

Republic of the Philippines
Province of Abra
Municipality of Bangued

THE CONTRACT AGREEMENT FORM

Supply & Delivery of Treated Potable Water (15-YEAR CONTRACT PERIOD)

THIS AGREEMENT, made this 14 JUL 2023 between **METRO BANGUED WATER DISTRICT**, a government-owned and controlled corporation located at corner Taft and Actividad Economia Sts., Zone 4, Bangued, Abra (hereinafter called "**MBWD**") and **MEP CONSTRUCTION**, #18 St. Benedict, Petersville Subd., Camp 7, Baguio City (hereinafter called "**Supplier**").

- WITNESSETH -

WHEREAS, a lack of reliable access to drinkable water has always been a reality in the service area of MBWD;

WHEREAS, given this situation, MBWD has to utilize several sources of potable water to meet both the current and anticipated demand.;

WHEREAS, one of those options is tapping water provider like MEP in order to meet current and future water demand;

WHEREAS, the parties herein agree to the following terms and conditions and covenant to do so in light of the aforementioned;

Article I. DEFINITIONS OF TERMS

The following terminology shall have the corresponding meanings as used herein.

- **Agreement** - refers to this Bulk Water Supply Contract
- **Facilities** - includes the extraction, treatment, distribution, land structures and improvements and other related equipment and instruments.
- **Ground Water** - is water extracted beneath the surface of the ground.
- **Independent Laboratory** - is any DOH-accredited laboratory capable of conducting water analysis not owned or controlled by either or both parties.
- **Inspection** - means the conduct of any investigation/verification/examination which includes but not limited to water sampling for analysis.
- **Point of Delivery** - refers to draw-off point or the point where the water supplier's pipe interconnects to MBWD's distribution system at which the flow meter(s) are installed.

- **Potable Water** - refers to delivered treated water whose quality complies with Philippine National Standards for Drinking Water (PNSDW) (LWUA-DOH) for Bulk Water.
- **Raw Water** - is the unprocessed water extracted or taken directly from ground or surface source.
- **Surface Water** - is water from rivers, streams, springs, lake and the like.
- **Water Quality Standard** - refers to Philippine National Standards for Drinking Water (PNSDW) (LWUA-DOH) for Bulk Water.
- **Water Supply Contract** - shall mean the supply of potable water to the MBWD point of delivery by the Supplier. This falls under the procurement of goods and services as defined in Section 5 (r), as differentiated from infrastructure project as defined in Section 5 (u) of the Revised IRR of RA. 9184.

Article II. TERM AND PROJECT MILESTONES

Section 1. This Agreement shall commence on the date of its execution. It shall remain in full force and effect for a period of fifteen (15) years from the intended Day One of delivery.

Day One of delivery should be within fifteen (15) days after the receipt of Notice to Proceed.

Article III. THE PROJECT

Section 1. This is a bulk water supply contract whereby potable and treated water shall be delivered by the Supplier to MBWD at a specified volume and at a pre-determined injection point and location.

Section 2. It is expressly understood by the Supplier that the installation of equipment or appurtenances required under the contract shall not change the nature of the agreement which is strictly a water supply contract which will fall under the procurement of goods as defined in the Revised IRR of the R.A. 9184.

Section 3. The MBWD shall install transmission pipelines for the treated water from the Water Treatment Plant located at Gaddani, Tayum to MBWD's reservoirs and other holding of distribution facilities.

Article IV. PERMITS, LICENSES, TAXES, LAND RIGHTS AND ENVIRONMENTAL STANDARDS

Section 1. With the assistance of MBWD, the SUPPLIER shall secure water rights from the National Water Resources Board (NWRB) under the name of MBWD. The SUPPLIER shall also be responsible for securing licenses and/or permit required by the local government unit agency or office for the operation of the water source and land rights. The SUPPLIER shall also be responsible for the payment of all national and local taxes, customs' duties, fees and the like whatsoever arising in connection with the project.

Section 2. The SUPPLIER shall be responsible for the payment of any fee, assessment or imposition including business permit and such other fees if applicable that may be imposed by any agency or local government unit in the process of extracting or collecting water from its source and its transportation to the specified injection points.

Section 3. The SUPPLIER shall submit environmental clearances required by the Government.

Article V.

QUANTITY/VOLUME OF WATER

Section 1. The working dynamic water pressure at point of delivery must be maintained at enough pressure. The supplier shall deliver to MBWD 2,500 cubic meters per day (CMD) of potable water for fifteen (15) years.

