits and approvals to enable the JVC to perform its service obligations, and (c) 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.
4. *Acceptance tests and procedures.* Subject to the terms and conditions of the Service Agreement (in substantially the form attached as **Exhibit F**), the JVC agrees and undertakes to design, build, manage, and operate the Facilities to be able to provide the Services and to meet the Operational Performance Criteria in accordance with:
 - (a) all Applicable Laws;
 - (b) all applicable Government Authorizations;
 - (c) Prudent Utility Practices; and
 - (d) requirements of any insurance policies specified in Clause 15 (Insurance Obligations) of the Service Agreement.
5. *Free Recycled Water.* Once the ieSSTP-PP has achieved full commercial operations capable of treating 2,000 cmd of wastewater, the JVC shall offer up to 1,000 cmd of treated water (recycled water) to the PP LGU free of charge.

**ARTICLE VI
PERFORMANCE BOND**

Section 6.01. Performance Bond. To secure the obligations of the JVC under this Agreement, within thirty (30) days from the JVA Commencement Date the PSP shall provide a Performance Bond for and on behalf of the JVC naming the PP LGU as beneficiary, which is valid for one (1) year and shall be renewable on an annual basis during the Joint Venture Term. The annual Performance Bond shall be in the following amounts in relation to the security offered:

Security	Amount
Cash, manager’s check, irrevocable letter of credit, bank draft	PhP4,800,000.00
Bank Guarantee	PhP12,000,000.00
Surety Bond	PhP24,000,000.00

In the event that the JVC shall fail to perform its obligations under this Agreement, then the PP LGU shall be entitled to draw on the Performance Bond for such unperformed obligations unless such failure is due to justifiable causes. The (1) failure of the JVC and the PPCWD to enter into an agreement as provided under Section 10.03, or (2) failure to obtain a permit or other government approval, shall without limitation be justifiable causes.

Section 6.02. Performance Security Upon Termination. One (1) month prior to the expiration of the Joint Venture Term, the PSP shall provide a performance security in the amount of Pesos One Million (PhP1,000,000.00). The performance security shall, at the option of the PSP, be in the form of a surety bond, bank guarantee, cash, manager’s check or irrevocable letter of credit. The performance security shall stand as security for any claims arising from acts or omissions of the Private Sector Partner or the JVC during the Joint Venture Term, but which claims are filed after the termination of the Joint Venture Term. The performance security shall be valid for a term of one (1) year after the expiration of the Joint Venture Term. If six (6) months after the expiration of the Joint Venture Term, no claims are filed, the performance security shall be reduced to Pesos Five Hundred Thousand (PhP 500,000.00). One (1) year after the expiration of the Joint Venture Term, there being no claims filed or such claims having been duly satisfied, the PP LGU shall issue a certification on such matters and the performance security shall thereafter be released.

**ARTICLE VII
OBLIGATIONS OF THE PRIVATE SECTOR PARTNER;
OTHER JVC OBLIGATIONS**

Section 7.01. Obligations of the Private Sector Partner. The Private Sector Partner shall comply with its obligations under this Agreement, which shall include but not limited to the execution of this Agreement for the formation of the JVC, the infusion of funds to the JVC for the design, construction, operation and maintenance of the Project in accordance with Operational Performance Criteria, and the provision of a Performance Bond for and on behalf of the JVC as stated in Section 6.01 of this Agreement.

The obligations of the Private Sector Partner shall likewise include the following:

- a. To cause the JVC to construct the Facility in accordance with the approved design, plans and specifications and performance standards; and
- b. To cause the JVC to complete the construction of the Facility in accordance with the construction milestones under this Agreement.

Section 7.02. Taxes. The JVC shall be responsible for all income and withholding taxes, customs, and import duties, real property taxes (except to the extent that the JVC shall be granted exemptions therefor) on all of the JVC’s facilities, other local taxes, capital gains tax and other

transfer taxes, value added tax and other forms of taxes and charges arising from its operation of the JV Project.

Section 7.03. Insurance. The JVC 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, the types of which may include, subject to availability, the following:

- I. Construction Phase
 - a. Contractor's All Risk Insurance
- II. Operations Phase
 - a. Property Insurance
 - b. Business Interruption Insurance.

If deemed necessary by the parties, the JVC shall engage the services of a competent insurance advisor to assist it in developing the insurance program for the JV Project and procuring the necessary insurance policies.

