

**BULK WATER SUPPLY CONTRACT  
FOR DELIVERY POINT NO. 1**

SO THE PUBLIC MAY KNOW:

This Water Supply Contract made and entered into this 10th day of March, 2016, in Bacolod City, Philippines by and between:

**BACOLOD CITY WATER DISTRICT (BACIWA)**, a government-owned and controlled corporation (GOCC) created pursuant to the provisions of Presidential Decree 198, as amended, with principal office address at corner Galo – San Juan Streets, Bacolod City, represented herein by its General Manager, **ENGR. MARIO G. MACATANGAY**, duly authorized for this purpose as evidenced by Board Resolution No. 042, s.2016 dated March 10, 2016 and hereto attached as Annex A and made as integral part hereof

-and-

**Mactan Rock Industries, Inc.**, a corporation duly organized and existing under the Republic of the Philippines, with office address at 3/F FCB Financial Center Building, A.C. Cortes Avenue, Mandaue City, Cebu, represented by its Board Chair and CEO Mr. Antonio P. Tompar, Filipino, and resident of Palm Hill Road, Sitio Tundan, Basak, Mandaue City, Cebu, as evidenced by Secretary's Certificate dated February 23, 2016 and hereto attached as Annex B and made as integral part hereof;

**TGV Builders, Inc.**, a corporation duly organized and existing under the Republic of the Philippines, with office address at #485 Barangay Pinmaludpod, Urdaneta City, Pangasinan, represented by its Corporate Secretary Mr. Conrado G. Belisario, Filipino and resident of 28 Scout Rallos, Quezon City, as evidenced by Secretary's Certificate dated February 22, 2016 and hereto attached as Annex B<sub>1</sub> and made as integral part hereof; and

**Tubig Pilipinas Group, Inc.**, a corporation duly organized and existing under the Republic of the Philippines, with office address at 3/F JTKC Centre, 2155 Don Chino Roces Ave., Makati City, represented by its President Ryan Wesley T. Yapkianwee, Filipino, and resident of 26 Sto. Domingo St., Urdaneta Village, Makati City, as evidenced by Secretary's Certificate dated February 19, 2016 and hereto attached as Annex B<sub>2</sub> and made as integral part hereof.

Collectively known as **BULK WATER SUPPLIER** (the Joint Venture Corporation which the parties had agreed to form for this purpose is in the process of incorporation)

**-ANTECEDENTS-**

Inadequate water supply has always been a fact of life to residents in some areas served by BACIWA;

Aware of the predicament, BACIWA needs to tap different sources of potable water to answer the said water shortage;

In a bidding held for the bulk water supply project, the BULK WATER SUPPLIER submitted the lowest complying bid and was issued a Notice of Award on September 21, 2015.

ACCORDINGLY, herein parties agree and covenant to undertake the following terms and conditions:

**DEFINITION OF TERMS**

- Clearance - means local clearance / permit in the form of resolution from the city/municipality council and memorandum of agreement issued and signed by the Mayor of the city/municipality where the Bulk Water Supplier intends to source its water.
- Day 1 of Delivery - The first moment at which potable water is delivered to BACIWA's point of delivery, which shall be within a maximum period of 18 months after issuance of the Notice to Proceed.
- Delivery of Water - refers to delivery of potable water to the point of delivery.
- Facilities - includes the production and distribution facility, land and other associated equipment and facilities.
- Ground water - is water extracted beneath the surface of the ground.
- Independent Laboratory - is any laboratory capable of conducting water analysis which is neither owned nor controlled by one 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 the draw-off point or the point where the bulk water supplier's pipe unloads to BACIWA's reservoir facility at which the flowmeter/s is/are installed.
- Potable Water - refers to delivered treated water whose quality complies with BACIWA Drinking Water Quality Standards as shown in Annexes "D-D<sub>1</sub>" hereto attached and made as integral part hereof.
- Raw Water - is the unprocessed water extracted or taken directly from ground or surface source.
- Reasonable Hours - 8am to 7pm Monday to Sunday.
- Surface Water - is water from rivers, streams, lake and the like.
- Water Quality Standards- refers to BACIWA Drinking Water Quality Standards as shown in Annexes "D-D<sub>1</sub>" hereto.
- Water Supply Contract - shall mean the supply of potable water to the BACIWA's point of delivery by the Bulk Water Supplier.

## Article I. EFFECTIVITY OF THE CONTRACT

The effectivity of the water supply contract shall be for a period of twenty five (25) years commencing on Day 1 of delivery following the delivery schedule, volume, and flowrate as specified in Annex "C" and made as integral part hereof.

All construction and civil works of the Bulk Water facilities inclusive of all pertinent licenses, permits and acquisition of road rights of way shall be completed within a maximum period of eighteen (18) months from the issuance of the Notice to Proceed (NTP).