Section 2. The minimum offtake volume shall be 2,500 cubic meter per day of potable water. The minimum offtake shall take effect as soon as the Water Treatment Plant is completed and the water quality has passed the specifications of the Philippine National Standard for Drinking Water with the analysis being performed by a DOST accredited Third-Party Laboratory and delivered at the Point of Delivery at the expense of the Supplier.

Section 3. In the event that the MBWD desires to increase or expand the quantity of water from the current scheduled volume during the contract period, MBWD will issue a Notice of Increased Capacity to the supplier not more than **three (3) months** prior to scheduled date of increase with no rate increase in the contract price. But, if the installed treatment plant can accommodate the increase in demand, the supplier shall immediately increase its water supply after the receipt of Notice of Increased Capacity with specific additional volume and duration.

Section 4. The total volume of potable water delivered by the SUPPLIER shall be measured by two (2) identical water meters that will be supplied and installed in the series by the supplier and all locks will be in the possession of MBWD. MBWD may opt to install its own battery-operated electromagnetic flow meter with built in data logger as additional monitoring reference. Non-revenue water or NRW within the pipelines of MBWD from source to water treatment shall be accounted for by the MBWD through fair and just calculation.

Section 5. To ensure volume calculation accuracy the Supplier must maintain an hourly flow meter reading logbook to monitor the effective flow of the plant and may be counter checked anytime by the MBWD personnel. Both parties shall read the flow meter daily or as may be necessary as determined by both parties

Article VI.

QUALITY OF WATER

Section 1. The supplier shall process the raw water using the agreed technology and non-hazardous chemical to meet quality parameters for drinking water.

Section 2. The water produced must at all times pass the standards set by the Philippine National Standard for Drinking Water (PNSDW). There shall be two (2) kinds of water analyses to be performed at the designated Point of Delivery to check the quality standards of water 1) bacteriological and 2) physical-chemical. Water samples shall be strictly taken jointly from the designated delivery point.

Section 3. The Supplier shall at its own cost and expense conduct an actual water test at least 2 times a day (morning and afternoon) to closely monitor the residual chlorine and turbidity using water testing kits. If the results do not pass the standard, the Supplier shall stop operations and make the necessary adjustments to meet the required standards. A copy of the test results shall be submitted daily to MBWD for monitoring and configuration of the Supplier's compliance with the water quality standards.

Section 4. To ensure that the quality of potable water is within the required PNSDW for BULK WATER the SUPPLIER shall allow MBWD to conduct inspection of its potable water as it deems fit and is allowed free and unhampered access to its facilities.

Section 5. MBWD reserves the right to demand from the SUPPLIER the immediate repeat testing and adjustment on particular water quality parameters with aesthetic effects when it is found out to be questionable or to be out of order within six (6)

hours therefrom. When the repeat testing results of the SUPPLIER would not accord with MBWD laboratory findings, immediate split sampling and testing with other accredited independent laboratory shall be sought by the SUPPLIER to resolve the questionable water quality issue. If the water quality parameter in dispute has not been resolved within 24 hours, MBWD reserves the right to order for an immediate shutdown of the water supply.

Section 6. In case laboratory analysis found to be non-compliant with PNSDW, especially but not limited on the standard values for inorganic chemical contents with health significance physical and chemical (Phychem) quality for acceptability aspects, the SUPPLIER shall reimburse MBWD on the actual cost for the water flushing and disinfection.

Section 7. The Supplier is required to submit reports to MBWD pertaining water quality as required by the PNSDW and LWUA-DOST standards such as but not limited to the following:

a.) Semi-Annual bacteriological test result on the samples drawn from collection points specified by MBWD. Result shall be submitted every month of June and December, not later than the 10th day thereof.

b.) Semi-annual Physical and Chemical test analysis in compliance with PNSDW on Color, Turbidity, pH, TDS, Tron. Manganese, Lead, Cadmium, Chloride, Sulfate, Nitrate, Benzene, & Arsenic to be submitted every month of June and December, not later than the 10th day thereof. Samples shall be collected from the source and discharge point.

c.) Annual physical & chemical test analysis on river water quality for Antimony, Boron, Cadmium, Cyanide, Fluoride, Mercury (Total), Nitrite, Organophosphorus, Carbamates, Oil & Grease, Aluminum, Copper, Hardness (Total), Hydrogen Sulfide, Sodium, Zinc, Total Coliforms, E. Coli, Heterotopic Plate Count, Alkalinity, Salinity, Calcium Hardness (CaCO₃), Magnesium Hardness. Initial report on the said analysis shall be submitted before the day one of the contract period, and succeeding reports shall be submitted to MBWD every month of December.

