

**Management Contract for  
Al Yarmouk Water Company  
YWC**

**a Limited Liability Company (LLC)  
owned by WAJ, the Water Authority of Jordan**

**The Hashemite Kingdom of Jordan**

**Request for Proposals**

**REQUEST FOR PROPOSALS  
FOR A MANAGEMENT CONTRACT  
FOR THE PROVISION OF WATER  
AND WASTEWATER SERVICES  
TO AL YARMOUK WATER COMPANY LLC  
YWC**

**[Date]**

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## **SECTION 1 - PROJECT BACKGROUND**

### **1.1 General**

1.1.1 On behalf of Al Yarmouk Water Company LLC (“Al Yarmouk Water” or “YWC”) the Performance Management Unit (“PMU”) within the Water Authority of Jordan (“WAJ”) is carrying out an open competition to retain an experienced water and wastewater operations service provider (“Management Contractor”) to provide management, operations and maintenance services related to the water and wastewater infrastructure of the northern governorates of Ajloun, Irbid, Jerash and Mafraq (the “Northern Governorates”) in the Hashemite Kingdom of Jordan (“HKJ”). The competition is a one-staged international competitive Request for Proposals procurement process with integrated qualification (the “RFP Procurement Process”). The Management Contractor chosen through this process will enter into a contract with YWC in substantially the same form and substance as the draft contract attached as Annex B to this Request for Proposals document (the “Draft Contract”).

1.1.2 Al Yarmouk Water, the utility responsible for providing water and wastewater services to the Northern governorates is the legal successor of the Northern Governorates Water Administration (NGWA) which has been a distinct department of WAJ until its corporatisation and registration under the company name “Al Yarmouk Water Company” on 26 July 2010.

1.1.3 In respect of this RFP, goals of the Management Contract are,

- (a) to improve the water and wastewater services to customers in the Northern Governorates;
- (b) to improve the financial position of Al Yarmouk Water through the achievement of cost efficiencies and improved revenue management;
- (c) to establish, for Al Yarmouk Water, the foundation for sustainable operational and business effectiveness and efficiency; and
- (d) to reduce the amount of water lost or unaccounted for through, among other things, leakage and unauthorized connections to the Facilities.

### **1.2 The Performance Management Unit**

The Performance Management Unit (“PMU”) will be the implementing agency for the purpose of this RFP and Contract, and will carry out all regulatory responsibilities relating to the Contract.

## **SECTION 2 - SOURCE OF FUNDS**

### **2.1 General**

2.1.1 The HKJ applied for a grant (the “Grant”) and two loans (the “Loans”) from Kreditanstalt für Wiederaufbau (“KfW”) for the benefit of the Northern Governorates which will be used as follows:

- (a) the Grant will be used to finance all or a portion of the Management Contractor’s Fix Fee to be paid to the Management Contractor under the Contract;

- (b) one of the Loans is used to make available to the HKJ funds to carry out the activities under the Water Loss Reduction Program; and
- (c) one of the Loans is used to finance a Rehabilitation and Repair Fund to assist in the Management Contractor’s performance improvements as set out in the Contract.

2.1.2 WAJ will finance the remainder of the Management Contractor’s Fee and the Incentive Compensation to be paid to the Management Contractor in accordance with the Contract.

2.1.3 The RFP Procurement Process specified in this Request for Proposals (“RFP”) has been prepared in accordance with the KfW’s procurement guidelines. The “RFP Procurement Process” is defined as commencing with the issuance of these RFP Documents and terminating on the date the Contract is signed by the Successful Bidder and Al Yarmouk Water.

2.1.4 The HKJ may also continue to apply to a number of international organizations with respect to financing capital improvements to the infrastructure separate and apart from this Contract, including capital improvements in the Service Area.

## **2.2 Payment by KfW**

Payment by KfW will be made only at the request of WAJ and upon approval of KfW, in accordance with the terms and conditions of the Loan and Financing Agreements, and will be subject in all respects to the terms and conditions of the Loan and Financing Agreements. No party other than the HKJ shall derive any rights from the Loan and Financing Agreements or have any claim to the Grant or Loan proceeds.

## **2.3 Management Contractor’s Compensation**

2.3.1 The Management Contractor shall receive an Annual Fee (AF), covering all its services according to the contract, consisting of a Fix Fee (FF) and a Variable Fee (VF) as incentive compensation.

2.3.2 The VF will be paid to the Management Contractor as incentive compensation for exceeding specific minimum performance targets on an annual basis as set out in the Draft Contract.

## **SECTION 3 - RFP DOCUMENTS, INFORMATION GATHERING, CLARIFICATION PROCESS AND RFP TIMETABLE**

### **3.1 Introduction**

3.1.1 This RFP, issued by PMU, is the formal invitation to all registered companies or consortia to submit a Technical and a Financial Proposal for the management, operation and maintenance of the water supply and wastewater facilities of Al Yarmouk Water.

3.1.2 This RFP Procurement Process will be implemented by PMU on behalf of YWC. A special Evaluation Committee (the “Evaluation Committee”) will advise in the RFP Procurement Process with respect to matters of evaluation and contract award.

### **3.2 The Request for Proposals Documents**

3.2.1 The nature of the service area, the services, the facilities which are to be managed, operated and maintained by the Management Contractor, the procedures that are to be followed during the RFP Procurement Process and the Contract terms and conditions are prescribed in the RFP documents. The RFP documents consist of:

- (a) this Request for Proposals;
- (b) Annex A to the Request for Proposals consisting of:
  - (i) Form of Tender Security;
  - (ii) Bidder’s Commitment Letter;
  - (iii) Format of Curriculum Vitae (CV) for Proposed Key Staff;
  - (iv) Format of Project Reference Sheet;
- (c) Annex B to the Request for Proposals – the Draft Contract consisting of:
  - (i) Form of Contract;
  - (ii) General Conditions of the Contract;
  - (iii) Appendices to the General Conditions.
- (d) Addenda, to either the Request for Proposals or the Annexes to the Request for Proposals, if any are issued by PMU.

3.2.2 The documents listed in RFP Section 3.2.1(a), (b), (c) and (d) are collectively the “RFP Documents”. For information purposes only, an Information Memorandum shall be issued to the Bidders together with the RFP Documents.

3.2.3 The Proposals shall be in English and the RFP Procurement Process shall be carried out in English.

3.2.4 Bidders will be required to submit a non-refundable fee of 1,500 JOD to PMU to receive the RFP Documents and participate in the RFP Procurement Process. The method of payment shall be a bank transfer. Payments shall be made to:

Cairo Amman Bank  
Account holder: Ministry of Water and Irrigation/Performance Management Unit  
Account no: 01 500 211441 01  
BIC: CAABJOAM

### **3.3 Non-responsive Proposals**

3.3.1 Each Bidder shall examine all instructions, terms and conditions, forms, specifications and other information contained in the RFP Documents. If the Bidder,

- (a) fails to provide all documentation and information required by the RFP Documents;  
or
- (b) submits a Proposal which is not Substantially Responsive, as defined in RFP Section 3.3.2 to the terms and conditions of the RFP Documents,

PMU may determine that the Proposal is non-responsive to the RFP and may reject it.

3.3.2 For the purpose of this RFP, “Substantially Responsive” means that the Proposal conforms to all the terms, conditions and specifications of the RFP Documents without material deviation, objection, conditionality or reservations. A material deviation, objection, conditionality or reservation is one,

- (a) that affects in any substantial way the scope, quality or performance of the Contract;
- (b) that limits in any substantial way, inconsistent with the RFP Documents, Al Yarmouk Water’s rights or the Successful Bidder’s obligations under the Contract; or
- (c) whose rectification would unfairly affect the competitive position of other Bidders who are presenting Substantially Responsive Proposals.

### **3.4 Clarification of RFP Documents and Information**

3.4.1 Bidders may request clarification of any of the RFP Documents or information provided by the PMU in accordance with the following procedure:

- (a) Bidders shall submit all requests for clarification in writing and signed by the person or persons authorized to bind the Bidder in accordance with RFP Section 5.1.3, to the PMU by courier or by fax at the address or fax number set out in RFP Section 3.8;
- (b) For information purposes only, each bidder shall submit a list of those sections of the Draft Contract which they will want to negotiate if they are Preferred Bidder (list of negotiation issues), to the PMU by courier or by fax at the address or fax number set out in RFP Section 3.8;
- (c) All requests for clarification and the list of negotiation issues shall be submitted as softcopy by email additionally; and
- (d) All requests for clarification and the list of negotiation issues shall be submitted on or before the deadlines set out in RFP Sections 3.10.1.

3.4.2 The PMU shall provide each Bidder with a document (the “Response to Questions Document”) containing written responses to all requests for clarification which were submitted in accordance with RFP Section 3.4.1. The Response to Questions Document shall not identify the source of any request for clarification. If similar or repeated requests for clarification are made by the Bidders, the PMU may list those requests for clarification as one request for clarification and answer such request for clarification only once.

### **3.5 Site Visits and Pre-Proposal Conference**

3.5.1 The PMU shall schedule a time and a procedure for Bidders to visit and conduct a physical inspection of the sites of the water and wastewater facilities and their surroundings in accordance with the estimated timetable set out in RFP Section 3.10.1 (the “Site Visits”). While attendance at the Site Visits is not mandatory, Bidders are strongly advised to attend the Site Visits and obtain for themselves all information that may be necessary to prepare their Proposals and enter into the Contract. The cost of the Site Visits shall be at each Bidder’s own expense.

3.5.2 Each Bidder and its advisors, employees, consultants and agents shall be granted permission by YWC to enter upon YWC’s premises and lands for the purpose of the Site Visits, but only upon the express condition that the Bidder, its advisors, employees, consultants and agents shall release and indemnify YWC, WAJ, the PMU, and the HKJ (together the “Authorities”) and their respective advisors, employees, consultants and agents from and against all liability in respect thereof and that the Bidder shall be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs or expenses incurred as a result of the Site Visits.

3.5.3 The PMU shall hold a pre-bid conference on the date set out in RFP Section 3.10.1 at the offices of WAJ in Amman or at the offices of YWC in Irbid. The intention of the pre-proposal conference is to provide a technical presentation to the Bidders as well as a brief review of the RFP

Documents. The PMU shall prepare and circulate minutes of the pre-proposal conference but these minutes shall not amend the RFP Documents in any way. While attendance by Bidders at the pre-proposal conference is not mandatory, Bidders are strongly encouraged to attend.

### **3.6 Data Room**

The PMU shall establish a data room with a selection of relevant data, information and documents to be accessible to Bidders or their representatives from the date set out in RFP Section 3.10.1 until the Submission Deadline in accordance with a schedule established by the PMU.

### **3.7 Addenda**

PMU shall issue changes to the RFP Documents by written addenda only. No other communications of any kind whatsoever, including, without limitation, the minutes of the pre-proposal conference and the Response to Questions Document, shall modify the RFP Documents. PMU shall send any or all addenda by air mail, courier or facsimile to each of the Bidders. The addenda shall be binding on each Bidder, and PMU has the right to assume that the information contained in the addenda has been taken into account by the Bidder in its Proposal. Each Bidder shall confirm receipt of all addenda in the Bidder's Commitment Letter.

### **3.8 Contact with PMU for the Purpose of Clarification**

The Bidders shall contact only the person set out below at PMU, at the address set out below, for the purpose of requesting information and clarification or for any other purpose relating to this RFP during the RFP Procurement Process. Such contact shall be in writing, signed by the person or persons authorized to bind the Bidder in accordance with RFP Section 5.1.3 submitted by courier or by fax. The Bidders shall not contact any other person at PMU or any person at WAJ, YWC or the Evaluation Committee during the RFP Procurement Process.

Performance Management Unit (PMU)  
Attn.: PMU Director Eng. Basem Telfah  
Jaber Ben Haan Street, Building No. (5)  
P.O. Box 5012  
Amman 11181  
Jordan

Telephone: +962 6 56 52 261 Ext. 1045  
Fax: +962 6 56 27 823  
Email: [MC\\_Yarmouk@pmu.gov.jo](mailto:MC_Yarmouk@pmu.gov.jo)

One soft copy of this communication shall be sent to KfW:

KfW Entwicklungsbank  
Attn.: Dr. Manuel Schiffler  
Kompetenzzentrum Wasser- und Abfallwirtschaft L III b  
Palmengartenstraße 5 – 9  
60325 Frankfurt / Main, Germany

Telephone: +49 69 7431-4325  
Fax: +49 69 7431-3279  
Email: [Manuel.Schiffler@kfw.de](mailto:Manuel.Schiffler@kfw.de)

Another soft copy of this communication shall be sent to the Transaction Advisor:

Prof. Dr. Dr. Rudolph GmbH  
 Consultants for Environmental Engineering and Management  
 Attn.: Mr. Michael Harbach  
 Alfred-Herrhausen-Str. 44  
 58455 Witten, Germany

Telephone: +49 2302 91401-0  
 Fax: +49 2302 91401-11  
 Email: [mail@professor-rudolph.de](mailto:mail@professor-rudolph.de)

### **3.9 Information Provided by the Authorities**

3.9.1 Each Bidder is solely responsible for conducting its own independent research, due diligence, and any other work or investigations and for seeking any other independent advice necessary for the preparation of Proposals, negotiation of agreements, and the subsequent delivery of all services to be provided by the Successful Bidder. Bidders are specifically cautioned that if actual conditions, either with respect to the infrastructure, the financing position of WAJ or otherwise in any of the Northern Governorates are different from those discovered by the Bidder during its due diligence process, the Bidder, as Management Contractor, shall have no claim for a price increase on the basis of the difference.

3.9.2 No representation or warranty, express or implied, is made and no responsibility of any kind is accepted by the Authorities or their advisors, employees, consultants or agents, for the completeness or accuracy of any information contained in the RFP Documents or the Response to Questions Document, or provided during the RFP Procurement Process or during the term of the Contract. The Authorities and their advisors, employees, consultants and agents shall not be liable to any person or entity as a result of the use of any information contained in the RFP Documents or the Response to Questions Document, or provided during the RFP Procurement Process or during the term of the Contract.

3.9.3 Bidders shall not rely on any oral statements made by the Authorities or their advisors, employees, consultants or agents.

### **3.10 Timetable**

3.10.1 WAJ estimates that the RFP Procurement Process will take approximately 6 months. The execution of the Contract is expected to follow within approximately two weeks thereafter with the Bidder that has been successful (the “Successful Bidder”). The steps in the RFP Procurement Process and the estimated timetable to complete those steps are as follows:

- |     |  |                              |
|-----|--|------------------------------|
| (a) | Advertisement  | July 26, 2010                |
| (b) | Deadline for the purchase of bidding documents   | August 12, 2010              |
| (c) | Pre-bid meeting  | August 23, 2010              |
| (d) | Site Visits (tour)   | August 24 & 25, 2010         |
| (e) | Data Rooms opened  | August 25 – October 18, 2010 |
| (f) | Last Day for Bidders to Submit Requests for Clarification/<br>and the List of negotiation issues | September 17, 2010           |

(g)	Date for Determination of Taxes	September 26, 2010
(h)	Deadline for the Issuance of Clarifications and Addenda	October 4, 2010
(i)	Deadline for Submission of Proposals	October 18, 2010 1:00 pm, Amman
(j)	Evaluation report	November 18, 2010
(k)	No objection to the evaluation report	November 25, 2010
(l)	Identification of the Preferred Bidder and Negotiations	
(m)	Negotiations completed	December 20, 2010
(n)	Notification of Award (Note: After “no objection” from KfW)	January 13, 2011
(o)	Contract Closure and Signing	January 23, 2011
(p)	Effective Date	February 1, 2011
(q)	Commencement of Work	April 1, 2011

3.10.2 PMU may, in its sole discretion and without prior notice to the Bidders, modify the estimated timetable set out in RFP Section 3.10.1. Bidders shall not rely in any way whatsoever on the estimated timetable set out in RFP Section 3.10.1 and the Authorities shall not incur any liability whatsoever arising out of amendments to the estimated timetable. The PMU shall give notice of timetable changes, if any, by addenda.

## **SECTION 4 - PROPOSAL FORMAT AND CONTENT**

### **4.1 Contents of the Proposal**

Each Bidder shall submit only one Proposal which shall consist of,

- (a) one Technical Section which contains the following parts in the following order:
  - (i) Part I – Proof for the Bidder’s eligibility pursuant to RFP Section 6.3
  - (ii) Part II – the workplan and staffing information required by RFP Section 4.3;
  - (iii) Part III – the Tender Security required by RFP Section 4.4;
  - (iv) Part IV – the Bidder’s Commitment Letter required by RFP Section 4.5 and the information required by RFP Section 4.5.2;
  - (v) Part V – where applicable, the joint venture (bidding consortia) documents required by RFP Section 4.5;
  - (vi) Part VI – the power of attorney required by RFP Section 5.1.3;
  - (vii) Part VII – the Declaration of Commissions and Gratuities required by RFP Section 4.8; and
  - (viii) Part VIII – optional, separately bound pre-printed literature; and

- (b) one Financial Section which consists of only the Bidder's Price Form completed in accordance with RFP Section 4.10 and Appendix 15 of the Draft Management Contract.

*[Note: The Technical Section Envelope shall contain the content pursuant to RFP Section 4.1(a) (ii) – (viii), the Financial Section Envelope shall comprise of the content pursuant to RFP Section 4.1(b), the documents and information requested by RFP Section 4.1(a) (i) shall be attached to the Bidder's cover letter.]*

#### **4.2 Technical Section of the Proposal – Part I – Qualification Documents**

Part I of the Technical Section of the Proposal shall contain the relevant information requested by RFP Section 6.3.2 to proof the Bidder's eligibility:

Part I.1 – Declaration Letters

Part I.2 – Proof for the Bidder's eligibility.

Part I is not to be submitted as part of the Technical Section Envelope (cf. RFP Section 5.2.1(a)) but shall be attached to the Bidder's cover letter.

#### **4.3 Technical Section of the Proposal – Part II – Workplan and Staffing Information**

Part II of the Technical Section of the Proposal shall consist of the following sub-parts in the following order:

- (a) A detailed workplan (the "Workplan") setting out the manner in which the Bidder proposes to carry out the Services as defined in the Draft Contract (the "Services"), meet the performance standards and meet the performance targets set out in the Incentive Compensation and Liquidated Damages Appendix to the General Conditions. The Workplan shall pay particular attention to the priority issues in providing the Management Contractor's Services, including the criteria for Incentive Compensation and billing and collection issues; and
- (b) A detailed staffing plan (the "Staffing Plan") setting out the Bidder's proposed staffing arrangements, for the Bidder's own staff, for the carrying out of the Services. The Staffing Plan shall be divided into the following sections:
  - (i) a section entitled the "Staffing Chart" which consists of a chart setting out a list of all proposed Management Staff, as defined in the Draft Contract, positions, the role of each position, the duration of existence of the position, the (minimum) man-month input of each position and the location of the staff person filling the position during the periods of assignment to carry out the Services;
  - (ii) a section entitled "Summary of Staff Qualification" which consists of a summary table setting out,
    - (A) all proposed positions for the Management Staff and the qualifications, years of experience and areas of expertise for each of the proposed positions; and
    - (B) for the Key Staff positions, the names of the Bidder's professional employees who will occupy the Key Staff positions; and

- (iii) a section entitled, “Curriculum Vitae” which contains the signed curriculum vitae for each of the Key Staff, in the format set out in Annex A to the RFP;
- (c) For the purpose of RFP Section 4.3(b) and (e), “Key Staff” means the persons providing expertise set out as “Key Staff Expertise” in the Management Staff Appendix to the General Conditions.
- (d) The Bidder may, with the prior written consent of the Minister of Water and Irrigation, include WAJ staff and Al Yarmouk Water staff in its Staffing Plan as Management Staff.
- (e) Envisaged minimum assignment duration for the Management Contractor’s Key Staff:
  - General Director: 5 years (and throughout the extended contract duration, if applicable)
  - Director of Finance: 2 years, from the 3<sup>rd</sup> year on: part-time support / coaching to its successor (e.g. local vice director) is allowed
  - Technical Director: 2 years, from the 3<sup>rd</sup> year on: part-time support / coaching to its successor (e.g. local vice director) is allowed
  - Director of Operations: 2 years, from the 3<sup>rd</sup> year on: part-time support / coaching to the successor (e.g. local vice director)
  - Commercial and Customer Manager: 1 year, from the 2<sup>nd</sup> year on: part-time support / coaching to its successor (e.g. local deputy manager) is allowed
  - Human Resources Director: 1 year, from the 2<sup>nd</sup> year on: part-time support / coaching to its successor (e.g. local vice director) is allowed
  - Information Tech Director: 1 year, from the 2<sup>nd</sup> year on: part-time support / coaching to its successor (e.g. local vice director) is allowed

The input of all other members of the Management Staff required by the Management Contractor to fulfil the contractual obligations as set out in the General Conditions and Appendices are expected to work on a short-term basis. The minimum input from the Contractor’s staff during the 5 years of Contract duration is 200 man months.

The long-term and short-term professionals of the Management Contractor shall get sufficient backstopping support from the Management Contractor’s home offices.

*Note: The General Director and his staff have to accept and support the Chief Supervising Officer (CSO) of YWC, nominated by the Management Committee. The responsibilities of the CSO will be to report directly to the Management Committee (always with copy to the Management Contractor), about all issues of importance to YWC and the Management Contract. The CSO shall have access to all information and data, any time, which are relevant for YWC. The CSO has, whatsoever, no operational powers.*

- (f) Furthermore a comprehensive presentation of the Bidder’s backstopping activities pursuant to RFP Section 6.4.1(b); and
- (g) A comprehensive methodology for capacity development and know-how transfer activities (pursuant to RFP Section 6.4.1(b)) providing (inter alia) background information on the concepts and curricula to be used as well as the qualification and experience of the trainers. The methodology should be concrete and understandable for bid evaluation and should also detail the related input (staff, facilities, total training expenses) as well as the expected results.

#### **4.4 Technical Section of the Proposal – Part III – Tender Security**

4.4.1 In Part III of the Technical Section of its Proposal, each Bidder shall provide a Tender Security in the amount of 150,000 JOD (the “Tender Security”).

4.4.2 The Bidder’s Tender Security shall be in the form of a certified cheque, letter of credit or a bank guarantee from a reputable Jordanian bank or from the local branch of a reputable foreign bank licensed to carry on the business of a bank in Jordan. If the Bidder elects to provide a bank guarantee as its Tender Security, the format of the bank guarantee shall be in accordance with the form of Tender Security contained in Annex A of the RFP. Other formats may be permitted, subject to the prior written approval of the PMU. If a Bidder wishes to have an alternate format approved, it shall submit the proposed alternate format to the PMU no later than 14 days prior to the Submission Deadline. The Bidder shall ensure that the Tender Security remains valid for a period of 30 days beyond the original Proposal Validity Period, as defined in RFP Section 5.4.1, and 30 days beyond any extension subsequently requested by the PMU in accordance with RFP Section 5.4.2.

4.4.3 Any Proposal not accompanied by a Tender Security acceptable to PMU shall be rejected as being non-responsive. The Tender Security of a joint venture must be in the name of the lead joint venture participant or the names of all of the participants in the joint venture submitting the Proposal.

4.4.4 PMU shall return the Tender Security of the unsuccessful Bidders not later than 30 days after the expiration of the Proposal Validity Period.

4.4.5 The Tender Security of the Successful Bidder will be returned when the Bidder has signed the Form of Contract pursuant to RFP Section 7.3.2 and has provided the required performance security as set out in the Contract and RFP Section 7.4.1.

4.4.6 The Tender Security may, in the sole discretion of PMU, be forfeited,

- (a) if the Bidder withdraws its Proposal during the Proposal Validity Period;
- (b) violates the provisions of the Confidentiality Agreement; or
- (c) in the case of the Successful Bidder, if the Successful Bidder fails within the specified time limit,
  - (i) to execute the Form of Contract in accordance with the RFP Section 7.3.2; or
  - (ii) to provide the Performance Security to YWC in accordance with RFP Section 7.4.1.

4.4.7 A copy of the Tender Security shall be enclosed in Part I.1 of the Bidder’s Technical Proposal.

#### **4.5 Technical Section of the Proposal – Part IV – Bidder’s Commitment Letter**

4.5.1 In Part IV of the Technical Section of its Proposal, each Bidder shall provide a completed Bidder’s Commitment Letter in the same form and substance as the Bidder’s Commitment Letter contained in Annex A to this RFP.

4.5.2 Each Bidder shall submit an initialled and unamended copy of Annex B to the RFP (the Draft Contract) and shall ensure that all pages of the Form of Contract, General Conditions and all Appendices to the General Conditions have been initialled by the person or persons authorized to sign on behalf of the Bidder.

#### **4.6 Technical Section of the Proposal – Part V - Joint Venture Documents and Requirements**

4.6.1 Bidders that are joint ventures or consortia (“Joint Venture Bidders”) shall present, in their Proposal, the joint venture arrangements and shall submit, with their Proposal, a copy of the agreement entered into by the Joint Venture Bidders in respect of the joint venture.

4.6.2 Each Joint Venture Bidder shall submit, as Part V of the Technical Section of its Proposal, a written commitment, in the form of a letter duly executed by an authorized officer of each joint venture participant, which,

- (a) confirms each joint venture participant’s commitment to the joint venture and acceptance of the joint venture arrangements described in the Proposal in accordance with RFP Section 4.6.1;
- (b) confirms each joint venture participant’s willingness to provide a joint and several guarantee to PMU to underwrite the performance of the joint venture in respect of the Contract; and
- (c) identifies which joint venture participant,
  - (i) will assume the leading role on behalf of the other joint venture participants; and
  - (ii) will have the authority to commit all joint venture participants.

4.6.3 If the Successful Bidder is a Joint Venture Bidder and the Contract is awarded to the Successful Bidder, the Successful Bidder shall incorporate, in the jurisdiction of its choice, a separate legal entity (the “Joint Venture Company”) which will enter into the Contract with Al Yarmouk Water. At the time of Proposal submission, only the intention of the joint venture participants to incorporate a separate legal entity as required by this RFP Section 4.6.3 needs to be demonstrated. The Successful Bidder shall ensure that the Joint Venture Company has the full legal capacity to carry out its obligations under the Contract and that it meets all requirements of the Applicable Law.