## Article II. OBLIGATIONS OF THE BULK WATER SUPPLIER

Section 1 The BULK WATER SUPPLIER shall secure water rights from the National Water Resources Board (NWRB) within the construction period of eighteen (18) months as a condition to the effectivity and validity of this contract.

The location of the source shall comply with the distance requirement of the Water Code of the Philippines.

Said water permit/rights shall be assigned to BACIWA upon approval by the NWRB and shall remain for the entire duration of this contract.

In case a conditional water permit or water rights have been acquired by BACIWA, the same may be used by the BULK WATER SUPPLIER.

Payment for the annual water charges and penalties, if any, shall be borne by the BULK WATER SUPPLIER.

Section 2 The BULK WATER SUPPLIER shall be responsible for the payment to DENR, LGU, BIR and other government agencies of any fee, assessment or imposition that may be imposed by any agency or local government unit in the process of installation of facilities, of extracting or collecting water from its source and its delivery to the specified points of delivery.

Section 3 The BULK WATER SUPPLIER shall secure ownership or possession of the property where the facilities shall be located, including acquisition of right of way for pipelines and access roads, except those owned by BACIWA. BACIWA if so needed, shall make the best effort to assist in complying such requirement pursuant to Sec. 7.1 of the GCC. BACIWA shall be furnished copies of such proofs of ownership and/or acquired rights immediately upon issuance of the title or any appropriate document but not later than 30 days from such issuance.


Section 4 The BULK WATER SUPPLIER shall ensure that the acquired Easement of Right of Way must be perpetual and shall contain a stipulation that confers the Right of Way on BACIWA as a third party beneficiary. This shall be duly annotated at the back of the Certificate of Title.

Section 5 The BULK WATER SUPPLIER shall abstract, design and construct structures and facilities, process/treat the water using acceptable technology and non-hazardous chemicals to meet the requirements of BACIWA WATER QUALITY PARAMETERS

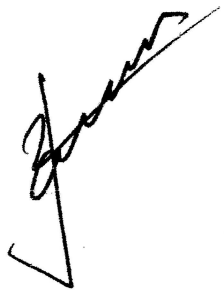
for BULK WATER as referred to in Annexes "D-D<sub>1</sub>" and supply the required volume. There shall be a full disclosure of the treatment process, chemicals and agents to be used by the BULK WATER SUPPLIER.

Failure to comply with or any unauthorized deviation from the standards or the specifications provided for in Annexes "D-D<sub>1</sub>" hereof by the BULK WATER SUPPLIER shall entitle BACIWA to, subject to prior notice to the BULK WATER SUPPLIER, refuse to accept such contracted volume of water. Failure to comply with BACIWA Drinking Water Standard shall entitle BACIWA to impose penalty provided for in Art. VI Section 1.

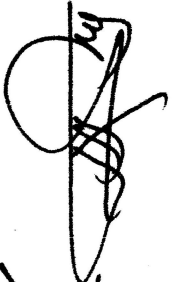
BULK WATER SUPPLIER must provide or install appropriate equipment or machineries to ensure continuous delivery of water e.g. power generation, water treatment, laboratory, storage and waste water facilities to cater increasing volume requirement.




Section 6 The BULK WATER SUPPLIER shall construct appropriate transmission lines and other necessary civil work structures complete with electro-mechanical equipment from the source up to the point of delivery following the BACIWA and the Local Water Utilities Administration (LWUA) Standards and Specifications Manual hereto attached as Annex "E" and made as integral part hereof.





Section 7 During the project construction and duration of this contract, the BULK WATER SUPPLIER shall give BACIWA the right to visit, upon prior notice at reasonable hours to inspect its facilities and ensure compliance to the approved design, methodologies, processes and other conditions of this Contract.



Section 8 The BULK WATER SUPPLIER shall furnish BACIWA with electronic and hard copies of plans, drawings, schematic diagrams, specifications, and as-built plans of all structures, water system facilities, equipment/instruments, water permits, right of way agreements and other related documents, except for those covered by proprietary Intellectual Property rights, fifteen (15) days prior to Day One of Delivery.



Section 9 The BULK WATER SUPPLIER shall supply BACIWA potable water from its minimum up to the maximum volume requirement as presented in the table attached hereto as ANNEX "C" to be delivered at the required flow rate per hour, plus or minus 5% variance, and shall be injected directly to BACIWA's identified Point of Delivery. Failure to comply with the daily minimum volume requirement and the required flow rate shall entitle BACIWA to impose penalty provided for in



Article VI Section 1, hereof.