Section 7.04. Financial and Periodic JV and Progress Reporting Obligations. As may customarily be provided to shareholders of corporations, the JVC shall provide to the PP LGU such reports, including financial reports, and for other relevant information that the PP LGU may request at any time if the requirements arise.

The PP LGU shall have such rights of inspection as may be granted to it in its capacity as a shareholder of the JVC.

Section 7.05. Assistance to Secure NSSMP Funding. The JVC shall extend assistance to the PP LGU in securing funding under the National Sewerage and Septage Management Program (NSSMP) for use in expansion programs.

ARTICLE VIII OBLIGATIONS OF THE PP LGU

Section 8.01. Cooperation with JVC. Subject to the provisions of this Agreement, the PP LGU undertakes to exert its best efforts to ensure that the JVC shall be able to perform its obligations under this Agreement.

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

Section 8.02. Non-Delegable Functions of PP LGU. The PP LGU will retain functions that the PP LGU may not delegate by contract. In addition to these, the PP LGU shall perform the functions stated in Section 2.09.

Section 8.03. Site for ieSSTP-PP; Execution of Interim Land Use Agreement and Deed of Usufruct. The PP LGU shall provide to the JVC land use rights (including but not limited to the right to possess and use such land) over the site for the ieSSTP-PP as more particularly described in **Schedule 8.03** and procure all rights of way or easements required for the construction and operation of the ieSSTP-PP and assure the JVC uninterrupted peaceful possession and use thereof. In this connection, the PP LGU shall execute the Interim Land Use Agreement in substantially the form of **Exhibit D** within three (3) days from the incorporation of the JVC. Furthermore, the PP LGU undertakes to secure title over the said site and once it has done so the PP LGU shall execute the Deed of Usufruct in substantially the form of **Exhibit E** and have the same annotated on the title. The PP LGU represents and warrants for the benefit of the Private

Sector Partner that it shall comply with all of its obligations under the Interim Land Use Agreement and the Deed of Usufruct, and that any breach by the PP LGU thereof shall be a breach of this Agreement. Should the JVC be dispossessed of the site, the PP LGU shall indemnify the JVC.

Section 8.04. Site for Additional Facilities. The PP LGU shall provide the site and procure all rights of way or easements at its cost and expense for any additional facilities that the JVC may construct and operate. The site shall be according to the requirements of the JVC. The PP LGU and the JVC shall thereafter execute such deeds and instruments as will grant the JVC land use rights for the additional facilities.

Section 8.05. Other Obligations of the PP LGU. The PP LGU hereby undertakes, in addition to any of its other obligations under this Agreement, to:

- (a) promptly pass to the JVC all accounts, invoices, statements, demands, notices, insurance demands, and other correspondence that may, from the date of this Agreement, come into PP LGU's possession concerning the JV Project;
- (b) give to the JVC all the information, advice and assistance which the JVC shall reasonably require in relation to the application for the grant of all Government Authorizations for the JV Project and the maintenance of its tax status;
- (c) provide such information, documents and records that the PP LGU has in its possession and which the JVC may require in order to meet its obligations under the Agreement;
- (d) if so requested by the JVC, exercise its rights to establish, operate and maintain sewerage systems under the Local Government Code and other laws and regulations and defend such rights and the grant of concession to the JVC;
- (e) provide such assistance as may be requested by the JVC for the construction and operation of the facilities and to encourage the availment of services;
- (f) to the fullest extent allowed by law, pass ordinances to exempt the JVC from payment of real property tax during the cooperation period; and
- (g) do any and all acts reasonably necessary and otherwise consistent with its rights, powers, duties and responsibilities under applicable law to assist the JVC in the performance of the Service Obligations and to otherwise achieve the objectives of the JV Project.

ARTICLE IX SERVICE AGREEMENT

Immediately after the incorporation of the JVC and upon satisfaction of the relevant conditions provided under Article XII - Conditions Precedent, the JVC and the PP LGU shall execute the Service Agreement (in substantially the form attached as **Exhibit F**) of this Agreement, which shall be an integral part of this Agreement .

ARTICLE X TARIFF

Section 10.01. General Principles

1. Tariffs shall ensure that all project costs are recoverable during the Joint Venture Term, earning the JVC a reasonable rate of return on investment.

2. Substantial and procedural requirements for approval of tariffs required by applicable law are complied with, including the public hearing required under City Ordinance No. 737.
3. The PP LGU shall exert all commercially reasonable efforts to obtain the targeted Tariff as set forth in Section 10.02 below.

