

## TERMS OF REFERENCE

### ARTICLE I. DEFINITION OF TERMS:

As used in this contract, the following terms shall have the corresponding meaning:

*Agreement* - refers to this Bulk Water Supply Contract.

*Clearance* - clearance/permit issued by the local government unit or pertinent government agencies.

*Facilities* - include the production and water impounding facilities, water treatment facilities, land and other associated equipment and facilities.

*Franchise Area* - currently covers four (4) municipalities namely, Compostela, Lilo-an, Consolacion and Cordova and four (4) cities namely, Cebu City, Talisay City, Lapu-lapu City, and Mandaue City.

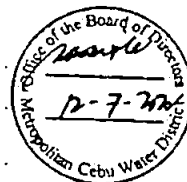
*Independent Laboratory* - is any DOH accredited laboratory capable of conducting water analysis and not owned or controlled by either or both parties.

*Injection Point* - refers to delivery or drop-off point or the point where the WATER SUPPLIER's pipe interconnects to MCWD's receiving infrastructure / facility.

*Inspection* - means the conduct of any investigation/verification/examination of the WATER SUPPLIER's water source and other facilities which includes but not limited to water sampling for analysis.

*Potable Water* - refers to the delivered treated water whose quality complies with MCWD Drinking Water Quality Standards as shown in Annex "A" of the technical specifications.

*Project* - refers to herein Bulk Water Supply Project.



JW

*Raw Water* - is the unprocessed water extracted or taken directly from ground or surface source.

*Brackish Water* - is water having more salinity than freshwater, but not as much as seawater.

*Service Area* - refers to the franchise area and the Local Government Units actually served by MCWD.

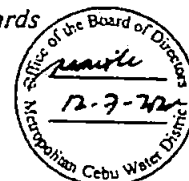
*Sustainability* - shall mean the capability of the water source and treatment facilities to produce the volume of potable water required under the contract all throughout its entire duration.

*Total Dissolved Solids (TDS)* - means the inorganic residue left after the filtration of colloidal and suspended solids and then the evaporation of a known volume of water.

*Turbidity* - refers to the suspension of fine colloidal particles that do not readily settle out of solution and can result in a cloudiness appearance of water.

*Water Supply Contract* - shall mean agreement to supply potable water to MCWD at the identified point of delivery by the WATER SUPPLIER.

*Water Quality Standards* - refers to MCWD Drinking Water Quality Standards as shown in Annex "A" hereto.



## ARTICLE II. TERM AND PROJECT MILESTONES

### Section 1. CONTRACT DURATION & EFFECTIVITY

This Agreement shall commence on the date of its execution and shall remain in full force and effect up to a period of ten (10) years from Day One of Delivery or actual delivery, whichever comes first. The signing of the agreement shall in effect serve as the Notice to Proceed (NTP).

### Section 2. "DAY-ONE" OF DELIVERY

Day One of Delivery shall be six months (6) months from signing of the contract or receipt of the Notice to Proceed.

The WATER SUPPLIER may, however, be allowed to make partial delivery before the Day One of Delivery, subject to MCWD's prior written approval. If allowed, penalties for short delivery may not apply.

Any delay on the date of delivery for whatever reason or cause shall in no way extend the term of this Agreement.

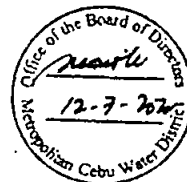
## ARTICLE III. THE PROJECT

Section 1. Involving an aggregate volume of at least 3,000 cubic meters per day of brackish water shall be treated and made potable and delivered by the WATER SUPPLIER to the designated injection point as identified by MCWD.

## ARTICLE IV. INJECTION POINT, FACILITIES & EQUIPMENT

### Section 1. INJECTION POINT & PRESSURE

The water to be delivered shall be injected directly at the existing 300mm DI. located along C.D. Seno St. Barangay Guizo, Mandaue City.



The WATER SUPPLIER should be able to overcome a pressure at all injection points of 65 psi at any given time.

**Section 2. INSTALLATION OF ELECTROMAGNETIC FLOWMETER AND OTHER EQUIPMENT**

In the specified injection point, the WATER SUPPLIER shall install an appropriate electromagnetic flowmeter capable of instantly monitoring the total volume, flow rate, and pressure with TDS and residual chlorine of the infused water supply.

To determine its capability, the electromagnetic flowmeter must comply with the attached technical specifications and capability requirements. Please see Annex "C" for the technical specifications of the electromagnetic flowmeter.

**Section 3. CONSTRUCTION OF METER VAULTS AND OTHER NECESSARY PIPELINES OR APPURTENANCES**

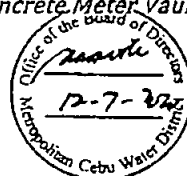
In the specified injection point, the WATER SUPPLIER shall construct a reinforced concrete meter vault and other appurtenances.