Section 10 The BULK WATER SUPPLIER shall ensure continuous water supply at 24/7 in 365 days per year and even during power interruptions, equipment breakdowns, adverse weather conditions, repairs and maintenance, except in cases of force majeure as stated in Article IV, BACIWA's major water interruptions or BULK WATER SUPPLIER's major maintenance works with prior agreement of both parties.

Section 11 The BULK WATER SUPPLIER, at its own cost and expense, shall itself conduct daily chlorine residual analysis of potable water supplied or as requested by BACIWA according to the parameters set out in Annexes "D-D<sub>1</sub>". A copy of the test results shall be submitted daily to BACIWA for monitoring of the BULK WATER SUPPLIER's compliance with the water quality standards.

There shall be two (2) water analyses to be performed to comply with the quality standards; the bacteriological (monthly or as needed) and physico-chemical analyses (semi-annual).

Water samples shall be taken jointly from three (3) specific sampling points: at source, metering/point of delivery and after metering point.

In the event that other disinfection method or technology will be utilized and adopted by the BULK WATER SUPPLIER, the former shall submit notice of such change, subject to the approval of BACIWA; such approval may be dispensed with if such change(s) was/were necessitated by the Philippine National Standard for Drinking Water (PNSDW) or the prevailing Philippine National Standard.

Section 12 To ensure that the quality of potable water is within the required Water Quality Standards, the BULK WATER SUPPLIER shall, upon prior written notice, allow BACIWA to conduct inspection of the former's facilities and sources, and shall be allowed free and unhampered access at any time.

Section 13 The BULK WATER SUPPLIER shall ensure that the volume delivered at the point of delivery as per schedule is consistent and continuous at the rated capacity and shall comply with the stipulated Water Quality Standards as provided in Annexes "D-D<sub>1</sub>". Such potable water quality must not, prior to the Bulk Water Supplier's point of delivery, deteriorate due to side reactions with existing pipeline 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 BULK WATER SUPPLIER.

In the event of instability and/or impairment of the water quality, the BULK WATER SUPPLIER shall at its own cost, expense and expertise, employ all appropriate pre-treatment and/or post-treatment processes necessary in correcting the instability and/or impairment of the water quality and shall not solicit from BACIWA any technical input and/or contribution to uphold neutrality and avoid biases.

Section 14 The total volume of potable water delivered by the BULK WATER SUPPLIER shall be measured by two (2) identical battery operated electromagnetic flow meters with built-in data loggers, one owned by BACIWA and one by BULK WATER SUPPLIER, installed in series within the vault. The vault shall be installed with double locks, one (1) lock for BACIWA and one (1) lock for the BULK WATER SUPPLIER.

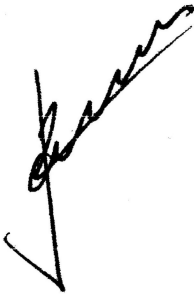
The said flow meters, vault structure and appurtenances within the vault shall be provided, owned, installed and maintained respectively by both the BULK WATER SUPPLIER and BACIWA.

BACIWA shall test the accuracy of the said flow meters and shall approve its installation, complete specifications of these meters, design of its installation and other necessary appurtenances thereof as provided for in Annex "E". Both parties shall read simultaneously each meter daily.

Neither party is authorized to make adjustments on the setting of any of the flow meters or any of its parts without the consent and presence of the other.

Section 15 The BULK WATER SUPPLIER shall likewise install at the injection point, water quality instruments with built-in data loggers to be used as monitoring devices for process control (Water Quality) acceptable to BACIWA. Proof of annual calibration shall be presented from a duly authorized agency (e.g., Department of Trade and Industry [DTI], Department of Science and Technology [DOST], etc.). In the absence of calibration certificates of such instruments, the standard manual methods for testing and monitoring the drinking water as stipulated in Annexes "D-D<sub>1</sub>" shall prevail.

Calibrated data loggers and other on-site instruments shall be acceptable to both parties in establishing satisfactory water quality on selected parameters i.e. pH, turbidity, total dissolved



solids (TDS), conductivity, hardness, residual chlorine and chloride only. Other parameters not aforementioned shall be monitored by water analysis employing the standard methods as stated in Annexes "D-D<sub>1</sub>". Complete specifications of the water quality instrument with data loggers are herein attached as ANNEX "F" and form part of this contract.

