

## **TERMS OF REFERENCE**

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### **ARTICLE I. DEFINITION OF TERMS:**

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

*Actual Day of Delivery* – the date which potable water was actually delivered by the Bulk Water Supplier which may be earlier or later than the Day One of Delivery.

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

*Back Up Power* – any source of power that can be used in the event of interruption of normal power supply.

*Bulk Water Supplier (BWS)* – an entity that provides MCWD potable water intended for distribution in its service area.

*Bulk Water Supply* – potable water supplied by the BWS to MCWD.

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

*Contract Price* – the price agreed by BWS and MCWD of the bulk water supply according to the period of delivery as defined in Article XII – Price and Consideration. The contract price is inclusive of all applicable taxes.

*Day One of Delivery* – the original date of which potable water is required to be delivered by the BWS to MCWD's designated injection point(s), which shall be within a maximum period of **twenty-four (24) months** after receipt of the Notice to Proceed (NTP) by the BWS or actual first day of delivery whichever comes later.

*Drop-off Point(s)* – additional injection point(s) identified by MCWD along the interconnecting pipelines of BWS before the main injection point.

*Facilities* – refers to raw water intake, pre-treatment, storage tanks, production and water treatment facilities, land and other associated equipment and facilities, both onshore and offshore, interconnecting pipelines, flow meter assembly, backup power equipment, power supply systems and other appurtenances and auxiliary equipment necessary to efficiently operate the plant under this Agreement.

*Independent Laboratory* – refers to the USC Water Laboratory.

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

*Inspection* - means the conduct of any investigation/verification/ examination of Bulk 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 with quality within the standards limits set in the latest Philippine National Standards for Drinking Water and MCWD Drinking Water Quality Standards both for acceptability and health aspects.

*Project* – refers to the herein Bulk Water Supply Contract including the facilities as herein defined.

*Raw Water Source* – is the unprocessed excess surface water from the Mananga River downstream of MCWD Jaclupan facility located in Jaclupan, Talisay, Cebu.

*Service Area* – refers to the Local Government Units served by Metropolitan Cebu Water District which currently covers four (4) municipalities namely, Compostela, Liloan, Consolacion and Cordova and four (4) cities namely, Cebu City, Talisay City, Lapu-Lapu City, and Mandaue City.

*Service Interruption* – any stoppage in the delivery of bulk water supply.

*Sustainability* – shall mean the capability of the water source and facilities to produce the volume required under this Agreement all throughout its entire duration.

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

*Water Quality Standards* - refers to Philippine National Standards for Drinking Water and MCWD Drinking Water Quality Standards as shown in Annex “A”<sup>1</sup> hereof.

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<sup>1</sup> Annex A – MCWD Drinking Water Quality Standards

## **ARTICLE II. THE PROJECT**

Section 1. This is a bulk water supply contract procured under Republic Act 9184 otherwise known as the “Government Procurement Reform Act” whereby potable bulk water shall be delivered by the BULK WATER SUPPLIER (BWS) at a volume defined in Article III Section 2 to the designated injection point.

### **Section 2. INFRASTRUCTURE REQUIREMENT**

The BWS shall provide the following infrastructure requirements:

1. The Facility as defined in Article 1 of this TOR;
2. Pipelines from the facility to the injection points and its appurtenances;
3. Hydraulic control valves as required;
4. At least One (1) 5,000 cu.m. Glass-Fused-to-Steel Modular Tank; and
5. Concrete Vaults and Electromagnetic Flowmeter Assemblies with SCADA monitoring capabilities

## **ARTICLE III. TERM AND PROJECT MILESTONES**

### **Section 1. CONTRACT DURATION & EFFECTIVITY**

This Agreement shall take effect upon signing or execution and shall remain in full force and effect up to a period of ***twenty-five (25) years*** from Actual Day of Delivery or after the complete delivery of 136,875,000 cu.m, whichever comes earlier, provided that it be not earlier than 15 years.

Within seven (7) calendar days from contract signing, MCWD shall issue the Notice to Proceed (NTP) together with a copy or copies of the signed Agreement to BWS. All notices called for by the terms of this Agreement shall be effective only at the time of receipt thereof by BWS.

Any party, under justifiable reason, may request extension of Day One provided that it shall be done one (1) month before Day One.