For reference, attached is the *Schematic Diagram* of the Concrete Meter Vault, marked as Annex "F"<sup>2</sup>.

**Section 4.** The WATER SUPPLIER shall be obliged to install whatever structures, pipelines or appurtenances necessary for purposes of fulfilling its obligation under this contract.

**Section 5. CONSTRUCTION COSTS, OPERATION AND MAINTENANCE EXPENSES**

JW



All costs for the construction of the necessary facilities, pipelines or structures shall be exclusively borne by the WATER SUPPLIER.

Section 6. All expenses for the installation of the necessary equipment, tools or other appurtenances shall be exclusively borne by the WATER SUPPLIER.

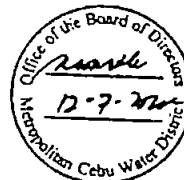
Section 7. The WATER SUPPLIER shall likewise bear all costs and expenses for the operation and maintenance of all structures, facilities, pipelines, or equipment constructed or installed for purposes of complying their obligation in this contract.

Section 8. The maintenance of ALL facilities built by the WATER SUPPLIER shall be at its own cost and responsibility during the entire duration of the contract.

Section 9. Any infrastructure designed and constructed by the WATER SUPPLIER must have the approval of the appropriate government agency, i.e., Office of the Building Official (OBO), Department of Public Works and Highways (DPWH) or any regulating body.

Section 10. The WATER SUPPLIER shall hold MCWD, its employees, consultants and assignees, free from any liability arising from the construction of any structure, installation of any pipeline or equipment, or in the operation and maintenance of these facilities and equipment.

Section 11. All structures, pipelines, equipment, tools and appurtenances built, installed or used by the WATER SUPPLIER shall be exclusively used for this Project only save those existing and used by the WATER SUPPLIER in delivering and supplying water under existing contracts between the WATER SUPPLIER and consumers other than MCWD.



Section 12. The installation of any equipment or appurtenances required from the WATER SUPPLIER under this Project shall not change the nature of this agreement, neither shall it alter, amend or modify the contractual rights and obligations of the parties as herein stipulated and agreed which is strictly a water supply contract which is entered into pursuant to the relevant provision of RA 9184.

**Article V. WATER SOURCE**

**Section 1. BRACKISH WATER**

The WATER SUPPLIER shall utilize brackish water to be processed and treated into potable water at the water treatment facility of the WATER SUPPLIER near the designated injection point.

**Section 2. SUSTAINABILITY OF WATER SOURCE**

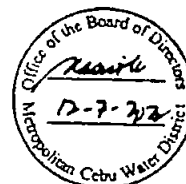
The WATER SUPPLIER shall ensure that the source shall be sustainable and reliable at any time all throughout the duration of the contract. As proof that the water source can sustain the supply of water for this Project, the WATER SUPPLIER shall submit a feasibility or water resource study to be submitted during post qualification.

**Section 3.** The WATER SUPPLIER must ensure compliance with the Water Code of the Philippines, and all other pertinent laws, ordinances, rules and regulations that strictly mandate policies, and regulate or monitor any operation involving the extraction and treatment of brackish water.

**Article VI. PERMITS, LICENSES AND CLEARANCES**

**Section 1. PERMIT FROM NATIONAL WATER RESOURCES BOARD (NWRB)**

SW



The WATER SUPPLIER shall submit a National Water Resources Board (NWRB) water right / permit or at least an MCWD - endorsed application within six (6) months before Day One (1) of Delivery.

The water right/permit or endorsement must be issued under the name of MCWD or the WATER SUPPLIER. If the water right/permit is under the WATER SUPPLIER's name, it must be for "MCWD BULK WATER SUPPLY PURPOSE ONLY".

The NWRB permit application should indicate that the abstraction rate is limited only to the maximum volume of 8,000 cu.m. per day.

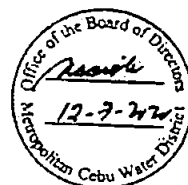
All other permits, licenses shall be secured at the expense of the WATER SUPPLIER.

## Section 2. LGU SUPPORT ON THE PROPOSED PROJECT

It shall be the sole responsibility of the WATER SUPPLIER to secure the pertinent document from the Local Government Unit (LGU) where the proposed Project facility shall be constructed or operated, authorizing the WATER SUPPLIER to undertake and operate the Project and expressly showing the consent and support of the LGU to the Project for the entire duration of the contract.

Any other license and/or permit required by other local government unit, agency or office for the operation of this Project shall likewise be the sole responsibility of the WATER SUPPLIER.