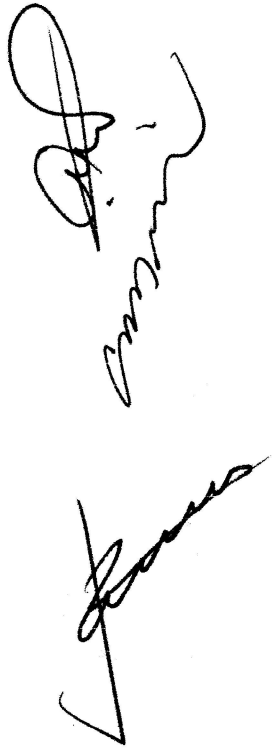
Section 16 BACIWA reserves the right to demand from the BULK WATER SUPPLIER the immediate repeat testing on particular water quality parameters with unacceptable color and turbidity as defined in Annexes "D-D<sub>1</sub>" within six (6) hours from discovery. When the repeat testing results of the BULK WATER SUPPLIER are not in accord with BACIWA laboratory findings, immediate split sampling & testing with other recognized independent laboratory shall be sought by the BULK WATER SUPPLIER to resolve the questionable water quality issue. If the water quality parameter in dispute has not been resolved within 24 hours, BACIWA reserves the right to order for an immediate shutdown of the water supply.

In any event when other water quality parameters with health significance are found to be deviating from acceptable standards pursuant to Annexes "D-D<sub>1</sub>", such as but not limited to bacteriological, heavy metals, pesticides, organics, and the like, BACIWA shall give order of immediate shutdown to the BULK WATER SUPPLIER until the water quality in dispute shall be resolved.

BACIWA shall inform the BULK WATER SUPPLIER of the need to shut down and to shut down its operation where BACIWA shall immediately close the valve at the point of delivery. BACIWA shall not be liable for any damage that may be incurred by such closing of the valve.

The BULK WATER SUPPLIER shall be liable for penalties under Section 2 Article VI of this Contract for failure to provide potable water due to non-compliance with the water quality requirements.

Section 17 The BULK WATER SUPPLIER shall bill BACIWA based on the total monthly volume registered in the battery operated electromagnetic flow meter equipped with data logger within the vault as accepted by BACIWA. If the flow meter reading deviates from the  $\pm 2\%$  allowable tolerance limit it is considered defective, thus, the volume delivered shall be based on the average of the immediately preceding three (3) months taking into account other factors that may affect the volume of delivery. Accuracy of the flow meters shall be jointly inspected by BACIWA and the BULK WATER SUPPLIER as deemed





necessary. Both parties shall provide a spare unit of flow meter to be installed upon pull-out.

At any given time, both parties shall provide their respective standby unit duly calibrated by a mutually acceptable third party.

Section 18 The Bulk Water shall be sold to BACIWA at a fixed rate of Php8.85 with no escalation for the whole contract period of twenty five (25) years.

Price escalation may only be allowed under CPI escalation and/or extraordinary circumstances as may be determined and agreed by both parties, based on the Guidelines provided by the Government Procurement Policy Board (GPPB) and/or National Economic Development Authority (NEDA) whichever is applicable.

Section 19 The BULK WATER SUPPLIER shall be liable to pay the penalty stipulated in Article VI for failure to deliver the required minimum volume of water stipulated under Section 9 of Article II provided said failure does not fall under the conditions or circumstances which would constitute fortuitous event (act of God) / force majeure (act of Man) as stipulated in this contract, and as provided under applicable laws.

Section 20 To ensure continuity of supply to affected consumers in case of emergencies, under or non-delivery of water, the BULK WATER SUPPLIER shall turn over possession and ownership to BACIWA one (1) unit brand new water delivery truck/tanker with at least ten (10) cu.m. capacity complete with pump, hose and BACIWA logo complete with registration and insurance from day one of delivery. Repair and maintenance of the water delivery truck/tanker shall be borne by BACIWA after the lapse of warranty period of the equipment.

Section 21 It is expressly understood by the BULK WATER SUPPLIER that the installation of electromagnetic flow meters with data loggers, pressure transducer, water quality instruments with data loggers and such other equipment or appurtenances required under the contract shall not change the nature of the agreement which is strictly a water supply contract.

Section 22 All appurtenances and water quality instruments as stipulated herein must be completely installed prior to day one of delivery.

Section 23 The BULK WATER SUPPLIER shall ensure faithful performance of its contractual obligations, including implementation of the scheduled Capital Expenditures (CapEx).


Effective from the third year of commercial operations, the procurement, construction, expansion for such CapEx and facilities must be started no less than two (2) years prior to necessity or scheduled phasing of expansion, development and updating of facilities and equipment.

Section 24 The BULK WATER SUPPLIER is prohibited from selling bulk water within the service/franchise area of BACIWA.

Section 25 All Joint Venture Partners of the BULK WATER SUPPLIER shall be jointly and severally liable for all the obligations of the BULK WATER SUPPLIER under this contract. For this purpose, the BULK WATER SUPPLIER shall submit to BACIWA a notarized joint and several undertaking of all joint venture partners to comply with the obligations under this contract. Hereto attached as Annex "B<sub>3</sub>" and made as integral part hereof is the Deed of Undertaking.