Section 10.02. Initial Tariff Rates. The initial target user fees for septage services and fees for sewerage services are as follows:

- a. **User Fees.** For septage services to customers connected to the PPCWD, the user fee shall be P2.00 per cubic meter of water consumption in accordance with City Ordinance No. 737. Connected customers shall be entitled to one siphoning service every five (5) years. For non-connected residents and those connected customers requiring more than one siphoning service within such 5-year period, the user fee shall be on a “per transaction” basis at market rates.
- b. **Sewerage Fee.** For sewerage services, the fee shall be on a per cubic meter of wastewater basis, graduated as follows (exclusive of any applicable value added tax):

Year 1 – P40.00 per cubic meter of influent wastewater
 Year 2 – P50.00 per cubic meter of influent wastewater
 Year 3 – P70.00 per cubic meter of influent wastewater
 Year 4 – P75.00 per cubic meter of influent wastewater
 Year 5 – P80.00 per cubic meter of influent wastewater

At the start of Year 6, and every 5 years thereafter, the per cubic meter fee shall be escalated by P10.00 (exclusive of VAT). The current applicable VAT is a 5% final withholding VAT.

A minimum monthly service fee shall be applied as follows (exclusive of VAT):

Year 1 – P2,100,000.00
 Year 2 – P2,100,000.00
 Year 3 – P2,940,000.00
 Year 4 – P3,150,000.00
 Year 5 – P3,360,000.00

The maximum monthly charge shall be the applicable rate multiplied by 2,000 cmd, multiplied by the number of days of the relevant calendar month.

Commencing on Year 6, the minimum monthly charge shall be escalated by P575,000, and for every 5 years thereafter, to address the effects of inflation.

For the avoidance of doubt, the fee to be paid shall be the higher of the minimum monthly service fee and the amount computed as the product of the volume of wastewater treated for the month multiplied by the applicable rate for the year.

The PP LGU may (but is not required to) fund the payment of the sewerage service fee from the proceeds of the Environmental Fee, without prejudice to other funding sources.

On any year that all of the Facilities are exempt from real property tax, a PhP6.50 discount shall be applied to the then applicable Sewerage Fee, and the minimum monthly charge shall be reduced by Pesos Four Hundred Thousand (PhP400,000).

Section 10.03. Cooperation with PPCWD. Pursuant to the authority granted to the JVC under this Agreement, with the assistance of the PP LGU the JVC shall enter into an agreement with the Puerto Princesa City Water District (the “**PPCWD**”) under which the JVC shall be agent,

contractor and operator for purposes of implementing Section 11 of City Ordinance No. 737, and for the PPCWD to act as collecting agent for the user fees that will be charged to the Customers that are connected to the PPCWD.

Customers availing of siphoning services who are not connected to the PPCWD shall deal directly with the JVC.

ARTICLE XI TRANSITIONAL ARRANGEMENTS

Section 11.01. Social Acceptability and Information Campaign. Prior to the Service Agreement Commencement Date, the PP LGU at its own costs and expense shall conduct an information drive and social acceptability program aimed at informing the constituents of the PP LGU of the Project and its benefits.

ARTICLE XII CONDITIONS PRECEDENT

Section 12.01. Conditions Precedent for Effectiveness of Agreement. The effectiveness of this Agreement is subject to the satisfaction at or prior to JVA Commencement Date of the following conditions:

1. the representations and warranties of the Private Sector Partner shall be true and correct in all material respects as if made on the JVA Commencement Date;
2. save to the extent that the receipt has been waived in writing by the PP LGU, PP LGU has received (or waived the receipt of) the documents listed below:
 - a. a certificate, dated the JVA Commencement Date, from duly authorized officers of the Private Sector Partner to the effect that the representations and warranties of the Private Sector Partner in this Agreement are true and correct in all material respects; and
 - b. a certified true copy of the resolution of the Board of Directors of the Private Sector Partner authorizing the execution, delivery, and performance of this Agreement;
3. the representations and warranties of PP LGU in this Agreement shall be true and correct in all material respects as if made on the JVA Commencement Date;
4. save to the extent that the receipt has been waived in writing by the Private Sector Partner, the Private Sector Partner has received (or waived the receipt of) the documents and instruments set out below in form and substance acceptable to the Private Sector Partner:
 - a. an opinion from the City Legal Officer of the PP LGU dated as of JVA Commencement Date confirming the legality, validity and enforceability of this Agreement;
 - b. a certificate, dated the JVA Commencement Date, from a duly authorized officer of PP LGU to the effect that the representations and warranties of PP LGU in this Agreement are true and correct in all material respects;

- c. the Notice of Award for the project as mandated under Section 12(g) of the Puerto Princesa City JV Ordinance has been issued to and received by the PSP;
 - d. all material Government Authorizations required for the exercise of its rights and the performances of its obligations under this Agreement have been granted to the Private Sector Partner;
5. 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 transaction contemplated herein.
 6. 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.
 7. 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.