*Jw*



In the event that the LGU clearance granted to the WATER SUPPLIER is only for a period shorter than the term of this contract, the WATER SUPPLIER shall obtain or secure the extension to cover the remaining period of this contract at least one (1) year before the expiration of the issued clearance. If the WATER SUPPLIER fails to secure the extension of the LGU clearance for reasons not attributable to the WATER SUPPLIER, the contract shall be mutually terminated.

Cease and desist order issued by the court or any proper authority resulting to interruption in the operation due to the WATER SUPPLIER's non-compliance of permits and/or licenses shall make the WATER SUPPLIER liable for penalties under Article XVI, "Damages and Penalties" hereof and shall further give MCWD the option to rescind this Agreement.

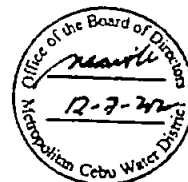
The WATER SUPPLIER shall submit this document during post qualification.

**Section 3. EXCAVATION PERMITS, RIGHT OF WAY AND OTHER CLEARANCES**

The WATER SUPPLIER shall comply with the excavation, right of way, and all other clearances that may be required by law or local ordinance in order to comply with the provisions of this contract for water supply to MCWD.

Failure to secure the necessary permits and clearances from other LGU/government agencies shall be a ground for the termination of the agreement without prejudice to the penalty to be imposed under Article XVI, "Damages and Penalties".

*JW*





When necessary, the WATER SUPPLIER or its contractor shall be a registered Philippine Contractors Accreditation Board (PCAB) licensee appropriate to the Project. For purposes of this provision, the category of PCAB license requirement will apply to construction of its facilities, pipelines and its appurtenances.

Section 4. **ENVIRONMENTAL COMPLIANCE  
CERTIFICATE (ECC) OR ANY EQUIVALENT  
PERMIT**

The WATER SUPPLIER shall secure an Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR) prior to the implementation and operation of the Project. Failure to secure the ECC shall be a ground for the termination of the agreement without prejudice to the imposition of penalty provided under Article XVI, "Damages and Penalties."

The WATER SUPPLIER shall submit this document before Day One of Delivery.

Section 5. **CLEARANCE OR AUTHORIZATION FROM  
BUSINESS CONSORTIA OR PARTNERS**

Whenever applicable, the WATER SUPPLIER shall submit a clearance or authorization to enter into and execute a joint venture contract for this Project from all its business consortia or partners.

Section 6. Failure of the SUPPLIER to acquire/secure the above permit shall not be a ground for a grant of extension of DAY 1 of delivery.

Article VII. **QUANTITY OF WATER & FLOW RATE**

Section 1. MCWD shall receive the water from the WATER SUPPLIER under a take or pay scheme.

*SW*



The WATER SUPPLIER shall deliver potable water at a minimum volume of 3,000 cubic meters per day plus twenty five percent (+25%) to MCWD at a uniform flow rate for 24 hours. Any water delivery in excess of the maximum volume specified shall not be paid except only when such an excess is requested by MCWD.

MCWD through the Production Department may request for an increase in supply beyond the specified daily maximum volume through a written request addressed to the WATER SUPPLIER.

Section 2. For failure to meet the minimum required volume per day, the WATER SUPPLIER shall be liable for penalty provided for in Article XVI, Section 3 "Penalty for Short Delivery".

Section 3. The total volume of potable water delivered by the WATER SUPPLIER shall be measured with electromagnetic flowmeters as shown in Annex "C"<sup>3</sup>, pressure transducer as shown in Annex "D"<sup>4</sup>, and other monitoring devices (SCADA Monitoring System) as shown in Annex "G"<sup>5</sup> series.

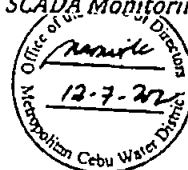
Flowmeter sizes shall be determined by MCWD depending on the number of injection points and the total volume and flow rates shall be based on the aggregate sum of all injection points.

Section 4. The monitoring system that will be provided by the WATER SUPPLIER shall be compatible with the existing MCWD SCADA monitoring system, capable of wireless connection and transmission of data through SMS and other reliable means, the following: flowrate, pressure, TDS and residual chlorine.

<sup>3</sup> Annex C - *Electromagnetic Flowmeters*

<sup>4</sup> Annex D - *Pressure Transducer*

<sup>5</sup> Annex G series - *Design & Technical Specifications of SCADA Monitoring System*



However, regardless of the time, in instances when any of the parameters fail to comply with the allowable range set by both parties, the monitoring system shall trigger an alarm to MCWD's SCADA monitoring system. All cost incurred in the transmission of data to MCWD i.e., software, hardware, GPRS transmission, etc. shall be borne by the WATER SUPPLIER.