### Article III. OBLIGATIONS OF BACIWA



Section 1 BACIWA shall accept the delivery of water from the BULK WATER SUPPLIER at a specified minimum volume as presented in the table in ANNEX C at the required flowrate and shall be injected directly to the BACIWA point of delivery at 9,842 cu.m. Concrete Ground Reservoir located at Hda. Loygoy, Brgy. Granada, Bacolod City. BACIWA shall have an option to request for additional volume with proper notice to the BULK WATER SUPPLIER, to be paid at the prevailing rate.

BACIWA shall likewise have an option to increase the maximum volume requirement earlier than scheduled, provided that prior written notice is given to BULK WATER SUPPLIER; provided further, that the BULK WATER SUPPLIER is capable of supplying the additional volume requirement.

BACIWA reserves the right, after due notice, to regulate the valve at the point of delivery if the BULK WATER SUPPLIER fails to maintain the required flow rate as provided for in the TOR.

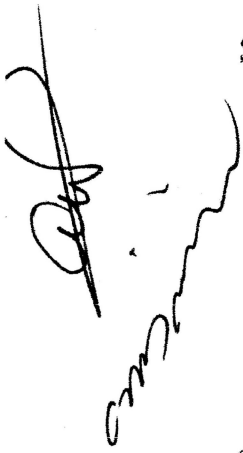


Section 2 BACIWA shall pay for the water delivered by the BULK WATER SUPPLIER on a monthly basis at the rate of Eight Pesos and 85/100 (P8.85) per cubic meter starting from day one (1) of delivery. Should BACIWA fail to accept the minimum volume delivered in any day without any justifiable

reason, BULK WATER SUPPLIER shall bill BACIWA for the said minimum volume, provided that the supply was available.

In the event that for a particular day, BACIWA accepts delivery in excess of required minimum volume and the additional requested volume, which in no case shall exceed 5% of the requested volume, the excess volume shall likewise be billed at regular billing rate.

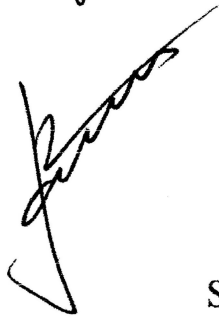
Delivered water in excess of 5% of the required minimum daily volume, that was not requested shall not be paid by BACIWA. The total allowable volume delivered shall be monitored daily.



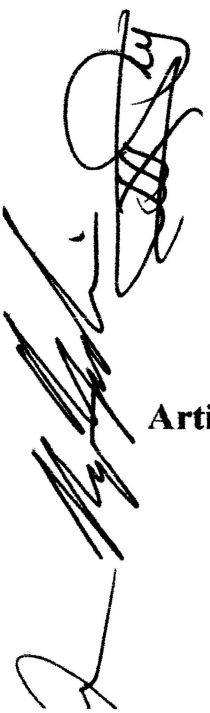
**Section 3** Payment shall be made within forty five (45) working days after receipt of the required correct and complete documents, otherwise, BACIWA is authorized to withhold 1% and 5% thereof as expanded withholding tax and final withholding value added tax respectively until the BULK WATER SUPPLIER can present an exemption from payment of these taxes.

BACIWA shall be entitled to a 2.5% discount if payment is made within thirty (30) calendar days from the receipt of billing.

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



**Section 4** In the absence of any dispute as provided herein, default in payment for three (3) consecutive months by BACIWA, the BULK WATER SUPPLIER may withhold delivery of water after due notice until BACIWA effects or restructures payment; after which, the BULK WATER SUPPLIER shall immediately resume delivery.


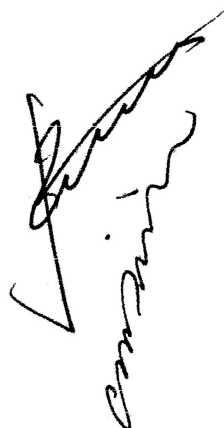
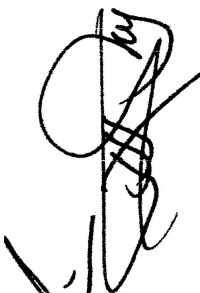



Should there be any dispute, the disputed amount for any given period shall be held in abeyance pending its resolution and shall not prejudice the continuous normal operation and responsibilities of both parties.