#### **4.7 Technical Section of the Proposal – Part VI – Power of Attorney**

Each Bidder shall provide, as Part VI of the Technical Section of its Proposal, a written power of attorney in accordance with RFP Section 5.1.3.

#### **4.8 Technical Section of the Proposal – Part VII – Commissions and Gratuities**

4.8.1 In Part VII of the Technical Section of its Proposal, each bidder shall provide detailed information listing all commissions and gratuities, if any, paid or to be paid by the Bidder to agents relating to this Proposal or the Contract if the Bidder is awarded the Contract. The Bidder shall list the name and address of any agents, the amount, in words and figures, and the currency paid or to be paid to the agents and the purpose of the commission or gratuity. If no such commissions and gratuities have been paid, the Bidder shall provide this information in Part VII of the Technical Section of its Proposal.

#### **4.9 Technical Section of the Proposal – Part VIII – Pre-Printed Literature**

4.9.1 If the Bidder wishes to provide pre-printed literature about the Bidder or the joint venture participants, that pre-printed literature shall be contained in Part VIII of the Technical Section of the Proposal only and shall be separately bound.

#### **4.10 Financial Section of the Proposal**

4.10.1 The Financial Section of each Bidder's Proposal shall consist of a completed and properly executed Bidder's Price Form, completed in accordance with RFP Section 4.10.4.

4.10.2 Each Bidder shall submit a completed and properly executed Bidder's Price Form in the form contained in Annex B to this RFP. Bidders shall complete the Bidder's Price Form in full and shall not change the form in any way. The Bidder shall state all amounts in the Bidder's Price Form in both words and figures.

4.10.3 Bidders shall quote their price in Euro.

4.10.4 For the purpose of submitting Proposals, Bidders should note that the price set out in the Bidder's Price Form shall include all taxes, duties, levies or charges applicable to the Contract as of the Date for Determination of Taxes set out in RFP Section 3.10.1 (except for the VAT and the corporate income tax). But Bidders shall also include in the Financial Proposal a separate breakdown of these taxes, duties, levies or charges included in the Bidder's price (the "Tax Breakdown"). For the information of Bidders, the provisions with respect to taxes, duties, levies and charges appear at GC Section 1.9.

#### **4.11 Proposals and the Draft Contract**

4.11.1 The Bidders shall base their Proposals on the terms and conditions of the RFP Documents and, without limiting the generality of the foregoing, shall,

- (a) submit their prices based on the terms and conditions in the RFP Documents; and
- (b) submit their Proposals based on the assumption that the final Contract will be the same as the Draft Contract and shall not base their Proposals on the premise that they may be able to change the Draft Contract.

4.11.2 No Bidder shall submit a Proposal that contains statements that are inconsistent with the RFP Documents.

4.11.3 A Bidder shall not submit a Proposal that proposes an arrangement between Al Yarmouk Water and the Bidder which, in the sole discretion of PMU, is different than the arrangement set out in the RFP Documents (an "Alternative Proposal"). Al Yarmouk Water intends to enter into a management contract based on the terms and conditions of the RFP Documents. Any Bidder that attempts to influence the RFP Procurement Process toward any other arrangement may, in the sole discretion of PMU, be disqualified.

4.11.4 All Bidders shall, prior to submitting their Proposals, review all legal requirements with respect to corporate registration, and all other requirements that apply to companies that wish to conduct business in the Hashemite Kingdom of Jordan.

### **SECTION 5 - SUBMISSION, RECEIPT AND SIGNING OF PROPOSALS**

#### **5.1 Original, Copies and Signing of the Proposal**

5.1.1 Each Bidder shall prepare and submit,

- (a) one signed and initialed original of its Proposal and seven copies of such signed and initialed Proposal; and

- (b) an electronic copy of the Proposal on CD (one CD containing the Technical Section, one CD containing the Financial Section, to be included in the relevant envelopes).

In the event of any discrepancy between the copies and the original, the original shall govern. In the event of a discrepancy between the electronic copy and the hard copy of the Proposal, the hard copy, shall govern.

5.1.2 The person or persons duly authorized to bind the Bidder to the Proposal and Contract shall sign the Proposal by,

- (a) signing the original of the Bidder's Commitment Letter; and
- (b) initialling all of the pages of the original of the Proposal, except for unamended printed literature.

5.1.3 The authority of the person or persons signing the Proposal to bind the Bidder shall be demonstrated by a written power of attorney included in the Proposal and submitted as Part VI of the Technical Section of the Proposal.

5.1.4 Any interlineation, erasures or overwriting in the Proposal shall only be valid if it is initialled by the person or persons authorized to bind the Bidder to the Proposal.

## **5.2 Sealing and Labelling of Technical and Financial Sections and Proposal**

5.2.1 Each Bidder shall,

- (a) seal the original of the Technical Section of its Proposal in an envelope or package labelled with the name of the Bidder and the words "Technical Section – Original" (the "Technical Section Envelope");
- (b) seal the original of the Financial Section of its Proposal in an envelope labelled with the name of the Bidder and the words, "Financial Section – Original" (the "Financial Section Envelope");
- (c) place the sealed Technical Section Envelope and the sealed Financial Section Envelope in a third envelope or package (the "Outer Envelope") labelled with the name of the Bidder and the words "Original Proposal Documents – Water and Wastewater Management Contract, Al Yarmouk Water Company".

5.2.2 Each Bidder shall,

- (a) seal each copy of the Technical Section of its Proposal in a separate envelope or package labelled with the name of the Bidder and the words "Technical Section – Copy";
- (b) seal each copy of the Financial Section of its Proposal in a separate envelope labelled with the name of the Bidder and the words, "Financial Section – Copy";
- (c) with respect to each copy of the Proposal, place one sealed envelope or package containing one of the copies of the Technical Section and one sealed envelope containing one of the copies of the Financial Section in an outer envelope or package labelled with the name of the Bidder and the words "Copy # \_\_\_\_\_ – Proposal Documents – Management Contract, Al Yarmouk Water Company", with each copy given its own specific number from one to seven.

- 5.2.3 All envelopes or packages referred to in RFP Sections 5.2.1 and 5.2.2 shall,
- (a) be addressed to the PMU at the address specified in RFP Section 5.3.1; and
  - (b) bear the statement “DO NOT OPEN BEFORE \_\_\_\_\_”, with the date and time of the Submission Deadline filled in.

5.2.4 If any of the outer envelopes or packages is not sealed and marked as required by this RFP Section 5.2, the Authorities shall assume no responsibility for the Proposal’s misplacement or premature opening.

### **5.3 Deadline for Submission of Proposals**

5.3.1 Proposals must be received by PMU no later than the date and time set out as the Submission Deadline in RFP Section 3.10.1 at the following address:

Performance Management Unit (PMU)  
Attn.: PMU Director Eng. Basem Telfah  
Jaber Ben Haan Street, Building No. (5)  
P.O. Box 5012  
Amman 11181  
Jordan

Telephone: +962 6 56 52 261 Ext. 1045  
Fax: +962 6 56 27 823  
Email: MC\_Yarmouk@pmu.gov.jo

One of the seven copies (as hard copy and soft copy) shall be sent directly to KfW, to the address set out in RFP Section 3.8 (a copy of the dispatch notice to KfW shall replace copy no. 7 in the package sent to PMU).

5.3.2 PMU may, in its sole discretion, extend the Submission Deadline by amending this RFP in accordance with RFP Section 3.7, in which case all rights and obligations of PMU and the Bidders will thereafter be subject to the Submission Deadline as extended.

5.3.3 Bidders shall deliver all Proposals by hand or by courier. Bidders shall not submit Proposals by facsimile or electronic means. Each Bidder shall be solely responsible for the timely delivery of its Proposal to the address set out in RFP Section 5.3.1 irrespective of any delivery or local difficulties.

5.3.4 Any Proposal received by PMU after the Submission Deadline shall be returned to the Bidder unopened.

### **5.4 Period of Validity of the Proposal**

5.4.1 Proposals shall remain valid for a period of 120 days commencing on the Submission Deadline or any extension thereof pursuant to RFP Section 5.3.2 (the “Proposal Validity Period”).

5.4.2 The PMU may solicit the Bidders’ consent to an extension of the Proposal Validity Period. The PMU’s request and each Bidder’s response thereto shall be made in writing or by fax. A Bidder may refuse the PMU’s request to extend the Proposal Validity Period without forfeiting its Tender Security. A Bidder granting the request shall not be required nor permitted to modify its Proposal, except as provided in RFP Section 5.5.

## 5.5 Modification of Proposals

5.5.1 A Bidder may modify its Proposal after submission provided that the modifications are received by PMU prior to the Submission Deadline. Bidders shall not modify Proposals after the Submission Deadline. Any modification received after the Submission Deadline shall be returned to the Bidder unopened.

5.5.2 The Bidder's modifications to its Proposal shall be submitted in accordance with the following:

- (a) the Bidder shall submit an original and seven copies of any modifications to its Proposal;
- (b) the Bidder shall place the originals of any modifications to the Technical Section of its Proposal in a sealed envelope labelled with the name of the Bidder and the words "Technical Section – MODIFICATIONS – Original";
- (c) the Bidder shall place each copy of any modification to the Technical Section of its Proposal in a sealed envelope labelled with the name of the Bidder and the words "Technical Section – MODIFICATIONS – Copy # \_\_\_\_\_", with each copy given its own specific number;
- (d) if the modification is to the Financial Section of a Bidder's Proposal, the Bidder shall submit a replacement Bidder's Price Form (the "Replacement Bidder's Price Form") and shall place the original of the Replacement Bidder's Price Form in a sealed envelope labelled with the name of the Bidder and the words "Financial Section – MODIFICATIONS – Original";
- (e) the Bidder shall place each copy of the Replacement Bidder's Price Form in a sealed envelope labelled with the name of the Bidder and the words "Financial Section – MODIFICATIONS – Copy # \_\_\_\_\_", with each copy given its own specific number;
- (f) if PMU receives a sealed envelope from Bidder which is labelled, "Financial Section – MODIFICATIONS – Original", this modification will supersede the Financial Section which was submitted previously and the Financial Section which has been superseded will be returned to the Bidder unopened;
- (g) the Bidder shall place,
  - (i) the sealed envelope containing the originals of any modifications to the Technical Section; and
  - (ii) the sealed envelope containing the original of the Replacement Bidder's Price Formin an outer envelope labelled with the name of the Bidder and the words "Original MODIFICATIONS to Proposal Documents – Water and Wastewater Management Contract, Al Yarmouk Water Company"; and
- (h) the Bidder shall follow the same process as described in RFP Section 5.5.2(g) with respect to the envelopes containing copies of the modifications to the Technical Section or Financial Section and shall label the outer envelope with the name of the Bidder and the words "Copy # \_\_\_\_\_ - MODIFICATIONS to Proposal Documents – Water and Wastewater Management Contract, Al Yarmouk Water Company" with each copy given its own specific number.

## **5.6 Withdrawal of Proposals**

5.6.1 A Bidder may withdraw its Proposal after submission provided that a notice of withdrawal (the “Withdrawal Notice”) is received by PMU prior to the Submission Deadline. A Proposal Withdrawal Notice which is received after the Submission Deadline will be treated in accordance with RFP Section 5.6.4.

5.6.2 A Bidder’s Withdrawal Notice shall be,

- (a) in writing and signed by the person or persons authorized to bind the Bidder in accordance with RFP Section 5.1.3;
- (b) delivered by hand or by courier, subject to RFP Section 5.6.3;
- (c) addressed to PMU at the address in RFP Section 5.3.1; and
- (d) contained in a sealed envelope labelled with the name of the Bidder and the words “WITHDRAWAL NOTICE – Water and Wastewater Management Contract, Al Yarmouk Water Company”.

5.6.3 A Bidder may send a Withdrawal Notice electronically or by facsimile but it must be followed by a confirmation copy signed by the person or persons authorized to bind the Bidder in accordance with RFP Section 5.1.3 and postmarked not later than the Submission Deadline.

5.6.4 If a Bidder withdraws its Proposal during the Proposal Validity Period, the withdrawal may result in the forfeiture of the Tender Security in accordance with RFP Section 4.4.6.

## **5.7 Proposals as Binding Offers**

Each Proposal,

- (a) is a binding offer which PMU may, in its sole discretion, accept at any time prior to the expiration of the Proposal Validity Period; and
- (b) shall continue to be a binding offer pursuant to RFP Section 5.7(a) notwithstanding any contract finalization that may proceed between Al Yarmouk Water and any Bidder.

## **5.8 Cost of Proposals**

5.8.1 The Bidder shall bear all costs and expenses with respect to the preparation and submissions of its Proposal and the Bidder’s participation in the RFP Procurement Process (the “Proposal Costs”) including, without limitation, all costs and expenses related to the Bidder’s involvement in,

- (a) Site Visits and inspections;
- (b) data room visits and all other information gathering and due diligence processes;
- (c) interviews;
- (d) preparation of responses to questions or requests for clarification PMU;
- (e) preparation of questions for PMU; and
- (f) Contract discussions.

5.8.2 The Authorities shall not be responsible for or liable to pay any Proposal Costs of any Bidder regardless of the conduct or outcome of the RFP Procurement Process.

## **SECTION 6 - OPENING AND EVALUATION OF PROPOSALS**

### **6.1 Opening of Technical Section (Technical Envelope)**

6.1.1 PMU shall open the Withdrawal Notices and the Technical Section Envelopes, including any modifications thereof, of all Proposals that were submitted prior to the Submission Deadline,

- (a) on the same day as the Submission Deadline no later than 1:00 p.m. local time;
- (b) in the presence of the Bidders' representatives who choose to attend the opening; and
- (c) at the offices at the address listed in RFP Section 5.3.1.

6.1.2 PMU shall announce the Bidders' names at the opening of the Technical Section Envelopes as well as whether a copy the Tender Security is contained in the Bidder's Technical Section Part I. The Financial Section Envelopes of all Proposals shall remain sealed until all Financial Section Envelopes are opened in accordance with RFP Section 6.2.

6.1.3 Bidders' representatives who attend the opening of the Technical Section Envelopes shall sign a register to record their attendance.

6.1.4 The Evaluation Committee shall evaluate the Technical Sections of all eligible Bidders (pursuant to RFP Section 6.3) and score each Technical Section in accordance with RFP Section 6.4.

6.1.5 PMU shall open the Financial Section Envelopes only after the technical evaluation has been completed and only in respect of Qualified Bidders pursuant to RFP Section 6.4.2.

### **6.2 Opening of Financial Section (Financial Envelop)**

6.2.1 PMU shall determine a date and time after the evaluation of the Technical Sections when it shall open the Financial Section Envelopes of the Qualified Bidders pursuant to RFP Section 6.4.3, and shall,

- (a) notify the Bidders of the date and time of the opening of the Financial Section Envelopes; and
- (b) carry out the opening of the Financial Section Envelopes, including any modifications thereof, of the Qualified Bidders pursuant to RFP Section 6.4.3 and the announcement of the Bidders' names and quoted prices in the presence of the Bidders' representatives who choose to attend the opening.

6.2.2 Bidders' representatives who attend the opening of the Financial Section Envelopes shall sign a register to record their attendance.

6.2.3 PMU shall keep minutes of the opening of the Financial Section Envelopes pursuant to this RFP Section 6.2.

### 6.3 Eligibility and Evaluation of Proposals

6.3.1 Only those Proposals meeting below eligibility criteria (6.3.1(1) – 6.3.1(3)) will be evaluated (Note to the Bidders: the eligibility criteria will be applied to the bidder consortium as a whole, if not stated otherwise)

6.3.1(1) The Bidder (if the Bidder is a consortium: the Consortium Leader) must show that

- (a) it has been incorporated as operational service provider for at least 7 years;
- (b) it has executed at least one service contract to operate and manage water as well as wastewater services in an area with more than 120,000 customers for a period of 3 years or more;
- (c) Additionally, the Bidder (respectively the Bidding Consortium) must have had at least two more assignments (for operations, constructions or consulting) in relation to water or wastewater services in Jordan in the past 5 years.

Note: For each reference, Bidders have to deliver reference descriptions, technical data and contact details of the Client. The success of the projects must be documented by a positive reference letter from the Client, on request.

6.3.1(2)(a) The minimum annual turnover of the bidder must be Euro 50 mio for each of the three fiscal years 2006, 2007 and 2008.

- (b) Furthermore, the annual net profit of each company among the bidder group must have been positive before-tax-results in at least two of the four years 2006, 2007, 2008, 2009.

Note: Bidders have to submit copies from their testified balance sheets and profit and loss accounts.

6.3.1(3) The bidder has submitted the following documents, including;

- (d) “No conflict of interest” – declaration (sworn statement) of each Bidder or consortium member;
- (e) “No conflict with the law” – declaration (sworn statement) of each Bidder or consortium member;
- (f) Tender Security provided, orderly issued as requested (copy of the original document to be enclosed in Part I.1);
- (g) Written statement to submit the Performance Security prior to Contract Closure;
- (h) A letter declaring that the Technical Proposal fulfils the required staff input of at least 200 Man Months during the contract period;
- (i) “Declaration of Undertaking” – in the format set out in Annex A to the RFP.

6.3.1(4) Only proposals from bidders, which fulfil all eligibility criteria, are subject of further evaluation. All other proposals will be returned unopened (Technical and Financial Proposal envelops).

6.3.2 The Evaluation Committee shall evaluate those Proposals received prior to the Submission Deadline in accordance with the process outlined in RFP Sections 6.4 and 6.5. If there is a

discrepancy between the original and any copy of a Proposal, the provisions of the original shall prevail.

## 6.4 Evaluation of Technical Sections

6.4.1 The Evaluation Committee shall evaluate the Technical Sections of eligible Bidders received prior to the Submission Deadline and opened in accordance with RFP Section 6.1 in accordance with the following process:

- (a) the Evaluation Committee shall examine each Technical Section submitted to determine whether the Technical Section is complete and Substantially Responsive to the RFP Documents;
- (b) the Evaluation Committee shall evaluate the Technical Sections that are Substantially Responsive to the RFP Documents based on the following criteria and marking system:

<b>Technical Evaluation Criteria</b>	<b>Score</b>
<b>1. Organisation &amp; Methodology</b>	<b>15</b>
1.1.1 Form of application (clarity and completeness of the proposal)	1
1.1.2 Strategy & Methodological Approach	2
1.1.3 Organisation & Team composition	<u>9</u>
1.1.3.1 Overall Structure	2
1.1.3.2 Regional Capabilities	7
<i>(Note: Maximum score to be awarded if the Bidder's consortium includes a consortium partner with more than three years of operational experience in the Jordanian water sector, and the partner's share is at least 30% of the Total Fix Fee. Zero points shall be awarded if the Bidder does not have at least 2 years of operational experience in the Jordanian water sector. Scores awarded in between these benchmarks depend on the quality and quantity of the input of partners with regional capabilities.)</i>	
1.1.4 Time and Workplan (incl. MC's staffing schedule)	3
<b>2. MC Staff Quality</b>	<b>30</b>
2.1 <u>General Director</u>	<u>8</u>
2.1.1 International professional experiences	4
2.1.2 Educational background and training ( <i>max = doctorate degree</i> )	1
2.1.3 Regional knowledge ( <i>max = 2 projects from Jordan or 5 from MENA region</i> )	2
2.1.4 Language skills ( <i>English is compulsory, Arabic is a plus</i> )	1
2.2 <u>Financial Director</u>	<u>5</u>
2.2.1 International professional experiences	3
2.2.2 Educational background and training ( <i>max = doctorate degree</i> )	1
2.2.3 Regional knowledge ( <i>max = 2 projects from Jordan or 5 from MENA region</i> )	1
2.3 <u>Technical Director</u>	<u>5</u>
2.3.1 International professional experiences	3
2.3.2 Educational background and training ( <i>max = doctorate degree</i> )	1
2.3.3 Regional knowledge ( <i>max = 2 projects from Jordan or 5 from MENA region</i> )	1
2.4 <u>Operational Director</u>	<u>5</u>
2.4.1 International professional experiences	3
2.4.2 Educational background and training ( <i>max = doctorate degree</i> )	1
2.4.3 Regional knowledge ( <i>max = 2 projects from Jordan or 5 from MENA region</i> )	1
2.5 <u>Non-Key Professionals (NKP)</u>	<u>7</u>
2.5.1 Number of NKP in relevant fields ( <i>max =15</i> )	3
2.5.2 Qualification and experiences of NKP	4

<b>3. Professional backstopping</b>	<b>20</b>
3.1 Bidders' previous operational experiences ( <i>measured against the eligibility criteria</i> )	5
3.2 Total staff employed for utility operations ( <i>max = 1,000</i> )	5
3.3 Total turnover p.a. for operational services ( <i>max = 500 mio EURO/a</i> )	5
3.4 Focus on water utility operations ( <i>max = 100%; no other business</i> )	5
<b>4. Time input of professionals</b> ( <i>from 0 scores for 200 to 22 scores for 400 working months</i> )	<b>22</b>
4.1 Key Professionals ( <i>from 0 scores for 150 to 15 scores for 300 man months</i> )	15
4.2 Non-Key Professionals ( <i>from 0 scores for 50 to 7 scores for 100 man months</i> )	7
<b>5. Capacity development and know-how transfer</b>	<b>13</b>
5.1 Concept (relevance and quality of curricula)	4
5.2 Trainers (experience and education)	4
5.3 Expenses (outside YWC's budget, only as far as clearly dedicated)	5
<b>Maximum Technical Section Score</b>	<b>100</b>

Note: International experience is experience gained outside the Hashemite Kingdom of Jordan.

6.4.2 A Technical Section must receive at least a total score of 65 to be considered further in the evaluation process and to have the corresponding Financial Section opened. Any eligible Bidder whose Technical Section meets this criterion is a "Qualified Bidder".

6.4.3 The Bidder's Technical Section score shall be multiplied by 0.50, to achieve the Bidder's technical score (the "Technical Score").

## 6.5 Evaluation of the Financial Section

6.5.1 PMU shall open the corresponding Financial Section of each Proposal submitted by a Qualified Bidder and shall open the Financial Sections in accordance with RFP Section 6.2.1. PMU shall examine each such Financial Section to determine whether it is complete and Substantially Responsive to the RFP Documents. The Financial Sections of Bidders that do not receive a passing Technical Score pursuant to RFP Section 6.4.3 shall be returned unopened to the applicable Bidders.

6.5.2 For the purposes of RFP Section 6.5.1, a Substantially Responsive financial section shall be one in which the Bidder's Price Form is complete in all respects.

6.5.3 The Financial Sections which are opened in accordance with RFP Sections 6.2 and 6.5.1, and which are Substantially Responsive to the RFP Documents, shall be ranked from lowest to highest based on the bid price. If there are discrepancies between the amounts expressed in words and figures, the amount in words shall prevail.

6.5.4 The Bidders shall offer one Annual Fee (AF) in Euro for all Contract Years, as lump sum, to be subdivided in a Fix Fee (FF) and a Variable Fee (VF). Bidders may choose a lower Fix Fee : Variable Fee ratio (FF:VF ratio) than the ratio defined in Appendix 8. However, the Fix Fee percentage must not be increased and the sum of Fix Fee and Variable Fee must not exceed 100% in each year. The financial bid evaluation will be based on the sum of the Total Fee TF (which is the sum of the Total Fix Fee and the Total Variable Fee, wherein the Totals are the accumulated annual fees over the first five Contract years) and the Total Fix Fee (which is the sum of the Annual Fix Fees accumulated over the first five Contract years). Through this formula, the weight of the Total Fix Fee is doubled compared with the Total Variable Fee. This is done by intention, in order to award the bidders taking over the performance risks related to the Variable Fees.

6.5.5 For the financial evaluation, the Bidder's Financial Section score shall be calculated as follows (pursuant to Appendix 15 to the Management Contract):

	FF - Fix Fee [EUR/a]		VF - Variable Fee [EUR/a]		SUM
	Acc. to App. 8, Art. 1 (= maximum %)	Bidder's proposal	Acc. to App. 8, Art. 1 (= minimum %)	Bidder's proposal	= %FF + %VF
Year 1	90% Fix Fee	_____ % FF	10% Variable Fee	_____ % VF	100%
Year 2	75% Fix Fee	_____ % FF	25% Variable Fee	_____ % VF	100%
Year 3	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
Year 4	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
Year 5	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
	TFF = 315% x AF	TFF = (accumulated %FF) x AF = _____ EUR	TVF = 185% x AF	TVF = (accumulated %VF) x AF = _____ EUR	

$$\text{Financial Section score} = \frac{\text{lowest (Total Fee + Total Fix Fee)}}{\text{Bidder's (Total Fee + Total Fix Fee)}} \times 100$$

The Bidder's Financial Section score shall be multiplied by 0.50 to achieve the Bidder's financial score (the "Financial Score").

## 6.6 Final Score

The Bidder's final score shall equal the Bidder's Technical Score plus the Bidder's Financial Score (the "Final Score"). The Bidder with the highest Final Score shall be the apparent Successful Bidder if the Proposal is Substantially Responsive to the RFP Documents.

## 6.7 Right of the Evaluation Committee to Investigate and Seek Clarification

6.7.1 The Evaluation Committee may, in its sole discretion, seek clarification, during the RFP Procurement Process, of any matter in the Proposals. In the process of clarification, no change in the substance of the Technical Section or in the price in the Financial Section shall be sought, offered or permitted.

6.7.2 The Evaluation Committee shall, in seeking clarification pursuant to RFP Section 6.7.1, seek all clarifications in writing and the Bidders' responses shall also be in writing and be signed by the person or persons authorized to bind the Bidder in accordance with RFP Section 5.1.3.

6.7.3 Without limiting the generality of RFP Section 6.7.2, the Evaluation Committee may,

- (a) investigate evidence of the ability and experience of a Bidder under consideration, including joint venture partners, proposed subcontractors, and parties otherwise related to the Bidder or the Bidder's Proposal; and
- (b) require or seek out confirmation from other parties of information furnished by a Bidder.

## 6.8 Contact with the Authorities or the PMU

6.8.1 Except in response to a request for clarification pursuant to RFP Section 6.7, no Bidder shall contact the Authorities or their advisors, employees, consultants or agents, or the PMU on any matter relating to the Bidder's Proposal from the time of opening the Proposals to the time the Contract is awarded.