The software shall be capable of displaying pressure, flowrate and total volume, TDS and residual chlorine data at the same time. The said flowmeters, (vault structure) and appurtenances within the vault shall be provided, owned, installed and maintained by the WATER SUPPLIER.

Section 5. MCWD shall define the specifications of the flowmeter, data logger, pressure transducer, software and other appurtenances. Such Technical Specifications and Drawings shall form part of this agreement.

The WATER SUPPLIER shall submit to MCWD, the complete and detailed design, specifications and brochures of the electromagnetic flowmeter and other appurtenances inside the vault meter structure like, but not limited to the following: valves (gate/butterfly, air vacuum/air release, etc.) tees, pressure gauges, check valves, etc. for MCWD's approval prior to installation.

It shall be the responsibility of MCWD to cause the preparation of the conceptual design flowmeter vault and control structure as shown in Annex "F".

All permits and fees in relation to the foregoing shall be borne by the WATER SUPPLIER.

SW



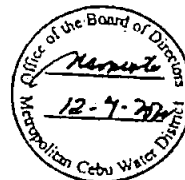
Section 6. The flowmeter shall be installed symmetrically within ten (10) meters, or as may be approved by MCWD, from the main injection point and shall be housed in a concrete meter vault conceptually designed by MCWD. All materials and labor costs, right of way acquisitions, in the construction and location of the meter vaults shall be at the expense of the WATER SUPPLIER. MCWD will ensure that the technical requirement shall be complied by the WATER SUPPLIER.

The conceptual design and specifications of the structures of the flowmeter and the vault prepared by MCWD shall be followed by the WATER SUPPLIER.

Section 7. Both parties shall read simultaneously each meter daily or as may be necessary as determined by both parties. Neither party is authorized to tamper nor make adjustments on the setting of any of the flowmeters or any of its parts without the consent of the other. To ensure this, an enclosure for the meter with double lock (one (1) lock for MCWD and one (1) lock for WATER SUPPLIER) shall be installed by the WATER SUPPLIER.

Section 8. Before initial delivery and every after change of meter, the parties shall establish a variance based on the readings of the two (2) parallel flowmeters. If there is a substantial difference of at least plus or minus five percent (+/-5%) from the established variance in the readings between the two (2) flowmeters, a joint investigation by both parties shall be conducted. In the event that both MCWD and the WATER SUPPLIER concur that there is a defect and that it resulted to either under or over registration, adjustment in the billing shall be made accordingly. If one (1) flowmeter is found to be defective, the water delivered shall be measured on the basis of the non-defective water meter reading for the period. If both flowmeters are found to be defective, the water delivered shall be based on the average of the immediately preceding three (3) months.

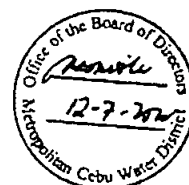
JW



- Section 9. If joint investigation results show that there is no defect in the flowmeter, billing shall be made based on the actual reading.
- Section 10. Except for the cost of the meter repair or replacement which shall be exclusively shouldered by the WATER SUPPLIER, the cost incurred for the investigation/testing of the flowmeter shall be shouldered by the WATER SUPPLIER.
- Section 11. Any replacement of a defective flowmeter shall be done within five (5) days from the time a suspected defect was confirmed and shall be the responsibility and for the account of the WATER SUPPLIER.
- Section 12. Any protest for over- or under-registration or other defect in the flowmeter shall be filed by either party within thirty (30) calendar days from receipt or submission of the subject bill. Failure to protest on time waives the right to seek adjustment of the billed amount.
- Section 13. Calibration and proper maintenance of the flowmeters shall be done annually at the expense of the WATER SUPPLIER. In cases where MCWD deems it necessary, calibration and maintenance shall be done immediately at the expense of the WATER SUPPLIER.
- Section 14. The WATER SUPPLIER shall provide a spare unit of each flowmeter for each injection point to be installed upon pull-out due to preventive or corrective maintenance. The spare units should be of the same specification with that of the main units. The spare units must also be made available on or before the DAY 1 of delivery.

#### Article VIII. QUALITY OF WATER

JV



Section 1. The WATER SUPPLIER shall supply MCWD with potable water conforming to Annex "A" hereof. Failure of the WATER SUPPLIER to comply with the standards or the specifications provided therein shall give MCWD the right to unilaterally refuse acceptance taking into consideration first and foremost the general public health and safety. Frequency of tests shall be conducted often than the frequency indicated under the "PROTOCOL ON WATER QUALITY FOR WATER SUPPLY FROM MCWD BULK WATER SUPPLIERS" attached as Annex "B," when the circumstances require.<sup>6</sup> Further, failure to comply with MCWD Water Quality Standards shall entitle MCWD to impose penalty as herein provided (see Article XVI).