**Article IV. FORTUITOUS EVENT / FORCE MAJEURE**


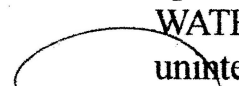
“Force Majeure” shall be limited to acts of God or any event or circumstance, or a combination of events or circumstances, which are unforeseen and beyond the reasonable control of the Parties or which, though foreseeable, could not have been prevented or avoided by reasonable

diligence and which result in either Party being unable to perform or being delayed in performing, in whole or in part, its obligations under this Agreement. The term "force majeure" as used herein includes, but is not limited to, any act of God, fire, flood, storm, drought, earthquake or seismic disturbance, act of war (whether or not declared), act or omission of any court or government agency, act of public enemies of the Republic of the Philippines, sabotage, rebellion, revolution, civil commotion, strike, lockout, boycott or other industrial disturbance or labor dispute, shortage or unavailability of equipment, materials or labor or restriction or limitation upon the use thereof, brownouts extending to more than five (5) days, any event which cannot be insured by any reputable insurance company. It includes the following events and circumstances to the extent that they, or their consequences, satisfy the above requirement:

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- i) act of war (whether declared or not), invasion, armed conflict or act of foreign enemy, blockade, riot, terrorism or exercise of military power;
  - ii) 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, subsurface, environmental, geological, seismic, geo-technical, climatic, hydrological conditions and the existence of underground obstruction, fossils, antiquity structures and archeological remains);
  - iii) continuous interruption in the supply of the electricity not attributable to the BULK WATER SUPPLIER for a period exceeding five (5) consecutive days;
  - iv) repair/maintenance work on pipelines, 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. However, either party shall each be entitled to claim a maximum of five (5) days accumulated in a year under this type of force majeure.

## Article V. BACIWA STEP-IN RIGHTS

Section 1 BACIWA shall have the right, but not the obligation to assume operational responsibility of the facilities in place of the BULK WATER SUPPLIER for purposes of assuring continued and uninterrupted supply of treated water. For this purpose, prior



notice shall be given by BACIWA to the BULK WATER SUPPLIER.

Section 2 This right may be exercised by BACIWA under the following cases:

- 2.1 Failure to correct deviation in the agreed WATER QUALITY PARAMETERS for BULK WATER stated in the Bulk Water Supply Quality Monitoring Program for more than 48 hours as provided in Annexes "D-D<sub>1</sub>" hereof.
- 2.2 Complete stoppage of operations for any reason and for whatever circumstance where such stoppage continued for more than 48 hours.
- 2.3 Failure to comply with its obligations under this Agreement and such failure continues for more than one month in spite of due notice and demand.
- 2.4 Other circumstances analogous but not limited to the foregoing which adversely affect the BULK WATER SUPPLIER'S ability to operate and maintain the facilities in accordance with this Contract.

Section 3 BACIWA, at its sole discretion, shall revert operational responsibility to the BULK WATER SUPPLIER, only after the circumstances warranting the exercise of this right shall have ceased.

Section 4 BACIWA has the right to enter the premises of the BULK WATER SUPPLIER for purposes of exercising its Step-in-Rights. BACIWA shall exercise due care in operating the Facilities. On the other hand, the BULK WATER SUPPLIER shall be allowed to monitor BACIWA's exercise of its step-in rights.

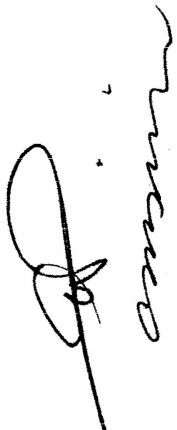
Section 5 The Obligation of BACIWA to pay for the delivered water shall continue despite the exercise of this Step-In Right but it shall automatically deduct mutually agreed expenses incurred in running the Facilities.

Section 6 The exercise of this right shall not in any way be construed as a buy-out or take-over of the Facilities by BACIWA.


Section 7 The exercise of Step-In Rights by BACIWA shall not prejudice the imposition of penalty upon the BULK WATER SUPPLIER in accordance with the provisions of this Contract; nor shall it

bar any actions before the courts of law, mediation or arbitration proceedings.


**Article VI. PERFORMANCE SECURITY, LIQUIDATED DAMAGES  
INDEMNIFICATION AND PENALTIES:**



Section 1 Except when the plant is under the control of BACIWA pursuant to Article V provided the capability of the facility can meet the volume requirement, BACIWA shall impose a penalty of 50% of the prevailing selling price per cubic meter of the BULK WATER SUPPLIER for short delivery deductible automatically and unilaterally from the monthly bill due or which may become due to the BULK WATER SUPPLIER in this Contract or to collect such amount from the latter's Performance Security, whichever is convenient and expeditious to BACIWA, except if attributable to force majeure as defined in Article IV. 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 until the situation normalizes. After the suspension period has lapsed, BACIWA shall impose the same penalty per cubic meter should the BULK WATER SUPPLIER still fail to deliver the guaranteed minimum volume.