### **Section 2. QUANTITY OF WATER and “DAY-ONE” OF DELIVERY**

BWS shall deliver a maximum volume of up to ***50,000 cu.m. per day*** or a total of ***136, 875,000 cu.m.*** of potable water for the whole duration of the contract up to ***25 years*** but not earlier than ***15 years*** to MCWD.

Further, BWS shall not exceed an annual volume of ***9,125,000 cu.m*** per year.

MCWD is not obliged to pay for any water delivery in excess of the maximum volume of 50,000 cu.m per day and 9,125,000 cu.m per year unless prior request and approval in writing is made.

Day one (1) of delivery shall be ***twenty-four (24) months*** from the

receipt of the Notice to Proceed (NTP) by the BWS.

Either party may request for extension of Day One based on justifiable cause or reason within thirty (30) calendar days before the expected Day One of Delivery.

## **ARTICLE IV. INJECTION POINT, FACILITIES & EQUIPMENT**

### **Section 1. INJECTION POINT(S), DROP-OFF POINT(S) & PRESSURE**

- A. At Day One of Delivery, BWS shall deliver to the existing *Ø400 mm PVC located along N. Bacalso Ave., near corner Poooc Road A. Bacaltos St., Talisay, City*, Cebu as shown in Annex “B”<sup>2</sup> and to the existing *Ø800 mm PVC located along Rafael Rabaya St., near corner Ilang-Ilang St. Lagtang. Talisay City*, Cebu as shown in Annex “B”<sup>3</sup>.
- B. MCWD shall control the schedule of delivery of water on a daily/weekly/monthly basis taking into consideration the projected volume per day/week/month.
- C. BWS should be able to overcome a pressure of 80 psi at the injection points at any given time.
- D. BWS shall provide a Hydraulic Control Valve along their own line before the above-mentioned existing *Ø400 mm PVC* injection point.

### **Section 2. PROJECT SITE**

BWS shall construct the facility within MCWD’s downstream property. See Annex “C”.

### **Section 3. INSTALLATION OF ELECTROMAGNETIC FLOW METER AND OTHER EQUIPMENT**

In the specified injection point(s), BWS shall install an appropriate electromagnetic flow meter capable of remote and real-time monitoring of the total volume, flow rate, and pressure, chlorine residual and turbidity of infused water supply.

To determine its capability, the electromagnetic flow meter must comply with the attached technical specifications and capability requirements. Please see Annex “D” for the technical specifications of the following:

- 2 units Ø300 mm electromagnetic flow meters at injection point 1
- 2 units Ø400 mm electromagnetic flow meters at injection point 2

Location of the Flow Meter Assembly must be within 10 meters from the injection or as may be approved by MCWD.

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<sup>2</sup> Annex B – *Location Map of the Injection Point*

<sup>3</sup> Annex C – *Sketch Plan of Facility Location*

Annex D – *Electromagnetic Flowmeter with GPRS*

Section 4. **CONSTRUCTION OF METER VAULTS AND OTHER NECESSARY PIPELINES OR APPURTENANCES**

In the specified injection point, BWS shall construct a reinforced concrete meter vault to house the above-mentioned electromagnetic flow meters and other appurtenances.

The BWS shall refer to the *Conceptual Design for the Installation and Construction of Concrete Meter Vault*, marked as Annex "E"<sup>4</sup>.

BWS shall submit a signed and sealed Structural Computation of the Concrete Meter Vault for MCWD's reference.

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

BWS shall exclusively shoulder the following for the duration of this Agreement:

- 5.1. All costs for the construction of the facilities for the Project;
- 5.2. All expenses for the installation of the necessary equipment, tools or other appurtenances; and
- 5.3. All costs for the operation and maintenance of the facilities.

Section 6. **REPAIRS AND MAINTENANCE**

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 **ONE HUNDRED TWENTY (120) HOURS** per year, provided, there is prior written notice given to the other party in cases of planned repairs and maintenance, and that the latter has concurred as to the existence of such defect that needs repair or maintenance. For emergency or unplanned repairs, immediate notice shall suffice.

Section 7. Any site preparation/development, infrastructure designed and constructed by BWS must have the approval of the appropriate government agency, i.e., Office of the Building Official (OBO), Department of Environment and Natural Resources (DENR), Department of Public Works and Highways (DPWH) or any regulating body.