The MCWD Water Quality Laboratory shall be the official laboratory to undertake the required tests as per MCWD Standards for Drinking Water. Expenses will be charged to the WATER SUPPLIER.

Should the WATER SUPPLIER contest any test result performed by MCWD, the issue shall be resolved through a Third-party Laboratory (TPL) applying the "Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers" under Annex "B".

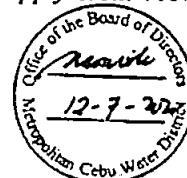
MCWD's action of unilateral refusal to accept water supply shall be based on the following, among others:

- a. Complaints on water quality such as foul smell, discoloration and/or turbidity;
- b. Unacceptable Field Test results for residual chlorine;
- c. Failed laboratory test results on bacteriological, physical and chemical analysis.

---

<sup>6</sup> Annex B - Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers.

*JW*



MCWD shall notify the WATER SUPPLIER's field personnel within three (3) hours prior to closure. Subsequent formal notice of closure shall be sent to the WATER SUPPLIER within two (2) days after closure.

MCWD shall not be liable for any damage that may be incurred arising out of the closure.

Operations shall only resume if all water quality disputes shall have been resolved.

- Section 2. The WATER SUPPLIER may, at its own cost and expense, engage the service of an independent laboratory subject to Annex "B" Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers.
- Section 3. Prior to the construction of the discharge pipeline route (from the water source to the main injection point), the same shall be evaluated by MCWD for purposes of preventing water contamination.
- Section 4. Quality of the input water to MCWD will be monitored from a sampling point as specified in Annex "F-4".
- Section 5. Quality of the delivered water must not deteriorate due to side reactions with existing pipelines and appurtenances' materials or must not be altered because of its biological and/or chemical components and the transformation it undergoes due to reaction dynamics that are incidental to the types and/or modes of treatment processes employed by the WATER SUPPLIER.
- Section 6. The WATER SUPPLIER shall, at its own cost and expense, employ all appropriate pre-treatment and/or post-treatment processes necessary in correcting the instability and/or impairment of the water quality.
- Section 7. The WATER SUPPLIER shall at any time, allow full access to MCWD in order for the latter to gather water samples at the input side of the WATER SUPPLIER's pumping station.

JW



Section 8. Except on extreme emergency cases, the WATER SUPPLIER must notify MCWD within seventy-two (72) hours prior to any activity that would require interruption of service that could possibly affect water quality such as repair of the WATER SUPPLIER's water mains, appurtenances and sources. This procedure should be strictly observed so that corresponding re-sampling and testing can be conducted before re-feeding water back to MCWD's system.

**Article IX. EXCLUSIVITY OF SUPPLY**

MCWD shall have exclusive rights and control of the water received at the specified injection point.

The WATER SUPPLIER shall hereby desist and refrain from supplying and distributing water to any person or entity within MCWD's franchise and service areas except for water supply services existing before the signing of this Agreement. For this purpose, all pipe laying pursued by the WATER SUPPLIER shall be limited only to the Project. Any pipe laying not related to the Project shall be prohibited.

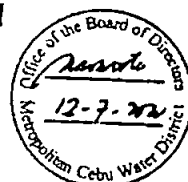
**Article X. NON-PREJUDICE TO EXISTING CONTRACTS OF WATER SUPPLIER**

The delivery and supply of water under this Project shall not prejudice the WATER SUPPLIER's existing contracts with its customers other than MCWD.

For this purpose, the WATER SUPPLIER shall immediately provide MCWD a sworn statement of the list of its existing consumers within MCWD's franchise and service areas that are directly affected by the Project and shall provide copies of such agreements to MCWD.

**Article XI. PAYMENT AND CONSIDERATION**

*Jh*





Section 1. MCWD shall pay for the water delivered by the WATER SUPPLIER at a rate of Thirty-Five Pesos and 90/100 (P35.90) per cubic meter, inclusive of all taxes and net of penalties.

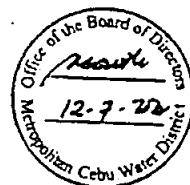
In the event that MCWD fails to accept the total volume of water delivered in accordance with the terms set herein, without any justifiable reason, the WATER SUPPLIER shall bill MCWD for the said volume, provided that the supply is available subject to the technical evaluation of MCWD.

Section 2. The WATER SUPPLIER shall bill MCWD once a month. Payment will be made within thirty (30) working days after receipt of the required correct and complete documents, including documents containing the hourly log data on flowrate, pressure and total volume.

Section 3. MCWD is authorized to withhold 1% and 5% (for withholding tax and final withholding VAT), and for other legal deductions or taxes, unless the WATER SUPPLIER can present an exemption from payment of these taxes.