Section 8. The SUPPLIER must maintain at all times 0.3 ppm to 1.5 ppm Chlorine residual and less than 5 NTU turbidity at the discharge point (product tank) to be logged on an hourly basis by the supplier and operator. The supplier must submit to MBWD a daily report on the chlorine residual. The Supplier must also provide and maintain laboratory equipment or apparatus with proof of annual calibration from a duly authorized agency such as DOST or DOH.

Section 9. In any event, when other water quality parameters with health significance are found to be deviating from PNSDW standards, such as but not limited to bacteriological, heavy metals, pesticides, organics and the like, MBWD shall give a cease-and-desist order for the immediate shutdown of the operation of the SUPPLIER. In such case, MBWD shall likewise close the valve at the injection point and shall not be liable for any damage that may be incurred by the closing of the valve. Operations shall only resume if all water quality disputes have been resolved.

Section 10. The supplier shall submit maintenance program of the treatment plant as designed and scheduled by the supplier in a way not to cause shutdown of the operation. If shutdown is inevitable, the supplier is required to submit prior notice 2 days before shutdown schedule. In case of emergency shutdown, the supplier shall inform the MBWD immediately the cause of shutdown and its timeline to resolve the situation.

Article VII. PAYMENT

Section 1. The supplier shall bill the MBWD based on the total monthly volume registered in the two (2) existing flow meters installed by the Supplier, whichever is lower.

Section 2. MBWD shall pay for the water delivered by the SUPPLIER at Php20.80 per cubic meter inclusive of all taxes and net of penalties. The supplier shall bill the MBWD monthly on the actual delivered volume of potable water at the point of delivery but the MBWD shall not be billed for delivered potable water in excess of 2,500 cubic meters per day, unless otherwise requested for by the MBWD. Excess shall be billed in the next billing.

Section 3. The SUPPLIER shall bill MBWD on a monthly basis. The MBWD shall ensure that all billings for water produced and delivered shall be paid not later than **thirty (30) calendar** days upon determination of the accuracy of the billed volume and amount with complete attached reports.

Section 4. MBWD shall unilaterally impose or deduct any liquidated damages due for the supplier on its monthly collectibles.

Section 5. The supplier agrees and binds itself to guarantee payment to MBWD for whatever injuries or damages suffered by the latter by reason of failure, negligence, delay or conduct of the former and/or its employees in the performance of its obligations. For this purpose, MBWD shall have the right to withhold payment on any amount due or that become due the supplier or from the performance security to compensate MBWD for any damages it suffered.

Section 6. It is understood that any payment made by the MBWD to the supplier or failure of MBWD to demand compliance of any of the terms and conditions of the contract shall not be considered as a waiver of the part of MBWD for the enforcement of the agreement or any portion hereof.

Section 7. The payment for the supplier for the last billing period of the contract year shall be withheld by MBWD pending upon the submission of the following year's performance security which must be submitted thirty (30) days prior to the last day of each year. Performance security shall be renewed annually until the end of fifteen (15) year contract.

Section 8. MBWD is authorized to withhold 1% and 5% thereof as expanded withholding tax and final withholding value added tax respectively until the supplier can present an exemption from payment of these taxes.

Section 9. The Bulk water shall be sold to MBWD at a fixed rate with no escalation for the whole contract period.

Section 10. 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 VIII. FORTUITOUS EVENT/FORCE MAJEURE

"Force Majeure Event" 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 reasonable control, directly or indirectly, of the affected party and could not have been avoided even if the affected party had taken reasonable care. "Force Majeure Event" includes the following events and circumstances to the extent that they or their consequences satisfy the above requirements:

- a) any government occurrence not otherwise initiated by MBWD which includes but not limited to expropriation, change in laws, 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, flood, fire, hurricane or any other act of God or natural environmental disaster wherever occurring or any condition of land circumstance in each case affecting the site of the facilities (including but not limited to soil, sub-surface, environmental, geological, seismic, geo-technical, climatic, hydrological, conditions and the existence of underground obstruction, fossils, antiquity structures and archeological remains): or any type of repair work on pipelines, pumping equipment and or appurtenances or water flushing on pipeline and any type of replacement or rehabilitation work on pipelines and/or appurtenances which can directly affect the use of the supply from the said project and after due notice has been provided to the other party and a concurrence from the party that the said defect is existent.
- d) Both parties are suspended for any agreed period based on the joint assessment of the extent of damages or restoration works. In case of disagreement, the dispute shall be referred to an Independent third-party entity whose finding shall be accorded respect by the parties.