6.8.2 Any effort by a Bidder to influence the Authorities, their advisors, employees, consultants or agents, or the Evaluation Committee in the Evaluation Committee’s Proposal evaluation, Proposal comparison, or Contract award decision may, in the sole discretion of PMU, result in rejection of the Bidder’s Proposal.

## **6.9 Corrupt or Fraudulent Practices**

6.9.1 WAJ and KfW require that the recipient of a Grant or Loan (the “Recipient”), as well as Bidders under contracts financed by KfW, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, KfW:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
  - (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Recipient, and includes collusive practice among Bidders, prior to or after Proposal submission, designed to establish Proposal prices at artificial non-competitive levels and to deprive the Recipient of the benefits of free and open competition;
- (b) will reject a Proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract financed by KfW if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract financed by KfW; and
- (d) will have the right to require that, in contracts financed by KfW, a provision be included requiring the Bidder to permit KfW to inspect their contract related accounts and records relating to the performance of the contract and to have them audited by auditors appointed by KfW.

6.9.2 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by KfW in accordance with RFP Section 6.9.1(c).

6.9.3 Bidders shall be aware of the provisions on fraud and corruption set out in GC Section 2.8.1(h).

## **6.10 Conflict of Interest**

6.10.1 No Bidder, and no member of the Bidder’s team, including consultants and employees of the Bidder but excluding WAJ or Al Yarmouk Water employees named in the Staffing Plan in accordance with RFP Section 4.3(d), shall have an interest in the Proposal of any other Bidder either directly or indirectly. Bidders shall not enter into any arrangement, agreement or understanding before or after the Submission Deadline that would have the result of giving them an interest of any kind in the Proposal of any other Bidder.

6.10.2 A firm, and any of its affiliates, that has been engaged by the Authorities to provide consulting services with respect to,

- (a) the preparation of the Contract documents;
- (b) work carried out specifically in preparation for or in anticipation of the Contract; or
- (c) the RFP Procurement Process,

shall be disqualified from subsequently providing goods, services or works to either the Bidders under the RFP Procurement Process or the Management Contractor under the Contract.

## **6.11 Confidentiality**

6.11.1 After the public opening of the Technical Sections of the Proposals, the Evaluation Committee and PMU shall not disclose information relating to,

- (a) the examination, clarification and evaluation of Proposals; or
- (b) recommendations concerning awards,

to Bidders or other persons not concerned with the RFP Procurement Process until the Successful Bidder is notified of the award.

6.11.2 Bidders acknowledge that the RFP Procurement Process is a public process and, while the Authorities will endeavour to keep the Proposals confidential, the Authorities shall not be liable in any way should information relating to the contents of any Proposal become public.

## **6.12 Right to Accept or Reject**

6.12.1 PMU may, in its sole discretion:

- (a) accept any Proposal;
- (b) reject any Proposal;
- (c) annul the RFP Procurement Process and reject all Proposals;
- (d) annul the RFP Procurement Process and commence a new process; and
- (e) waive irregularities, minor informalities, or minor non-conformities which do not constitute material deviations in the submitted Proposals from the RFP Documents,

at any time prior to the award of the Contract without incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for PMU's actions.

## **SECTION 7 - FINAL CONTRACT AWARD**

### **7.1 Successful Bidder**

7.1.1 The Qualified Bidder that has submitted the Proposal with the highest Final Score shall be the Preferred Bidder if its Proposal is Substantially Responsive to the RFP Documents.

7.1.2 PMU shall submit the name of the prospective Preferred Bidder to KfW for a no objection and after receiving a no objection from KfW, PMU shall notify the Preferred Bidder that its Proposal has been accepted by PMU.

## **7.2 Award of Contract**

In accordance with the estimated timetable set out in RFP Section 3.10.1, after the identification of the Preferred Bidder and prior to the expiration of the Proposal Validity Period, PMU shall enter into negotiations with the Preferred Bidder to finalize the Contract and to submit the Contract, as finalized, to KfW for its no objection. After receiving the no objection from KfW in respect of the Contract, PMU shall notify the Preferred Bidder in writing that the Contract has been accepted by PMU (the “Notification of Award of Contract”). The Notification of Award of Contract shall specify the quantum of the Management Contractor’s Fix Fee to be paid in consideration of the execution and completion of the Contract.

## **7.3 Signing of the Form of Contract**

7.3.1 At the same time that PMU sends the Successful Bidder the Notification of Award, PMU shall send to the Successful Bidder,

- (a) a Form of Contract; and
- (b) the other Contract Documents.

7.3.2 No later than 30 days after the Successful Bidder’s receipt of the Notification of Award, Form of Contract and the other Contract Documents pursuant to RFP Sections 7.2 and 7.3.1, the Successful Bidder shall sign the Form of Contract and initial each page of the Contract and return them to PMU.

## **7.4 Performance Security**

7.4.1 No later than 30 days after the Successful Bidder’s receipt of the Notification of Award, the Successful Bidder shall provide PMU with the Performance Security in the amounts and in the substance and form required by the Draft Contract.

7.4.2 Upon the Successful Bidder’s furnishing of the performance security, PMU shall promptly notify the name of the Successful Bidder to each unsuccessful Bidder and shall discharge the Tender Security of the unsuccessful Bidders.

## **7.5 Failure to Sign the Form of Contract or Provide the Performance Security**

If the Successful Bidder fails to comply with either RFP Section 7.3 or 7.4.1, this failure shall constitute a breach of contract, and shall constitute sufficient grounds for annulment of the award, forfeiture of the Tender Security and such other remedies as PMU may take under the Contract and the Applicable Law, and PMU may, in its sole discretion, award the Contract to another Bidder or call for new proposals.

**Annex A**  
**to the Request for Proposals**

- (i) Form of Tender Security**
- (ii) Bidder's Commitment Letter**
- (iii) Declaration of Undertaking**
- (iv) Format of Curriculum Vitae (CV) for Proposed Key Staff**
- (v) Format of Project Reference Sheet**

**FORM OF TENDER SECURITY (BANK GUARANTEE)**

Address of guarantor bank:

.....  
.....  
.....

Address of beneficiary (contracting agency):

.....  
.....  
.....

We, the undersigned ..... (Guarantor), in order to enable  
..... to bid for ..... (project, object of contract),  
hereby irrevocably and independently guarantee to pay to you an amount up to a total of  
..... waiving all objections and defences.

We shall effect payments under this guarantee on your first written demand, which must be  
accompanied by your confirmation that you have accepted the above-mentioned bid and that the firm  
..... is no longer prepared to abide by this bid.

This guarantee shall expire no later than .....  
By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount  
to be claimed hereunder.

This guarantee is governed by the laws of .....

.....  
Date

.....  
Guarantor

### BIDDER'S COMMITMENT LETTER

[Name/Address]

Telephone: [ ]  
Fax: [ ]

To the Performance Management Unit / Water Authority of Jordan:

**Re: Water and Wastewater Management Contract for Al Yarmouk Water LLC**

With respect to the "Request for Proposals for a Management Contract for the Provision of Water and Wastewater Services for Al Yarmouk Water LLC", please be advised as follows:

- (i) capitalized terms used in clauses (ii) through (viii) below shall have the meanings given thereto in the Request for Proposals;
- (ii) we have examined the RFP Documents and confirm that we have received all pages of the RFP Documents;
- (iii) we have received and examined all Addenda to the RFP Documents as follows:

*[Note to Bidder: List Addenda and dates here.]*

- (iv) by the submission of our Proposal we submit a binding offer to carry out all services and obligations described in the RFP Documents in accordance with the terms and conditions of the RFP Documents and for the compensation set out in the Financial Section of our Proposal and in the RFP Documents;
- (v) our Proposal is based on the terms and conditions of the RFP Documents and to the extent that any statement in our Proposal conflicts with the terms and conditions of the RFP Documents, the statement is hereby withdrawn;
- (vi) the price contained in our Financial Section (the Bidder's Price Form) is based on the terms and conditions of the RFP Documents;
- (vii) by the submission of our Proposal we submit a binding offer to provide the staff identified in the Staffing Plan of our Proposal or, with the prior written consent of WAJ or the PMU, equivalent or superior staff, to carry out the services set out in the RFP Documents; and
- (viii) we agree to hold our Proposal open for acceptance until the expiration of the Proposal Validity Period set out in the RFP Documents.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Signed by person or persons  
authorized to bind the Bidder  
in accordance with RFP Section 5.1.3

### **Declaration of Undertaking**

#### Declaration

We underscore the importance of a free, fair and competitive procurement process that precludes fraudulent use. In this respect we have neither offered nor granted, directly or indirectly, any inadmissible advantages to any public servants or other persons in connection with our bid, nor will we offer or grant any such incentives or conditions in the present procurement process or, in the event that we are awarded the contract, in the subsequent execution of the contract.

We also underscore the importance of adhering to minimum social standards ("Core Labour Standards") in the implementation of the project. We undertake to comply with the Core Labour Standards ratified by the country of (name of country).

We will inform our staff about their respective obligations and about their obligation to fulfil this declaration of undertaking and to obey the laws of the country of (name of country).

.....  
Place, date

.....  
Bidder

**FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED KEY STAFF**  
(Bidders are not bound to the below format and may use other formats. However, the information provided should at least include the items specified below)

Proposed Position: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Name of Staff: \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Years with Firm/Entity: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Professional Societies: \_\_\_\_\_

\_\_\_\_\_

Detailed Tasks Assigned: \_\_\_\_\_

**Key Qualifications:**

*[Give an outline of staff member’s experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations. Use about half a page.]*

**Education:**

*[Summarize college/university and other specialized education of staff member, give names of schools, dates attended, and degrees obtained. Use about one quarter of a page.]*

**Employment Record:**

*[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employment organizations, titles of positions held, and locations of assignments. For experience in last ten years, also give types of activities performed and client references, where appropriate. Use about two pages.]*

**Languages:**

*[For each language indicate proficiency: excellent, good, fair or poor in speaking, reading and writing.]*

**Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe me, my qualifications, and my experience I further declare that I am able and willing to work for the period(s) foreseen for the position for which my CV has been included in the event that this tender is successful, namely:

<b>From</b>	<b>To</b>

I confirm that (if this tender is successful) I will not be engaged in another project in a position for which my services are required during the above period(s).

\_\_\_\_\_ *[Fill in name of Bidder here.]*

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of staff member and authorized representative of the firm] Day/Month/Year*

Full name of staff member: \_\_\_\_\_

Full name of person or persons authorized to bind the Bidder pursuant to RFP Section 5.1.3:  
\_\_\_\_\_

**FORMAT OF PROJECT REFERENCE SHEET**

Ref # (maximum 15)	Project title							
Name of legal entity	Country	Overall project value (EUR)	Proportion carried out by legal entity (%)	No of staff provided	Name of client	Origin of funding	Dates (start/end)	Name of consortium members (if any)
<b>Detailed description of project</b>			<b>Type of services provided</b>					

**Annex B**  
**to the Request for Proposals**

**The Draft Contract**

# **Management Contract for Al Yarmouk Water Company YWC**

**a Limited Liability Company (LLC)  
owned by WAJ, the Water Authority of Jordan**

**The Hashemite Kingdom of Jordan**

## **Contents**

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	<b>General Conditions</b>
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Appendix 9	Performance Security
Appendix 10	Water Loss Reduction Program
Appendix 11	Rehabilitation and Repair Fund Program
Appendix 12	Assignment Agreement between YWC and WAJ
Appendix 13	Previous Financial and Performance Reports of YWC
Appendix 14	Management Contractor's Proposal
Appendix 15	Bidder's Price Form

**Management Contract for  
Al Yarmouk Water Company  
YWC**

**a Limited Liability Company (LLC)  
owned by WAJ, the Water Authority of Jordan**

**The Hashemite Kingdom of Jordan**

**Form of Contract**

**FORM OF CONTRACT**

**THIS CONTRACT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, [2010]

**B E T W E E N**

**Al Yarmouk Water Company LLC**

(hereinafter “**YWC**”)

– and –

**[Name of Management Contractor’s Company]** incorporated under the laws of **[place of incorporation]** with its principal place of business at **[Address of the Management Contractor]**

(hereafter the “**Management Contractor**”)

– and –

**[Name of the Management Contractor’s company, or (if this company is still under foundation) name of the company authorised to act on behalf of the future Management Contractor’s company]**

**WHEREAS:**

1. YWC owns the water supply and wastewater assets described in the Facilities Appendix;
2. YWC has the jurisdiction to enter into the Contract, as defined in Section 1.1 of the Form of Contract below, pursuant to the Applicable Law;
3. YWC has received all requisite approvals necessary and has conformed with all requisite laws in accordance with the Applicable Law to permit YWC to enter into the Contract;
4. YWC wishes to increase and improve the effectiveness and viability of the Facilities, reduce unaccounted for water, and improve water and wastewater services to customers;
5. The Management Contractor has represented to WAJ that it has the skills and ability to manage, operate, and maintain the Facilities in an effective manner with reduced cost and increased profitability in the water and wastewater systems, under the jurisdiction in the Service Areas;
6. The Management Contractor responded to the Request for Proposal Documents dated [ ] organized by WAJ/PMU on behalf of YWC and was selected as the recommended Management Contractor to fulfil the Services set out in the Services Appendix;

7. The Management Contractor has the corporate capacity and authority to enter into the Contract; and

8. The Management Contractor's parent company or shareholders of a joint venture company, or both, as determined by YWC, has or have guaranteed the Contract as provided in the Contract and have agreed to be jointly and severally bound to YWC for the fulfillment of the provisions of the Contract as provided in the Contract;

**NOW THEREFORE**, in consideration of the mutual covenants and Agreements hereinafter set forth, YWC and the Management Contractor agree as follows:

## **ARTICLE 1 - CONTRACT DOCUMENTS**

### **1.1 Contract Documents**

This water and wastewater management contract between YWC and the Management Contractor (the "Contract") consists of the following documents (collectively, the "Contract Documents"), and each of the following shall be read and construed as an integral part of the Contract:

- (a) Form of Contract;
- (b) General Conditions of the Contract;
- (c) 16 Appendices to the General Conditions of the Contract; and
- (d) Request for Proposal Documents.

### **1.2 Order of Precedence**

(1) In the event of any ambiguity or conflict between the Contract Documents listed in Section 1.1 of this Form of Contract, the order of precedence shall be the order in which the Contract Documents are listed in Section 1.1 of this Form of Contract.

(2) Notwithstanding Section 1.2(1) of this Form of Contract and any other term or condition in the Contract Documents, if any statement or provision in Appendix 14 – Management Contractor's Proposal, is not consistent with or conflicts with any other term or condition in the remainder of the Contract Documents, the remainder of the Contract Documents shall govern.

### **1.3 Definitions**

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of the Contract and Appendices to the General Conditions of the Contract.

**ARTICLE 2 - MANAGEMENT CONTRACTOR’S COMPENSATION AND TERMS OF PAYMENT**

**2.1 Management Contractor’s Compensation**

In consideration of the performance by the Management Contractor of its obligations hereunder, YWC hereby agrees to pay to the Management Contractor a fee as compensation which is determined in accordance with the terms and conditions of the Contract and the Bidder’s Price Form.

**2.2 Terms of Payment**

The terms and procedures of payment by which the Management Contractor shall be compensated by YWC are as set out in the General Conditions of the Contract.

**ARTICLE 3 - EFFECTIVE DATE AND STARTING DATE**

**3.1 Determination of Effective Date and Starting Date**

The Effective Date and the Starting Date for the Contract shall be determined in accordance with the General Conditions of the Contract.

**IN WITNESS WHEREOF** YWC and the Management Contractor have caused this Form of Contract to be duly executed by their duly authorized representatives.

**EXECUTED** as of the date first written above.

**YWC  
AL YARMOUK WATER COMPANY LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

**[THE MANAGEMENT CONTRACTOR]** (Consortium Leader)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

**[PARENT(S) / SHAREHOLDERS  
OF THE MANAGEMENT CONTRACTOR]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

**Management Contract for  
Al Yarmouk Water Company  
YWC**

**a Limited Liability Company (LLC)  
owned by WAJ, the Water Authority of Jordan**

**The Hashemite Kingdom of Jordan**

**General Conditions**

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## GENERAL CONDITIONS

### ARTICLE 1 - CONTRACT AND INTERPRETATION GENERAL

#### 1.1 Definitions

In this Management Contract, unless the context otherwise requires, the following terms wherever used in this Contract have the following meanings:

“**Affiliate**” means, with respect to any legal entity, any other legal entity who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such legal entity, and for the purposes of this definition, a legal entity is deemed to control another legal entity if such legal entity possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other legal entity, whether through the ownership of voting securities, by contract or otherwise;

“**Applicable Law**” means the laws and any other instruments having the force of law in the Hashemite Kingdom of Jordan, as they may be issued and in force from time to time, and any internal regulations of WAJ;

“**Authorities**” means, WAJ, the PMU, and the Hashemite Kingdom of Jordan;

“**Base Year**” means the last fiscal year of YWC, immediately prior to the Starting Date;

“**CSO**” means the Chief Supervising Officer acting as liaison between YWC and the Management Contractor to carry out the tasks defined in GC Section 5.5(2)(d);

“**Contract**” means the agreement between YWC and the Management Contractor which consists of the Contract Documents;

“**Company**” refers to YWC;

“**Contract Documents**” means the Form of Contract, General Conditions and all Appendices to the General Conditions;

“**Contract Records**” is defined in GC Section 3.9.1;

“**Contract Year**” means a continuous period covering a full 365 days, 366 days in leap years, the first Contract Year to begin on the Starting Date;

“**Customers**” means all entities and individuals to which YWC provides water and, where applicable, wastewater services and includes those Customers in existence as of the Starting Date and entities or persons that become Customers after the Starting Date;

“**Effective Date**” is defined in GC Section 2.1;

“**End Date**” is defined in GC Section 2.2(2);

“**Facilities**” is defined in the Facilities Appendix;

“**Foreign Currency**” means any currency other than the Local Currency;

“**GC**” stands for General Conditions, as part of this Management Contract;

**“Incentive Compensation”** is defined in GC Section 6.2.1(1)(b) and the Incentive Compensation and Liquidated Damages Appendix;

**“includes”** means includes but not limited to and **“including”** means including but not limited to, unless expressly stated otherwise;

**“Independent Auditor”** is a technical and economic expert (no financial auditor, see GC Section 3.9) to carry out the tasks defined in GC Sections 2.7 and 6.3.2;

**“Joint Venture Company”** means the legal entity formed in connection with the Request for Proposals Procurement Process related to and for the purpose of entering into and performing the Services under this Contract;

**“KfW”** means the Kreditanstalt für Wiederaufbau;

**“Local Currency”** means the Jordanian Dinar [JOD];

**“Man Month”** is defined to be equal to 21 working days (net presence), one working day equals 8 working hours;

**“Management Contractor”** means the utility service provider retained by YWC in consent with WAJ to carry out the Services as named as the Management Contractor in the Form of Contract;

**“Management Contractor’s Fee”** is defined in GC Section 6.2.1(1). The Fee is consisting of two components, which are the Fix Fee (FF) and the Variable Fee (VF). The Annual Fee (AF) is for each Contract Year = Annual Fix Fee (AFF) + Annual Variable Fee (AVF). The Total Fee (TF) is the sum of the annual fees, accumulated over the first five Contract Years = Total Fix Fee (TFF) + Total Variable Fee (TVF);

**“Management Staff”** means those persons directly employed by the Management Contractor to carry out the Services as set out in the Management Staff Appendix;

**“Management Staff Costs”** is defined in GC Section 6.1;

**“Material Change in Law”** means any adoption, promulgation, repeal or modification after the Effective Date of any laws, regulations, statutory instruments within Hashemite Kingdom of Jordan and/or any part of the Applicable Law that may adversely affect the rights and obligations of Parties under this Agreement.

**“MWI”** means the Ministry of Water and Irrigation of the Hashemite Kingdom of Jordan;

**“Northern Governorates”** means the Governorates of Ajloun, Irbid, Jerash and Mafraq;

**“Operations Staff”** is defined in GC Section 4.4;

**“Party”** means YWC or the Management Contractor, as the case may be, and **“Parties”** means all of them;

**[Note: For all joint venture participants to be “parties” this definition will be amended.]**

**“PMU”** means the Performance Management Unit, as defined in GC Section 5.5(2)(b);

**“Performance Standards”** is defined in the Performance Standards Appendix;

**“Revenues”** means amounts that are paid by Customers and other persons or institutions in respect of water and wastewater services in the Service Area;

“**Services**” means the work to be performed by the Management Contractor pursuant to this Contract and in compliance with the Assignment Agreement (Appendix 12), as described in the Services Appendix;

“**Shareholder**” means, any one of the shareholders forming the Joint Venture Company if the Management Contractor is a joint venture;

“**Starting Date**” is defined in GC Section 2.3.1 and in the Contract Particulars Appendix;

“**Subcontractor**” means any entity to which the Management Contractor subcontracts or subconsults (a “Subconsultant”) any part of the Services in accordance with the provisions of GC Section 3.10 and, for the purpose of this Contract, including also any entity which the Management Contractor enters into contracts with on behalf of YWC in accordance with the Contract;

“**Subsequent Management Contractor**” means the Management Contractor that is to assume the provision of the Services, or a variation of the Services, upon termination or completion of the Contract and may include one of the Authorities;

“**Tax Breakdown**” means the breakdown of taxes, duties, levies and other charges submitted by the Management Contractor as part of the Financial Section of its Proposal and submitted during the RFP procurement process;

“**Third Party**” means any person or entity other than the Parties to this Contract;

“**WAJ**” means the Water Authority of Jordan;

“**YWC**” means the Al Yarmouk Water Company LLC, which has been transformed from the Northern Governorates Water Administration (NGWA), a former department of WAJ, into an autonomous limited liability company (LLC) owned by WAJ, responsible for water and wastewater services in the Northern Governorates, as regulated by WAJ or any other subsequent entity; and

“**YWC Fiscal Year**” means the fiscal year of the Water Authority of Jordan which, as of the Effective Date, is January 1 to December 31.

## 1.2 Contract Documents

(1) Subject to the Form of Contract provisions, all documents forming part of the Contract, and all parts thereof, are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

(2) The following appendices which are incorporated by reference into the Contract shall be referred to as follows:

Appendix	Name
Appendix 1	Contract Particulars (the “Contract Particulars Appendix”)
Appendix 2	Description of the Services (the “Services Appendix”)
Appendix 3	Performance Standards (the “Performance Standards Appendix”)
Appendix 4	Description of the Facilities (the “Facilities Appendix”)
Appendix 5	Description of the Service Area (the “Service Area Appendix”)
Appendix 6	Management, Supervisory and Technical Staff (the “Management Staff Appendix”)
Appendix 7	Operations Staff (the “Operations Staff Appendix”)
Appendix 8	Incentive Compensation and Liquidated Damages (the “Incentive Compensation and Liquidated Damages Appendix”)
Appendix 9	Performance Security (the “Performance Security Appendix”)

<b>Appendix</b>	<b>Name</b>
Appendix 10	Water Loss Reduction Program (the “Water Loss Reduction Program Appendix”)
Appendix 11	Rehabilitation and Repair Fund Program (the “Rehabilitation and Repair Fund Appendix”)
Appendix 12	Assignment Agreement between YWC and WAJ (the “Assignment Agreement Appendix”)
Appendix 13	Previous Financial and Performance Reports of YWC (the “Project Information Appendix”)
Appendix 14	Management Contractor’s Proposal (the “Proposal Appendix”)
Appendix 15	Bidder’s Price Form (the “Bidder’s Price Form Appendix”)
	Starting Date Inventory List (according to GC 3.13.2)

### **1.3 Interpretation**

#### **1.3.1 Language**

This Contract has been executed in English. The binding and controlling language for all matters relating to the meaning or interpretation of this Contract shall be the English language. Notwithstanding that the language of the Contract is English, the Management Contractor shall have a full and complete ability to communicate, orally and in writing, in Arabic either by itself or through translators or interpreters paid for by the Management Contractor.

#### **1.3.2 Persons**

Words importing persons or parties shall include firms, corporations, and government entities.

#### **1.3.3 Headings**

The headings shall not limit, alter or affect the meaning of this Contract.

#### **1.3.4 Singular or Plural**

In these Contract Documents the singular shall include the plural and the plural shall include the singular except where the context otherwise requires.

#### **1.3.5 Entire Agreement**

This Contract constitutes the entire agreement between YWC and the Management Contractor and supersedes all communications, negotiations and agreements, whether written or oral, made by either the Management Contractor or YWC prior to the Effective Date.

#### **1.3.6 Amendment**

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, has been approved by the body or bodies legally authorized in accordance with the Applicable Law to make such an amendment or variation on behalf of YWC, and is signed by a duly authorized representative of each Party to the Contract.

#### **1.3.7 Independent Contractor**

(1) The Management Contractor shall be an independent contractor in its performance of the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto.

(2) Subject to the provisions of the Contract, the Management Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Management Contractor in connection with the performance of the Contract shall be under the complete control of the Management Contractor and nothing contained in the Contract, or in any subcontract awarded by the Management Contractor, shall be construed to create any contractual relationship between the Management Contractor's representatives or Subcontractors and YWC. The relationship between the Management Contractor, YWC and the Operations Staff shall be governed by the Operations Staff Appendix.

(3) Notwithstanding that the Management Contractor is an independent contractor, the Parties acknowledge that,

- (a) when the Management Contractor incurs expenditures to be paid, in accordance with the Contract, for day to day operations and maintenance of the Facilities in the Service Area or with respect to the Rehabilitation and Repair Program, it does so on behalf of YWC; and
- (b) when the Management Contractor is carrying out the Services it does so on behalf of YWC.

#### 1.3.8 Joint Venture or Consortium

If the Management Contractor is a joint venture or consortium of two or more persons and/or legal entities, then all such legal persons and/or entities shall be jointly and severally bound to YWC for the fulfilment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture shall not be altered without the prior written consent of YWC.

#### 1.3.9 Non-waiver

(1) Subject to GC Section 1.3.9(2), no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

(2) To be a valid waiver, any waiver of a Party's rights, powers or remedies under the Contract shall,

- (a) be in writing;
- (b) be dated and signed by a duly authorized representative of the Party granting such waiver;
- (c) specify the right, power or remedy being waived and the extent to which it is being waived; and
- (d) where the waiver is given by YWC, be approved by the body or bodies legally authorized in accordance with the Applicable Law to waive YWC's rights, powers or remedies under the Contract.