Section 4. That any provision to the contrary notwithstanding, all payment shall be subject to existing laws and accounting and auditing rules and regulations in the Philippines.

*JL*



Article XII. NO LIABILITY IN CASES OF FORTUITOUS  
EVENTS OR FORCE MAJEURE

Section 1. As a rule, no party shall be liable during the occurrence of any force majeure or fortuitous event.

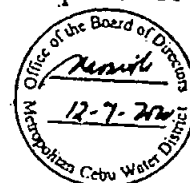
Section 2. "Force Majeure or Fortuitous Events" shall mean any event or circumstance or combination thereof that wholly or partly prevents or unavoidably delays any party in the performance of its obligation under this Agreement, but only to the extent that such events and circumstances are not within the reasonable control, directly or indirectly, of the affected party and could not have been avoided even if the affected party had taken reasonable care.

It includes the following events and circumstances to the extent that they, or their consequences, satisfy the above requirement:

- i) Any Government occurrence not otherwise initiated by MCWD which includes change in laws or hostilities; or
- ii) Any act of war (whether declared or not), invasion, armed conflict or act of foreign enemy, blockade, riot, terrorism or exercise of military power; or
- iii) Any earthquake, flood, fire, typhoon or any other acts of God or natural environmental disaster adversely affecting the site of the facilities rendering it inoperable; or
- iv) Any continuous interruption in the supply of electricity not attributable to the WATER SUPPLIER for a period exceeding five (5) consecutive days.

Section 3. "Force Majeure or Fortuitous Events" shall not include major changes in the flow of the source as a result of seasonal changes including those affected either directly or indirectly by sediment transport or prolonged drought.

*JW*



Section 4. For purposes of making any repairs or maintenance on the facilities, pipelines or appurtenances which affect the delivery or receipt of water in this Project, either party shall be entitled to claim a maximum of FIVE (5) days per year as a "fortuitous event", provided, there is prior notice given to the other party, and that the latter has concurred as to the existence of such defect that needs repair or maintenance.

This five (5)-day fortuitous event shall be interpreted and computed hourly.

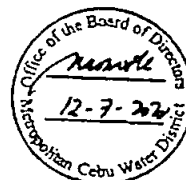
### Article XIII. MCWD STEP-IN RIGHTS

Section 1. MCWD shall have the right, but not the obligation to assume operational responsibility of the Facilities in place of the WATER SUPPLIER for purposes of assuring continued and uninterrupted supply of treated water to MCWD. For this purpose, prior notice should be given by MCWD to the WATER SUPPLIER.

Section 2. This right may be exercised by MCWD in the following cases:

- 2.1 Failure to correct deviation in the Water Quality Standards stated in Annex "A" for more than forty-eight (48) hours.
- 2.2 Complete stoppage of its operations for any reason and for whatever circumstance and such stoppage continued for more than forty-eight (48) hours.
- 2.3 Failure to comply with other obligations under this Agreement after due notice and demand and such failure continued for more than one (1) month.
- 2.4 Other circumstances which could adversely affect the WATER SUPPLIER's ability to operate and maintain the facilities in accordance with this Agreement.

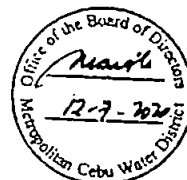
JV



- Section 3. The WATER SUPPLIER shall allow and permit MCWD to enter its premises for purposes of exercising its Step-In Rights. MCWD shall exercise due care in operating the Facilities. On the other hand, the WATER SUPPLIER shall be allowed to monitor MCWD's operations.
- Section 4. The obligation of MCWD to pay for the delivered water shall continue despite the exercise of this Step-In Right. However, all expenses incurred in operating the facilities shall automatically be charged to the WATER SUPPLIER.
- Section 5. The exercise of this right shall not in any way be construed as a buy-out or take-over of the Facilities by MCWD.
- Section 6. MCWD shall revert back operational responsibility to the WATER SUPPLIER at its sole discretion or after the circumstances warranting the exercise of this right shall have ceased.
- Section 7. The exercise of Step-In Rights by MCWD shall not prejudice any penalty imposable upon the WATER SUPPLIER in accordance with the provisions of this agreement or any case pending before courts of law or issues subjected to mediation or arbitration proceedings.