Section 2 The penalties for non-compliance to water quality requirements:

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- 2.1 Penalty equivalent to 100% of the regular billing rate per cubic meter of the BULK WATER SUPPLIER to BACIWA, including any volume of water contaminated, to be computed from the time of last test conducted until it was discovered;
  - 2.2 Opportunity loss, based on the prevailing effective selling price (BACIWA's Selling Price to consumers minus BULK WATER SUPPLIER's regular billing rate) per cubic meter multiplied by the volume of water contaminated until rectified;
  - 2.3 Payment for any rectification cost; and
  - 2.4 Damages that may arise from such contamination attributable to the BULK WATER SUPPLIER.

The sample computation of the penalty under this section is hereto attached as ANNEX "G" and form an integral part hereof.

The supplier shall be also be similarly penalized for violation of Article II Section 16.

Section 3 To guarantee the faithful performance of this Contract, the BULK WATER SUPPLIER shall post on an annual or yearly 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 commercial or universal bank, surety bond, callable on demand, issued by the Government Service Insurance System or by reputable 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, certified check, manager's check, cashier's check, bank draft or irrevocable domestic letter of credit – five percent (5%) of the total annual contract price.
- b. Bank guarantee - five percent (5%) of the total annual contract price.
- c. Surety bond - thirty percent (30%) of the total annual contract price.

The Total Annual Contract Price is computed as follows:

$$\text{Total Annual Contract Price} = \text{Php} \underline{\hspace{2cm}} \text{ per cu.m.} \times \underline{\hspace{2cm}} \text{ (volume in cu.m.)} \times 365 \text{ days}$$

This performance security shall be posted in favor of BACIWA and shall guarantee the payment of the amount of the security as penalty for default.

In case of a surety bond, the BULK WATER SUPPLIER shall renew the yearly performance security one (1) month prior to its expiration. In the event the BULK WATER SUPPLIER fails to do so within the specified period, BACIWA has the option to renew the said security and to pay the premium in advance which shall be automatically deducted from the billing of the BULK WATER SUPPLIER.

In the execution of the performance security, the following 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 BULK WATER SUPPLIER one (1) month prior to its expiration. After such renewal, original copy of the policy shall be submitted immediately to BACIWA.

Section 4 The performance security shall be confiscated if this Contract is rescinded or pre-terminated for causes attributable to the fault of the BULK WATER SUPPLIER.

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

Section 5 BACIWA shall impose liquidated damages (LD) for delay in the start-up of delivery to be computed as follows:

$$LD \text{ per day} = \text{_____ cu.m. / day} \times \text{Bid Price per cu.m.} \times 0.001$$

starting after eighteen (18) months from the date of issuance of the Notice to Proceed (NTP) until the BULK WATER SUPPLIER have started the delivery of the treated water.

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, BACIWA shall not be required to prove that it has incurred actual damages. In case of such delay, BACIWA is hereby authorized to deduct immediately the amount of the liquidated damages from any money due or which may become due to the BULK WATER SUPPLIER or to collect such amount from the latter's Performance Security, whichever is convenient and expeditious to BACIWA. In no case shall the total sum of liquidated damages exceed 10% of the total contract price, in which event BACIWA may automatically terminate the contract and impose appropriate sanctions over and above the liquidated damages to be paid as may be allowed by law. Failure on the part of the BULK WATER SUPPLIER to submit NWRB Permit to BACIWA shall not exculpate the BULK WATER SUPPLIER from the imposition of liquidated and other damages.

Section 6 The BULK WATER SUPPLIER agrees and binds itself to indemnify BACIWA for whatever injuries or damages suffered by the latter by reason of the failure, negligence, delay or misconduct of the former and/or its employees in the performance of its obligation.



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

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



**Article VII. DISPUTES AND JURISDICTION**


Any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, that cannot be settled amicably, may be submitted for arbitration in accordance with Republic Act 9285, otherwise known as the "Alternative Dispute Resolution (ADR) Act of 2004". The place of arbitration shall be in Bacolod City, Philippines, otherwise, if said dispute or controversy arising out of the contract or breach thereof will not be resolved by way of ADR, it shall be submitted to a court of law in Bacolod City to the exclusion of all other venues.



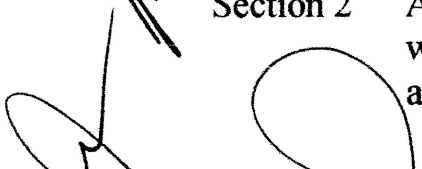
**Article VIII. AMENDMENTS**

This contract shall not be modified or revised except only through a formal written agreement between the parties hereto, citing therein the specific clause(s) or provisions to be revised and the corresponding amendment.

**Article IX. NON-ASSIGNABILITY CLAUSE**



Section 1 For the entire duration of the contract, the BULK WATER SUPPLIER shall not sell or transfer its rights, interests or operations; assign any rights or receivables; pledge assets or facilities, rights or receivables, or make any other disposal of interest in the BULK WATER SUPPLY PROJECT without the prior written consent of BACIWA, which consent shall not be unreasonably withheld.