Article IX. PERFORMANCE SECURITY

Section 1. To guarantee the faithful performance of this Contract, the 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 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:

- a) Cash or cashier's/manager's check, issued by a Universal or Commercial Bank - five percent (5%) of the total annual contract price.
- b) Bank Draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank - five percent (5%) of the total annual contract price.
- c) Surety bond callable upon demand issued by a surety or insurance company duly certified by Insurance Commission as authorized to issue such security - thirty percent (30%) of the total annual contract price.

The Total Annual Contract Price is computed as follows:

Total Annual Contract Price = Bid Price per cu.m. x total cu.m. x 365 days

This performance security shall be posted in favor of MBWD and shall guarantee the payment of the amount of the security as penalty in the event it is established that the SUPPLIER is in default in his obligations thereunder.

In case of a surety bond, the SUPPLIER shall renew the yearly performance security one (1) month prior to its expiration. In the event the SUPPLIER fails to do so, MBWD has the option to renew the said security and to pay the premium in advance and automatically deductible from the SUPPLIER.

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

- a) It shall be executed in accordance with the formula prescribed therefore, and

- b) It shall be at least one (1) year in duration and to be renewed yearly by the SUPPLIER one (1) month prior to its expiration. After such renewal, original copy of the policy should be submitted immediately to MBWD.

Section 2. The performance security shall be confiscated and this contract rescinded should the SUPPLIER fail to deliver water for a period of thirty (30) consecutive days due to circumstances other than those falling under Article IX, hereof and it is established that the failure to deliver is solely due to the fault of the SUPPLIER.

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

Article X.

DAMAGES AND PENALTIES

Section 1. MBWD shall impose liquidated damages for delay in start-up of delivery to be computed as follows:

- **LD per day = 2,500 cu.m. per day x No. of days delayed x price per cu.m. x 0.001**

It is understood that the liquidated damages herein provided are fixed and not by way of penalty, and that to be entitled to such damages, MBWD shall not be required to prove that it has incurred damages. In case of such delay, MBWD is hereby authorized to deduct immediately the amount of the liquidated damages from any money due or which may become due to the supplier from this or any other contract or to collect such amount from the latter's Performance Security, whichever is convenient and expeditious to MBWD. In no case shall the total sum of liquidated damages exceed 10% of the total annual contract price in which event MBWD can unilaterally and automatically terminate the contract and impose appropriate sanctions over and above the liquidated damages to be paid. Failure on the part of the SUPPLIER to submit NWRB Permit to MBWD shall not constitute a valid cause or ground to exempt it from imposition of the liquidated damages herein stipulated.

Section 2. Each day delay is subject to penalty of 0.1% of the total value of each day delay. The liquidated damages (LD) must not exceed 10% of the total annual contract value. LD shall be computed as follows:

- **LD per day = required CMD x contact price per cubic meter x 0.001**

Section 3. MBWD shall without notice impose a penalty of 50% 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 SUPPLIER in this or any other Contract or to collect such amount from the latter's Performance Security, whichever is convenient and expeditious to MBWD except if attributable to force majeure as defined in Article VII. If the force majeure is due to natural calamities like typhoon, earthquake and those expressly defined by law which requires a reconstruction of the facilities, the obligations of both parties are suspended for an agreed period based on the joint assessment of the extent of damage or restoration works, but in any case, should not exceed a maximum period of six (6) months. After the suspension period has lapsed, MBWD shall impose without notice the same penalty per cubic meter should the SUPPLIER still fails to deliver the guaranteed minimum cu.m. per day.

Section 4. The penalty due from the SUPPLIER for not providing potable water due to non-compliance with the water quality requirements shall be equivalent to 100% of the selling price per cubic meter to be computed from the time the non-compliance was made or discovered until it was rectified.

Section 5. In the event that the SUPPLIER has delivered more than the required daily volume of water under this contract without prior notice and approval from the MBWD the excess water shall not be included in the payment.

Section 6. The SUPPLIER agrees and binds itself to indemnify MBWD 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, MBWD shall have the right to withhold payment or any amount due or that becomes due the SUPPLIER to compensate MBWD for any damages it suffered on account of the failure, negligence or conduct of the SUPPLIER or its employees in the performance of its obligation.

Section 7. It is understood that any payment made by MBWD to the SUPPLIER or the failure of MBWD to demand compliance of any of the terms and conditions of this contract shall not be considered as a waiver on the part of MBWD for the enforcement of this Agreement or any portion hereof.