Section 8. BWS shall hold MCWD, its employees, consultants, and assignees, free from any liability arising from the construction, operation, and maintenance of the facilities for the Project.

Section 9. All facilities built, installed, or used by BWS shall be exclusively used for this Project.

Section 10. BWS shall at any time, allow full access to MCWD in order for the latter to inspect all facilities of the project with prior written notice to BWS.

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- Section 11. The installation of any equipment or appurtenances required from BWS 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 Government Procurement Reform Act under RA 9184.

## **ARTICLE V. WATER SOURCE**

### **Section 1. SURFACE WATER**

BWS shall only utilize surface water from the Mananga River downstream from the weir of MCWD Jaclupan facility located in Talisay City, Cebu, to be processed and treated into potable water. No drilling or underground water extraction shall be allowed.

### **Section 2. PROJECT SUSTAINABILITY**

The BWS shall ensure that the source shall be sustainable and one hundred percent (100%) 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 BWS shall submit a feasibility or water resource study *during the period for post qualification*.

- Section 3. BWS 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 surface water.

- Section 4. In compliance with the Water Code of the Philippines as well as the mandates of the Department of Environment and Natural Resources (DENR), the BWS shall ensure that water source shall be sustainable throughout the duration of the contract and strictly adhere to the downstream compensation set by NWRB.

## **ARTICLE VI. PERMITS, LICENSES AND CLEARANCES**

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

BWS shall submit a National Water Resources Board (NWRB) water right/permit or at least an MCWD - endorsed application.

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

Submission of the actual water right/permit must be done within *twenty-four* (24) months from receipt of Notice to Proceed or Actual Day of Delivery whichever comes first. Provided, BWS should submit proof of application prior to contract signing.

### **Section 2. LGU SUPPORT ON THE PROPOSED PROJECT**

As a mandate of the local government to provide basic services and

upgrade the quality of life of the people in the community, the support of this project must be secured by BWS from the Local Government Unit (LGU) exercising authority over the area where the project is situated.

As part of the *post-qualification requirements*, the BWS shall secure a LETTER OF NO OBJECTION (LONO) from the Local Chief Executive of the LGU where the proposed Project facility shall be constructed or operated.

A joint venture agreement or any other contract evidencing partnership between the LGU and BWS shall likewise suffice.

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

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

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

BWS 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 Agreement.

The BWS shall provide a copy of the excavation permit to MCWD any time during the implementation of the Project.

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

BWS shall submit to MCWD an Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR) prior to Day One of Delivery.

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

Whenever applicable, BWS shall submit a clearance or authorization (i.e., board resolution or secretary's certificate) to enter into and execute contract for this Project from all its business consortia or partners.

Section 6. **MISCELLANEOUS PERMITS**

All other permits, licenses shall be secured at the expense of BWS and must be submitted to MCWD any time during the implementation of the Project.

Section 7. Failure to secure the required permits, licenses and clearances as mentioned in this Article shall be a ground for the termination of the Agreement without prejudice to the penalty to be imposed under Article XVII, "Damages and Penalties".

## ARTICLE VII. QUANTITY OF WATER AND FLOW RATES

Section 1. BWS shall deliver potable water to MCWD at a volume *up to 50,000 cu.m. per day*. Supply exceeding the maximum volume should have the approval of MCWD.

Section 3. MCWD is not obliged to pay for any water delivery in excess of the specified maximum volume unless prior request in writing is made.

Section 4. Any volume delivered in excess of the maximum volume *as requested by MCWD* shall be billed at one hundred percent (100%) of the prevailing Contract Price inclusive of all applicable taxes.

Section 5. The total volume of potable water delivered by BWS shall be measured with electromagnetic flow meters as shown in Annex “D”<sup>5</sup>, pressure transducer as shown in Annex “F”<sup>6</sup>, and other monitoring devices (SCADA Monitoring System) as shown in Annex “G”<sup>7</sup> series.

Otherwise, MCWD shall require the BWS to provide the latest computer set and software (Annex F) that will receive and process data coming from the injection point. The computer set shall be installed at the MCWD SCADA Monitoring Center.

Flow meter sizes shall be determined by MCWD depending on the number of injection point(s) and the total volume and flow rates shall be based on the aggregate sum of all injection point(s).

Section 6. The monitoring system that shall be provided by the BWS must be compatible with the MCWD SCADA monitoring system, capable of wireless connection and transmission of the following data through SMS and other reliable means: total volume, flow rate, pressure, turbidity and residual chlorine.

