

AMENDMENT TO THE REVISED CONCESSION AGREEMENT

This AMENDMENT TO THE REVISED CONCESSION AGREEMENT, dated MAY 10 2023, ("Amendment") is made between the Metropolitan Waterworks and Sewerage System ("MWSS"), a government corporation organized and existing pursuant to Republic Act No. 6234, as amended, (the "Charter"), and Maynilad Water Services, Inc. ("MWSI"), a corporation organized and existing under the laws of the Philippines (the "Concessionaire").

WHEREAS, on 31 March 2021, the Revised Concession Agreement (the "RCA dated 31 March 2021") was signed by and between the MWSS and Manila Water Company, Inc. ("MWCI");

WHEREAS, on 18 May 2021, the Revised Concession Agreement ("the RCA dated 18 May 2021") was signed by and between the MWSS and MWSI;

WHEREAS, Section 16.3(iii)(c) of the RCA dated 31 March 2021 and RCA dated 18 May 2021 (collectively, hereinafter referred to as the "RCAs") stipulate that the Concessionaires shall have received an "Undertaking Letter signed by the Head of the Supervising Agency and the Secretary of Finance, as approved by the President ... " is required "[a]t or prior to the Effective Date";

WHEREAS, in a Joint Letter dated 17 October 2022 (the "Joint Letter dated 17 October 2022"), the MWCI and MWSI represented that the RCAs were not effective because of the "failure of the Republic to execute a compliant Undertaking Letters ... ". In addition, the MWCI and MWSI relayed their proposals to the Department of Finance to amend the following provisions in the RCAs:

1. Increasing the "C" factor from two-thirds (2/3) to 95% of the Consumer Price Index (CPI) published by the Philippine Statistics Authority;
2. Reinstating the mechanism under Amendment No. 1 to the Concession Agreement allowing the Concessionaires to pass on foreign currency differentials on a quarterly basis with respect to present and future foreign exchange losses or gains arising from MWSS Loans and Concessionaire Loans;
3. Aligning of the RCAs provisions with the revised Implementing Rules and Regulations of Republic Act No. 6957, as amended by Republic Act No. 7718 ("BOT Law IRR") in

Handwritten signatures and initials in black ink, including a large stylized signature and several smaller initials.

particular the provisions on: (a) Materials Adverse Government Action (MAGA); (b) reclassifying the forms of Performance Bond; and (c) making the actions and decisions of the MWSS-Regulatory Office (RO) arbitrable;

WHEREAS, on 1 December 2022, a Memorandum from the Executive Secretary was issued to create an ad-hoc Water Concession Agreements Review Committee to review the existing water concession agreements entered into by the MWSS pursuant to Republic Act No. 6234, as amended (the "Committee");

WHEREAS, on 16 December 2022, the Committee held its first meeting at the Premier Guest House, Malacañang discussing matters regarding the RCAs and proposals of MWCI and MWSI;

WHEREAS, on 26 December 2022, the government, represented by the Department of Justice and the Department of Finance conveyed the position of the Committee to MWCI and MWSI;

WHEREAS, MWCI and MWSI submitted a Joint Letter dated 06 January 2023 (the "Joint Letter dated 06 January 2023") expressing their willingness to accept the view of the Committee regarding the effectivity of the RCAs;

WHEREAS, on 30 January 2023, the Committee convened at the Premier Guest House, Malacañang with MWCI and MWSI to discuss the proposals as stated in their Joint Letters dated 17 October 2022 and 06 January 2023;

NOW, THEREFORE, the Parties agree to amend the RCA as follows:

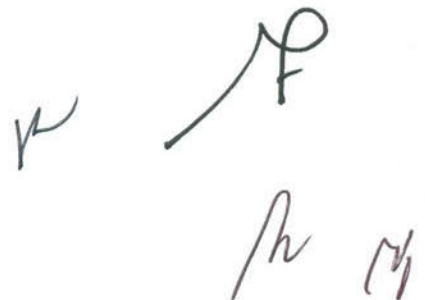
1. Additional definitions in Article 1 are as follows:

Foreign Currency Differential Adjustment ("FCDA") is a rate adjustment mechanism for the recovery or compensation on a current basis, subject to quarterly review and adjustment of the Regulatory Office, of accrued FOREX losses/gains arising from payments of the loans enumerated in Section 9.8 hereof;

Modified Foreign Currency Differential Adjustment ("MFCDA") is a rate adjustment mechanism for extraordinary inflation/deflation of the Philippine Peso, as described in Section 9.8.1 hereof;

2. "C", as defined in Article 1, is amended as follows:

"C" means seventy-five percent (75%) of the percentage change in the



Consumer Price Index for the Philippines, as published by the Philippine Statistics Authority between July of the Weighting Year and July of the Prior Year.