Section 12.02. Notice of Fulfillment. On the date that a party becomes aware that any of the conditions in Section 12.01 (Conditions Precedent for Effectiveness of Agreement) has been satisfied, it shall promptly give notice thereof to the other party.

Section 12.03. Failure to Satisfy Conditions Precedent.

- (a) If the JVA Commencement Date does not occur within twelve (12) months from the date of this Agreement, or such later date as the parties may agree, this Agreement shall automatically terminate and the parties shall have no further rights or obligations under this Agreement (other than such rights and obligations that by their express terms survive termination of this Agreement).
- (b) If the JVA Commencement Date does not occur due to failure of PP LGU to fulfill any condition precedent under Section 12.01, paragraphs (3) or (4), such event shall be deemed a PP LGU Event of Default under Section 14.02 hereof and Section 14.05(a) shall apply as if the JVA Commencement Date has occurred.

Section 12.04. Conditions for JVA Commencement Date. Prior to the JVA Commencement Date, the Parties shall satisfy the conditions to which they are responsible to accomplish.

**ARTICLE XIII
TERM OF THIS AGREEMENT**

This Agreement shall commence as of the date hereof and shall be for a term of twenty-five (25) years from JVA Commencement Date, renewable for another twenty-five (25) years under such terms and conditions as the parties may agree (the “**Joint Venture Term**”).

The Parties shall agree on the terms of the extension of this Agreement at least two (2) years prior to the expiration of the initial twenty-five (25) year term.

ARTICLE XIV
PRE-TERMINATION OF AGREEMENT

Section 14.01. Pre-termination by PP LGU arising from Private Sector Partner Event of Default. Each of the following, if not caused by a default of PP LGU under this Agreement or Force Majeure shall, if not cured within the period permitted, be considered as a Private Sector Partner Event of Default which shall entitle PP LGU to issue a Notice of Intention to Pre-terminate:

- i. The occurrence of a material breach by the JVC or the Private Sector Partner of any of their obligations under this Agreement, which has continued unremedied for a period of ninety (90) days or extension thereof as may be agreed by both parties after receipt of official written notice from PP LGU. For the avoidance of doubt, a material breach shall be of a kind or to a degree that, in the reasonable opinion of the PP LGU thru the JV Regulatory Authority, would jeopardize the provision of Services;
- ii. Any representation or warranty made by the Private Sector Partner in this Agreement proving to have been materially incorrect when made such that the Private Sector Partner, or the JVC's ability to perform its obligations under this Agreement is materially and adversely affected; and
- iii. Any Service Provider Event of Default under the Service Agreement.

Section 14.02. Pre-termination by Private Sector Partner arising from PP LGU Event of Default. Each of the following if not caused by a default of the JVC, the Private Sector Partner under this Agreement or Force Majeure shall, if not cured within the period permitted, be an PP LGU Event of Default which shall entitle the Private Sector Partner to issue a Notice of Intention to Pre-terminate:

- i. A material breach by PP LGU of any of its obligations under this Agreement which has continued unremedied for a period of ninety (90) days after notice thereof has been given to it by the Private Sector Partner. For the avoidance of doubt, a material breach shall be of a kind or to a degree that will prevent any of the JVC or the Private Sector Partner from carrying out their responsibilities under this Agreement;
- ii. Any representation or warranty made by the PP LGU in this Agreement proving to have been materially incorrect when made such that any of the JVC or the Private Sector Partner's ability to perform its obligations under this Agreement is materially and adversely affected; and
- iii. Any PP LGU Event of Default under the Service Agreement.

Section 14.03. Unforeseen Change of Circumstances. 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 Joint Venture Term. The parties agree and acknowledge that none of them seek 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 among them with fairness and without detriment to the interest of any 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.

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.