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 BWS.

The software shall be capable of displaying pressure, flow rate, total volume, turbidity and residual chlorine at the same time. The said flow meters, vault structure and appurtenances within the vault shall be provided, owned, installed, and maintained by BWS.

All costs incurred in the data collection and the data transmission including the assurance of their reliability to MCWD SCADA, i.e.,

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<sup>5</sup> Annex “D” – *Electromagnetic Flowmeter with GPRS*

<sup>6</sup> Annex “F” – *Pressure Transducer*

<sup>7</sup> Annex “G” series – *Design & Technical Specifications of SCADA Monitoring System*



software, hardware, GPRS transmission, calibration and maintenance of the device, etc., shall be borne by the BWS. The said device and appurtenances within shall be provided, owned, installed and maintained by the BWS.

Section 7. MCWD shall define the specifications of the flow meter, data logger, pressure transducer, software and other appurtenances. Such Technical Specifications and Drawings shall form part of this Agreement.

BWS shall submit to MCWD, the complete and detailed design, specifications and brochures of the electromagnetic flow meter 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 flow meter vault and control structure as shown in Annex "E"<sup>8</sup>.

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

Section 8. The flow meter 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 based on the conceptual design provided 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 BWS. The vault's Technical Specifications and Drawings shall form part of this agreement.

The conceptual design and specifications of the structures of the flow meter and the vault prepared by MCWD shall be followed by the BWS.

Section 9. Both parties shall conduct daily meter reading simultaneously 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 flow meters or any of its parts without the consent of the other. To ensure compliance, an enclosure for the meter with double lock (one (1) lock for MCWD and one (1) lock for BWS) shall be installed by the BWS.

Both parties shall observe and comply the meter reading protocols provided under "Annex I"<sup>9</sup>.

Section 10. Prior to installation, the BWS shall submit the required flow meters, including the spare units, to MCWD for testing and calibration. In case MCWD is not able to do so, both parties shall agree on a Department of Science and Technology (DOST) accredited laboratory to conduct the testing and calibration in the presence of both parties. The BWS shall immediately submit the calibration results to MCWD. All costs incurred shall be shouldered by the BWS.

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<sup>8</sup> Annex "E" series - *Design for the Installation & Construction of Concrete Meter Vault*

<sup>9</sup> Annex "I" – *Protocol on Metering and Measurement of Bulk Water Supply*

- Section 11. The cost of testing and repair or replacement of defective meter shall be exclusively shouldered by BWS.
- Section 12. Any replacement of a defective flow meter shall be done within five (5) calendar days from the time a suspected defect was confirmed and shall be the responsibility and for the account of BWS.
- Section 13. Any protest for over- or under-registration or other defect in the flow meter 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 14. Calibration and proper maintenance of the flow meters shall be done annually at the expense of BWS. In cases where MCWD deems it necessary, calibration and maintenance shall be done immediately at the expense of BWS.
- Section 15. BWS shall provide a spare unit of each flow meter 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.
- Section 16. In case the BWS fails or refuses to calibrate or replace a defective flow meter, MCWD may refuse to accept the water supply until the BWS submits its flow meters for calibration or replacement at the latter's expense. The BWS shall also be liable for the penalty provided for under Article XVII "Damages and Penalties".

**ARTICLE VIII. QUALITY OF WATER**

- Section 1. BWS shall supply MCWD with potable water conforming to Annex "A" - MCWD Water Quality Standards. Failure of BWS 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 and BWS shall be liable for penalty provided for under Article XVII "Damages and Penalties."

Frequency of tests shall be as often as the frequency indicated under the "Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers" attached as Annex "H"<sup>8</sup> when the circumstances require. Further, failure to comply with MCWD Water Quality Standards shall entitle MCWD to impose the applicable penalty as provided in Section 3 of Article XVII "Penalty for Non-Compliance to Water Quality Standards".

The MCWD Water Quality Laboratory shall be the official laboratory to undertake the required tests as per MCWD Water Quality Standards. MCWD shall submit a statement of account to the BWS for the cost of the laboratory tests conducted and the same shall be deducted from the latest billings of the BWS.