### 1.3.10 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### 1.3.11 Number of Days

Except as expressly stated to the contrary elsewhere herein, in computing the number of days for the purposes of the Contract all days shall be counted, including Fridays, Saturdays and legal holidays, provided, however, that if the final day of any period shall fall on a Friday, Saturday or legal holiday, then the final day shall be deemed to be the next day which is not a Friday, Saturday or legal holiday.

### 1.3.12 References to Currency

Except where provided otherwise in the Contract, for the purpose of the Contract, all references to currency or money shall mean the Local Currency.

### 1.3.13 Rate of Interest

Wherever a reference to the payment of interest is made in the Contract Documents, the rate of interest shall be the borrowing rate set by the Central Bank of Jordan which is applicable at the relevant time.

### 1.3.14 Survival of Obligations

Upon the termination or expiration of the Contract pursuant to the Contract, all rights and obligations of the Parties hereunder shall cease, except,

- (1) such rights and obligations as may have accrued or to which the Parties may be entitled on the date of termination or completion;
- (2) the Management Contractor's obligation of confidentiality set forth in GC Section 3.4;
- (3) the Management Contractor's obligation with respect to Contract Records, Accounting and Auditing set forth in GC Section 3.9;
- (4) any right which a Party may have under the Applicable Law;
- (5) the Management Contractor's obligation to co-operate with YWC and PMU on the matter of the transition arrangements in the event of termination or on completion; and
- (6) any duty of the Management Contractor to make its Management Staff available for a period of up to 60 days after the End Date to ensure a smooth transition to a Subsequent Management Contractor.

### 1.3.15 Section References

- (1) Section and subsection references in the Contract Documents which refer to the Form of Contract shall be preceded by the letters "FC" such that a reference to "FC Section", followed by a number, shall refer to that section or subsection number in the Form of Contract.
- (2) Section and subsection references in the Contract Documents which refer to the General Conditions shall be preceded by the letters "GC" such that a reference to "GC Section", followed by a number, shall refer to that section or subsection number in the General Conditions

(3) Section and subsection references in the Contract Documents which refer to the Services Appendix shall be preceded by the letters “SA” such that a reference the “SA Section”, followed by a number, shall refer to that section or subsection number in the Services Appendix.

(4) Section and subsection references in the Contract Documents which refer to the Performance Standards Appendix shall be preceded by the letters “PSA” such that a reference to “PSA Section”, followed by a number, shall refer to that section or subsection number in the Performance Standards Appendix.

#### **1.4 Notices**

(1) Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be considered to have been given or made when delivered in person to the Authorized Representative of the Party to whom the communication is addressed, or when sent by courier to such Party at the addresses for notice set out in the Contract Particulars Appendix.

(2) Notices will be considered to be effective in the case of both personal delivery and delivery by courier, upon delivery to and acknowledgement of receipt in writing by the receiving Party.

(3) A Party may change its address for notice pursuant to this Contract by giving the other Party notice of change in accordance with this GC Section 1.4.

(4) The Management Contractor’s address for the purpose of giving notice pursuant to this GC Section 1.4 shall be in the Hashemite Kingdom of Jordan.

(5) Notice to the Management Contractor pursuant to GC Section 1.4 shall be deemed to be notice to all Parties, excluding YWC.

#### **1.5 Law Governing Contract**

This Contract, its meaning and interpretation, and the relations between the Parties shall be governed by the Applicable Law.

#### **1.6 Location**

The Management Contractor shall perform the Services at such locations in the Service Area as are specified in the Contract Documents and, where the location of a particular task is not so specified, at such locations in the Service Area as YWC may approve.

#### **1.7 Authority of Shareholder in Charge**

(1) If the Management Contractor is a Joint Venture Company, the Shareholders hereby authorize the Shareholder named in the Contract Particulars Appendix to act on their behalf in exercising all the Management Contractor’s rights and obligations toward YWC under this Contract, including the receiving of instructions and payments from YWC.

(2) If the Management Contractor is a Joint Venture Company and the Shareholders of the Joint Venture Company have signed this Contract, those Shareholders hereby authorize the Management Contractor to act on their behalf, including the receiving of instructions and payments from YWC.

#### **1.8 Authorized Representatives**

(1) Prior to the Starting Date, the Management Contractor and YWC shall each identify,

- (a) an individual to act as its contract liaison and coordinator (the “Authorized Representatives”); and
- (b) an individual to be the official designate to act in the stead of its Authorized Representative in the event that its Authorized Representative is unavailable or unable to perform its obligations under the Contract.

(2) The Authorized Representatives and their designates may take any action required or permitted by the Contract and may execute any document required or permitted to be executed under the Contract.

(3) Each Party may change its Authorized Representative upon prior written notice (pursuant to GC Section 4.2).

(4) For the purpose of the Contract, the Authorized Representatives and their designates shall be those individuals named as Authorized Representatives in the Contract Particulars Appendix.

## **1.9 Taxes, Duties, Customs, Levies and Charges**

### **1.9.1 Taxes Included in Management Contractor’s Price**

(1) The Management Contractor shall pay all income, value added or social service taxes and/or generally all any other taxes, duties, fees, customs, stamp tax, levies and charges assessed or applicable and/or to be applicable throughout the prevalence of this Management Contract by all municipal, state or national authorities and/or competent court in the Hashemite Kingdom of Jordan in accordance with the Applicable Law (the “Taxes”).

(2) The Management Contractor acknowledges that its gross price includes all Taxes in effect as of the date which was set out as the Date for Determination of Taxes in the RFP. [*Note: The Contractor is expected to be exempted from VAT and corporate income tax, see Appendix 15.*]

(3) If the Management Contractor has included in its price, as evidenced by the Management Contractor’s Tax Breakdown, a Tax from which the Management Contractor is determined by the Hashemite Kingdom of Jordan to be exempt, the Management Contractor’s price shall be reduced accordingly.

(4) The Management Contractor shall further undertake to pay any fees or dues associated with the award of this Management Contract.

## **1.10 Assignment**

(1) The Management Contractor shall not assign to any Third Party the Contract, or any part thereof, or any right, benefit, obligation, or interest therein, without the prior written consent of YWC, except that the Management Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that become due and payable to it under the Contract.

(2) To be a valid assignment which has been approved by YWC pursuant to GC Section 1.10(1), the assignment must,

- (a) be in writing;
- (b) be dated and signed by a duly authorized representative of YWC;
- (c) state the specific details of the assignment; and

- (d) be approved by the body legally authorized in accordance with the Applicable Law to exercise the necessary authority.

### **1.11 Submission to Jurisdiction**

Except with respect to those disputes that are to be determined by arbitration in accordance with GC Article 8, in all disputes arising from or in connection with this Contract, and in respect of the enforcement of any arbitration award, the Parties consent and submit to the jurisdiction of the courts of the Hashemite Kingdom of Jordan.

## **ARTICLE 2 - TERM COMMENCEMENT, COMPLETION, AND TERMINATION OF CONTRACT**

### **2.1 Effective Date**

The Form of Contract shall be executed by the Management Contractor prior to its execution by YWC and the effective date of the Contract (the “Effective Date”) shall be the date the Form of Contract is executed by YWC, contingent on final approval by KfW.

### **2.2 Duration of Contract**

(1) Unless terminated earlier pursuant to GC Section 2.8 or extended pursuant to GC Section 2.5, the duration of this Contract is five (5) years.

(2) The End Date shall be the day following the last working day of the Contract, which will be 5 years after Starting Date, unless the Contract is terminated or extended (pursuant to GC Section 2.2(1)).

(3) The Completion Date shall be the day after the day, on which the Contractor has fulfilled all its obligations under this Contract.

### **2.3 Commencement of Services**

#### **2.3.1 Starting Date**

(1) The Starting Date shall be established by YWC and shall be a date no later than 60 days after the Effective Date or on such later date as the Parties may agree in writing (the “Starting Date”).

(2) The Management Contractor shall carry out all Services commencing on the Starting Date.

### **2.4 Services After the End Date**

(1) The Management Contractor, upon written request by YWC or the PMU no later than 30 days prior to the End Date, shall provide assistance to YWC and the PMU during a transitional period of up to 60 days after the End Date (the “Transition Assistance”). The purpose of the Transition Assistance is to ensure a smooth transition between the Management Contractor and a Subsequent Management Contractor of the Facilities. The Transition Assistance shall be related to only transition services and shall not be the full range of services as set out in the Services Appendix.

(2) YWC shall pay the Management Contractor an amount equal to 1/12 of the Management Contractor’s last annual Fix Fee for each month the Management Contractor provides Transition Assistance as payment for the Transition Assistance provided by the Management Contractor.

(3) If YWC or the PMU makes a request for assistance pursuant to GC Section 2.4(1), the Transition Assistance shall be provided by those Management Staff identified by YWC or the PMU, and the identified Management Staff, which is obliged to be resident according to Appendix 6, shall remain to be resident in the Hashemite Kingdom of Jordan, until the completion of the Transition Assistance. If YWC or the PMU do not identify all members of the Management Staff to provide Transition Assistance, the payment identified in GC Section 2.4(2) shall be reduced in proportion to the cost of Management Staff which are not providing Transition Assistance.

## **2.5 Extension of the Contract**

Without prior written notice this Contract will be automatically extended twice by a period of two (2) years each. Such written notice will have to be received by the Parties at least twelve (12) months prior to the end of the initial Duration of Contract pursuant to GC Section 2.2, respectively prior to the end of the first Extension of the Contract. Further extensions of this Contract may be agreed on in consent of both Parties and shall be applied with prior written notice.

## **2.6 Force Majeure**

### **2.6.1 General**

(1) Save as provided for under the Applicable Law, for the purposes of this Contract, “Force Majeure” means an event that is,

- (a) beyond the reasonable control of a Party; and
- (b) makes a Party’s performance of its obligations under the Contract impossible or so impractical as reasonably to be considered impossible in the circumstances.

(2) Force Majeure includes,

- (a) war, riots and civil disorder;
- (b) storm, flood, earthquake or other severely adverse weather conditions;
- (c) confiscation or other similar action by government agencies; and
- (d) strikes, lockouts and other industrial actions except where such strikes, lockouts and other industrial actions are within the power of the Party invoking Force Majeure to prevent,

if such events meet the test set out in GC Section 2.6.1(1)(b).

(3) Force Majeure shall not include,

- (a) any event that is caused by the negligence or intentional action of a Party or such Party’s Subcontractors or agents or employees; or
- (b) any event that a diligent Party could reasonably have been expected to,
  - (i) take into account at the time of the execution of this Contract; and

- (ii) avoid or overcome in the carrying out of its obligations under the Contract.

(4) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

#### 2.6.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract to the extent that such failure to fulfill the Contract obligation arose from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

#### 2.6.3 Measures to be Taken

(1) A Party affected by an event of Force Majeure shall take all reasonable measures to fulfill its obligations under the Contract with a minimum of delay.

(2) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 days after the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

(3) The Parties shall take all reasonable measures to minimize the consequences and/or mitigate damage and losses resulted as a consequence of any event of Force Majeure.

#### 2.6.4 Extension of Time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

#### 2.6.5 Payments

(1) During the period of the Management Contractor's inability to perform the Services as a result of an event of Force Majeure, YWC shall continue to pay the Management Contractor under the terms of this contract and shall reimburse the Management Contractor for only additional costs reasonably and necessarily incurred by the Management Contractor during such period for the purpose of,

- (a) carrying out the Services; and
- (b) in reactivating the Services after the end of such period.

(2) Payments made pursuant to GC Section 2.6.5 shall not include any payments in respect of lost or foregone profits, revenues, Incentive Compensation or any similar payments and the Management Contractor shall make no claim in respect of such losses or foregoing amounts.

#### 2.6.6 Consultation

Not later than 30 days after the Management Contractor, as the result of an event of Force Majeure, has become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

## 2.7 Suspension

(1) YWC may, by written notice of suspension to the Management Contractor, suspend all, or a part of, payments to the Management Contractor hereunder if the Management Contractor fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension,

- (a) shall specify the nature of the failure; and
- (b) shall require the Management Contractor to remedy such failure within a period not exceeding 30 days after receipt by the Management Contractor of such notice of suspension.

(2) If the Management Contractor submits to YWC or the PMU,

- (a) a plan, program, report, survey, guideline or other document required by the Contract (a “Deliverable”), later than 14 days after the date established under the Contract for submission of that Deliverable to YWC or the PMU; or
- (b) a Deliverable of consistent poor quality, as evidenced by YWC or the PMU and testified by the Independent Auditor, requiring two drafts of the Deliverable to be submitted to YWC or the PMU without obtaining YWC’s approval with respect to that Deliverable,

(3) YWC may, by written notice to the Management Contractor, withhold payment of up to 3% of 1/12 of the Management Contractor’s annual Fix Fee for each Deliverable that meets either of the tests set out in GC Sections 2.7(2)(a) or (b). If YWC approves, no later than 30 days after the date established for the submission of a particular Deliverable under the Contract, a Deliverable which meets either of the tests set out in GC Sections 2.7(2)(a) or (b), YWC shall pay to the Management Contractor the amounts withheld pursuant to this GC Section 2.7(2), without interest, no later than 15 days after YWC’s approval of the Deliverable that gave rise to the withholding pursuant to this GC Section 2.7(2).

## 2.8 Termination

### 2.8.1 By YWC

YWC may terminate this Contract if,

- (a) the Management Contractor fails to remedy a failure in the performance of its obligations as specified in a notice of suspension pursuant to GC Section 2.7 no later than 30 days after the Management Contractor’s receipt of such notice of suspension or within such further period as YWC may, in its sole discretion, approve in writing;
- (b) the Management Contractor, or if the Management Contractor is a Joint Venture Company and any Shareholder of the Joint Venture Company, becomes insolvent or bankrupt or enters into any agreements with its creditors for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;

- (c) the Management Contractor fails to comply with any final decision reached as a result of arbitration proceedings pursuant to GC Article 8;
- (d) the Management Contractor submits to YWC a statement which has a material effect on the rights, obligations or interests of YWC and which the Management Contractor knows to be false;
- (e) the Management Contractor fails to comply with any of the provisions of GC Section 3.3.3 (2) and 3.14;
- (f) the Liquidated Damages exceed the maximum of 35% of the Annual Fee (pursuant to Appendix 8, Clause 5.5) in two consecutive years;
- (g) as a result of Force Majeure, the Management Contractor is unable to perform a material portion of the Services for a period of more than 60 days;
- (h) PMU, in its sole discretion, determines that the Management Contractor has, at any time prior to or after the Effective Date, demanded, assumed, rendered, granted, promised or obtained a promise of unlawful payments or other advantages in connection with the preparation and implementation of the Contract.

#### 2.8.2 Required Notice of Termination – For Cause

(1) YWC may terminate the Contract pursuant to GC Sections 2.8.1(a)-(g) by delivering a written notice of termination (the “Notice of Termination – For Cause”) to the Management Contractor and the termination of the Contract shall occur 30 days after the date of the Notice of Termination – For Cause.

(2) The Notice of Termination – For Cause shall set out the specific section or sections of the Contract pursuant to which the Contract is being terminated by YWC.

#### 2.8.3 Required Notice of Termination – For Convenience

YWC may terminate this Contract pursuant to GC Section 2.8.1(h) by delivering a written notice of termination (the “Notice of Termination – For Convenience”) to the Management Contractor and the termination of the Contract shall occur 180 days after the date of the Notice of Termination – For Convenience.

#### 2.8.4 By the Management Contractor

The Management Contractor may terminate this Contract if,

- (a) YWC fails to pay any money due to the Management Contractor pursuant to this Contract within 60 days after receiving written notice from the Management Contractor that such payment is overdue, if the payment is not subject to dispute pursuant to GC Article 8;
- (b) YWC is in material breach of its obligations pursuant to this Contract and has not remedied the same within 45 consecutive days after receiving written notice from the Management Contractor;

- (c) as the result of Force Majeure, the Management Contractor is unable to perform a material portion of the Services for a period of more than 60 days; or
- (d) YWC fails to comply with any final decision reached as a result of arbitration pursuant to GC Article 8.

#### 2.8.5 Notice of Termination by the Management Contractor

(1) If the Management Contractor wishes to terminate this Contract pursuant to GC Section 2.8.4, it shall deliver a written notice of termination (the “Management Contractor’s Notice of Termination”) to YWC and the termination of the Contract shall occur 30 days after the date of the Management Contractor’s Notice of Termination.

(2) The Management Contractor’s Notice of Termination shall set out the specific section or sections of the Contract pursuant to which the Contract is being terminated by the Management Contractor.

#### 2.8.6 Disputes about Events of Termination

(1) If either Party disputes whether an event specified in GC Sections 2.8.1(a)-(g) or in GC Section 2.8.4 has occurred, such Party may, within 20 days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to GC Article 8, and the Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

(2) Notwithstanding GC Article 8, YWC’s decision to terminate the Contract pursuant to GC Section 2.8.1(h) shall be final and shall not be subject to the dispute resolution process.

#### 2.8.7 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to GC Section 2.8, the Management Contractor shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to Contract Records and equipment, materials and property which is to be returned to YWC, the Management Contractor shall proceed as provided, respectively, by GC Sections 3.9 and 3.13.

#### 2.8.8 Payment upon Termination

(1) Upon termination of this Contract pursuant to GC Section 2.8, YWC shall make only the following payments to the Management Contractor:

- (a) a pro-rated portion of the Management Fix Fee for Services performed prior to the date of termination; and
- (b) except in the case of termination pursuant to GC Sections 2.8.1(a)-(f), reimbursement of any reasonable cost incurred by the Management Contractor incident to the prompt and orderly termination of the Contract.

(2) The Management Contractor shall not make a claim for lost or foregone profits, revenues, consequential damages or any other cost, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract.

## **ARTICLE 3 - OBLIGATIONS OF THE MANAGEMENT CONTRACTOR**

### **3.1 General**

#### **3.1.1 Services and Standard of Performance**

The Management Contractor shall,

- (a) perform the Services set out in the Services Appendix;
- (b) perform the Services in accordance with the Performance Standards set out in the Performance Standards Appendix; and
- (c) undertakes its duties with care, diligence and in accordance with international best practice.

#### **3.1.2 Service Area**

The Management Contractor shall perform the Services, as specified in the Services Appendix, in respect of the Service Area as defined in the Service Area Appendix.

#### **3.1.3 Facilities**

The Management Contractor shall perform the Services as they relate to the Facilities set out in the Facilities Appendix. The Management Contractor shall be responsible for the care and control of the Facilities during the Term of the Contract.

### **3.2 Law Governing Services**

The Management Contractor shall perform the Services in accordance with the Applicable Law and shall ensure that its Management Staff and Subcontractors perform the Services in accordance with the Applicable Law.

### **3.3 Conflict of Interest**

#### **3.3.1 Management Contractor not to Benefit from Commissions, Discounts or Similar**

The compensation of the Management Contractor pursuant to GC Article 6 shall constitute the Management Contractor's sole compensation in connection with this Contract and, except as provided in GC Article 6, the Management Contractor shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of its obligations hereunder, and the Management Contractor, shall use its best efforts to ensure that the Management Staff, Subcontractors, and as employees and agents of either of them, similarly shall not receive any such additional remuneration.

#### **3.3.2 Management Contractor and Affiliates Disqualification**

The Management Contractor, Subcontractors and any of the Management Contractor's or Subcontractor's Affiliates during the term of the Contract, shall be disqualified from providing goods, works or operational services, other than the Services, with respect to,

- (a) the goods, works and operational services to be purchased from the Water Loss Reduction Program;

- (b) the goods, works and operational services to be purchased from the Rehabilitation and Repair Fund;
- (c) capital investment programs of YWC; and
- (d) except with the prior written consent of PMU, the goods, works and services purchased from the Annual Operations and Maintenance Budgets of YWC.

### 3.3.3 Prohibition of Conflicting Activities

(1) The Management Contractor, Management Staff, Subcontractors and the employees and affiliates of the Management Contractor and Subcontractors shall not engage, either directly or indirectly, in any business or professional activities in the Hashemite Kingdom of Jordan which would conflict with the activities assigned to them under this Contract.

(2) Any delivery of goods or works, especially technology and equipment, by any company affiliated with the Management Contractor, or co-operating with the Management Contractor or any of its Affiliates, shall be considered as conflicting activity, unless the Management Contractor has undergone the procedure described in GC Section 3.3.3(3).

(3) PMU may in its sole discretion allow any company affiliated with the Management Contractor, or co-operating with the Management Contractor or any of its affiliates, to deliver goods, works or services, especially technology and equipment within the service area of YWC or any other area where YWC under the Management Contractor are delivering whatever services. With no exception, such delivery shall be awarded through a public tender process. The Management Contractor must hire independent Consultants, to be appointed by PMU, to elaborate the design, the terms of reference and the tender documents, and to advise PMU with bid evaluation and to select the best bidder for the delivery. In no way is the Management Contractor allowed to influence the tender process.

(4) Any subcontracting of services or works exceeding the total contract value of 25,000 JOD shall be considered as conflicting activity, unless the Subcontractor has been engaged in compliance with the procedure described in GC Section 3.10.

(5) The Prohibition of Conflicting Activities shall be valid throughout the Management Contract period and for another two (2) years period subsequent to the End Date.

(6) In case of conflicting activities pursuant to 3.3.3 (2) YWC may impose a penalty of 30 % of the total value of the contract but not less than 100,000 JOD, payable to YWC.

(7) The penalty to be paid by the Management Contractor in case of conflicting activities in case of 3.3.3 (4) is 10,000 JOD plus 30 % of the value subcontracted.

## 3.4 **Intellectual Property and Confidentiality**

(1) As between the Parties, the Management Contractor shall retain the copyright and other intellectual property rights in any technical or engineering inventions or innovations made by or on behalf of the Management Contractor in providing the Services and in the Management Contractor's Parent's and Shareholders' proprietary software as applicable, that the Management Contractor modified for use in connection with the Services (the "Management Contractor's Innovations and Software").

(2) The Management Contractor shall be deemed, by signing the Contract, to give YWC a non-terminable, transferable, non-exclusive, royalty-free licence to copy, use and communicate the Management Contractor's Innovations and Software and any other software used or purchased by the

Management Contractor in the performance of the Services (the “Other Software”), including making and using modifications of them. This licence shall,

- (a) apply throughout the actual or intended working life, whichever is longer, of the relevant parts of the Facilities;
- (b) entitle any person in proper possession of the relevant part of the Facilities to copy, use and communicate the Management Contractor’s Innovations and Software and the Other Software for the purposes of managing, operating and maintaining the Facilities;
- (c) in the case of the Management Contractor’s Innovations and Software and the other Software which are in the form of computer programs and other software, permit their use on any computer at the Facilities and other places as envisaged by the Contract, including replacements of any computers supplied by the Management Contractor; and
- (d) entitle YWC to make the Management Contractor’s Innovations and Software and the Other Software available for inspection by a prospective bidder who may be involved in the process to select a Subsequent Management Contractor.

(3) As between the Parties, YWC owns and will continue to own all data with respect to the Services, Facilities and Customers.

(4) The Management Contractor, Subcontractors and the employees and Affiliates of the Management Contractor and Subcontractors shall not, either during the term of the Contract or after the expiration of the Contract, disclose any proprietary or confidential information relating to the Services, the Contract or YWC’s business or operations without the prior written consent of YWC. The determination of whether information is proprietary or confidential shall be in the sole discretion of YWC.

### **3.5 Indemnity by the Management Contractor**

(1) The Management Contractor shall indemnify and hold harmless the Authorities and their employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney’s fees and expenses, in respect of the death or injury of any person or loss of or damage to any property arising in connection with the Management Contractor’s provision of the Services and by reason of the negligence of,

- (a) the Management Contractor;
- (b) Subcontractors;
- (c) the employees, officers or agents or the Management Contractor or Subcontractors; and
- (d) the Operations Staff under the supervision of the Management Contractor pursuant to the Operations Staff Appendix.

(2) The Management Contractor is not obliged to indemnify and hold harmless the Authorities and their employees and officers according to clause 3.5(1), if it had to follow instructions

or to tolerate interventions from public authorities, public servants, politicians, which were related to the events under dispute about indemnification.

### **3.6 Intellectual Property Indemnity**

(1) The Management Contractor shall, subject to the Authorities' compliance with GC Section 3.6(2), indemnify and hold harmless the Authorities and their employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Authorities may suffer as a result of any infringement or alleged infringement by the Management Contractor, Subcontractors, or their employees or officers, of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing.

(2) If any proceedings are brought or any claim is made against the Authorities arising out of the matters referred to in GC Section 3.6(1), the Authorities shall promptly give the Management Contractor a notice thereof, and the Management Contractor may at its own expense and in the Authorities' name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

(3) If the Management Contractor fails to notify the Authorities within 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Authorities shall be free to conduct the same on its own behalf. Unless the Management Contractor has so failed to notify the Authorities within the 28 day period, the Authorities shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

(4) The Authorities shall, at the Management Contractor's request, afford all available assistance to the Management Contractor in conducting such proceedings or claim, and shall be reimbursed by the Management Contractor for all reasonable expenses incurred in so doing.

(5) The Authorities shall indemnify and hold harmless the Management Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Management Contractor may suffer as a result of any infringement or alleged infringement by the Authorities of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing.

### **3.7 Limitation of Liability**

Except in cases of criminal negligence or wilful misconduct,

- (a) the Management Contractor shall not be liable to the Authorities in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits of interest costs, provided that this exclusion shall not apply to any obligation of the Management Contractor to pay liquidated damages to the Authorities; and
- (b) the aggregate liability of the Management Contractor to the Authorities, whether under the Contract, in tort or otherwise, shall not exceed the aggregate of the total Management Contractor's Fix Fee and the total available Incentive Compensation, provided that this limitation shall not apply to any obligation of the Management Contractor to indemnify the Authorities with respect to patent infringement.

### **3.8 Insurance to be Taken out by the Management Contractor**

(1) To the extent specified in GC Sections 3.8(1)(a) and (b), the Management Contractor shall take out and maintain in effect, or cause to be taken out and maintained in effect, during the prevalence of the Contract, the insurances set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of YWC, which shall not unreasonably withhold such approval. Furthermore, YWC shall on the Effective Date notify the Management Contractor of those assets, operations and insurable risks that shall be subject to the obligation of the Management Contractor under this Section 3.8(1)(a) and (b) herein.