Section 2 Any sale, transfer, assignment, pledge, or any other disposition without the prior written consent of BACIWA shall be regarded as null and void and not recognized by BACIWA. It shall be a

sufficient ground for BACIWA to terminate or cancel the BULK WATER SUPPLY PROJECT *motu proprio* without need of judicial action but without prejudice to claim for actual damages as may be allowed by law.

Section 3 The BULK WATER SUPPLY PROJECT facilities shall be operated by the BULK WATER SUPPLIER and shall not be subcontracted. Subcontracting may be allowed only in the construction aspect of the WATER FACILITIES within the contract period and shall cease upon its completion.

#### Article X. TERMINATION AND EXIT PROVISION

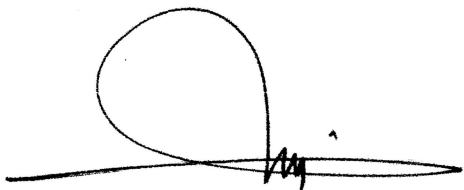
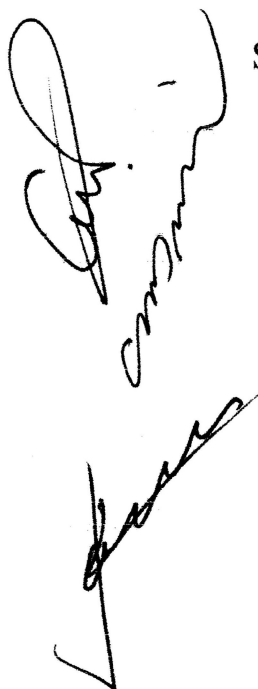
Section 1 This contract shall automatically terminate at the end of its term reckoned 25 years from day 1 of delivery.

Section 2 This contract may be pre-terminated due to any of the following causes:

- 2.1 Exercise of BACIWA of its Step-In-Right Twice within Three (3) consecutive years;
- 2.2 Unpaid Penalties and damages due from the Bulk Water Supplier already accumulated to an amount equivalent to 10% of the total annual contract price, and such amount/s is/are not immediately settled within a period of 30 days from receipt of notice;
- 2.3 Failure to deliver the required minimum volume for fifteen (15) consecutive days due to causes or reasons other than force majeure and fortuitous events, and such situation is not remedied by the BULK WATER SUPPLIER.

Section 3 If the contract is terminated due to paragraphs 2.1 and 2.3 above, BACIWA shall have the option to take over and buy all the facilities of the BULK WATER SUPPLIER based on the book value of the assets net of unpaid penalties and damages subject to applicable existing laws.

Section 4 At the end of the contract period, BACIWA shall have the right of first refusal in case facilities will be sold by the Bulk Water Supplier, provided that the price will be at book value.



**Article XI RENEWAL OF CONTRACT**

This Contract may be subject to extension or renewal upon the option of either one or both of the parties subject to terms and conditions that shall be mutually agreed upon and in accordance with existing laws.

**Article XII SEPARABILITY CLAUSE**

Any provision of this Contract which may be found to be contrary to law or may be declared null and void by the Court, shall not affect in any way the validity of all other remaining provisions.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ at Bacolod City, Philippines.

**BACOLOD CITY WATER DISTRICT**


**BULK WATER SUPPLIER CONSORTIUM**

By:



**Engr. Mario G. Macatangay**  
General Manager

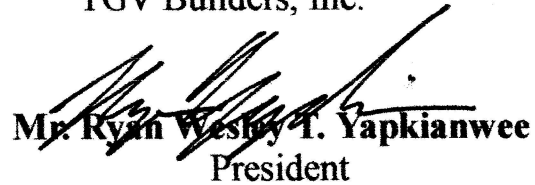
By:



**Mr. Antonio Camelo P. Tompar**  
Board Chair/CEO  
Mactan Rock Industries, Inc.

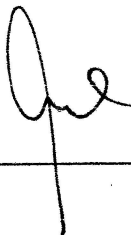
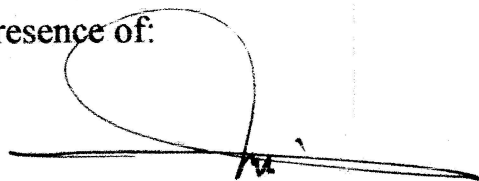


**Mr. Conrado G. Belisario**  
Corporate Secretary  
TGV Builders, Inc.



**Mr. Ryan Wesley T. Yapkianwee**  
President  
Tubig Pilipinas Group, Inc.

Signed in the presence of:

  
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