Section 14.04. Pre-termination Procedure. Any Notice of Intention to Pre-terminate shall specify the materially adverse action, unforeseen change of circumstances, Private Sector Partner Event of Default, or PP LGU 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 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 19.02.

Section 14.05. Consequences of Pre-Termination

a. PP LGU Event of Default

In the event of a pre-termination of this Agreement arising from a PP LGU Event of Default, the PP LGU shall acquire the shares of the Private Sector Partner in the JVC at a price equivalent to double the par value thereof. The full par value shall be paid on the termination date, while payment of the balance shall be made in 120 equal monthly installments commencing on the termination date. Should the PP LGU Event of Default occur less than ten (10) years before the expiration of the Cooperation Period, the payment for acquiring the shares of the Private Sector Partner shall be pro-rated to the number of remaining months of the Cooperation Period. All taxes and costs, including documentary stamp tax and capital gains tax, for such sale shall be borne by the PP LGU. Costs for such report shall be for the account of the JVC. The Private Sector Partner shall continue to have title and possession of the shares until it has received full payment and the tax clearance certificate pertaining to the transfer has been obtained.

b. Private Sector Partner Event of Default

In the event of a pre-termination of this Agreement arising from a Private Sector Partner Event of Default, in addition to forfeiture of the Performance Bond, the PP LGU shall acquire the shares of the Private Sector Partner in the JVC at a price equivalent to the par value thereof which shall be paid on the termination date. All taxes and costs, including documentary stamp tax, for such sale shall be borne by the Private Sector Partner.

c. Other Causes

In the event of a pre-termination of this Agreement arising from causes other than a Private Sector Partner Event of Default or an PP LGU Event of Default, the JVC shall be dissolved and liquidated, and liquidating dividends shall be divided between the Private Sector Partner and the PP LGU in accordance with applicable law. The PP LGU shall have the first option to acquire the Facilities at its appraised value based on the written report of an independent third party appraiser appointed by the JVC. The Private Sector Partner may continue to provide the operations and maintenance services of the Facilities at such terms and conditions as the PP LGU and the Private Sector Partner may agree.

This provision shall cover the withdrawal by the PP LGU of its contribution to the JVC, or exit divestment by the PP LGU of its interest in the JVC.

d. No Prejudice

No pre-termination of this Agreement shall relieve the defaulting Party of its liabilities and obligations hereunder and the non-defaulting Party/ies 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.

ARTICLE XV TERMINATION OF THE JV AGREEMENT; EFFECT ON JVC

Upon the termination of this Agreement due to the expiration of the Joint Venture Term (whether the original or as renewed), the JVC shall sell and transfer the ownership of all of its facilities that are in its name to the PP LGU at its appraised value based on the written report of an independent third party appraiser appointed by the JVC. The Private Sector Partner may continue to provide the operations and maintenance services of the Facilities at such terms and conditions as the PP LGU and the Private Sector Partner may agree. The JVC shall then be liquidated in accordance with applicable law, with the proceeds of the aforesaid sale to be distributed to the shareholders of the JVC as liquidating dividends to the fullest extent allowed by applicable law.

ARTICLE XVI 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, including trade information, 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 the 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.

ARTICLE XVII LIABILITY AND INDEMNIFICATION

Section 17.01. Cross Indemnity; No Liquidated Damages. Each party shall indemnify, defend and hold harmless the other party from and against, all liabilities, damages (including liquidated damages), losses, expenses and claims of any nature whatsoever from 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.

Section 17.02. Joint Responsibility. In the event that any loss or damage is caused only in part by the negligent or intentional act or omission of the PP LGU and in part by the act or omission of the JVC or the Private Sector Partner, each Party shall be liable to the other Party only in proportion to its relative degree of fault.

**ARTICLE XVIII
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 or 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 in the reasonable opinion of the Private Sector Partner or the JVC 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 the Private Sector Partner or the JVC. The Parties shall exert all commercially reasonable efforts to minimize the effects of force majeure. Specific to the JVC, the JVC shall at all times exert all commercially reasonable efforts to provide services to the Consumers even during the existence and subsistence of a force majeure event.

**ARTICLE XIX
ALTERNATIVE DISPUTE RESOLUTION**

Section 19.01. Amicable Settlement. If any dispute arises in connection with the Agreement, any party may give thirty (30) days prior written notice to the other parties of the same, whereupon the parties shall meet promptly and in good faith attempt to reach an amicable settlement.