(a) On behalf and at the expenses of the Management Contractor:

Professional Liability Insurance

Covering any loss or damage resulting from professional negligence occurring in connection with the Services with a minimum coverage of 2,000,000 Euros;

Third Party Liability Insurance

Covering bodily injury or death suffered by third parties, including the Management Contractor's employees, and loss of damage to property occurring in connection with the Services with a minimum coverage of 5,000,000 Euros;

(b) On behalf and at the expense of YWC all insurances as stipulated under the Assignment Agreement (Appendix 12), Clause 7.6, plus any other insurances on decision of YWC.

(2) YWC shall be named as co-insured under all insurance policies taken out by the Management Contractor pursuant to GC Section 3.8(1), except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Subcontractors shall be named as co-insured under all insurance policies taken out by the Management Contractor pursuant to GC Section 3.8(1)(a). All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

(3) The Management Contractor shall deliver to YWC certificates of insurance, or copies of the insurance policies, as evidence that the required policies are in full force and effect. The certificates shall provide that no less than 21 days notice shall be given to YWC by insurers prior to cancellation or material modification of a policy.

(4) The Management Contractor shall ensure that, where applicable, the Subcontractors shall take out and maintain in effect adequate insurance policies for their employees and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Management Contractor.

(5) If the Management Contractor fails to take out or maintain in effect the insurances referred to in GC Section 3.8, YWC may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Management Contractor under the Contract any premium that YWC shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Management Contractor.

(6) Unless otherwise provided in the Contract, the Management Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GC Section 3.8, and all monies payable by any insurers shall be paid to the Management Contractor. YWC shall give to the Management Contractor all such reasonable assistance as may be required by the Management

Contractor. With respect to insurance claims in which YWC's interest is involved, the Management Contractor shall not give any release or make any compromise with the insurer without the prior written consent of YWC.

### **3.9 Contract Records, Accounting and Auditing**

#### **3.9.1 Contract Records**

(1) All data, information, documentation, account, plans, programs, reports, surveys and guidelines of any kind whatsoever (the "Contract Records") prepared by the Management Contractor in performing the Services shall become and remain the property of YWC and the Management Contractor shall deliver all Contract Records and a detailed inventory of those Contract Records to YWC no later than the date of termination or expiration of the Contract.

(2) The Contract Records shall include,

- (a) information of any kind whatsoever related to the finances, revenues or expenditures of YWC's operations;
- (b) information of any kind whatsoever related to the Water Loss Reduction Program;
- (c) all files, documents, plans, drawings, specifications, notes, minutes of meetings and minutes of conversations;
- (d) the plans, programs, reports, surveys and guidelines listed in PSA Section 9;
- (e) the accounts of YWC's operations; and
- (f) all manuals, reports, condition surveys, safety records, audit records, inventories, laboratory test results, procurement records, customer information, financial information, financial statements, invoices, accounting records, subcontracts and personnel records,

whether stored in hard copy or electronically.

(3) The Management Contractor shall provide YWC and the PMU with unrestricted access to the Contract Records during the term of the Contract, including the right to make and retain copies.

(4) The Management Contractor may retain a copy of the Contract Records but shall not use them for purposes unrelated to this contract without the prior written approval of YWC.

(5) The Management Contractor acknowledges that YWC, as owner of the Contract Records, may deal with the Contract Records in any way it determines including making the Contract Records publicly available, including making them available to prospective bidders who may be involved in the process to select a Subsequent Management Contractor.

#### **3.9.2 Accounting**

(1) The Management Contractor shall keep accurate and systematic accounts in accordance with internationally accepted accounting principles in respect of the Services and the Contract.

(2) The Management Contractor shall keep accounts of YWC's operations in accordance with the Applicable Law and shall submit those accounts to WAJ on an annual basis.

### 3.9.3 Auditing the Management Contractor's Own Accounts and the Contract Records

- (1) YWC may, in its sole discretion, audit,
  - (a) the Management Contractor's own accounts, financial information, financial statements and technical information at any reasonable time and with 24 hours notice to the Management Contractor; and
  - (b) the Contract Records at any reasonable time and without notice to the Management Contractor,

in respect of any matters related to the Contract.

(2) YWC may complete the audit or audits itself or may retain an auditor, at YWC's expense, to complete the audit or audits.

### 3.9.4 Management Contractor's Audited Accounts

The Management Contractor shall submit, to YWC, the annual audited accounts of its own finances for each of the Management Contractor's fiscal years that occurs during the term of the Contract.

### 3.9.5 Audit by KfW

The auditors appointed by KfW may, as directed by WAJ, inspect or audit the Management Contractor's accounts, financial information, financial statements and technical information in respect of any matters related to the Contract from time to time and on an annual basis without notice to the Management Contractor.

## **3.10 Subcontractors**

(1) The Management Contractor shall not enter into any contract or contracts which will result in the total or majority of the Services being performed by a Subcontractor. The determination of the "majority of services", shall conclusively rest with the PMU, which shall have the full right and discretion in determining the same. However, the Management Contractor may enter into a contract or contracts with Subcontractors to perform some elements of the Services. Key activities as defined in Appendix 6 (Management Staff Appendix) shall not be subcontracted.

(2) The Management Contractor may not enter into a contract with any Subcontractor without giving prior written notification to YWC. The Management Contractor shall refrain from the contract with the subcontractor if YWC raises justified objections with good reasons within thirty (30) days after having received the notification.

(3) The Management Contractor shall ensure that any of its Contract obligations which are relevant to the work being carried out by a Subcontractor are incorporated into the terms and conditions of the agreement under which the Subcontractor is retained.

(4) Subcontracting by the Management Contractor does not relieve the Management Contractor of any of its obligations under the Contract.

(5) YWC's consent to a Subcontractor imposes no obligations or liabilities whatsoever on YWC and in no way relieves the Management Contractor of any of its obligations under the Contract.

### **3.11 Meetings**

(1) The Management Contractor's Authorized Representatives shall meet with YWC's Authorized Representative at regularly scheduled monthly meetings to discuss and review any issues related to the Services and the Contract as well as the records and reports prepared by the Management Contractor pursuant to the Services Appendix (SA Article 5) and the Assignment Agreement (Appendix 12).

(2) The Management Contractor's Authorized Representatives shall meet with YWC's Authorized Representative at ad-hoc meetings to be announced by YWC seven (7) days in advance.

(3) The Management Contractor shall prepare minutes of all meetings held pursuant to GC Sections 3.11(1) and 3.11(2) and submit minutes signed by the Management Contractor to the PMU.

### **3.12 Reporting Obligations**

Unless otherwise specified in the Contract, the Management Contractor shall submit to the PMU 7 copies in English, an executive summary in Arabic and electronic copies of the reports and documents required by the Contract, in the form, in the numbers and within the time periods set forth in the Contract.

### **3.13 Equipment and Materials Furnished by YWC**

#### **3.13.1 General**

(1) Subject to the Assignment Agreement, the vehicles, equipment, materials and supplies in respect of the water and wastewater systems in the Service Area will remain under the ownership of YWC.

(2) The vehicles, equipment, materials and supplies and any other property whatsoever made available to the Management Contractor by YWC, or purchased by the Management Contractor with funds provided by YWC, excluding the Management Contractor's Fix Fee and Incentive Compensation, shall be the property of YWC and shall be marked accordingly.

(3) YWC shall, on the Starting Date, provide all vehicles, equipment, materials and supplies used by YWC, as of the Starting Date, to the Management Contractor. As of the Starting Date, the vehicles, equipment, materials and supplies shall be in the care and custody of the Management Contractor.

(4) During the term of the Contract, the Management Contractor shall return any vehicles, equipment, materials, and supplies to YWC received or purchased by the Management Contractor pursuant to GC Section 3.13.1(2) or (3) if they become unusable or unneeded.

(5) The Management Contractor shall develop, for the review and approval of YWC, a policy for the Management Contractor's use of YWC's vehicles provided to the Management Contractor pursuant to GC Section 3.13.2 (the "Vehicle Use Policy"). The Management Contractor shall use the vehicles provided to the Management Contractor pursuant to GC Section 3.13.2 in accordance with the Vehicle Use Policy.

(6) The Management Contractor shall, on the End Date, return all vehicles, equipment, materials and supplies made available to the Management Contractor pursuant to GC Section 3.13.1(3) or purchased by the Management Contractor using funds provided by YWC pursuant to GC Section 3.13.1(2), as of the End Date, to YWC. The vehicles, equipment and materials returned to YWC by the Management Contractor pursuant to this GC Section 3.13.1(6) shall be in at least the

same condition, normal wear and tear excepted, as they were when made available to or purchased by the Management Contractor.

### 3.13.2 Vehicles, Equipment, Materials and Supplies Inventory Lists and Handover

(1) No later than the Starting Date, YWC shall provide to the Management Contractor a list of all vehicles, equipment, materials and supplies to be provided to the Management Contractor on the Starting Date (the “Starting Date Inventory List”).

(2) No later than 30 days after the Starting Date, the Management Contractor shall confirm, in writing, that it has received all items on the Starting Date Inventory List or shall provide a revised Starting Date Inventory List.

(3) No later than 30 days prior to the End Date, or the date of termination, the Management Contractor shall provide to YWC for its review and approval a list of the vehicles, equipment, materials and supplies to be returned to YWC on the End Date or that were returned to YWC during the term of the Contract (the “End Date Inventory List”).

(4) No later than the End Date, YWC shall confirm, in writing, that it has received all items on the End Date Inventory List.

(5) The vehicles, equipment, materials and supplies shall be handed over by each Party, pursuant to this GC Section 3.13, at no cost to either Party.

### **3.14 Collection and Handling of Revenues<sup>1</sup>**

(1) The Management Contractor shall, in accordance with the Services Appendix, collect Revenues on YWC's behalf. All Revenues of YWC, including collected water tariffs, subsidies from WAJ, disbursements from donor agencies, shall be transferred to a Revenue Account, as described in GC Section 3.14(2) ff.

Expenses on behalf of YWC (such as for capital investments, including goods and services from construction companies or equipment manufacturers, and for operations and maintenance, including salaries, consumables, repairs) shall be paid from a separate Expenditures Account, as further described in GC Section 5.3.2.

The Expenditures Account shall be balanced through transfers from the Revenue Account. Whereas the Expenditures Account shall be under full control and withdrawal power of the Management Contractor, the Revenue Account shall be under the joint withdrawal power of both Parties.

(2) YWC shall maintain a deposit account at a bank that has branches in the Service Area to be used solely for the deposits of all Revenues collected by the Management Contractor on behalf of YWC (the “Revenue Account”). YWC may, in its sole discretion, choose the bank at which the Revenue Account is to be held. The authority to sign for withdrawal from this Revenue Account shall be jointly with YWC’s General Director and two of YWC's Management Committee members.

(3) The Revenues to be deposited on the Revenue Account are the Revenues (pursuant to GC Section 1.1) and any subsidy amounts from WAJ including the working capital of 2 million JOD as stated in the Assignment Agreement, Article 2.5. b, plus other revenues including disbursements from donor agencies to YWC.

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<sup>1</sup> This section is matter to further specification, adjustment and updating, in accordance with the business plan of the Management Contractor, and in accordance with the available budgets respectively decisions of WAJ and KfW, regarding the final handling and administration of cash.

(4) The Revenue Account shall be used only for two kinds of withdrawals, namely transfers to the Expenditures Account and payments of the Management Contractor's compensation according to GC Section 6.2. The withdrawals from the Revenue Account dedicated to transfer the needed capital to the Expenditures Account shall not happen more than once every month, except for urgent situations.

(5) YWC commits to have a positive balance in the Revenue Account of at least two (2) million Jordanian Dinars at the end of each month. WAJ shall support YWC regarding this commitment.

(6) YWC is entitled to conclude an agreement with the bank for over draft amount not to exceed one million Jordanian Dinars, WAJ shall facilitate the guarantee if needed.

(7) YWC shall open other bank account/accounts (sub-accounts or side-accounts to the Revenue Account), if required to process capital projects' financial procedures. This account can be in Jordanian Dinar, Euro, or any other currency as required by the donors. The foreign and local contribution in the projects shall be deposited to this account, withdrawal authority from this account will be defined according to the donors requirements.

(8) The Management Contractor shall directly deposit all of the collected Revenues of the Customers into the Revenue Account. The Management Contractor acknowledges that at all times ownership of the collected Revenues rests with YWC. The Management Contractor shall deposit all collected Revenues, whether in the form of cash, cheques or other form, to the Revenue Account on the day of receipt. If it is not possible for the Management Contractor to deposit Revenues on the day of receipt, the Revenues shall be deposited by the Management Contractor on the next banking day.

(9) At all times, all Revenues collected by the Management Contractor are the property of YWC. Until such time as the Management Contractor deposits the Revenues into the Revenue Account, the Revenues shall be in the care and custody of the Management Contractor.

(10) The Management Contractor shall not deposit nor permit the deposit of the Revenues into any account other than the Revenue Account.

(11) The Management Contractor shall be liable for any loss, theft or destruction of the Revenues which occurs due to defective or negligent management by the Management Contractor prior to the deposit of the Revenues into the Revenue Account. In the event of such loss or theft of Revenues before they are deposited to the Revenue Account, the Management Contractor shall pay the amount of such losses to YWC forthwith and without recourse to any defense or objection.

(12) The Management Contractor shall put in place, prior to the receipt of any of the Revenues, security measures, to protect such Revenues from loss, theft or destruction. [*Note: YWC and the winning bidder shall agree through negotiations prior to the awarding of the contract on the measures required to prevent misuse or loss of cash from the Expenditures Account.*]

### **3.15 Performance Security**

(1) The Management Contractor shall take out and maintain at its own expense a performance security from a local bank in Jordan or a reputable local branch in Jordan of a foreign bank licensed to carry on the business of a bank in Jordan, guaranteeing the compliance of the Management Contractor with the terms and conditions of the Contract (the "Performance Security"). The form and wording of the Performance Security shall be as provided for in the Performance Security Appendix and the institution providing the Performance Security shall be subject to the approval of YWC. The Management Contractor shall provide the performance security no later than 30 days after the Management Contractor's receipt of the Notification of Award pursuant to the Request for Proposals.

(2) The Performance Security shall be valid from the Effective Date until six months after the End Date (pursuant to GC Section 2.2(2) or until YWC terminates the Performance Security by providing notice of termination to the bank that issued the Performance Security.

(3) The amount of the Performance Security shall be ten (10) percent of the contract value which is equal to 10% of the Management Contractor's Total Fee, as to be determined by the Bidder's Price Form, Annex 15.

### **3.16 YWC's Access to Facilities**

(1) YWC, the PMU, WAJ, MWI, KfW and their respective consultants, advisor and guests shall have free and unrestricted access to the Facilities at all times without permission but with prior notice to the Management Contractor.

(2) At the request of the PMU, the Management Contractor shall provide free and unrestricted access to the Facilities, at times to be determined by the PMU and with reasonable notice to the Management Contractor, to any prospective bidders, or any other persons, participating in any procurement process to select a Subsequent Management Contractor.

## **ARTICLE 4 - MANAGEMENT CONTRACTOR'S MANAGEMENT STAFF AND OPERATIONS STAFFING**

### **4.1 General – Management Staff**

(1) The Management Contractor shall ensure that all Management Staff are qualified, appropriately certified, competent and capable of performing the Services and that the Management Staff is capable of providing the expertise required by the Management Staff Appendix.

(2) The Management Contractor shall provide the expertise and the Management Staff listed in the Management Staff Appendix in accordance with the provisions of the Management Staff Appendix.

### **4.2 Removal or Replacement of Management Staff**

(1) The Management Contractor shall not change his Authorised Representative (pursuant to Section 1.8) without prior written notification to PMU.

(2) The Management Contractor shall not change any levels of responsibility that any member of the Management Staff is committed to the Contract or any other matter set out in the Management Staff Appendix without the prior written notification to YWC.

(3) If, for any reason beyond the Management Contractor's control, it becomes necessary to replace any of the Management Staff, the Management Contractor shall forthwith provide a person of equivalent or better qualifications to the satisfaction of YWC.

(4) If,

- (a) in PMU's discretion, it determines that any member of the Management Staff has committed serious misconduct or has been charged with having committed a criminal action; or
- (b) YWC has reasonable cause to be dissatisfied with the performance of any of the Management Staff,

then the Management Contractor shall, at PMU's written request, remove the identified person forthwith and replace him or her with another person of equivalent or better qualifications, to the satisfaction of YWC.

(5) If, pursuant to GC Sections 4.2(3) or 4.2(4), the Management Contractor provides a replacement person to the Management Staff, it shall be at no additional cost to YWC.

#### **4.3 Management Contractor's Resident General Manager**

The Management Contractor shall ensure that, at all times during the term of the Contract, there is a General Manager and his team of professionals, as required pursuant to Attachment 1 to the Management Staff Appendix, resident in the Hashemite Kingdom of Jordan.

#### **4.4 Operations Staff**

The Management Contractor shall direct the activities of the staff employed by YWC in carrying out water and wastewater services in the Service Area (the "Operations Staff") in accordance with the Operations Staff Appendix.

### **ARTICLE 5 - OBLIGATIONS OF YWC**

#### **5.1 Assistance and Exemptions**

YWC, as far as necessary supported by WAJ, MWI shall use reasonable efforts to,

- (a) provide the Management Contractor, Subcontractors and Management Staff with work permits and such other documents as shall be necessary to enable the Management Contractor, Subcontractors or Management Staff to perform the Services;
- (b) assist the Management Staff and, if appropriate, their eligible dependants with making application for all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in Jordan;
- (c) assist in the prompt clearance through customs of any property required for the Services and of the personal effects of the Management Staff and their eligible dependants; and
- (d) issue to officials, agents and representatives of YWC all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

#### **5.2 Access to Land**

YWC shall provide the Management Contractor, free of charge, with unimpeded access to all land in the Service Area (as defined in the Service Area Appendix) in respect of which access is required for the performance of the Services and in respect of which YWC has a right to grant access.

### **5.3 Operations and Maintenance Costs**

#### **5.3.1 Operations and Maintenance Budgets**

(1) While the Management Contractor is responsible for the management of day to day operations and maintenance as described in the Services Appendix, the costs and expenses for day to day operations and maintenance, excluding the Management Staff Costs of the Management Contractor, shall be paid by YWC.

(2) Notwithstanding GC Section 5.3.1(1), the Management Contractor shall play the lead role in the preparation of the Annual Operations and Maintenance Budgets for YWC in accordance with SA Section 4.1.

(3) Neither YWC nor WAJ shall, without the consent of the Management Contractor, decrease the Annual Operations and Maintenance Budgets to an amount, in real terms, that is less than that part of the YWC budget applicable to this Contract operations and maintenance budget for the Base Year.

#### **5.3.2 Payment of Operations and Maintenance Costs<sup>2</sup>**

(1) No later than the Starting Date, YWC shall deposit to an account reserved exclusively for funds in respect of YWC's expenditures (the "Expenditures Account"), an amount of 2 million JOD as start-up capital granted from WAJ (cf. Article 2.5 b of the Assignment Agreement, Appendix 12). This amount is equal to 8 percent of the estimated operations and maintenance budget for the YWC, for the remaining period of the then current YWC Fiscal Year (the "Initial Partial Year").

(2) Starting 30 days after the Starting Date and at the beginning of each month and continuing until the commencement of the first full YWC Fiscal Year after the Starting Date, YWC shall deposit an amount equal to the remaining 92 percent of the estimated operations and maintenance budget for the Initial Partial Year divided by the number of months in the Initial Partial Year, excluding the first month, minus an amount equal to any portion of the previous month's payment which is unused.

(3) Starting on January 1 of the first full YWC Fiscal Year during the term of the Contract, and on the first day of each consecutive month during the term of the Contract, YWC shall deposit to the Expenditures Account an amount equal to one twelfth of the estimated operations and maintenance budget for YWC for the applicable YWC Fiscal Year.

(4) If the last YWC Fiscal Year during the term of the Contract is not a full YWC Fiscal Year, the approach set out in the provisions in respect of the Initial Partial Year as set out in GC Sections 5.3.2(1) and (2) shall be applied with the following exceptions: For the period of the last YWC Fiscal Year that falls within the term of the Contract (the "Last Partial Year") YWC shall deposit an amount equal to the remaining estimated operations and maintenance budget, divided by the number of months remaining in the Last Partial Year.

(5) For the purpose of clarity, the intention of GC Sections 5.3.2(1), (2) and (4) is to ensure that for the Initial Partial Year and the Last Partial Year YWC is obliged to deposit only a pro-rated portion of the estimated operations and maintenance budget for the YWC for the applicable partial YWC Fiscal Year.

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<sup>2</sup> This section is matter to further specification, adjustment and updating, in accordance with the business plan of the Management Contractor, and in accordance with the available budgets respectively decisions of WAJ and KfW, regarding the final handling and administration of cash.

(6) All amounts remaining in the Expenditures Account on the End Date, including interest accrued, if any, shall be the property of YWC and shall be paid to YWC on the End Date.

(7) The Management Contractor shall not withdraw or use, in any way, funds from the Expenditures Account for any purpose other than expenditures that have been generally approved by the Management Committee under the applicable Capital Investments and Operations and Maintenance Budgets.

(8) The Management Contractor shall collect deposits from Customers as part of the Customers' water subscription payments, maintain accurate records with respect to these deposits and deposit the amounts collected in a separate bank account as directed by YWC.

(9) To ease operations, the new water subscribers' deposits shall be collected by the Management Contractor. They shall be considered as part of the revenues provided that they are registered in the financial books as deposits, and the Management Contractor shall be responsible to repay the deposits to the subscribers who terminate their contracts regardless when these deposits were collected.

(10) The Management Contractor has been put fully aware of the nature and extent of YWC's obligation under the Assignment Agreement (Appendix 12), and/or the implication of the said obligations on its duties under this Management Contract.

(11) Notwithstanding the above, YWC, through WAJ, will guarantee that a minimum monthly cashflow equal to 1/24 of the Annual Operations and Maintenance Budget for YWC is transferred to the Expenditures Account.

#### **5.4 Facilities, PMU, Operations Staff, and Equipment and Materials**

YWC shall, free of charge, for the purpose of carrying out the Services,

- (a) make the Operations Staff available to the Management Contractor in accordance with the Operations Staff Appendix;
- (b) provide all equipment and materials used by YWC in the provision of the Services in the Base Year to the Management Contractor;
- (c) make the Facilities available to the Management Contractor in accordance with the Contract.

#### **5.5 Contract Supervision**

(1) YWC's owner, WAJ, will be involved in Contract Supervision.

(2) The Parties acknowledge and agree as follows:

- (a) The Assignment Agreement (Appendix 12) and the Articles of Association, under the Company Law and other relevant legislation of Jordan, define the responsibility of WAJ as YWC shareholder and of the Management Committee. The Management Contractor's field of responsibilities is ring-fenced by afore mentioned documents. In particular, the Management Contractor shall be free to decide on all issues for the day to day management of YWC.

- (b) WAJ shall, for the purpose of this Contract, be represented by PMU, which shall be the contract administrator and which shall be responsible for decisions of major significance in respect of project coordination and supervision.
- (c) The PMU has the right to assign an officer for the administration of the Contract.
- (d) The CSO shall act as liaison between PMU, YWC and the Management Contractor. He shall monitor the Management Contractor's day to day operation and shall report directly to the Management Committee. Therefore, he shall have access to all information and data which are relevant for YWC. However, the CSO will have no operational powers.
- (e) On decision of PMU, the role and function of the officer (pursuant to GC Section 5.5 (c)) may be combined with that of the CSO (pursuant to GC Section 5.5 (d)), which means that they may be one and the same person.

(3) YWC through its Management Committee and with support of PMU shall carry out the Management Contract coordination and supervision responsibilities under this Contract including,

- (a) direct supervision of the Management Contractor;
- (b) providing the Authorized Representative as set out in Section 1.5 of the Contract Particulars Appendix;
- (c) attending all meetings with the Management Contractor; and
- (d) reviewing and approving all submissions made by the Management Contractor in accordance with this Contract.

(4) With respect to decisions to be made, reviews to be carried out, reports to be submitted, and approvals to be given by YWC and the PMU under this Contract, the Management Contractor shall submit all requests for decisions, reviews and approvals, reports and any similar requests or documents to the Authorized Representatives set out in Section 1.5 (a) and (b) of the Contract Particulars Appendix.

(5) The Management Contractor and YWC acknowledge and agree that the Government of the Hashemite Kingdom of Jordan may, during the term of the Contract create a new regulatory body that will be charged with the regulation of water supply and wastewater services in the Service Area, including the regulation of matters under this Contract.

## **5.6 Reviews and Approvals of Submissions**

(1) Except as otherwise provided in the Contract, if the Management Contractor submits a Deliverable for review and approval by YWC or the PMU, YWC or the PMU shall review and either approve or provide written comment on the Management Contractor's submission within 30 days after the day of submission by the Management Contractor.

(2) If YWC or the PMU, as applicable, fails to approve or refuse to approve the Management Contractor's submission in accordance with GC Section 5.6(1), the Management Contractor shall notify the PMU Director in writing that it has not received a response to its submission.

(3) If the PMU Director does not respond to the Management Contractor's written notification pursuant to GC Section 5.6(2) within 14 days after the receipt by the PMU Director of the Management Contractor's written notification, the Management Contractor's submission shall be deemed to be approved.

## **ARTICLE 6 - COMPENSATION TO BE PAID TO THE MANAGEMENT CONTRACTOR**

### **6.1 Management Staff Costs**

The Management Contractor shall, at its own expense, pay all costs and expenses of, or related to, the Management Staff (the "Management Staff Costs") including,

- (a) wages, salaries, benefits, allowances, and severances of Management Staff including but not limited to social security fees and taxes;
- (b) the Management Contractor's home office support (including, among others, short time expert missions to the service area as well as YWC's staff training in facilities of the Management Contractor);
- (c) notwithstanding that office premises in each of the Northern Governorates shall be provided for the Management Contractor by YWC, all telephone and fax and any other costs of communicating to the Management Contractor's overseas offices;
- (d) all secretarial and administrative support staff providing assistance and services to the needs of the Management Contractor (not to the needs of YWC);
- (e) reports, attendance and initiating of meetings with stakeholders of YWC;
- (f) all vehicle, accommodation and transportation costs, whether local or international;
- (g) travel and relocation of Management Staff and their dependants;
- (h) communications, photocopying, telephone, faxes, hardware, software and office supplies; and
- (i) training and development of the Management Staff.