Should BWS contest any test result performed by MCWD, the issue shall be resolved through an *Independent Laboratory* applying the "Protocol on Water Quality for Water Supply from MCWD Bulk Water

Suppliers” under Annex “H”<sup>10</sup> at the expense of the BWS.

MCWD’s 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.

In case the failure to comply with water quality standards warrant closure of the facilities as provided under the “Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers,” MCWD shall notify BWS’s field personnel within three (3) hours prior to closure. Subsequent formal notice of closure shall be sent to BWS within two (2) calendar 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. 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 3. Quality of the input water to MCWD will be monitored from a sampling point as specified in Annex “D”.
- Section 4. 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 BWS.
- Section 5. BWS 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 6. The WATER QUALITY of the delivered water by the BWS shall be monitored at the injection/sampling point by a REAL-TIME MONITORING device/equipment/ system capable of data-logging every 10 minutes and *preferably* capable to transmit logged-data to the existing MCWD SCADA Main Control Center. The device to be installed shall have an accreditation from MCWD Laboratory. The REAL-TIME MONITORING device shall primarily be monitoring the following parameters:
  - a. Residual Chlorine in ppm;

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<sup>10</sup>

Annex “H” – Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers

b. Turbidity

Section 7. BWS shall at any time, allow full access to MCWD in order for the latter to gather water samples at the sampling point located at the meter vault.

Section 8. Except on extreme emergency cases, BWS 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 BWS'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. PRODUCTION AVAILABILITY & INTERRUPTION DUE TO PLANNED AND UNPLANNED DOWNTIME**

**Section 1. PLANNED OUTAGE, MAINTENANCE PROGRAM AND SCHEDULE**

1.1. Each party shall submit the Annual Schedule of Planned Maintenance to other party, not later than thirty (30) calendar days prior to the start of each calendar year for the purpose of obtaining the consent of the other party. The BWS shall coordinate with the MCWD as to maximize overlap of any planned downtime with any scheduled maintenance. The BWS shall exert all efforts to plan the duration of a downtime not exceeding twenty-four (24) hours, and may be extended within justifiable reasons.

1.2. Each party shall conduct regularly all scheduled maintenance of their respective facilities, including repairs, overhauls, improvements and replacements, in accordance with the maintenance plans and schedules developed at the start of the calendar year.

1.3. A planned downtime shall be confirmed by BWS thirty (30) calendar days prior to such downtime and reconfirmed twenty-one (21) calendar days in advance. The BWS may request to reschedule a planned downtime for any valid reason, and MCWD shall make reasonable efforts to accommodate the request. If MCWD cannot accommodate the request, it shall inform the BWS in writing as early as possible, which should not be later than fifteen (15) calendar days after its receipt of a request for rescheduling any planned downtime.

The BWS shall shoulder the cost for the news advisory and publication in the newspaper and other medium in cases of planned downtime, whether rescheduled or not. The BWS shall then coordinate with the authorized representative(s) of MCWD for the said news advisory. For this purpose, the provision of Section 6 of Article XVII on automatic deduction may be applied by MCWD for the cost of the news advisory and publication.

1.4. The written consent of the MCWD to the conduct of the maintenance works must be obtained, and the failure of the MCWD to give the requested consent within three (3) working days from receipt of the written notice shall be deemed consent on the performance of the Maintenance Works.

Section 2. **UNPLANNED OUTAGES MAINTENANCE**

In case any unplanned downtime occurs or is foreseen to occur, the requesting party shall immediately notify the other party whether in writing or electronic mail specifying the date and commencement of the unplanned downtime and its expected duration (or as may be extended based on any justifiable reason/s to both parties).

Section 3. **BACKUP POWER**

Prior to Day One of Delivery, the BWS shall provide supplemental power system at its own expense.

The supplemental power system will be used in case of power interruptions *not attributable to BWS*. It must be capable of delivering 100% of the required volume as indicated in [Section 1 of Article VII](#). BWS shall submit to MCWD a certification from the power provider within twenty-four (24) hours after occurrence of the power interruption.

**ARTICLE X. EXCLUSIVITY OF SUPPLY**

All water produced from the facility under this Agreement shall be exclusively supplied to MCWD.

For this purpose, any pipe laying not related to the Project shall be prohibited except for purposes of maintenance and repair of BWS's existing pipelines.