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.

Section 19.02. Disputes Arbitration. 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 Philippine Dispute Resolution Center Inc. (PDRCI). The parties shall mutually agree on the arbitrator so designated by the PDRCI.

The place of arbitration shall be in the Philippines. English shall be the language used.

**ARTICLE XX
MISCELLANEOUS PROVISIONS**

Section 20.01. Representations and Warranties

Each Party hereby represents and warrants that:

- i. It is duly organized and validly existing pursuant to the laws and regulations of the Republic of the Philippines;

- ii. It has full corporate power, absolute authority, and legal right to execute, deliver and perform this Agreement and to perform its obligations herein;
- iii. It has taken all appropriate and necessary corporate and legal action to authorize the execution, delivery and performance hereof and all other agreements, instruments or documents contemplated herein;
- iv. Its representatives and/or signatories are fully authorized by its Board of Directors (or the Sangguniang Panlungsod for the PP LGU) to sign, execute, deliver and perform this Agreement;
- v. It carries on its business that it now conducts or proposes to conduct in accordance with the applicable laws and regulations of the 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;
- vi. It is fully entitled and capable of entering into the dispute resolution procedures under Article XIX and the decisions, awards and pursuant remedies contemplated thereunder shall be valid and enforceable against that party.

Section 20.02. Anti-Corruption Warranties; Resolution of Warranty.

The PP LGU hereby warrants that has not directly or indirectly:

- i. given, promised offered or authorized; or
- ii. accepted, requested, received, or agreed to receive,

any payment, gift, reward, rebate, contribution, commission, incentive, inducement or advantage to or from any person, that is in contravention of any applicable law relating to or connected with anti-bribery or corruption.

The PP LGU has instituted, maintained and monitored policies and procedures consistent with the laws and regulations on anti-corruption. Any violation of anti-corruption laws shall be dealt with in accordance with applicable law.

The Private Sector Partner likewise warrants that it has not given or promised any consideration to any official of the City Government in order to obtain this Agreement.

Section 20.03. Compliance with Environmental Compliance Certificate Requirements. The JVC shall keep the Project Site and the Facilities in a sanitary condition and in compliance with the environmental requirements and mitigation measures specified in the Environmental Compliance Certificate issued in respect of the Facilities and in accordance with the laws of the Philippines.

Section 20.04. 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. This shall include the addition of parties to this Agreement. Pursuant to the Puerto Princesa City JV Ordinance, any amendment to this Agreement, which if effected will not violate the policy on competition and fairness and does not materially affect the substance of the Agreement, after award and signing of the contract shall undergo approval by the City Mayor with prior authorization by the Sangguniang Panlungsod.

Non-compliance with the corresponding approval process shall render the amendment null and void.

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.

Section 20.05. Compliance with Laws, Rules, and Regulations. The Parties hereby undertake to comply with the applicable laws, ordinances, rules and regulations of the City Government of Puerto Princesa and the Republic of the Philippines in connection with the proposed Project.

Section 20.06. Entire Agreement. This Agreement including the Schedules, Exhibits and 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 other contents of this Agreement.

Section 20.07. Separability. If any part or parts of this Agreement is/are declared by any competent tribunal to be invalid or unenforceable other parts not affected shall remain valid and enforceable.

Section 20.08. Notices. Any notice, demand or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and shall be delivered by hand or by courier or email or airmail:

If to the PP LGU:

City Government of Puerto Princesa
New City Hall Building, Brgy. Sta. Monica
Puerto Princesa City, Palawan 5300

Attention: Hon. Lucilo R. Bayron
City Mayor

Email Address: As notified to the counterparties

If to ESTI:

Eco-System Technologies, Inc.
SKH Mansion, No. 3 V. Victorio Street
Barangay Pleasant Hills, Mandaluyong City

Attention: Robert Y. So
President

Email Address: As notified to the counterparties

If to ESTII:

Eco-System Technologies International (ESTII), Inc.
SKH Mansion, No. 3 V. Victorio Street
Barangay Pleasant Hills, Mandaluyong City

Attention: Robert Y. So
President

Email Address: As notified to the counterparties

If to JCA:

JCA 1221 Holdings Inc.
Unit 11A, PDCP Bank Center, Rufino corner Leviste Streets
Salcedo Village, Makati City, 1227

Attention: Jehremiah C. Asis
President

Email Address: As notified to the counterparties

and shall be deemed to have been duly given or made as follows:

- a. if delivered by hand or by courier, upon delivery at the address of the relevant Party; and
- b. if sent by electronic mail when actually received by the intended recipient in readable form,

provided that if, in accordance with the above provisions, any such notice, demand or other communication would otherwise be deemed to be given or made after 5:00 p.m. on a Business Day, such notice, demand or other communication shall be deemed to be given or made at 9:00 a.m. on the next Business Day.