### **6.2 Compensation to be Paid to the Management Contractor**

#### **6.2.1 Compensation to be Paid**

- (1) YWC shall pay the Management Contractor a fee, consisting of,
  - (a) a Fix Fee (FF) for the services of the Management Staff (the "Management Contractor's Fix Fee") in accordance with the Bidder's Price Form (Appendix 15); and

- (b) an annual performance incentive payment (the “Incentive Compensation” i.e. the “Variable Fee” VF) in accordance with the Incentive Compensation and Liquidated Damages Appendix (Appendix 8).

(2) The Management Contractor acknowledges that it does not in any way rely on YWC’s capital investment programs, except for the Rehabilitation and Repair Fund Program (Appendix 11). The Management Contractor acknowledges further that the compensation under the Contract is not in any way dependent or based on YWC’s capital investment programs.

#### 6.2.2 Management Contractor’s Fix Fee

(1) YWC shall pay the Management Contractor the Management Contractor’s Fix Fee for the services provided by the Management Staff of the Management Contractor.

(2) In case the Management Contractor delivers less Man Months than defined in Attachment 1 to the Management Staff Appendix (Appendix 6), YWC has the right to reduce the Fix Fee payment by deducting the value of undeployed Man Months. YWC will, by its own discretion, refrain from executing this right, if all Performance Standards and Targets are fulfilled according to the Management Contractor’s contractual obligations (as defined in Appendix 3 and Appendix 8).

(3) The Management Contractor shall make no claim whatsoever for additional costs, expenses or reimbursement for any costs or expenses associated with the Management Staff and acknowledges that the Management Contractor’s Annual Fee constitutes full payment to the Management Contractor for the Management Staff and the services carried out by the Management Staff.

### 6.3 **Payment**

#### 6.3.1 Payment of the Management Contractor’s Fix Fee

(1) No later than 20 days after the Starting Date and on the fifteenth day of each subsequent quarter of each Contract Year, the Management Contractor shall render an invoice to YWC for the services provided by the Management Staff in the forthcoming quarter. The invoice shall be in the amount of one quarter of the Management Contractor’s Annual Fix Fee.

(2) The Management Contractor’s Annual Fix Fee shall be determined according to Appendix 8, Article 1, basing on the Management Contractor’s proposal as set out in the Bidder’s Price Form (Appendix 15).

(3) YWC shall settle each invoice, and pay the due amount in Euros, no later than 45 days after the date of the invoice, except to the extent that YWC is permitted and decides to withhold a portion of the Management Contractor’s Fix Fee pursuant to the Contract, GC Section 2.7.3.

(4) The Management Contractor shall ensure that it retains all information which clearly indicates the actual costs to the Management Contractor of the Management Staff. All information with respect to these costs shall be made available to YWC and the PMU at YWC’s or the PMU’s request.

#### 6.3.2 Payment of the Incentive Compensation and Liquidated Damages

(1) No later than 120 days after the Effective Date, YWC shall retain and pay for an independent auditor from a reputable international firm (the “Independent Auditor”) to undertake an audit of the Management Contractor’s achievements, calculate the Incentive Compensation and Liquidated Damages, i.e. the Variable Fee (Appendix 8) for the applicable Contract Year and to resolve all disputes with respect to the calculation of the Incentive Compensation. Notwithstanding GC Article 8, the decisions of the Independent Auditor, with respect to the calculation of the Incentive

Calculation, shall be final and binding on the Parties and shall not be subject to the settlement of disputes process.

(2) No later than 90 days after the end of each Contract Year, the Management Contractor shall submit to YWC, the PMU and the Independent Auditor its calculations of the Incentive Compensation and Liquidated Damages for the previous Contract Year together with the Annual Report (pursuant to the SA Article 5). The Management Contractor shall prepare the calculation in accordance with the Incentive Compensation and Liquidated Damages Appendix.

(3) No later than 30 days after the Management Contractor's submission of its calculations to YWC, the PMU and the Independent Auditor pursuant to GC Section 6.3.2(2), the Independent Auditor shall provide recommendations to YWC as to whether the Management Contractor's calculations should be accepted as presented or if some amendment and further evaluation is required.

(4) No later than 15 days after the Independent Auditor's recommendations pursuant to the GC Section 6.3.2(3), YWC and the PMU shall inform the Management Contractor as to whether they agree or disagree with the Management Contractor's calculation based upon the recommendation of the Independent Auditor.

(5) Not earlier than 18 days after the Independent Auditor's recommendations pursuant to GC Section 6.3.2(3), the Management Contractor shall submit its invoice for payment of the Annual Variable Fee to YWC, with copy to PMU. This invoice shall be paid by YWC within 45 days.

(6) If YWC and the PMU disagree with the Management Contractor's calculations, or do not respond within the time limit set out in GC Section 6.3.2(4), either Party may refer the matter again to the Independent Auditor for final resolution.

(7) The Independent Auditor shall,

- (a) complete a comprehensive review of the Management Contractor's Incentive Compensation and Liquidated Damages calculations; and
- (b) meet with Parties, separately and together,

before reaching a final determination of the Incentive Compensation and Liquidated Damages for the applicable Contract Year.

(8) No later than 30 days after YWC's and the PMU's receipt of the Independent Auditor's final decision for the applicable Contract Year,

- (a) YWC shall pay the Incentive Compensation to the Management Contractor or as the case might be the Management Contractor pays the penalty to YWC; and
- (b) The Management Contractor and YWC shall reconcile the Independent Auditor's determination with any amounts the Management Contractor paid as Liquidated Damages pursuant to Section 5 of the Incentive Compensation and Liquidated Damages Appendix.

#### **6.4 Currency and Exchange Rates**

YWC shall pay the Management Contractor the Management Contractor's Fee in Euros.

## **6.5 Change in Contract Elements**

Except as provided in the Incentive Compensation and Liquidated Damages Appendix (Appendix 8, Article 3), the Management Contractor shall make no claim whatsoever for any adjustment to the Management Contractor's Fix Fee or the Incentive Compensation. Without limiting the generality of the foregoing, the Management Contractor shall make no claim whatsoever for any adjustment as a result of,

- (a) a change in the number or type of Customers in the Service Area;
- (b) changes to the Facilities or the addition of new Facilities;
- (c) changes to the quality or quantity of the raw water supply; or
- (d) disruption to the water system as a result of the Authorities' capital investment programs including the Water Loss Reduction Program.

## **6.6 Adjustment of the Management Contractor's Fee**

(1) The Management Contractor's Fee, consisting of the Fix Fee and the Variable Fee (available for the Incentive Compensation according to Appendix 8, Article 1), shall be adjusted to account for inflation and for currency exchange.

(2) Adjustments can only be made annually under the condition that the value of an adjustment exceeds 5 % of the Management Contractor's Fix Fee of the first year.

(3) The first adjustment may not happen before the end of the second contract year.

(4) For adjustments to inflation the following formula shall apply:

30 % of the Management Contractor's Fee shall be adjusted according to the Jordanian labour price index, 70 % of the Management Contractor's Fee shall be adjusted according to the labour price index of the Management Contractor's home country.

(5) For adjustments to currency exchange, the following formula shall apply:

50 % of the Management Contractor's Fee shall be adjusted according to the shift of exchange rate between the currency of Jordan and the currency of the Management Contractor's home country, 50 % of the Management Contractor's Fee shall not be considered for adjustment.

(6) For all adjustments, the selling rate of exchange for JOD fixed by the Jordanian Central Bank of the Hashemite Kingdom of Jordan and by the National Central Bank of the Management Contractor's home country shall be applied. The adjustment parameters to be used shall be *[to be inserted]*.

(7) The reference date for all currency exchange rate related adjustments shall be 28 days prior to the Bid Submission Date. The base year for all inflation related adjustment shall be the Base Year as defined in GC Section 1.1.

(8) Should any Material Change in Law take place that may cause the performance of this Management Contract cumbersome or may result in a loss to any such Party, then the Parties shall endeavor to discuss in good faith and agree on the positives and or negative remedies resulting from such a change. If both Parties fail to settle their disputes over this Material Change in Law, then any Party may decide at its own discretion to invoke Clause 8 of these General Conditions.

## **ARTICLE 7 - WARRANTIES**

### **7.1 General**

Except for this GC Article 7, neither Party has given any warranties or made any representations in respect of the subject matter of this Contract. It is recorded that the Management Contractor has, before entering into this Contract, satisfied itself as to the condition of the Facilities, the income and expenditure of YWC in providing water and wastewater services, the validity of the establishment of YWC, the validity of YWC's Contract, and the validity and sufficiency of the licences and permit in terms of which the Services are provided. The Management Contractor, by due diligence audit of YWC in its function of providing water and wastewater services, has satisfied itself as to all issues to enable it to determine whether to enter into this Contract. The water and wastewater services, the Facilities and the use and operation of the Facilities are accepted by the Management Contractor in the condition in which they are received.

### **7.2 Management Contractor's Warranties**

The Management Contractor warrants that,

- (a) it has the skills and ability to manage, operate and maintain the Facilities and to carry out the Services; and
- (b) it has the corporate capacity and legal authority to enter into this Contract in the Hashemite Kingdom of Jordan and under the Applicable Law.

## **ARTICLE 8 - SETTLEMENT OF DISPUTES**

### **8.1 Amicable Settlement**

The Parties shall use their best efforts to settle amicably by mutual consultation all disputes arising out of or in connection with this Contract or the interpretation thereof.

### **8.2 Right to Arbitration**

Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within 30 days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party to arbitration in accordance with the provisions of GC Sections 8.3, 8.4, 8.5, 8.6, 8.7 and 8.8.

### **8.3 Selection of Arbitrators**

Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the Applicable Law.

### **8.4 Rules of Procedure**

Except as stated herein, arbitration proceedings shall be conducted in accordance with the arbitration rules set out in the Applicable Law.

### **8.5 Substitute Arbitrators**

If for any reason an arbitrator is unable to perform its function, a substitute shall be appointed in the same manner as the original arbitrator.

## **8.6 Nationality and Qualifications of Arbitrators**

The sole arbitrator or the third arbitrator appointed pursuant to GC Section 8.3 shall be an internationally recognized legal or financial expert with extensive technical skills and experience in relation to the matter in dispute and shall not be a national of the Management Contractor's home country or of the Hashemite Kingdom of Jordan. For the purposes of this GC Section 8.6, "home country" means,

- (a) the country of incorporation of the Management Contractor;
- (b) the country in which the Management Contractor's or any of their Shareholder's principal place of business is located;
- (c) the country of nationality of a majority of the Management Contractor's shareholders; and
- (d) the country of nationality of the Subcontractor concerned, where the dispute involves a subcontract.

## **8.7 Miscellaneous**

In any arbitration proceeding under the Contract,

- (a) proceedings shall be held in the Hashemite Kingdom of Jordan;
- (b) the English language shall be the official language of all purposes; and
- (c) the decision of the sole arbitrator or of a majority of the arbitrators or of the third arbitrator if there is no such majority shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

## **8.8 Performance of the Contract during the Settlement of Disputes**

Notwithstanding any reference to arbitration pursuant to this GC Article 8, the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree.

**Management Contract for  
Al Yarmouk Water Company  
YWC**

**a Limited Liability Company (LLC)  
owned by WAJ, the Water Authority of Jordan**

**The Hashemite Kingdom of Jordan**

**Appendix 1  
Contract Particulars Appendix**

## CONTRACT PARTICULARS APPENDIX

*[NOTE TO BIDDERS: DO NOT FILL IN THE BLANKS IN THIS APPENDIX. THE APPENDIX WILL BE COMPLETED PRIOR TO THE EXECUTION OF THE CONTRACT.]*

### 1.1 Supplementing the General Conditions

The Contract Particulars Appendix shall supplement the General Conditions (GC).

### 1.2 Definitions

With respect to GC Section 1.1 the following shall apply:

- (a) the Starting Date shall be \_\_\_\_\_.

### 1.3 Notices

With respect to GC Section 1.4 the following shall apply:

- (a) the address for YWC shall be:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

the address for the Management Contractor shall be:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**1.4 Authority of Shareholder in Charge**

With respect to GC Section 1.7 the following shall apply:

- (a) the Shareholder in Charge shall be:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**1.5 Authorized Representatives**

With respect to GC Section 1.8 the following shall apply:

- (a) the Authorized Representative for YWC shall be:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (b) the official designate of YWC’s Authorized Representative shall be:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) the Authorized Representative for the Management Contractor shall be:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(d) the official designate of the Management Contractor's Authorized Representative shall be:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Management Contract for  
Al Yarmouk Water Company  
YWC**

**a Limited Liability Company (LLC)  
owned by WAJ, the Water Authority of Jordan**

**The Hashemite Kingdom of Jordan**

**Appendix 2  
Description of Services Appendix**

## **Description of Services Appendix**

### **ARTICLE 1 - OBJECTIVES OF THE SERVICES**

Save as provided for in the Assignment Agreement, the overall objectives of the Services provided by the Management Contractor shall be

- a) To improve the performance, efficiency and economic sustainability of the water and wastewater services of the Company;
- b) To increase the consumer's satisfaction and willingness to pay for water services through a higher quality and more consumer responsive service;
- c) To improve the financial performance of YWC ("the Company") and achieve a financially viable, sustainable operation;
- d) To train and develop the Company's staff to enable improvements in management, operation and financial performance to be sustained beyond the term of the Contract;
- e) To assess the long term investment needs and prepare corresponding investment plans for the Company;
- f) To develop any activities (in consent with YWC) in order to support the objectives of Article 1 a)-e) of the Service Appendix (such as related technical services to third parties), e.g. to raise cost synergies by better utilisation of the Company's capacities or to support the objectives of the Assignment Agreement (Appendix 12), such as the exploration of new water resources.

The Services delivered by the Management Contractor shall be in accordance with and shall cover at least the level of services specified in Article 4 of the Assignment Agreement between WAJ and YWC (Appendix 12).

### **ARTICLE 2 - RESPONSIBILITIES OF THE MANAGEMENT CONTRACTOR**

- a) The Management Contractor shall operate YWC in order that the same operates and maintains its facilities and infrastructure. The Management Contractor shall direct the administrative and operational staff of the YWC in his own responsibility, following his own operational decisions.
- b) The Management Contractor has the right and the obligation to appoint the General Director (GD) of the Company, see Appendix 6, who shall take all necessary decisions, how to manage and operate the Company.
- c) It is the responsibility of the Management Contractor, to make sure that YWC, PMU and WAJ all have access to all data and information, which are necessary, to monitor and regulate the YWC and to transfer know-how from the Management Contractor to YWC, and develop capacities among YWC's staff.
- d) All actions of the Management Contractor related to YWC shall be legally made in the name of YWC; nevertheless YWC will remain the sole legal entity responsible for these actions in front of its customers, suppliers and any other third parties.

**ARTICLE 3 - GENERAL OBLIGATIONS AND TASKS**

- a) All actions and services of the Management Contractor carried out under this contract are made on behalf of YWC.
- b) The Management Contractor shall be responsible to provide and improve the water supply and wastewater services to all existing and new customers within the Service Area (see Appendix 12 “Assignment Agreement”).
- c) The Management Contractor shall be responsible to manage, operate and maintain the Facilities and Infrastructure, to carry out the production, treatment, transmission and distribution of drinking water and the collection and treatment of wastewater.
- d) The Management Contractor shall be responsible for all billing, collections and customer service functions related to the services.
- e) The Management Contractor shall – where not yet implemented – be responsible for the installation of meters purchased under the loan and the transition from non-metered consumption and normative billing to metered consumption and volumetric billing of all customer categories in accordance with the provisions of acting legislation in Jordan.
- f) The Management Contractor shall provide training for the staff in all functions.
- g) The Management Contractor shall operate modern systems for management information, customer service and financial and cost, whether by improving and developing those in use or by designing and installing new ones if deemed necessary.
- h) The Management Contractor shall plan and procure equipment for operation and maintenance only as far as the items are financed by the YWC’s own funds or by WAJ.
- i) According to Article 1, clause e), it is the Management Contractors obligation to outline the financial impact of considered and planned investments, including a re-financing perspective. Furthermore, the Management Contractor has the right to act as financial engineer, financial arranger or even as financial sponsor to inject capital, goods and services for such investments, provided that YWC invites him to carry out such actions.
- j) The activities described in this Appendix are indicative of the Services expected from the Management Contractor. The description is not intended to be exhaustive and inclusion of additional tasks not listed may be needed. The Management Contractor may also propose additional tasks he thinks necessary according to its experience of good practice in similar utility operations and contracts.
- k) The Management Contractor shall perform the Services in accordance with the Assignment Agreement (Appendix 12) and the Performance Standards in Appendix 3 (Performance Standards Appendix), he shall provide the Deliverables specified in Appendix 3 (Performance Standards Appendix) and he shall monitor the Performance Indicators listed in Appendix 8 (Incentive Compensation and Liquidated Damages Appendix).

**ARTICLE 4 – SPECIAL OBJECTIVES**

- a) The Management Contractor shall perform its services in a way that a sustained operation will be secured, even beyond contract duration. For this purpose
  - (i) the Operations Staff needs to be actively involved in the daily activities. The development and implementation of employee compensation schemes for the Operations Staff shall support the achievement of this special objective;
  - (ii) all facilities and assets of YWC need to be operated and maintained in a sustainable way.
- b) The Management Contractor shall arrange for and shall regularly conduct internal and facilitate external trainings for the operations staff and develop and implement a Human Resources development plan.
- c) The Management Contractor shall annually conduct customer surveys to assess the customers' satisfaction.
- d) Throughout his assignment the Management Contractor shall give special attention to reducing non revenue water – both financial and technical (see Appendix 10).
- e) The Management Contractor shall implement the rehabilitation and repair programme (see Appendix 11).

**ARTICLE 5 - REPORTING**

- a) To improve operations management and administrative control the Management Contractor shall prepare and maintain comprehensive reports (in English)
  - (i) monthly records, quarterly and annual reports for management control and regulatory reporting (in accordance with the reporting requirements of YWC to WAJ, see Appendix 12);
  - (ii) appendices to the quarterly and annual reports featuring a routine description of activities performed by the Management Contractor and highlighting points of special interest to the Management Contractor;
  - (iii) annual reports summarising the performance of the Management Contractor and calculating the Incentive Compensation (see Appendix 8);
  - (iv) reports as described in the Service Appendix (Appendix 2), the Deliverables Chart in Appendix 3 and in the Assignment Agreement (Appendix 12), or as necessary considering the Company's needs;
  - (v) any reports to analyse, and plans to resolve specific problems of YWC or the Management Contract, namely those related to the Performance Indicators for the Incentive Compensation (Appendix 8).
- b) To improve operations management and administrative control the Management Contractor shall direct the elaboration of all reports YWC is due to deliver to WAJ as set out in the Assignment Agreement (Appendix 12).

- c) The Management Contractor shall meet with YWC and the PMU at least once per month, or as necessary, to review operations and financial performance and strategic and policy matters.
- d) The Management Contractor shall deliver the Quarterly Reports to YWC no later than 20 days after the end of the three month period to which the Quarterly Report applies.
- e) The Management Contractor shall, no later than 90 days after the last day of each Contract Year, submit to YWC an annual report.
- f) All reports are to be addressed to the YWC with full copy to WAJ / PMU.

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**Appendix 3  
Performance Standards Appendix**

## **Performance Standards Appendix**

### **ARTICLE 1 – GENERAL**

1.1 This Appendix 3 supplements the General Conditions, Appendix 2 (Description of the Services) and Appendix 8 (Incentive Compensation and Liquidated Damages).

1.2 The Performance Standards delivered by the Management Contractor shall be in accordance with the Assignment Agreement by and between WAJ and YWC (Appendix 12).

### **ARTICLE 2 - QUALITY OPERATING STANDARDS**

2.1 “Quality Operating Standard” means a standard of performance that,

- is duly diligent, competent, efficient, economical and in accordance with internationally accepted techniques used in the water industry;
- is in accordance with the best professional engineering, accounting and consulting standards, as applicable, recognized by international professional bodies and including the standards and indicators of the International Water Association;
- is in accordance with sound management, financial, commercial, technical and engineering practices;
- with respect to equipment, is operated in accordance with the manufacturer’s instructions;
- employs appropriate advanced technology and safe and effective equipment, machinery and methods;
- protects the interests of YWC and/or its shareholder(s);
- fulfills the Management Contractor’s obligations under the Contract;
- supports and safeguards YWC’s legitimate interests in any dealings with Subcontractors or Third Parties;
- is in accordance with the Applicable Law;
- if no other applicable standard exists, is at least equal to the standard of performance in place in the Base Year; and
- is in accordance with the technical specifications, design standards and internal policies and procedures all as established by YWC and as provided to the Management Contractor.

2.2 The Management Contractor shall, at all times, carry out the Services at least in accordance with these quality operating standards.

### **ARTICLE 3 - CODES AND STANDARDS**

Wherever references are made in the Contract to codes and standards with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date 30 days prior to the Submission Deadline shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be treated as a change in Applicable Law.

### **ARTICLE 4 - PERFORMANCE INDICATORS GENERAL PROVISIONS**

The Management Contractor shall progressively improve the Performance Standards of the Company, thereby creating an improvement trend throughout the whole contract duration to reach a standard level which

- is competent, efficient, economical and in closest accordance with best internationally accepted techniques used in the water and wastewater industry;
- is in accordance with professional engineering, accounting and consulting standards, as applicable, recognised by international professional bodies;
- is in accordance with sound management, commercial, technical and engineering practices;
- employs appropriate technology and safe and effective equipment, machinery and methods;
- protects the interests of YWC and/or its shareholder(s);
- is in accordance with the Applicable Law;
- represents significant improvements of the Performance Indicators of the Base Year.

### **ARTICLE 5 – PERFORMANCE INDICATORS SPECIAL PROVISIONS**

The Performance Indicators to be applied are listed in

- (a) the Incentive Compensation and Liquidated Damages Appendix (Appendix 8), and
- (b) the Assignment Agreement (Appendix 12)

### **ARTICLE 6 - INCENTIVE COMPENSATION**

The obligations of the Management Contractor to meet the performance standards as set out in this Performance Standards Appendix are independent and unaffected by the Incentive Compensation and Liquidated Damages Appendix (Appendix 8).

## **ARTICLE 7 - PLANS, PROGRAMS, REPORTS AND GUIDELINES**

Except as otherwise set out in the Performance Standards Appendix Chart, the Management Contractor shall review and update each of the documents listed in Article 9 annually and submit any appropriate revisions to the PMU for review and, if applicable, approval. Any revisions submitted to the PMU shall be subject to Article 8.

## **ARTICLE 8 – REVIEW OF PLANS, PROGRAMS, REPORTS AND GUIDELINES BY PMU.**

8.1 PMU Review and Approval of Plans, Programs, Reports and Guidelines: In respect of the documents listed in Article 9, the PMU shall, in writing,

- (b) review and provide comments; or
- (c) review and, if applicable, approve,

each document no later than 30 days after the PMU receives the document.

8.2 If the PMU fails to meet the deadline set out in Article 8.1, the Management Contractor shall notify the PMU of such failure.

8.3 If the PMU does not respond to the Management Contractor's notice under Article 8.2 prior to the expiration of 14 days after the notice is received by the PMU, the relevant document shall then be deemed approved.

8.4 The provisions of Articles 8.1 to 8.3 shall apply to both the first and all subsequent drafts of a document submitted by the Management Contractor.

8.5 The Management Contractor shall ensure that all documents listed in Article 9 and all recommendations contained in them are consistent and in compliance with the applicable Strategic Business Plan and the Applicable Law.

## **ARTICLE 9 - DELIVERABLES CHART**

9.1 Without limitation to the generality of Appendix 2 – Description of Services – the Management Contractor shall provide the deliverables pursuant to the Deliverables Chart below, which defines deliverables for specific organizational and managerial activities that will be monitored by the PMU.

9.2 The deliverables determined, comprehensively, under No. 1, are essential, whereas the deliverables listed under No. 2 to 19 refer to strategic papers, plans, programmes, data information sheets etc., which the Management Contractor will probably need as internal papers, in order to organise its own work. YWC has the right to request these deliverables No. 2 ff, if the Management Contractor fails to fulfil Performance Standards, or fails to reach Performance Targets, or if the performance of water or wastewater services is doubtful for whatever reason.

No.	Deliverable	Details, Deadlines
1	All reports, which YWC has to deliver to WAJ/PMU	See Service Appendix (Article 5) and Assignment Agreement (Appendix 12).
2	Prepare and Implement Human Resources and Staff Optimization Plan, staff list	Elaborate Year 1 plan not later than 180 days after Starting Date. Elaborate Year 2 plan not later than 45 days after start of Year 2 (the same applies to the consecutive years).
3	Proposal of a method and implementation for pressure (or flow) metering (instrumentation, measuring points and minimum pressure, or flow, to indicate supply continuity, according to Attachment 3 to Appendix 8.)	Finalise measuring methodology and install measuring devices data loggers within 150 days after Starting Date and determine the base year figure for IPI2 within 210 days after Starting Date.
4	Develop and implement Illegal Connections Program	Elaborate program not later than 60 days prior to the end of Year 1.
5	Develop and implement Customer Awareness and Public Information Program	Elaborate program not later than end of Year 1.
6	Develop and implement Staff Training and Development Programme	Elaborate program not later than 6 months after the Starting Date.
7	Develop and implement Customer Survey Program	Elaborate program not later than end of Year 1.
8	Work out and implement annual financial scheme	Elaborate plan for Year 1 not later then 30 days after Starting Date. Elaborate plan for Year 2 not later then 60 days prior to end of Year 1 (the same applies to the consecutive years).
9	Work out and implement program for paying off debtor and creditor debts	Elaborate program till the end of 1 <sup>st</sup> half-year of Year 1.
10	Work out and implement plan for reducing the number of employees	Elaborate till the end of 1 <sup>st</sup> half-year.
11	Develop and implement minimum water supply service program	Elaborate program not later than 180 days after Starting Date.
12	Develop and implement continuity of water supply service program	Elaborate program till the end of Year 1.
13	Develop and implement water safety and quality monitoring program	Elaborate program not later than 180 days after Starting Date.
14	Develop and implement leakage, intakes and wastage reduction program	Elaborate program not later than 280 days after Starting Date.
15	Develop and implement electricity efficiency program	Elaborate program not later than 280 days after Starting Date.
16	Develop, implement and maintain networks mapping program	Elaborate program not later than 120 days after Starting Date.
17	Develop and maintain Facilities and Infrastructure data base	Elaborate proposal prior to end of Year 2.
18	Prepare and implement Maintenance program	Elaborate program prior to the end of Year 1.
19	Develop and implement Safety program	Elaborate program not later than 60 days after beginning of Year 2.