**ARTICLE XI. PROHIBITION TO SUPPLY IN MCWD'S FRANCHISE AND SERVICE AREA**

The BWS hereby agrees to desist and refrain from supplying and distributing water to any person or entity within MCWD's franchise and service areas.

If at the time this agreement was signed, the BWS has an existing contract or agreement with any private individual, entity or government unit, the BWS shall immediately provide MCWD a sworn statement of the list of existing consumers within MCWD's franchise and service areas and provide all copies of such agreement to MCWD prior to Contract Signing. The prohibition covers the extension and/or renewal of the BWS' existing contracts.

Failure to comply with this provision shall be ground for termination of this Agreement.

## ARTICLE XII. PRICE AND CONSIDERATION

Section 1. MCWD shall pay for the water delivered by BWS according to the Bid Price as indicated in the Schedule of Prices.

The ABC includes price changes not limited to wage increases, power cost, fuel cost, price increases of materials and supplies and other production and maintenance costs, inflation, currency fluctuation and foreign currency devaluation. Hence, the contract price is not subject to price adjustment and escalation during contract implementation considering that the exemption provided in Section 61, Rule XIX – Contract Prices and Warranties of the 2016 IRR of RA 9184 is already incorporated herein.

All prices are inclusive of all applicable taxes and net of penalties.

## ARTICLE XIII. PAYMENT AND BILLING

Section 1. BWS shall bill MCWD once a month. Payment will be made within twenty (20) working days after receipt of the required correct and complete documents, including among others the monthly delivery log, flow rate, pressure, total volume, turbidity, residual chlorine, and other water quality test results. Any payment made hereunder shall be inclusive of all applicable taxes and net of all penalties imposable on BWS.

In the event that MCWD fails to accept the volume of water delivered in accordance with the terms set herein under Article III Section 2, without any justifiable reason, MCWD shall be liable for penalty in the form of liquidated damages for any delay in the commencement of water supply (Day One of Delivery) computed as follows:

$$\text{Total Contract Price} = 136,875,000 \text{ cu.m} \times \text{contract price per cu. m.}$$

$$\text{Total Liquidated Damages} = [1/10 \text{ of } 1\% \times \text{Total Contract Price}] \times \text{No. of Days of Delay of Acceptance}$$

Until MCWD can accept the volume, provided that the supply is available subject to the technical evaluation of MCWD.

Section 2. MCWD is authorized to withhold 1% and 5% (for withholding tax and final withholding VAT), and for other legal deductions or taxes, unless BWS can present an exemption from payment of these taxes.

Section 3. 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.

## ARTICLE XIV. 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.
- Section 3. It includes the following events and circumstances to the extent that they, or their consequences, satisfy the above requirement:
- a. Any Government occurrence not otherwise initiated by MCWD which includes change in laws or hostilities; or
  - b. 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
  - c. Any earthquake, fire, typhoon or any other acts of God or natural environmental disaster adversely affecting the site of the facilities rendering it inoperable.
- Section 4. “Force Majeure or Fortuitous Events” shall not include major changes in the quality of the source as a result of seasonal changes including those affected either directly or indirectly by land use or development in the area.
- Section 5. 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 occurrence of the event. After the suspension period has lapsed, MCWD shall impose without notice, the applicable penalties provided for under Article XVI – “Damages and Penalties” should BWS still fail to deliver the guaranteed volume as per schedule.

## **ARTICLE XV. 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 BWS for purposes of assuring continued and uninterrupted supply of treated water to MCWD. For this purpose, prior notice should be given by MCWD to BWS.
- Section 2. This right may be exercised by MCWD in the following cases:
- 2.1 Failure to correct deviation in the MCWD 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 BWS's ability to operate and maintain the facilities in accordance with this Agreement.

Section 3. BWS 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, BWS 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 BWS.

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 BWS 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 BWS that accrued prior to the exercise thereof.

**ARTICLE XVI. PERFORMANCE SECURITY**

Section 1. To guarantee the faithful performance of this Contract, the BWS shall post a performance security *annually* 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 % of the <i>Total Contract Price</i> )
Cash or cashier's/manager's check issued by a Universal or Commercial Bank.;	Five percent (5%)
Bank draft/guarantee or 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.	Thirty percent (30%)
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The performance security shall be based on the total contract price depreciated every year using the remaining volume to be delivered over the contract term at the end of each year.

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 BWS is in default in its obligations hereunder.