- 3. "Change in Law", as defined in Article 1, is deleted.
- 4. "Effective Date", as defined in Article 1, is amended as follows:

"Effective Date" means 29 June 2022.

- 5. "MWSS Loan", as defined in Article 1, is amended as follows:

"MWSS Loans" means the indebtedness listed in Schedule 4 hereto and any future loans where MWSS is the primary obligor. For the avoidance of doubt, future loans of MWSS will form part of the "MWSS Loans" only if they are or will be considered in determining the Concession Fees under Section 6.4.

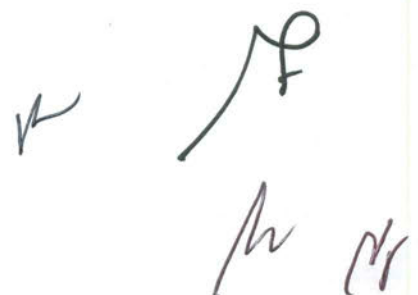
- 6. "Receipts", as defined in Article 1 is amended as follows:

"Receipts" means all cash receipts from Customer and grants from third parties (including from the republic) to the Concessionaire, excluding any interest and dividends received by the Concessionaires and any form of collections or reimbursements arising from FCDA and MFCDA.

- 7. The forms of Performance Bond provided in Section 6.10 is amended as follows:

xxx xxx xxx

<u>Form of Performance Bond</u>	<u>Amount of Performance Bond (not less than the Percentage of the Total Project Cost)</u>
(a) Cash or cashier's/manager's check, irrevocable letter of credit(using the form set out in Exhibit A [Form of Irrevocable Letter of Credit]), or bank draft issued by a Universal or Commercial Bank which MWSS, in its sole discretion, deems acceptable.	Two Percent (2%)



(b) Bank guarantee issued by a Universal or Commercial Bank which MWSS, in its sole discretion, deems acceptable.	Five Percent (5%)
(c) Surety bond callable on demand issued by the Government Service Insurance System or a surety or insurance company duly accredited by the Insurance Commission and acceptable to MWSS.	Ten Percent (10%)

xxx xxx xxx

8. Section 9.2.1 Rate Adjustment Limit and Rate Cap is amended as follows:

xxx xxx xxx

Rate Cap means:


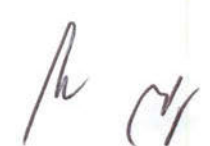
- a. xxx xxx xxx
- b. xxx xxx xxx

in each case, adjusted annually on the first day of each Charging Year for CPI pursuant to Section 9.2.2. below; provided that the adjustment in the Standard Rates attributable to the FCDA and MFCDA, as described in Sections 9.8 and Section 9.8.1 below, shall not be included in implementing the Rate Cap.

9. Section 9.2.2 Rate Adjustment Procedures is amended as follows:

9.2.2 Rate Adjustment Procedures

There shall be a percentage adjustment in the Standard Rates equal to the sum of:

- (i) "C", equal to seventy-five percent (75%) of the percentage change in the Consumer Price Index for the Philippines, as published by the Philippine Statistics Authority between July of the Weighting Year and July of the Prior Year; and
- (ii) the Rebasing Convergence Adjustment ("R"), as determined under Section 9.4.2 below; and
- (iii) any Extraordinary Price Adjustment "E", as determined under Section 9.3 below; and

provided, that such sum shall not exceed the limitations in Section 12 of the Charter;

Any percentage adjustment shall be subject to the final determination of the MWSS upon recommendation of the Regulatory Office. The Concessionaire shall submit to the Regulatory Office such percentage adjustment and its calculations no later than fifteen (15) days prior to the publication of such adjustment in accordance with Section 9.7.

It shall be understood that the seventy-five percent (75%) CPI Adjustment will not be applied to the cost of debt of the Concessionaire.