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**Appendix 6  
Management Staff Appendix**

## **Management Staff Appendix**

### **ARTICLE 1 - GENERAL**

#### **1.1 Expertise of the Management Contractor**

(1) The Management Contractor shall provide the expertise set out in Attachment 1 to the Management Staff Appendix with its own forces.

(2) The Management Contractor shall carry out the Services through its Management Staff and the Operations Staff in accordance with the provisions set out in GC Section 4.1. The Management Contractor's management team may include YWC Staff named in the Staffing Plan in accordance with the Operations Staff Appendix, provided this staff is fully capable to carry out the expected functions, and the Management Contractor is ready to replace any of this staff in case of difficulties or under-performance by other staff employed by the Management Contractor.

(3) The Management Staff members, providing the expertise marked with an asterisk in Attachment 1 are the Key Staff. The Key Staff shall be employees of the Management Contractor that meet the requirements set out in this Appendix.

#### **1.2 Provision of Staff**

(1) The Management Contractor shall provide the Management Staff listed in Attachment 2 to the Management Staff Appendix and in accordance with the time periods set out in Attachment 2 to the Management Staff Appendix.

(2) The Management Staff required, in accordance with Attachment 1 to the Management Staff Appendix, to be in place at the beginning of the Contract shall be in place at the headquarters of YWC on the Starting Date.

(3) The Management Contractor is free to exchange its Management Staff or even replace it with hired locals or with YWC staff, as long as the Management Contractor can assure that his Management duties are fulfilled to the same or to an even improved level as with its original staff.

#### **1.3 Maintaining Management Staff Quality**

(1) The Management Contractor has to ensure that continuous support of his Management Staff with know-how, expertise, software and supervision is delivered through his headquarters.

(2) The Management Staff has to provide all necessary capacity development, continuous education and training of his Management Staff.

**Attachment 1  
to the Management Staff Appendix**

**The Management Staff Expertise**

## Attachment 1 to the Management Staff Appendix

### The Management Staff Expertise

Field of Expertise (Not individuals)	Examples of Task Coverage (listed are examples only, this is not an exhaustive list)
*General Management	Overall management of the Project. Reporting and coordination with YWC and PMU/WAJ
*Financial Management (Finance, Cost Accounting, Budgeting)	Balance sheet, profit and loss statement, financing reporting Profit and cost centres, variable and fixed costs, plan/actual, variance analysis, fixed assets register, asset value Performance Index, Performance Indicators Financial Controls Experience in International Accounting Standards
* Technical Management	Managing operations and investments, supervise and lead technical professionals (Management and Operations Staff)
*Water Operations	Operations, including water distribution and pumping stations, water treatment processes, development and application of regular and emergency operations plans, maintenance plans, organization of complaints system, water rationing, supply concepts, water source management, reservoir and water storage management, network leakage evaluation and analysis expertise, chlorination processes, groundwater source management  Network zoning, flow and pressure measurements, pressure management, specification and commissioning of pressure control devices, active leakage control (including performance of leak noise sounding, leak noise correlation, leak noise logging, step testing, flow measurements with portable ultrasonic flow meters, leak detection training), organization and execution of leak repair and network rehabilitation measures
*Wastewater Operations	Operations, including wastewater collection and treatment processes, development and application of regular and emergency operations plans, maintenance plans, organization of complaints systems
Computer Systems and Database Management	Operation and systems administration of all existing computer and database systems, development and introduction of all needed software applications, standardization of database systems
*Commercial and Customer Management	Customer service, new connections, new and existing subscription contracts, billing and revenue collection, reduction of illegal water/wastewater connections, subscription contracts
Maintenance and Repair Management	Develop and apply future models for maintenance and repair management, introduction and consistent use of work order sheets, introduction of asset management
Mechanical Engineering	Development and introduction of preventative maintenance plans, rehabilitation of pumping stations and source pumping and management, introduction of new pump control systems, energy use and equipment optimization
Electrical Engineering	Development and introduction of preventative maintenance plans, rehabilitation of pumping stations and well-fields, introduction of new pump control systems, energy use optimization
Water Quality Monitoring	Regular monitoring of quality, design of quality improvement programs
* Procurement, Contracts Management	Development/application of new procurement policy, procurement and stores, general procurement for day to day operations, KfW procurement policies and guidelines General contract management and supervision for investment programs
* Human Resources Development	Permanent on-the-job training, managerial training programmes, general and specific training programmes for computerization, occupational health safety, human resources information systems, organizational structuring, change management, preparation of salaries and benefits recommendations, collective agreement negotiations, labour and industrial relations

\* Key Expertise to be provided by the Key Experts (cf. RFP Section 4.3(e)) is denoted by an asterisk for the purpose of the Request for Proposals.

**Attachment 2  
to the Management Staff Appendix**

**The Staffing Chart of the Management Contractor**

*[Note to Bidders: This document will be taken from the Management Contractor's Proposal. It is one of the required documents of the Technical Section of each Proposal]*

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**Appendix 8**

**Incentive Compensation and Liquidated Damages Appendix**

## Incentive Compensation and Liquidated Damages Appendix

### ARTICLE 1 - INCENTIVE COMPENSATION

The payment of the Management Contractor’s Fee is variable and subject to the achievement of the performance indicators (as set out below) in the following manner:

- Contract Year 1: 90% fixed, 10% variable (100% = Management Contractor’s Annual Fee, as offered in Appendix 15)
- Contract Year 2: 75% fixed, 25% variable (100% = Management Contractor’s Annual Fee, as offered in Appendix 15)
- Contract Year 3: 50% fixed, 50% variable (100% = Management Contractor’s Annual Fee, as offered in Appendix 15)
- Contract Year 4: 50% fixed, 50% variable (100% = Management Contractor’s Annual Fee, as offered in Appendix 15)
- Contract Year 5: 50% fixed, 50% variable (100% = Management Contractor’s Annual Fee, as offered in Appendix 15).

In case of a contract extension, the variable portion of the Annual Fee shall be the same as in the fifth contract year.

### ARTICLE 2 – INCENTIVE PERFORMANCE INDICATORS

The Incentive Performance Compensation will be based on the following four incentive performance indicators (IPI):

**IPI1 = AWS** = Annual Water Sales (m<sup>3</sup> / a) .

water sales means: billed amount of water, for which payments have been received by YWC during the reported year; to be calculated based on the expected availability of raw water resources. The expectations are:

Year 1	Year 2	Year 3	Year 4	Year 5
71 mio m <sup>3</sup>	72.5 mio m <sup>3</sup>	74 mio m <sup>3</sup>	75.4 mio m <sup>3</sup>	76.9 mio m <sup>3</sup>

In any reported year, during which a surplus or a deficit of more than 1 mio m<sup>3</sup> of raw water resources influencing IPI1 is caused by decisions or reasons beyond the Contractor’s responsibility; IPI1 shall be adjusted by 0.6 m<sup>3</sup> for each 1.0 m<sup>3</sup> of change in available raw water resources

**IPI2 = CST** = Continuity of Supply Time (hrs / week)

measured according to the following formula:

Average hours of minimum water pressure (or flow) per week in the reported year multiplied with the number of connections served in the pressurised (flow services) areas defined in accordance with the measuring scheme in Attachment 3 to Appendix 8, whereby the result shall be averaged for all measuring points and for all weeks in the reported year.

**IPI3 = SPC** = Specific Power Consumption (kWh / m<sup>3</sup>)

measured as ratio of electric energy consumed by YWC and the volume of supply water produced, according to the following formula:

Total annual electric power consumption billed (in kWh)

excluding electric power consumption for wastewater facilities which have been taken into operation after 31 December 2010.

divided by the amount of water produced (in m<sup>3</sup>) during the reported year.

**IPI4 = OCS** = Operational Cash Surplus (JOD)

calculated according to the following formula (with prices and tariffs from base year):

Total revenues (pursuant to GC Section 1.1) during the reported year

minus total operational expenses (i. e. OPEX, not including capital expenses CAPEX, as defined in Attachment 2), excluding the Management Contractor’s Fee, expenses for electric power, logger installation pursuant to Attachment 3, other Additional Expenses (as listed in Attachment 4 to Appendix 13) and staff training activities (as far as distinctively proposed by the Management Contractor),

in Jordanian Dinar (JOD),

with all expenses and revenues basing on prices of the starting date of the Contract (Attachment 4 to Appendix 8 contains the current tariff scheme for the Hashemite Kingdom of Jordan) and adjusted to any general change in salaries of the Operations Staff, if imposed by the Management Committee without prior consultation and acceptance of the Management Contractor.

### **ARTICLE 3 - REVIEW OF INCENTIVE COMPENSATION PERFORMANCE CRITERIA**

3.1 The Management Contractor and YWC hereby agree that the incentive performance figures and targets listed below are based on reasonable existing data and forecasts of the future performance, as judged on the information available at the date of Contract Closure.

3.2 Should the working conditions change materially or should new and different information be discovered and different data be found, the incentive performance figures shall be revised and adjusted by the Independent Auditor on request of either Party, to correct any major deviations during the term of the Contract. The objective of any adjustment shall be to achieve a fair contract for both Parties. If any of the Parties disagree with the Independent Auditor's adjustment, the controversy shall be resolved pursuant to GC Section 8 (Settlement of Disputes).

3.3 Such adjustment may be executed by

- (i) correcting physical performance figures that need to be corrected for the Base Year, or
- (ii) correcting performance figures that are related to targets, which have been found to be unreasonably difficult or unexpectedly easy to achieve, respectively
- (iii) modifying performance targets that are not clear in measurement or
- (iv) setting the weight to zero for that IPI, for which the Base Year figure has been found to deviate by more than 15% (as specified in Article 3.4), and for which no reasonable base figure could be agreed upon by both Parties; but only for the first Contract Year. The remaining IPI weights shall be increased proportionally until the sum of all weights matches a total of 100 %. For the IPI in default, this indicator shall be measured by the Contractor and shall be approved by the Independent Auditor. The Base Year figure will be the measured figure decreased or increased by the percentage of the scheduled performance improvement for the first year.

3.4 All such adjustments during the term of the Contract must lead to an adjustment exceeding 15% of each original figure.

3.5 In case of an extension of the contract (GC Section 2.5), the (Incentive and Minimum) Performance Targets shall be agreed on by the Management Contractor, the PMU and the Independent Auditor. In case of any disagreement, the performance targets shall be set by the Independent Auditor.

### **ARTICLE 4 – CALCULATION OF THE INCENTIVE COMPENSATION**

4.1 The Incentive Compensation (IC [in EUR/a]) shall be awarded to the Management Contractor according to the performance measured by the four Incentive Performance Indicators, IPI, with the indices 1, 2, 3 and 4. The performance, it has achieved in the reported year, shall be measured against the Incentive Performance Targets (IPT) and the Minimum Performance Targets (MPT) that have been scheduled for each Contract Year. The Incentive Compensation (IC) for the reported year shall be calculated, depending on the Annual Fee (AF [in EUR/a]), and is equal to the Variable Fee (VF [in %]), which is defined in Article 1.

4.2 A Liquidated Damage (LD) shall be imposed on the Management Contractor, whenever the performance, which it has achieved in the reported year, has been worse, compared to the Minimum Performance Targets (MPT) that have been scheduled for each Contract Year. The Liquidated Damage for the reported year might be understood as “negative IC”

4.3 The Incentive Compensation, as well as the Liquidated Damages (i.e. the negative IC) shall be calculated according to the following formula:

$$IC = AF * VF * \left[ w_1 * \left( \frac{IPI_1 - MPT_1}{IPT_1 - MPT_1} \right) + w_2 * \left( \frac{IPI_2 - MPT_2}{IPT_2 - MPT_2} \right) + w_3 * \left( \frac{MPT_3 - IPI_3}{MPT_3 - IPT_3} \right) + w_4 * \left( \frac{IPI_4 - MPT_4}{IPT_4 - MPT_4} \right) \right]$$

4.4 The following tables show the weights, the base year figures, the Incentive Performance Targets and the Minimum Performance Targets for each Contract Year:

**(1) Expected performance improvement – relative figures**

Incentive Performance Indicator (IPI)			Base Year Figure	Incentive ( <i>Minimum</i> ) Performance Target by End of Contract Year				
No.	Acronym	Weight		Year 1	Year 2	Year 3	Year 4	Year 5
1	AWS [mio m <sup>3</sup> /a]	35%	100%	107.4 % (102%)	115.3% (104%)	123.2% (106%)	132.5% (108%)	141.9% (110%)
2	CST [hrs/week]	35%	100%	130% (100%)	160% (110%)	190% (125%)	230% (140%)	250% (160%)
3	SPC [kWh/m <sup>3</sup> ]	10%	100%	96.8% (99.0%)	93.7% (98.0%)	90.5% (97.0%)	87.3% (96.0%)	84.5% (95.0%)
4	OCS [mio. JOD]	20%	100%	140% (120%)	160% (130%)	200% (140%)	220% (150%)	240% (160%)

**(2) Expected performance improvement – physical figures**

Of contractual relevance are the physical Base Year Figures, whereas for the Target Figures the relative figures from the table (1) above are relevant (the physical Target Figures are provided for information and better understanding, only).

Incentive Performance Indicator (IPI)			Base Year Figure	Incentive ( <i>Minimum</i> ) Performance Target by End of Contract Year				
No.	Acronym	Weight		Year 1	Year 2	Year 3	Year 4	Year 5
1	AWS [mio m <sup>3</sup> /a]	35%	40.6	43.6 (41.4)	46.8 (42.2)	50 (43)	53.8 (43.8)	57.6 (44.7)
2	CST [hrs/week]	35%	<i>To be measured by the MC within 210 days after Starting Date</i>	<i>Targets set pursuant to Article 4.4 (1)</i>				
3	SPC [kWh/m <sup>3</sup> ]	10%	3.16	3.06 (3.13)	2.96 (3.09)	2.86 (3.06)	2.76 (3.03)	2.67 (3.00)
4	OCS [mio. JOD]	20%	5.0	7.0 (6.0)	8.0 (6.5)	10.0 (7.0)	11.0 (7.5)	12.0 (8.0)

## **ARTICLE 5 - PRE-CONDITIONS AND LIMITATION OF PAYMENT**

5.1 Should the aggregated performance of all Performance Indicators exceed 100 % in one year, the Management Contractor shall then receive a higher Variable Fee than scheduled. However, this additional fee shall be limited to the surplus of revenues generated in that year (compared to the base year).

5.2 Should the Management Contractor earn Incentive Compensation as well as Liquidated Damage in one Contract Year, by delivering good performance regarding some performance indicators as well as bad performance regarding others, the sum of Incentive Compensation and the Liquidated Damage shall be paid.

5.3 The Management Contractor shall receive no Incentive Compensation for any year, in which it has failed to comply with important contractual obligations, even if the Incentive Performance Indicators would justify an Incentive Compensation for the year under discussion.

5.4 The compliance with the Minimum Performance Targets, as defined in clause 4.4, is regarded as important contractual obligation, and the non-compliance, testified by the Independent Auditor, regarding more than two Minimum Standards, or of one Minimum Performance Target for two consecutive years, is regarded as failure. Furthermore, the compliance with the Performance Standards, as defined in Appendix 3, is regarded as important contractual obligation, and the non-compliance, testified by the Independent Auditor, with more than three Performance Standards by at least 15%, is regarded as failure.

5.5 The annual Liquidated Damages (negative IC) shall be limited to a maximum of thirty (30) percent of the Annual Fee (pursuant to the Bidder's Price Form, Appendix 15).

**Attachment 1**  
**to the Incentive Compensation and Liquidated Damages Appendix**

<b>Sample Calculation</b>
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To explain and clarify the calculation, the following hypothetical example is provided for Contract Year 3:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)		
No.	Acronym	Weight	Incentive Performance Indicator (IPI) achieved	Incentive Performance Target (IPT) scheduled	Minimum Performance Target (MPT) required	First Calculation Step	Second Calculation Step	First Step Result = IC	Second Step Result = w x IC	Comment	
1	AWS [m³/a]	35%	51	50	43.1	$(51-43.1)/(50-43.1)$	1.145	$1.145 \times 0.35$	0.401	(7) = IPI > 100% !	
2	CST [hrs/week]	35%	30	32	25	$(30-25)/(32-25)$	0.714	$0.714 \times 0.35$	0.250	(7) = IPI < 100%	
3	SPC [kWh/m³]	10%	3.06	2.86	3.06	$(3.06-3.06)/(3.06-2.86)$	0.00	$0.00 \times 0.10$	0.000	LD not yet applicable	
4	OCS [mio JOD]	20%	6	10	7	$(6-7)/(10-7)$	-0.333	$-0.333 \times 0.20$	-0.067	LD applicable, because IPI is worse than MPT [therefore minus]	
		100%						Subtotal	0.584		

The Variable Fee, which is applicable for the 3<sup>rd</sup> Contract Year according to Article 1, is 50% of the Annual Fee.

Assumed that the Annual Fee contracted is 1 mio EUR, the Management Contractor's Fee (**paid**) would be:

$$\underbrace{50\% \times 1 \text{ mio EUR}}_{= 0.500 \text{ mio EUR (Fix Fee)}} + \underbrace{50\% \times 1 \text{ mio EUR} \times 0.584}_{0.292 \text{ mio EUR (Variable Fee)}} = \mathbf{0.792 \text{ mio EUR}}$$

**Attachment 2**  
**to the Incentive Compensation and Liquidated Damages Appendix**

<b>Definition of CAPEX and OPEX</b>
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## **Explanatory Note on the Definition of CAPEX and OPEX**

*Note: Bidders are invited to comment or amend the definition, if they feel this might clarify their proposal*

1. In general, and according to international accounting standards, CAPEX (Capital Expenditures) is defined as expenditures resulting from depreciated investments, such as interest and debt repayment. OPEX is operational expenditures for running the facilities (like networks and plants), which needs expenditures such as for labour, for consumables, for services.
2. Regarding water utilities, most cost items can be easily classified either as CAPEX or as OPEX. However, an uncertainty may arise in separating costs for structural maintenance (→ CAPEX) from regular maintenance (→ OPEX). In general:
  - Expenditures for maintenance works which are targeted to maintain the required level of operational performance and to prevent deterioration are defined as regular (preventive) maintenance and are part of OPEX.
  - Expenditures for maintenance works which become necessary to replace non-working assets or parts of YWC's assets are defined as structural maintenance (rehabilitation, renovation, replacement) and are part of CAPEX.
3. For this Management Contract, especially for the calculation of IPI 4, the following activities shall be considered as CAPEX (mainly for engineering design, supervision, construction, related goods and services), and shall be paid for by YWC, wherein the financial gap shall be subsidised through WAJ, according to investment programs agreed on between the two parties. CAPEX includes the following items:
  1. New water / wastewater networks that serve more than 20 house connections.
  2. New water / wastewater pumping stations.
  3. New water / wastewater treatment plants.
  4. New water / wastewater transmission / trunk pipes.
  5. New reclamation plants.
  6. New disinfection plants.
  7. New buildings / water reservoirs of a cost equal or superior to 50,000 JOD.
  8. New water well drilling and equipping.
  9. New irrigation / drought well drilling and equipping with their networks.
  10. Restructuring of water networks including tertiary networks and house connections for more than 20 house connections.
  11. Rehabilitation of any segment from the water networks consisting of main and secondary pipe systems, as well as from the tertiary pipe system any segment, which is fed with water from a main or secondary pipe system, provided this segment is serving more than 20 house connections.

12. Rehabilitation of any segment from the wastewater collection networks, which is consisting of main sewers, or which is serving more than 10 house connections.
  13. Extension of existing water networks that serve more than 20 house connections.
  14. Extension of existing wastewater networks that serve more than 10 house connections.
  15. Expansions of existing water / wastewater treatment plants.
  16. Expansion of existing water / wastewater pumping stations, excluding new pumps to expand pumping capacities within existing stations, to meet normal growing demand.
  17. Extension / expansion of buildings / water reservoirs of a cost equal or superior to 50,000 JOD.
4. There are various additional expenditures, listed in Attachment 4 to Appendix 13 and in the Financial Model, all expenditures, which had not been registered in the past, but which are needed for sustainable operations of YWC. These expenses shall be called “Additional Expenditures” and shall be financed through the revenues of YWC.

**Attachment 3**  
**to the Incentive Compensation and Liquidated Damages Appendix**

<b>Measuring Scheme for IPI 2</b>
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**Measuring Scheme for IPI 2 "CST" = Continuity of Supply Time (hrs / week)**

The measurement of IPI 2 shall be carried out according to the measuring scheme set out below:

YWC, through the Management Contractor shall purchase a tentative number of 320 measuring devices / loggers and shall install these devices / loggers in the Service Area in accordance with Table 1 of this Attachment 3 to Appendix 8 and in accordance with the map attached to this Attachment which designates the location of each logger [*Note to Bidders: The map will be made available in the Data Room and shall later on be included to this Attachment*]. The provisional costs for the installation of the loggers are 400,000 JOD which shall be treated as part of YWC's capital expenditures in the first Contract Year.

**Table 1: Number of loggers per region in the Service Area of YWC**

No.	Region	No. of villages	No. of loggers*
1	Irbid villages	37	37
2	North Shoneh	19	19
3	Al Koura	15	15
4	Bani Obeid	7	7
5	Bani Kenana	27	27
6	Taibeh	7	7
7	Ajloun	19	19
8	Jarash	27	27
9	Mafraq 1	16	16
10	Mafraq 2	16	16
11	Mafraq 3	42	42
12	Khalidiah	5	5
13	North Badia	44	44
14	Irbid city	---	5
15	Ajloun city	---	3
16	Jarash city	---	3
17	Mafraq city	---	3
18	Provisional	25	25
<i>Total no. of loggers</i>			<i>320</i>

\*It is planned to install

- 1 pressure logger in each village,
- 5 loggers in Irbid city,
- 3 loggers each in Ajloun, Jarash, Mafraq.

[In some exceptional cases additional loggers can be installed in the same village].

The finalization of the measuring methodology and the installation of the measuring devices (with data loggers) shall be completed within 150 days after the Starting Date. Within 210 days after the Starting Date the Management Contractor shall determine and submit to YWC and PMU the average water supply time (hours per week) which will serve as base year figure for the calculation of the Incentive Compensation and for the determination of the future Minimum and Incentive Performance Targets pursuant to Article 4.4(1) of this Appendix 8.

**Attachment 4**  
**to the Incentive Compensation and Liquidated Damages Appendix**

**Current Water Tariffs for the Hashemite Kingdom of Jordan**

**Current Water Tariffs for the Hashemite Kingdom of Jordan (as of June 2010)**

<b>Consumption (m<sup>3</sup> per 3 months)</b>	<b>Water Tariff (JOD/m<sup>3</sup>)</b>	<b>Wastewater Tariff (JOD/m<sup>3</sup>)</b>	<b>Fixed Fee (JOD/Quarter)</b>
<i>For Amman</i>			
0 - 20	2	0.6	2.15
21 – 40	0.14 * m <sup>3</sup> - 0.8	0.4 * m <sup>3</sup> - 0.2	4.15
41 – 130	0.006556 *(m <sup>3</sup> ) <sup>2</sup> - 0.12224 * m <sup>3</sup>	0.002889 * (m <sup>3</sup> ) <sup>2</sup> - 0.07556 * m <sup>3</sup>	5.15
≥ 130	0.85 * m <sup>3</sup>	0.35 * m <sup>3</sup>	5.15
<i>For all other Governorates ( → applicable to YWC) (for Zarqa Governorate the wastewater tariff is augmented by 12 percent)</i>			
0 - 20	1.3	0.6	2.15
21 – 40	0.075 * m <sup>3</sup> - 0.2	0.035 * m <sup>3</sup> - 0.1	3.65
41 – 185	0.004517 * (m <sup>3</sup> ) <sup>2</sup> - 0.10568 * m <sup>3</sup>	0.001828 * (m <sup>3</sup> ) <sup>2</sup> - 0.038103 * m <sup>3</sup>	4.65
≥ 185	0.85 * m <sup>3</sup>	0.35 * m <sup>3</sup>	4.65

*Note: The Hashemite Kingdom of Jordan has recently decided to increase the water tariffs and to change the billing period from a quarterly to a monthly basis. The new tariff system is anticipated to be effective from 2011 and which may increase revenues for YWC by approximately 2 mio JOD p.a.*

*During final negotiations, the parties shall agree on the methodology to calculate the base year figure for IPI 4 (Article 4.4(1) of this Appendix 8) in relation to the application of the new tariffs and the new billing conditions (monthly meter reading).*

**Management Contract for  
Al Yarmouk Water Company  
YWC**

**a Limited Liability Company (LLC)  
owned by WAJ, the Water Authority of Jordan**

**The Hashemite Kingdom of Jordan**

**Appendix 9  
Performance Security Appendix**

## Performance Security

Address of guarantor bank (Jordanian bank or Jordan branch of a foreign bank licensed in Jordan):

.....  
.....

Address of Beneficiary (Employer):

.....  
.....

On ..... you concluded with ..... („Contractor“) a contract for .....  
(project, object of contract) at a price of .....

In accordance with the provisions of the contract the Contractor is obligated to provide a performance bond (Guarantee) for \_\_\_\_\_ Euro (in words: \_\_\_\_\_ Euro) which equals ten (10) percent of the contract value (which is equal to 10% of the Management Contractor’s Total Fee).

We, the undersigned ..... (Guarantor), waiving all objections and defences under the aforementioned contract, hereby irrevocably and independently guarantee to pay on your first written demand an amount of up to a total of ..... (in words: .....) against your written declaration that the Contractor has failed to duly perform the aforementioned contract.