In the execution of the performance security, it shall be executed in accordance with the form prescribed therefore.

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 BWS shall furnish the performance security at the amount required and in any of the forms prescribed in the Section 1 of this Article.

Section 3. The performance security shall be confiscated and this contract terminated should the BWS fail to deliver water for a period of thirty (30) consecutive days due to circumstances other than those falling under ARTICLE XIV - "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 BWS.

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

Section 4. The Performance Security shall be valid within the period of one (1) year after the expiration of this Agreement. Upon certification by MCWD, that there are no claims filed against BWS after expiration of this Agreement, the Performance Security shall be released.

**ARTICLE XVII. 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:

$$\text{Total Contract Price} = 136,875,000 \text{ cu.m} \times \text{Contract price per cu. m.}$$

$$\text{Total Liquidated Damages} = [1/10 \text{ of } 1\% \times \text{Total Contract Price}] \times \text{No. of Days of Delay in Delivery}$$

Section 2. **PENALTY FOR NON-COMPLIANCE TO WATER QUALITY STANDARDS**

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

- a. One hundred percent (100%) of the Contract Price per cubic meter of the total delivered volume, which is non-compliant with the water quality standards, should BWS continue to operate despite due notice of shutdown from MCWD as provided in Annex “H” Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers:

$$\text{Penalty (WQ)} = (\text{Contract Price per cu. m.}) \times (\text{Delivered Volume})$$

and

- b. Reimbursement of MCWD’s actual costs for water mains flushing, disinfection, water sampling and laboratory analysis.

2.2 MCWD is not obligated to pay the delivered volume, which is non-compliant with the water quality standards.

Section 3. **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 Contract Price per cubic meter of the Actual Volume of Water Delivered of Non-Compliant Days shall be imposed to BWS until such time that the defect will be corrected.

$$\text{Penalty (TS)} = 10\% \times (\text{Contract Price per cu. m.}) \times (\text{Total Actual Volume of Water Delivered of Non-Compliant Days})$$

Section 4. **PENALTY FOR NON-COMPLIANCE TO OTHER CONTRACT PROVISIONS**

For failure to comply with any other material terms and conditions under this Agreement, may be a ground for the termination without prejudice to the penalty to be imposed under this Article.

Section 5. **PENALTY FOR DAMAGES**

BWS agrees and binds itself to indemnify MCWD for the actual cost of 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.

Section 6. **AUTOMATIC DEDUCTION OF PENALTIES AND DAMAGES**

All the aforesaid penalties and damages shall be automatically assessed,

deducted and withhold from the account of BWS, and such penalty shall continue to be imposed until compliance has been proven.

For this purpose, MCWD shall have the right to deduct or withhold payment of any amount due or which may become due to BWS 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 7. It is understood that any payment made by MCWD to BWS or the failure of MCWD to demand compliance of any of the terms and conditions of this Agreement shall not be considered as a waiver on the part of MCWD for the enforcement of this Agreement or any portion hereof.

## **ARTICLE XVIII. TERMINATION**

Section 1. MCWD reserves the right to terminate this Agreement based on any of the following grounds:

- a. Failure to correct water quality deviations within seven (7) days from receipt of notice of such deviation.
- b. Total sum of liquidated damages reaches ten percent (10%) of the total annual contract price
- c. Failure to deliver for thirty (30) consecutive and successive days due to circumstances other than those falling under Article XIV, "No Liability in Cases of Fortuitous Events or Force Majeure".
- d. Failure by BWS to secure or renew any expired permits, licenses or clearances from any concerned government agencies.
- e. Applying the provisions in Section 5 of Article XVII, "Penalty for Non-Compliance to Other Contract Provisions.

Section 2. If any of the grounds for termination has occurred, MCWD shall notify BWS in writing, specifying the ground/s and indicating the period to rectify. Within reasonable time from receipt of the notice, the Parties shall commence discussions in good faith with the view of mitigating the consequences of such event and to agreeing on the terms, if any, upon which the arrangement contemplated in this Agreement may be continued, giving regard to all the circumstances existing at such time.

If the ground/s for termination specified in the notice shall not have been remedied to the reasonable satisfaction of MCWD notwithstanding the expiry of thirty (30) calendar days from the BWS's receipt of such notice (unless another period to cure is specified), then MCWD may terminate the Agreement.