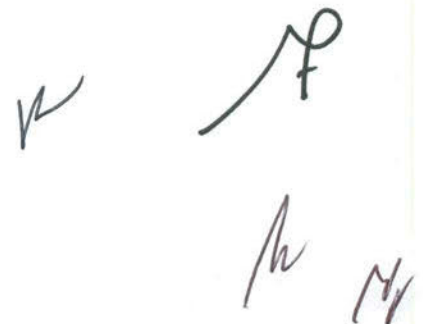
10. A new section 9.8 is added after Section 9.7 as follows:

9.8 Foreign Currency Differential Adjustment ("FCDA")

The concessionaire shall implement a rate adjustment for the recovery or compensation on a current basis, subject to quarterly review and adjustment of the Regulatory Office, of accrued FOREX losses/gains arising from the following:

- principal and interest payments on all MWSS loans; and
- principal payments for drawn and undrawn amounts on all Concessionaire Loans listed as follows:
 - JPY denominated Concessionaire Loan from Japan International Cooperation Agency dated 7 June 2017;
 - MWMP Loan dated 25 October 2012; and
 - JCB Loan dated 7 June 2017;

Provided that the Regulatory Office reviews the FCDA on a quarterly basis and determines the rate adjustment required. The FCDA shall be a



pass-through charge on top of the Standard Rates and not subject to the limitation the Rate Adjustment Limit in Section 9.2.1 hereof.

For avoidance of doubt, no foreign currency differential adjustment shall be applied to Concessionaire Loans not enumerated above, and circumstances provided for under the MFCDA. In no case shall the Concessionaire be allowed to recover twice for the same amount of payment for the MWSS loans. The Concessionaire shall publish any rate adjustment arising from the FCDA mechanism in accordance with Section 9.7.

A more detailed guidelines on the determination and application of the FCDA to the Concessionaire Loans will be issued by the Regulatory Office, as assisted by the Department of Finance and as approved by the MWSS.

11. A new section is added after Section 9.8.1 as follows:

9.8.2. Modified Foreign Currency Differential Adjustment (MFCDA)

For any and all Concessionaire Loans contracted after 29 June 2022, the Concessionaire may elect to apply MFCDA mechanism when there is an "extraordinary inflation" or "extraordinary deflation" of the Philippine Peso, subject to the following conditions:

- (i) Base Exchange Rate is defined as the exchange rate of the Philippine Peso to the US\$1.00 as of the close of the first trading day of the calendar year determined by the published BSP Reference Exchange Rate and shall remain to be the base exchange rate until the next calendar year.
- (ii) Prevailing Exchange Rate is defined as the average exchange rate of the Philippine Peso to the US\$1.00 for the last three (3) months within the current calendar year determined by the published BSP Reference Exchange Rate from a Trigger Date.
- (iii) Trigger Date is defined as the date when an extraordinary inflation or deflation has occurred.
- (iv) "Extraordinary inflation" is presumed to have supervened if the Prevailing Exchange Rate should increase by more than twenty percent (20%) from the Base Exchange Rate. In such event, fifty percent (50%) of the actual net FOREX loss on principal payments for

[Handwritten initials and signatures]

the calendar year where such MFCDA mechanism is triggered shall be recovered over a period of at least one (1) year starting from May 1 of the succeeding calendar year; provided, that if there is an actual net forex gain arising from the cash payment of the principal amounts of Concessionaire Loans, the Concessionaire may be required by MWSS to reimburse to its customers.

- (v) "Extraordinary deflation" is presumed to have supervened if the Prevailing Exchange Rate should decrease by more than twenty percent (20%) from the Base Exchange Rate. In such event, fifty percent (50%) of the actual net FOREX gain on principal payments for the calendar year where such MFCDA mechanism is triggered shall be reimbursed over a period of at least one (1) year starting from May 1 of the succeeding calendar year; provided, that if there is an actual net forex loss arising from the cash payment of the principal amounts of Concessionaire Loans, the Concessionaire shall not be allowed to recover net forex losses.

If the Concessionaire elects to exercise the MFCDA mechanism, the Concessionaire shall inform the Regulatory Office in writing within fifteen (15) days from the Trigger Date, provided that the MFCDA mechanism is automatically effective from the Trigger Date if there is an extraordinary deflation. In all cases, the Regulatory Office shall review and determine the adjustment to be applied as part of the recovery/reimbursement. The Regulatory Office shall conduct periodic review whether there is still a need for such adjustment. The adjustment is deemed extinguished upon approval by the MWSS of the Regulatory Office's recommendation that the Concessionaire has recovered or reimbursed the amount approved under the MFCDA and with written notice given to the Concessionaire.