**Article XIV. PERFORMANCE SECURITY**

- Section 1. To guarantee the faithful performance of this Contract, the WATER SUPPLIER shall post on an annual basis, a performance security in the form of cash, manager's check, cashier's check, bank draft/guarantee confirmed by a reputable commercial or universal bank, irrevocable certified check, letter of credit issued by a reputable bank, surety bond, callable on demand, issued by the Government Service Insurance System or by surety or any insurance company duly accredited by the Office of the Insurance Commission, or a combination thereof, in accordance with the following schedule :



Form of Performance Security	Amount of Performance Security (Equivalent Percentage of the Total Contract Price)
Cash, cashier's/manager's check, bank draft/guarantee confirmed by a Universal or Commercial Bank;	Ten percent (10%)
Irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank;	
Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security; and/or	Thirty percent (30%)
Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security

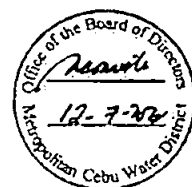
The Total Annual Contract Price is computed as follows:

$$\text{Total Annual Contract Price} = \text{Price per cu.m. of water} \times 3,000 \text{ cu.m. per day} \times 365 \text{ days}$$

This performance security shall be posted in favor of MCWD and shall guarantee the payment of the amount of the security as penalty in the event it is established that the WATER SUPPLIER is in default in its obligations hereunder.

In case of a surety bond, the WATER SUPPLIER shall renew the yearly performance security one (1) month prior to its expiration. In the event the WATER SUPPLIER fails to do so, MCWD shall withhold payment due to the WATER SUPPLIER.

JW



In the execution of the performance security, the following conditions shall be complied with:

- a. It shall be executed in accordance with the form prescribed therefore, and
- b. It shall be at least one (1) year in duration and to be renewed yearly by the WATER SUPPLIER one (1) month prior to its expiration. After such renewal, the original copy of the policy should be submitted immediately to MCWD.

Section 2. Within ten (10) calendar days from receipt of the Notice of Award from MCWD but in no case later than the signing of the contract by both parties, the WATER SUPPLIER shall furnish the performance security at the amount required and in any of the forms prescribed in Section 1. above.

Section 3. The performance security shall be confiscated and this contract terminated should the WATER SUPPLIER fail to deliver water for a period of thirty (30) consecutive days due to circumstances other than those falling under Article XIII, "No Liability in Cases of Fortuitous Events or Force Majeure" hereof and it is established that the failure to deliver is solely due to the fault of the WATER SUPPLIER.

Prior to making a claim under the performance security, MCWD shall in every case notify the WATER SUPPLIER in writing, stating the nature and duration of the default in respect of which the claim is to be made.

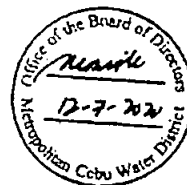
## Article XV. DAMAGES AND PENALTIES

### Section 1. PENALTY FOR LATE DELIVERY

MCWD shall impose a penalty in the form of liquidated damages for any delay in the commencement of water supply (Day One of Delivery) computed as follows:

LD per day = volume per day\*365\*price per cu.m.\* 1/10 of 1%

*JW*



In case of such delay, MCWD is hereby authorized to deduct immediately the amount of the liquidated damages from any money due or which may become due to the WATER SUPPLIER in this or any other contract or to collect such amount from the latter's Performance Security, whichever is convenient and expeditious to MCWD.

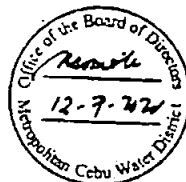
Section 2. The WATER SUPPLIER agrees and binds itself to indemnify MCWD for whatever injuries or damages suffered by the latter by reason of the failure, negligence, delay or conduct of the former and/or its employees in the performance of its obligation.

For this purpose, MCWD shall have the right to withhold payment of any amount due or that becomes due to the WATER SUPPLIER to compensate MCWD for any damages it incurred on account of the failure, negligence or conduct of the WATER SUPPLIER or its employees in the performance of its obligation.

Section 3. **PENALTY FOR SHORT DELIVERY**

MCWD shall without notice, impose a penalty of one hundred percent (100%) of the selling price per cubic meter for SHORT DELIVERY which shall be automatically and unilaterally deductible from the monthly bill due or which may become due to the WATER SUPPLIER in this or any other Contract or to collect such amount from the latter's Performance Security, whichever is convenient and expeditious to MCWD, except if attributable to force majeure as defined in Article XIII, "No Liability in Cases of Fortuitous Events or Force Majeure".

*JW*



If the force majeure is due to natural calamities like typhoon, earthquake, etc. which requires a reconstruction of the facilities, the obligations of both parties are suspended for a maximum period of six (6) months. After the suspension period has lapsed, MCWD shall impose without notice, the same penalty per cubic meter should the WATER SUPPLIER still fails to deliver the guaranteed minimum volume as per schedule in cu.m. per day.