## **ARTICLE XIX. DISPUTE RESOLUTION**

Should any dispute related to the Contract and/or rights of the parties arise, the same shall be submitted to mutual consultation, mediation and arbitration, in the order of application. The venue of the proceedings shall be in the City of Cebu.

In case of a court suit, the venue shall be the courts of competent jurisdiction in the City of Cebu, to the exclusion of all other courts.

## **ARTICLE XX. AMENDMENTS**

This Agreement 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.

The representatives of both parties should present proof of authority (i.e., board resolution or secretary's certificate) to make such amendments.

## **ARTICLE XXI. RENEWAL**

Renewal of this agreement shall follow the provisions of RA 9184 or the Government Procurement Reform Act of 2003 and its latest implementing rules and regulations.

## **ARTICLE XXII. TURN-OVER OF FACILITY, EQUIPMENT AND TRANSFER OF TECHNOLOGY**

### **Section 1. FACILITY**

The Facility shall refer to raw water intake, pre-treatment, storage tanks, production and water treatment facilities, and other associated equipment and facilities, both onshore and offshore, interconnecting pipelines, flow meter assembly, backup power equipment, power supply systems and other appurtenances and auxiliary equipment necessary to efficiently operate the plant under this Agreement. It shall also include the following:

- a.) Interconnecting pipelines to the injection point.
- b.) Proposed one (1) Reservoir having the capacity of at least 5,000 cu.m to be built at MCWD's choice location to be named, together with its corresponding accessories and/or appurtenances. See attached Annex "J"<sup>11</sup> for more details.

BWS shall ensure that the facility to be constructed is capable of producing 50,000 cu.m. of potable water daily.

### **Section 2. TURN-OVER OF FACILITY**

BWS shall divest itself of the ownership of the facility and shall turn-over the same to MCWD at no cost.

BWS shall undertake to turn over the facility in good condition, save for natural wear and tear and at its full capacity for operation. Before acceptance of the

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<sup>11</sup> Annex "J" - Conceptual Design of Reservoir and Site Development

facility, MCWD shall impose upon BWS all costs for repairs and other applicable costs to bring the facility to its operational condition for five (5) more years.

The Turn-over of the Facility and Equipment shall be done either by the end of the contract term of 25 years, or after the complete delivery of 136,875,000 cu.m, whichever comes earlier, provided that it be not earlier than 15 years.

### **Section 3. TRANSFER OF TECHNOLOGY**

Two years prior to the turnover of the facility and equipment, the BWS shall conduct training and program relative to the transfer of technology, operation, and maintenance of the facility.

Also, in the event that the water delivered by BWS reaches at 125,925,000 cu.m. at any given period of time of contract but not earlier than fifteen (15) years, the training and transfer of technology shall commence.

Both turn-over of facilities and transfer of technology/training shall be at the expense of BWS.

### **Section 4. MAINTENANCE OF THE FACILITY**

BWS shall undertake to ensure proper maintenance of the facility. For this purpose, a semi-annual plant visit which shall include but not limited to a scheduled joint inspection by BWS and MCWD of the electro-mechanical equipment including the civil structures and appurtenances, among others.

## **ARTICLE XXII. INCLUSIONS**

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

a. Annexes

1. Annex "A" - MCWD Drinking Water Quality Standards
2. Annex "B" - Location Map of the Injection Point
3. Annex "C" - Sketch plan of the Proposed Location of the Facility
4. Annex "D" series - Electromagnetic Flow meter with GPRS
5. Annex "E" series - Design for the Installation & Construction of Concrete Meter Vault
6. Annex "F" series - Pressure Transducer
7. Annex "G" series - Design & Technical Specifications of SCADA Monitoring System
8. Annex "H" - Protocol on Water Quality for Water Supply from MCWD Bulk Water Suppliers

9. Annex “I”

Protocol on Metering and Measurement of Bulk Water Supply

10. Annex “J”

Conceptual Design of Reservoir and Site Development

- b. Bidding Documents;
- c. Terms of Reference (TOR);
- d. Contract Agreement;
- e. Eligibility Documents submitted by the BWS (Program of Work, Technical Specification of Materials, Equipment, etc.);
- f. Financial Bid;
- g. Notice of Award;
- h. Notice to Proceed;
- i. All Other Documents required during Post-Qualification, Contract Signing, Before and After Day One of Delivery.

Prepared by:

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