During an extraordinary inflation, if the Concessionaire declines in writing to exercise the MFCDA mechanism, or if the Concessionaire fails to exercise it within the specified period, the Concessionaire's right to benefit from the MFCDA mechanism shall be deemed waived and terminated for that entire calendar year where the Trigger Date occurred.

The MFCDA shall be a pass-through charge on top of the Standard Rates and not subject to the limitation of the Rate Adjustment Limit in Section 9.2.1 hereof. The Concessionaire shall publish any rate adjustment arising from the MFCDA mechanism in accordance with Section 9.7.

Handwritten signatures and initials in the bottom right corner of the page. There are three distinct marks: a stylized 'K' or 'W' on the left, a large 'F' with a long horizontal stroke extending to the right in the center, and a smaller signature or set of initials on the right.

A more detailed guidelines on the determination and application of the MFCDA to the Concessionaire Loans will be issued by the Regulatory Office, as assisted by the Department of Finance and as approved by the MWSS, and such guidelines will form an integral part of the RCA.

12. Section 10.1 is amended as follows:

10.1 General

A material adverse government action ("MAGA") means any act of the government which the Concessionaire had no knowledge of, or could not reasonably be expected to have knowledge of, prior to the effectivity of this Agreement; and that occurs after the effectivity of this Agreement, which specifically discriminates against the sector, industry, or project, and which has a material and adverse effect on any of the rights and privileges of, or on the enjoyment and/or exercise thereof by the Concessionaire under this Agreement, or which has a material and adverse effect on the Concessionaire's ability to comply with its financial and/or other contractual obligations under this Agreement, provided that MAGA shall not include:

- (a) the renegotiation of the terms and amendment of the Concession Agreement between MWSS and the Concessionaire dated as of February 21, 1997, as implemented by this Agreement;
- (b) any reorganization of MWSS;
- (c) any reorganization or creation of the relevant regulatory agencies by the President;
- (d) any act or decision rendered by the Regulatory Office under this Agreement;
- (e) any claim or action initiated by the government in the exercise of its rights or remedies against the Concessionaire under this Agreement, any law, rules, or regulations;
- (f) any claim or action initiated by the government in relation to a purported breach on the part of the Concessionaire. For the avoidance of doubt, a judgment, ruling, or resolution in favor of the Concessionaire shall not render such government claim or action as MAGA;
- (g) the imposition of any new local or national tax, or an increase in the rate of any local or national tax;
- (h) an increase in the annual income tax for persons in the Philippines;
- (i) introduction or adjustment of value added tax of general application to persons doing business in the Philippines;

Handwritten initials and signatures in the bottom right corner of the page. There are several distinct marks, including what appears to be a large 'R' or 'F' and some smaller, less legible scribbles.

- (j) improvements in technology or operational practices relating to the water industry undertaken by the Concessionaire in the regular course of its operations;
- (k) adjustments in minimum wage scales and rates in the Philippines; and
- (l) an event, the adverse effect of which can be insured against in accordance with prudent industry practice; and revocation, withdrawal or failure to grant, maintain, renew or accept any relevant consent due to the fault or negligence of the Concessionaire.

13. Section 10.4 is amended as follows:

Section 10.4. MAGA Threshold and Cap

For any Rate Rebasing Period, if a MAGA or the combination thereof in the aggregate causes the Concessionaire to incur actual capital expenditures in excess of five percent (5%) of the approved capital expenditures for the Rate Rebasing Period (calculated at the time the Concessionaire claims such financial threshold to have been met), provided that the Concessionaire shall not be entitled to: (a) receiving double compensation for cost incurred, which means that the compensation referred to in this Section shall be understood to preclude all other forms of compensation to the Concessionaire due to a MAGA, such as but not limited to, treating the expenditure as an expenditure under any Rate Rebasing, or including the expenditure in the Early Termination Amounts or Expiration Payment or as part of FCDA and MFCDA (b) being compensated for all capital and other expenditures which has been disallowed by the Regulatory Office or the latter's successors and assigns; and (c) being compensated and/or receiving a return beyond the amounts in Section 12 of the Charter and/or through the ADR then the Concessionaire shall notify the Regulatory Office in writing of the total actual costs or losses suffered by it due to that MAGA or combination thereof; provided further that the Concessionaire has demonstrated to the satisfaction of the Regulatory Office and the MWSS that it has used and is continuing to exert all reasonable efforts to overcome or mitigate or minimize the financial effects of the MAGA, then the Concessionaire shall be entitled to:

- i. Compensation for actual costs, expenses, and losses caused by MAGA, including (and not just the excess over) the amounts described in the immediately preceding paragraph, capped at fifty percent (50%) of the approved capital expenditures for the Rate Rebasing Period; or

Handwritten initials and signatures in the bottom right corner of the page. There are several distinct marks, including what appears to be a large 'K' or 'R' and other stylized initials.

ii. Such other mode that may be agreed by the Parties

The inability of the Parties to agree on the appropriate mode of compensation within forty-five (45) days from notification of the total actual costs incurred by the Concessionaire, unless otherwise mutually extended by the Parties, shall result in the termination of this Agreement, and effects of such termination shall be the same as if this Agreement were terminated by mutual agreement of the Parties under Section 11.5(i) of this Agreement.

If the effects of the MAGA persists for a continuous period of more than ninety (90) days, the Concessionaire shall have additional right to terminate this Agreement, and the effects of such termination shall be the same as if this Agreement were terminated by mutual agreement of the parties under Section 11.5(i) of this Agreement.

14. Section 13.2 is amended as follows:

13.2 Arbitration

The Parties agree to use best efforts to amicably resolve any disagreements, disputes, controversies or claims arising out of or relating to this Agreement or the interpretation hereof or any arrangements relating hereto or contemplated herein or the breach, termination or invalidity hereof. Any dispute that cannot be resolved amicably shall be referred to and settled by final binding arbitration in accordance with the Arbitration Rules embodied in Republic Act No. 9285 and its Implementing Rules and Regulations, Republic Act No. 6957, as amended by Republic Act No. 7718 and its Revised Implementing Rules and Regulations, or the existing Philippine law and regulations on arbitration at the time of dispute, except insofar as the Rules conflict with the provisions of this Agreement.

The seat for arbitration will be the Philippines, and the venue shall be in Metro Manila. Only Filipino citizens may be appointed as arbitrators.

This Agreement and the rights and obligations of the Parties hereunder shall remain in full force and effect pending the award in any arbitration proceedings, which award shall determine whether and when termination of this Agreement may become effective.

Handwritten signatures and initials in black ink, including a large stylized signature, a smaller signature, and several initials.

15. The foregoing amendments shall take effect retroactively on 29 June 2022, the date of effectivity of the Revised Concession Agreement between the parties.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on its behalf by its duly authorized officer, all as of the date first written above.

**METROPOLITAN WATER
WORKS AND SEWERAGE
SYSTEM**



LEONOR C. CLEOFAS, CESO IV
Administrator

**MAYNILAD WATER SERVICES,
INC.**



RAMONCITO S. FERNANDEZ
President and CEO

Witnesses:



AUGUSTINE M. VESTIL, JR.
*Legal Services Department Manager,
MWSS-CO*



RANDOLPH T. ESTRELLADO
Chief Operating Officer, MWSI

ACKNOWLEDGMENT

BEFORE ME, personally appeared this MAY 11 2023 day of 2023 in Quezon City the following:

PARTIES	GOV'T ISSUED ID	VALIDITY
METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM Represented by: LEONOR C. CLEOFAS, CESO IV	TIN [REDACTED]	
MAYNILAD WATER SERVICES, INC. Represented by: RAMONCITO S. FERNANDEZ	TIN 005 393 442 000 Passport No. [REDACTED]	Valid until 12 June 2028

known to me to be the same person who executed the foregoing Revised Concession Agreement (Instrument) for and in behalf of said corporations, and they acknowledged to me that the same is their free and voluntary act and that of the respective corporation they represent.

This Instrument consists of only twelve (12) pages including this page in which this Acknowledgement is written, duly signed by parties and their witnesses.

WITNESS MY HAND AND SEAL this MAY 11 2023 at QUEZON CITY, Philippines.

Doc. No. 249 ;
Page No. 51 ;
Book No. 39 ;
Series of 2023 ;

NOTARY PUBLIC

[REDACTED]
ATTY. MARY CATHERINE A. DAMIAN
Notary Public for Quezon City until 12-31-24
Per Adm. No. NP-64 (2023-2024)
Unit 9 Bldg. 2, Access Support Area, Laurel Ave., UP Diliman, Quezon City
IBP# 238585-238586; 01/16-2023 for 2023 & 2024; QC Chapter
PTR# 4055029D; 01-06-2023; QC
Roll No.43243; MCLE Compliance No. VII-0017610; 05-11-2022-Pasig City

[Handwritten signatures]