A Party may notify the other Parties to this Agreement of a change to its name, relevant addressee, or address for the purposes hereof; provided, that such notification shall only be effective on:

- i. the date specified in the notification as the date on which the change is to take place; or
- ii. if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date falling five (5) Business Days after notice of any such change has been given.

Section 20.09. Governing Law. This Agreement shall be construed and governed by the laws of the Republic of the Philippines.

Section 20.10. Ownership and Retention of Intellectual Property. Each party shall retain ownership of its own intellectual property, patents, technology and consultant reports. Any intellectual property or technology (or grant of license to use intellectual property or technology) or consultant report of the JVC shall be owned by it and, upon its liquidation, shall be among the assets transferred to the PP LGU upon the dissolution of the JVC pursuant to Article XV, except

for those that are subject to the proprietary rights of the PSP or any of their respective shareholders and affiliates.

Section 20.11. Substantial Change in Ownership. The Private Sector Partner shall notify the PP LGU in writing with respect to any substantial change as to the ownership of the issued share capital of their respective companies.

Section 20.12. Assignment and Transfers. No Party to this Agreement shall, directly or indirectly, assign or transfer its rights and interests in this Agreement without the prior written consent of the other Parties hereto. This restriction shall not apply in the event of sale or transfer by the PSP of its interest in the Project and this Agreement to its affiliates or subsidiaries over which it exercises substantial control.

Section 20.13. Waiver of Immunity. The PP LGU (to the fullest extent permitted by law where applicable) irrevocably and unconditionally:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute private and commercial acts rather than public or governmental acts;
- (b) waives any right of immunity which it or its assets now has or may after the date of this Agreement acquire in relation to any legal proceedings brought against it or its assets in relation to this Agreement by the JVC and/or the lenders;
- (c) agrees that no immunity from those proceedings (which shall be deemed to include, without limitation, suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement) shall be claimed by or on behalf of itself or in respect of its assets; and
- (d) consents generally in respect of those proceedings to the giving of any relief or the issue of any process in connection with those proceedings including without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order of judgment which may be made or given in those proceedings.

[Signature and notarial pages follow]

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the parties hereto on the 27th of September, 2018.

CITY GOVERNMENT OF PUERTO PRINCESA

By:

Hon. Lucilo R. Bayron [Signed]
City Mayor

ECO-SYSTEM TECHNOLOGIES, INC.

By:

Robert Y. So [Signed]
President

ECO-SYSTEM TECHNOLOGIES INTERNATIONAL (ESTII), INC.

By:

Robert Y. So [Signed]
President

JCA 1221 HOLDINGS INC.

By:

Jehremiah C. Asis [Signed]
President

SIGNED IN THE PRESENCE OF:

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
Puerto Princesa City) S.S.

BEFORE ME, a duly commissioned and qualified Notary Public for and in the above jurisdiction, this 27th day of September 2018, personally appeared the following persons:

Name	Gov't. Issued ID	Date & Place Issued
CITY GOVERNMENT OF PUERTO PRINCESA , represented by: Hon. Lucilo R. Bayron	CGPP ID No. 001-002	City Government of Puerto Princesa
ECO-SYSTEM TECHNOLOGIES, INC. , represented by: Robert Y. So	Passport No. P3291032A	07 June 2017 / DFA Manila
ECO-SYSTEM TECHNOLOGIES INTERNATIONAL (ESTII), INC. , represented by: Robert Y. So	Passport No. P3291032A	07 June 2017 / DFA Manila
JCA 1221 HOLDINGS INC. , represented by: Jehremiah C. Asis	Passport No. EC7453139	23 April 2016 / DFA Manila

known to me and to me known/whom I identified by competent evidence to be the same persons who executed the foregoing Joint Venture Agreement and they acknowledged to me that the same is their free and voluntary act and deed and that of the entities they represent.

WITNESS MY HAND AND SEAL this 27th day of September, 2018, in Puerto Princesa City, Palawan, Philippines.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2018.