Article XI. TERMINATION

The contract may be terminated based on either of the following causes:

- a) Failure to correct water quality deviations within seven calendar days from receipt of notice of such deviation.
- b) Liquidated damages reaching 10% of the total annual contract price.
- c) Expiration of the terms of this Agreement
- d) Failure to deliver for thirty consecutive days due to circumstances other than those falling under fortuitous event or force majeure.
- e) Violation of Article XIV of this Agreement.
- f) Violation of the Confidentiality clause.
- g) Repeated failure to renew on time the Performance Security.

Article XII. DISPUTES AND JURISDICTION

Any dispute, controversy or claim arising out or relating to this contract or the breach, termination, or invalidity thereof. If 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 in the Municipality of Bangued, Abra, Philippines otherwise said dispute or controversy arising out of the contract or breach thereof shall be submitted to a court of law in Municipality of Bangued, Abra, Philippines to the exclusions of all other venue.

Article XIII. AMENDMENTS

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

Article XIV. NON-TRANSFERRABILITY AND SUBCONTRACTING

Section 1. The operation of the SUPPLY AND DELIVERY OF TREATED POTABLE WATER facilities shall be operated by the SUPPLIER. The SUPPLIER shall not transfer, assign, pledge, subcontract, or make any other disposition of interest in the SUPPLY AND DELIVERY OF TREATED POTABLE WATER PROJECT. Any transfer, assignment, pledge, subcontract or any other disposition, shall be sufficient ground for

MBWD to terminate or cancel the SUPPLY AND DELIVERY OF TREATED POTABLE WATER PROJECT *motu proprio* without need of judicial action.

Section 2. Sub-contracting may be allowed only in the construction or installation of the Water Facilities and shall cease upon its completion.

Article XV. RENEWAL

This contract may be renewed for another period upon the agreement by both parties.

Article XVI. CONFIDENTIALITY OF DOCUMENTS

Parties shall hold in strict confidence any and all documents and information contained in the project proposals, except for such matters which by nature are public documents.

Article XVII. INCLUSIONS

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

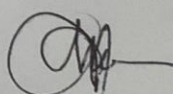
- a) the Bid Form and the Price Schedule submitted by the SUPPLIER;
- b) the Schedule of Requirements;
- c) the Technical Specifications;
- d) the Terms of Reference
- e) the General Conditions of Contract;
- f) the Special Conditions of Contract; and
- g) the Entity's Notification of Award.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this _____ in Bangued, Abra, Philippines.

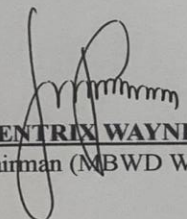
METRO BANGUED WATER DISTRICT:

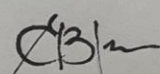

KATHLEEN MARIA B. TAWANTAWAN
General Manager

MEP CONSTRUCTION:

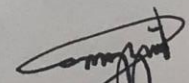

ENGR. EDUARDO PULMANO
Authorized Representative

SIGNED IN THE PRESENCE OF:


ENGR. JENTRIX WAYNE R. PIMENTEL
TWG Chairman (MBWD Witness)


EMERSON B. PULMANO
Bulk Water Supplier's Witness

FUNDS AVAILABLE:


HENRIETTA M. PAGAOA
OIC-Finance Division

ACKNOWLEDGMENT

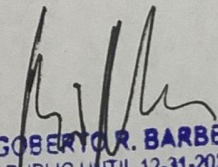
REPUBLIC OF THE PHILIPPINES)
PROVINCE OF ABRA) S.S.
MUNICIPALITY OF BANGUED)

BEFORE ME, Notary Public for and in the Province of Abra, appeared KATHLEEN MARIA BALBIN-TAWANTAWAN, known to me and to me known to be the same person who executed the foregoing instrument, and acknowledged to me that the same is her free and voluntary act and deed.

This refers to a CONTRACT AGREEMENT FORM consisting of ten (10) pages including this acknowledgement page, signed by the above-named person on each and every page thereof.

WITNESS MY HAND AND SEAL this _____ at Bangued, Abra.

Doc. No. 46
Page No. 11
Book No. 25
Series of 2023


ATTY. RIGOBERTO R. BARBERO
NOTARY PUBLIC UNTIL 12-31-2024
PTR NO. 1586009, JAN 3, 2023
IBP NO. 232402 / 3, JUNE 22, 2022, ABRA
ROLL NO. 84096, JUNE 17, 2022
UNIT # 2 ROSARIO BLDG. ZONE 5 BANGUED ABRA