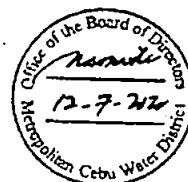
**Section 4. PENALTY FOR NON-COMPLIANCE TO WATER QUALITY STANDARDS**

For every non-compliance to the water quality standards, the WATER SUPPLIER shall be imposed with the following penalties:

- 4.1 One hundred percent (100%) of the selling price of the total delivered volume which is non-compliant with the water quality standards, should the WATER SUPPLIER continues to operate despite due notice of shutdown from MCWD as provided in Annex "B" Protocol on Water Quality for Water Supply from MCWD Water Suppliers; and
- 4.2 Reimbursement of MCWD's actual costs for water mains flushing, disinfection, water sampling and laboratory analysis.

**Section 5. PENALTY FOR NON-COMPLIANCE TO TECHNICAL SPECIFICATIONS AND STANDARDS**

For failure to comply with the technical specifications and standards as to any of the required parameters, such as but not limited to materials, design, fittings, etc. set by MCWD, a penalty of ten percent (10%) of the selling price per cubic meter per day shall be imposed to the WATER SUPPLIER until such time that the defect will be corrected.





$$\text{Penalty} = 10\% \times \text{Selling Price per Cubic Meter} \times \text{Minimum Volume}$$

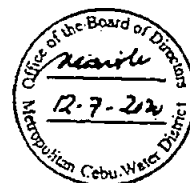
- Section 6. The imposable penalties herein shall be exclusive of VAT.
- Section 7. At the discretion of MCWD, all the aforesaid penalties may be automatically assessed, deducted and withheld from the account of the WATER SUPPLIER, and such penalty shall continue to be imposed until compliance has been proven.
- Section 8. When satisfactorily proven, MCWD may impose penalties for prior acts of non-compliance by the WATER SUPPLIER to the terms or standards provided herein.

It is understood that any payment made by MCWD to the WATER SUPPLIER or the failure of MCWD to demand compliance of any of the terms and conditions of this contract shall not be considered as a waiver on the part of MCWD for the enforcement of this Agreement or any portion hereof.

#### Article XVI. TERMINATION

MCWD reserves the right to terminate the contract based on any the following grounds:

1. Failure to correct water quality deviations within seven (7) days from receipt of notice of such deviation.
2. Penalties and damages reaching ten percent (10%) of the total annual contract price.
3. Failure to deliver for thirty (30) consecutive and successive days due to circumstances other than those falling under Article XIII, "No Liability in Cases of Fortuitous Events or Force Majeure".



## Article XVII. DISPUTES AND JURISDICTION

Any dispute, controversy or claim arising out or relating to this contract or the breach, termination or invalidity thereof, if the same cannot be settled amicably, may be submitted for arbitration in accordance with Republic Act 9285, otherwise known as the Alternative Dispute Resolution Act of 2004 and the place of arbitration shall be exclusively in the City of Cebu, Philippines. Otherwise, said dispute or controversy arising out of the contract or breach thereof shall be submitted to a court of law in Cebu City to the exclusion of all other venue.

## Article XIII. AMENDMENTS

This contract or any part or portions thereof shall be modified or revised only through formal written agreement between the parties hereto, citing therein the specific clause(s) or provisions to be revised and the corresponding amendment.

## Article XIX. RENEWAL

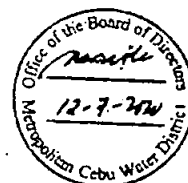
This contract may be renewed for another period upon the agreement by both parties. For this purpose, either party may manifest its intention to renew/renegotiate the agreement two (2) years before the expiration of the contract.

## Article XX. INCLUSIONS

The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:

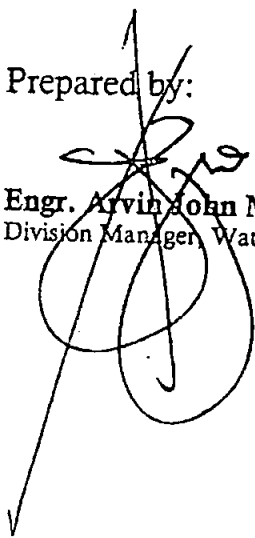
- a) Technical and Financial Proposal submitted by the proponent (Program of Work, Technical Specification of Materials, Equipment, etc.);
- b) Statement of Compliance to the Technical and Financial Parameters duly notarized;
- c) Terms of Reference (TOR);
- d) Annexes to the Proposal Requirements; and

Jh

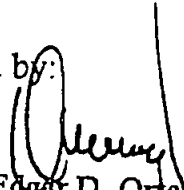


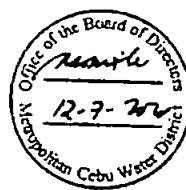
e) Entity's Notice of Award

Prepared by:

  
Engr. Arvin John M. Jaluague  
Division Manager, Water Production

Noted by:

  
Engr. Edgar D. Ortega  
OIC, AGM for Operations



JW