In the event of any claim under this Guarantee, payment shall be effected to Kreditanstalt für Wiederaufbau, Frankfurt am Main (BIC: KFWIDEFF, BLZ: 500 204 00, IBAN: DE53 5002 0400 3800 0000 00), account no. 38 000 000 00, for account of Al Yarmouk Water Company LLC.

This Guarantee shall expire not later than [*six months after the End Date of Contract*]. By this date we must have received any claims for payment by letter or encoded telecommunication. It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

This Guarantee is governed by the laws of .....

.....  
Place, date

.....  
Guarantor

**Management Contract for  
Al Yarmouk Water Company  
YWC**

**a Limited Liability Company (LLC)  
owned by WAJ, the Water Authority of Jordan**

**The Hashemite Kingdom of Jordan**

**Appendix 12  
Assignment Agreement**

*[Disclaimer: Unauthorized translation of the binding Arabic version.]*

**ASSIGNMENT AGREEMENT**

**By & Between**

**Water Authority of Jordan.**

**As  
"Assignor"**

**and  
Al\_Yarmouk Water Company  
(YWC)  
A Limited Liability Company, LLC,**

**As  
"Assignee"**

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## **ASSIGNMENT AGREEMENT**

**THIS ASSIGNMENT AGREEMENT** is entered into on this day the.....

### **Water Authority of Jordan**

(Formed under The Water Authority of Jordan Law No. 18 of 1988, *as amended*)

Hereinafter referred to, as appropriate, as “Assignor” , "**First Party** " “WAJ”

**AND**

### **Yarmouk Water Company**

(A Limited Liability Company established under the Companies Law of Jordan and having  
Registration No 22404)

Hereinafter referred to, as appropriate, as “Assignee”, "**Company**" or "**Second Party**"

The **First Party** and the **Second Party** are referred to collectively as “**the Parties**”.

## **RECITALS**

### **WHEREAS:**

- 1 The Assignor is vested with the responsibility over the water and wastewater services in the Kingdom of Jordan, according to the Water Authority of Jordan Law No.18 of 1988, *as amended*, and the regulations and instructions issued pursuant thereto;
2. The Assignor currently owns, operates, and maintains the Assets described in Article 2.4- Service Area, in this agreement ("Assignment Agreement);
3. The Assignor has the authority to enter into this Agreement pursuant to Article 28(A) of the Water Authority of Jordan Law No. 18 of 1988;
4. The Assignor has received all requisite governmental authorizations and complied with all requirements of Jordanian law to permit the Assignor to enter into this Agreement;
5. The Assignee is Limited Liability Company formed under The Companies Law of Jordan, No. 22 of 1997, whose objectives as evident from the Article of Association of the Assignee allow it to enter into this agreement; and
6. The Assignee has the corporate capacity and authority to enter into this Agreement and has obtained all approval needed, governmental or/or otherwise to be assign and/or handed over and make available (as the case might be) its rights, assets, and liabilities in the Service Area;

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, the Assignor and the Assignee agree as follows:

## ARTICLE 1-CONTRACT DOCUMENTS

### 1.1 ASSIGNMENT AGREEMENT

The preamble, the appendices and Associated Documents shall all constitute an integral part of this Assignment Agreement and shall be read together as one document for all purposes and interpretations.

### 1.2 DEFINITIONS

Capitalized words and phrases used in this Agreement shall have the meanings assigned to them in the following way:

<b>“Accounts Receivable”</b>	As prescribed in the International Accounting Standards (IAS)
<b>Agreement</b>	This Assignment Agreement made by and between WAJ and the Assignee, as maybe amended from time to time in accordance with the provisions hereof;
<b>Assets</b>	As defined in Article 2.4 and as evident from Appendix XX
<b>“Assets Management Plan”</b>	Comprehensive plan based on a detailed registry of assets including location, physical characteristics, operating conditions, age of installation and history of repairs to supervise the operation and make an optimal use of immovable and movable assets, to include, but not limited to, the Assignee proposal to maintain and substitute the Assets as required to maintain the highest level of performance and services to the Customers.
<b>“Appointed WAJ Employees”</b>	WAJ employees who received offers to work for the Assignee and have accepted such offers or to be seconded “ <i>E’arah</i> ” to the Assignee pursuant to the Civil Service Regulation effective from time to time, or as per the applicable labour law.

<b>“Associated Documents”</b>	All Appendices and/or related documents to this Agreement which are incorporated by reference in it, or agreed upon during the Term.
<b>“Assumed Liabilities”</b>	The liabilities attributable to WAJ in the Service Area transferred to Assignee.
<b>“Billing and Collection Services”</b>	The Services described herein after Article 4.2.3.
<b>“Bulk Water Agreement”</b>	The agreement signed between the Assignee, WAJ and Jordan Valley Authority for the supply of Bulk Water to the Assets in the Service Area and for the purchase of Bulk Water from the Assignee to WAJ or other water companies
<b>“Business Plan”</b>	An annual report with a comprehensive and systematic approach to achieve objectives that will periodically update a long-range development plan.
<b>“Calendar Year”</b>	The Gregorian calendar running from January 1 through December 31.
<b>“Consumables“</b>	All exhaustible materials used in the day-to-day operation of the Services and includes, but not limited to, chemicals, lubricants, and fuel.
<b>“Customer”</b>	A customer of the Assignee, or transferred to the Assignee pursuant to this Agreement who is legally authorized to receive Services in the Service Area.
<b>“Revenues”</b>	Fees, tariffs, levies, charges regulated charges and in general any consideration derived from or associated to the Services extended to the Customers by the Assignee, collected or received from time to time by or on behalf of the Assignee which are levied upon the Customer as described in Article 4.2.3 or elsewhere, Tariff rates and fees, recommended to WAJ by the Assignee and approved by the Council of Ministers, for obtaining Services in the Service Area.
<b>“Effective Date”</b>	The date on which this Agreement has been signed.

<b>“Excluded Assets”</b>	Those assets of WAJ within the Service Area which have not been assigned to the Assignee by this Agreement as further described in Article
<b>“Force Majeure”</b>	As defined in Article 11.2
<b>“Government”</b>	Government of the Hashemite Kingdom of Jordan
<b>“Governorates”</b>	Irbid, Jerash, Ajloun and Mafrq.
<b>“IAS”</b>	The International Accounting Standards published by the International Accounting Standards Board, London, UK.
<b>“Illegal Acts”</b>	Those acts stated in Article 30 of the Water Authority of Jordan Law No. 18 of 1988, as amended.
<b>“Jordan”</b>	The territory of the Hashemite Kingdom of Jordan recognised internationally and by the Constitution of Jordan.
<b>“Monitoring Protocol”</b>	A comprehensive document that will be prepared and developed by the PMU on the basis of performance measurement previously adopted by WAJ. This document maybe customized and tailored by PMU to suite the Assignee performance measurement techniques and procedures in the future, which represents the basis for the monitoring and auditing role of PMU vis-à-vis the Assignee. The Monitoring Protocols shall include, among others, Performance Measurements according to which the operations of the Assignee shall be evaluated by the PMU.
<b>“MWI”</b>	Ministry of Water and Irrigation
<b>“Non-Domestic ”</b>	industrial, touristy, vocational and/or poultry and cattle farms
<b>“Performance Measurements”</b>	The technical standards defined in the WAJ Water Sector Laws, Regulations, and Instructions, indicative list which was provided to the Assignee.
<b>“Planned Area”</b>	Areas which are located within the planning zone.

<b>“Plant and Equipment”</b>	The facilities associated with the discharge of the responsibilities of the Assignee in the course of executing the Services and supply of water, and handling the wastewater Including buildings, machinery, apparatus, articles, spare parts, and movables and immovable components within those facilities or associated thereto to extend the services assigned to the Assignee
<b>“PMU”</b>	The Performance Management Unit, established by & under MWI by virtue of the Financing Agreement to execute the Al-Meyyah Project or any subsequent legal entity vested with the mandate and responsibility of Project Management Unit.
<b>“Prudent Industry Practice”</b>	The exercise of that degree of skill, diligence, and care which would reasonably and ordinarily be expected from a skilled and experienced owner and operator engaged in the same type of undertaking under the same or similar circumstances and acting generally in accordance with the laws of Jordan and applying the standards generally adopted by water and waste water utilities in North America and Europe, except insofar as reasonably appropriate to take account of the location of or geological or meteorological conditions and resources available affecting the location of the Plant and Equipment or the social customs prevailing in the region of the Plant and Equipment.
<b>“Representative”</b>	The individual appointed by each Party from time to time to be the individual responsible for exchanging communications pursuant to this Agreement.
<b>“Services”</b>	All the assigned services from WAJ to the Assignee pursuant to this Assignment Agreement and acceptable by the Applicable Law as defined in Article 4 herein under.

<b>“Service Area”</b>	The geographical area within which Assignee provides the Services within, including any further amendments, pursuant to this Agreement and the decision of the Council of Ministers.
<b>“Special Projects”</b>	Projects carried out by WAJ in the Service Area including but not limited to :RRP, WLRP, WRMP and others
<b>“Staff”</b>	All personnel of the Assignee required to provide the Services, including Appointed WAJ Employees.
<b>“Contractor”</b>	Commercial or governmental entity providing goods or services to the Assignee pursuant to a contract that is awarded through procurement procedures applied by YWC.
<b>Term</b>	The duration of this Agreement as stipulated in Article 2.2 herein under
<b>“Transferred Assets”</b>	All assets, Plant and Equipments owned by WAJ and used in the Service Area to be transferred to the Assignee.
<b>Tariff Schedule</b>	The tariff schedule approved by the Council of Minster at the Execution Date, and subsequent proposed revision to the tariff by the Assignee that has been acceptable by WAJ, as per the Applicable Law.
<b>“User” or “Users”</b>	The natural or legal person or persons who use and/or consume water and/or treated wastewater from the Assignee sources or networks or connected to wastewater services from such sources or networks, within the Service Area
<b>WAJ</b>	Water Authority of Jordan or any subsequent legal entity vested with the mandate and responsibility of WAJ in accordance to the Water Authority Jordan Law No. 18 of 1988, <i>as amended</i> .

“WAJ Law”	Water Authority Jordan Law No. 18 of 1988 as issued, in force and effect and as amended from time to time.
“Wells”	The licensed water extraction facility or facilities and all equipments used for that whether above grounds or underneath in order to allow the extraction or pumping of water to the ground level or to containers whether fixed or movable. Water from groundwater sources.

### 1.3 LANGUAGE

- (a) This Agreement and the Associated Documents has been negotiated and drafted in English for ease of reference by it Parties and and international advisors. However, upon the execution of the same, this Agreement shall be translated into Arabic by a translator, that both Parties agree to, and such translation shall be rendered to the Parties for comment within three weeks, upon the approval of the translation, the Arabic version shall prevail, and the English version shall be kept in case of contravening interpretation. Until such time, the English version of this Agreement shall govern the Parties relationship.
- (b) If any of the Associated Documents, correspondence, or communications are already in Arabic, such versions shall prevail in matters of interpretation; and
- (c) The day-to-day language of conducting business in the Service Area is Arabic, and so the correspondences between the Parties.

### 1.4 INTERPRETATION

In this Agreement (including the Recitals), unless the context otherwise requires:

- (a) Words denoting persons or parties shall include firms, bodies corporate, unincorporated associations, partnerships, governments, government agencies and departments, statutory bodies or other entities, in each case whether or not having a separate legal personality, and all references to persons shall include their successors and permitted assigns;

- (b) The headings are included for ease of reference and shall affect the interpretation of the related paragraph;
- (c) The singular shall include the plural and the plural shall include the singular except where the context requires otherwise;
- (d) Words denoting the masculine shall include the feminine and neuter and vice versa;
- (d) The Recitals shall be deemed to be part of this Agreement and all references to Recitals and clauses shall be construed as references to Recitals of, articles of, clauses of this Agreement, and references to paragraphs in a clause shall be construed as reference to paragraphs of that clause, unless indicated otherwise;
- (e) References to times of day are (unless otherwise expressly provided) to Jordan Time and references to a day are to a period of twenty-four (24) hours running from midnight on the previous day;
- (f) The words “other”, “include”, and “including” do not connote limitation in any way; and
- (g) Any reference to “writing” and “written” includes faxes, emails and any legible reproduction of words delivered in permanent and tangible form, any verbal communication should be confirmed in writing within a reasonable time but not later than five Calendar Days.

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## **ARTICLE 2- TRANSFER OF ASSETS AND ASSUMPTION OF LIABILITIES**

### **2.1 LEGAL RIGHT**

In return of the warranties and covenants made by the Assignee to perform all of its obligations under this Agreement, the Assignor hereby grants the Assignee the rights to own, develop, maintain and operate the Transferred Assets in the Service Area as set forth in this Agreement.

### **2.2 TERM & DURATION**

The duration of the legal rights transferred by Article 2.1 shall be ninety-nine (99) years as of the Effective Date, unless terminated earlier in accordance with this Agreement.

### **2.3 REVENUES**

(a) Together with the rights transferred in Article 2.1, the Assignor assigns to the Assignee the authority to levy, collect, and retain the Revenues in accordance with the Tariff Schedule, and any other income resulting from providing Services at levels and under terms prescribed in this Agreement, as it may be modified from time to time.

(b) As of the Effective Date, the Assignee shall be the *De Facto* owner and legal successor of the Assignor in relation to all revenue generated, charged, levied, and/or collected within the Service Area in return for availing wastewater collection system to all Users.

(c) The contributions made/to be made pursuant to Article (21) of WAJ Law amounting to three percent (3%) of the annual rental value of properties located within the Service Area, shall be remitted to the Assignee. It is understood that if it is not possible for the Assignee to collect the said contribution, the Assignor shall then collect and maintain such an amount on behalf of the Assignee, and forward the same to the Assignee at.....

(d) All Accounts Receivable, including those referred to in (a) and (b) above, billed in the Service Area prior to the Effective Date shall be assigned to Assignee and collected by and belong fully to Assignee. Furthermore, on the Effective Date, all inventories must be made available and transferred to the Assignee on the Effective Date shall be assigned to Assignee.

(e) The Assignee shall be entitled for all other revenue, including but not limited to, selling of water and treated wastewater to outside its responsibility of service provision or outside the Service Area (i.e. Governorates) and any other revenues may be generated in the Service Area and related to the assignees activities.

(f) Save as Article 2.4.1.B hereunder, the Assignor hereby is committed to the financial sustainability of the Assignee through a subsidy amount necessary to be provided by the Assignor until the Assignee is able to recover all its efficient expenses.

## **2.4 ASSETS**

**2.4.1** On the Effective Date the Assignor shall have concluded the transfer of:

**2.4.1.A.** All Assets to the Assignee (and the Assignee shall be deemed to have accepted such transfer from the Assignor. And

**2.4.1.B** All of the Assignor's right, titles, and interests in and to the Transferred Assets, Wells, Plant and Equipments and any other systems and facilities currently utilized by the Assignor in providing the Services in the Service Area to the Users. And

**2.4.1. C.** To the extent possible, the Assignor shall also assign to the Assignee any existing third-party warranties related to the Assets.

**2.4.1. D.** Upon the Effective Date, the Assignor shall co-operate with the Assignee in updating the Assets register. The Assignee thereafter shall update and maintain the Asset register, which shall be made and updated under a methodology to be agreed upon with the shareholders of the Assignees.

**2.4.2.** The ownership of the Assets shall be fully transferred to the Assignee. This includes:

(a) All Land, Plants, and Equipments in the Service Area associated with:

- (i) The existing pre-sourcing, extraction, conveyance, treatment and desalination of, and metering of well water in the Service Area and any other extraction, conveyance, treatment of, and metering of Well water plant(s) in the Service Area;
- (ii) The existing distribution of bulk water received from WAJ and/or Jordan Valley Authority (JVA);
- (iii) All existing water distribution systems and storage facilities and metering of potable water within the Service Area;
- (iv) All existing water and wastewater connections to customers, including water-metering;

(b) All Plant and Equipment associated with:

- (i) Existing facilities relating to the collection of wastewater within the Governorates;
- (ii) Existing facilities relating to wastewater treatment facilities in the Service Area

(c) All existing buildings, structures, and other appurtenances associated with providing water and wastewater services in the Service Area.

### **2.4.3. ADDITIONAL PROVISIONS RELATED TO FACILITIES**

(a) At the conclusion of ongoing Projects, and not before, the Assignor shall transfer to the Assignee's all Capital Investment Projects. The Assignee shall retain control of Wells in the Governorates that supply water in the Service Area and any other future projects and/or treatment works in the Service Area.

(b) The Parties hereby acknowledge that the Assignor as of the Effective Date, the Assignor might not be able to assign to the Assignee existing third-party warranties or other entitlements of the Assignor under such third-party agreements

concerning some projects under its management with the Service Area. Consequently, the Parties hereby agree to set certain protocols between them to transfer such projects to the Assignee and/or to allow the Assignee to be responsible for the management and operation of such projects, such protocols might include appointing the Assignee as the representative of the Assignor in relation to third-party warranties.

## **2.5 ASSUMED LIABILITIES.**

On the Effective Date, the Assignor assigns to the Assignee (and the Assignee shall be deemed to have accepted such an assignment) all of the Assumed Liabilities. As follows

### **(a) The Assignee Assumed Liabilities**

The Assignee assumes all accounts payable for Services rendered and/or goods delivered after the Effective Date.

### **(b) Working Capital Contribution**

The Assignor shall extend to the Assignee a JD 2,000,000.000 (two Million Jordanian Dinars) line of credit (with zero interest) made as support for working capital needs. Drawdown on the line of credit shall be evidenced by a loan and repaid to the Assignor pursuant to terms and conditions to be agreed to by the Parties.

### **(c) Deposits of Water and Wastewater**

I. The Assignee shall assume as a liability all water deposits previously paid to the Assignor by Users in the Governorates for subscribing to Services in the Service Area. The Assignor shall within sixty days reimburse the Assignee of any payments made by the Assignee in relation to such deposits. The Assignor shall undertake, per the applicable legislation, settle any request to re-claim the Wastewater deposit relating to the provision of the Wastewater Services.

II. The Assignee shall not be responsible for any liability falling outside the scope of the Assumed Liabilities of YWC. The Assignee accepts the sale, transfer, conveyance, assignment, and delivery of all of Assignor's right, title, and interest in and to the Assumed Liabilities. For the avoidance of any doubt, the Assignor shall be responsible for all other liabilities that fall outside the scope of the Assumed Liabilities.

III. Notwithstanding any other provision in this Agreement or the Applicable Law, the Assignee shall not be liable for any employment liabilities resulting from any act or omission whatsoever occurring prior to the Effective Date. The Assignor shall be responsible to cover any such liabilities.

IV. The Assignor hereby agrees to indemnify and hold harmless the Assignee against any claim and/or liability in excess of the Assumed Liabilities and against all employment liabilities resulting from any act or omission whatsoever occurring prior to the Effective Date.

## **2.7 EXCLUDED ASSETS**

Transferred Assets shall not include

- (a) Underground water in the Service Area;
- (b) Wells in the Service Area not assigned to Assignee; and
- (c) Assets unrelated to Assignee's water and wastewater operations.

## **ARTICLE 3-TRANSFER OF EMPLOYEES TO THE ASSIGNEE**

### **3.1 TERMINATION OF EMPLOYEES & RE-APPOINTMENT TO THE ASSIGNEE**

**3.1.A** All appointed WAJ Employees shall be seconded to the Assignee. The Assignee shall not be responsible for any payments required to be made to the employees due to their transfer to the Assignee.

**3.1.B** For the purpose of 3.1.A above, the Parties have agreed on the following mechanism:

- (a) As per Article (95) of Civil Service Regulation and Jordanian Labor Law No. 8 of 1996, the period of said secondment shall be one year (Grace Year). During this year, YWC shall set up all of the personnel affairs and/or regulations, including but not limited to salaries structure.
- (b) Following the end of the above Grace Year, those seconded staff who are entitled for governmental retirement shall have the following options:
  - Appointed WAJ Employees would retire or take early retirement/deposition (*Isteeda'a*) according to Civil Service Regulation, and then be hired by the Assignee.
  - Employees who are not eligible for *Isteeda'a* will be seconded *Ea'arah* to the Assignee until they are eligible for *Isteeda'a* and then they are either hired by the Assignee or they will be returned back to WAJ.

(c) Following the end of the above Grace Year, the employees under the social security regime have the following choices:

- Discontinue their employment with WAJ and are rehired by the Assignee under the Jordanian Labor Law.
- Be returned to WAJ.

(d) After the Grace Year, the Assignee shall have the right to return to WAJ up to 20% of WAJ Appointed seconded Employees.

(e) WAJ shall have the right, upon a request from a seconded employee, to early terminate the secondment for any individual staff any time and transfer the same back to WAJ.

## **ARTICLE 4 - SERVICES**

### **4.1 SCOPE OF SERVICES**

4.1.1. The Assignee shall be responsible for effectively carrying out and performing the work described in Article 2.1. For this purpose, it shall provide all Staff and capital investment for Plant and Equipment required to perform the Services in the Service Area. Further it shall provide all support services including, without limitation, management, accounting, personnel, systems, financial, technical, design, and operations and maintenance expertise necessary to provide the Services. The Assignee generally shall implement management and investment programs to provide efficient water and wastewater.

To undertake the above obligations in the Service Area, the Assignee shall:

- (a) Operate, maintain, and monitor existing, under-construction, and future facilities to extract, pump, treat, and deliver water from the wells.
- (b) Operate, maintain, and monitor existing, under-construction, and/or future wastewater treatment facilities and any other future projects and/or treatment works in the Service Area.
- (c) Operate, maintain, and monitor existing, under-construction, and/or future Reuse of treated wastewater. All in accordance with special agreement to be signed for this purpose with WAJ;

- (d) Operate, maintain, and monitor the existing, under-construction, and future distribution and storage of water supply and wastewater collection systems;
- (e) Provide and maintain consumption meters and billing, collection, and customer services.
- (f) Ensure that the water and wastewater Facilities are at all times in compliance with the related Jordanian Quality Standards; and
- (g) Coordinate with WAJ the timely provision of bulk water and the development of additional bulk water and wastewater treatment facilities to timely meet demand.

4.1.2. In addition to performing all work and providing all Staff required to perform the Services, the Assignee shall perform all work which is not specifically mentioned in this Agreement but which can be reasonably inferred as being required to perform the Services as is customary in Prudent Industry Practice.

4.1.3. Service Area: the Assignee shall be responsible for operations in the Governorates. Notwithstanding the above, the obligations of the Assignee, outside the Governorates are to be limited to providing the services related to the operation and the maintenance of the Water Resources available for the Assignee.

4.1.4. The Assignee shall at least follow the minimum quality standards and legal requirements defined in the following list of WAJ Laws, Regulations, and Instructions as amended from time to time, which are:

- (a) Water Authority Law No. 18 of 1988 and its Amendments;
- (b) Drinking Water Bylaw No 67 for the Year 1994.
- (c) Under-Ground Water Control Bylaw No. 85 of 2002 and its amendments;
- (d) Wastewater Bylaw No. 66 of 1994 and its amendments;
- (e) Instructions for Subscribing for Drinking Water Bylaw No. 67 of 1994, bases for Estimating Estate value for the purpose of charging fees for connection to the sewerage network;
- (f) Instructions for the Commercial and Industrial Wastewater Disposal through the Sewerage Project Network (Issued According to the Water Authority Law No. 18, 1988, and to Wastewater Bylaw No. 66, 1994);

- (g) The Industrial Wastewater (Jordanian Standard No. 202/2007);
- (h) The Reclaimed Domestic Wastewater Standard (Jordanian Standard No. 893/2006);
- (i) Water –Sludge-Uses of treated sludge and sludge disposal (Jordanian Standard, No. 1145/2006);
- (j) Water-drinking water Standards 286/2007

## **4.2. SERVICE REQUIREMENT TOWARDS THE CUSTOMERS**

The Assignee shall abide to the service requirements stated herein under so long as it is not covered and/or does not conflict with the applicable laws, WAJ regulations, other regulations, bylaws, and/or instructions. If the same is covered by applicable laws, WAJ regulations, other regulations, bylaws, and/or instructions, or there is any conflict, then such instruments shall apply. From time-to-time, the Assignee shall have the right to propose to WAJ amendments to the applicable laws, WAJ regulations, other regulations, bylaws, and/or instructions. WAJ and the Assignee shall review in good faith such proposals and take reasonable measures to procure necessary approvals.

### **4.2.1 CUSTOMER SERVICE REQUIREMENTS**

YWC shall abide by any Bylaws, Regulations and/or Instruction issued from time by the competent authorities in Jordan regarding customer's services.

#### **4.2.1.1 Applications for Service**

The Assignee may require any new service applicant to sign a service application which sets forth the following as an indicative content. The Assignee shall have the right update, amend, and develop its own service application forms from time to time provided that it meets the minimum requirements under Applicable Law:

- (a) Applicant Particulars:

- I. Name of Applicant;
- II. Copy of proof of identify of applicant: proof of identity may comprise a Passport, Civil Identification Card, Family Collective Card, Driver's License, or such other form of locally or internationally accepted identification which includes, at a minimum, a photograph of the applicant;
- III. Contact Details for Applicant: the address, telephone number, facsimile number, and, if available, email address of the applicant.
- IV. Address to which every Bill and every other notice shall be mailed or otherwise delivered, if different from above contact details;
- V. Whether the Applicant is the owner, tenant, agent, or otherwise, of the premises for Service.

For any privately held land or premises, a copy of the private land title certificate or rental agreement shall be required for proof of standing.

For any public land or premises, a copy of the title deed, allocation letter, or other form of written documentation issued by any competent authority shall be required.

(b) Premises for Service

- I. Location of premises for Service;
- II. Date premises will be ready for Service;
- III. Whether the premises have been heretofore supplied with any Service and, if so, particulars of the same, if available; and
- IV. Purpose for which Service is to be used and proof that such use has been approved by the relevant authorities;

(c) Occupancy permit issued by relevant municipalities and any other documents required by the Applicable Law;

(d) Date and Location of Application;

(e) Signature of Service Applicant; and

(f) Any such other information as the Assignee may reasonably require.

**4.2.1.2 Duly Authorized Representatives on behalf of Customers**

Any Service applicant may be represented by any duly authorized representative, provided that proof of authority and identity documents of such representative satisfactory to the Assignee are tendered along with every Service Application submitted by the same.

For any Service Applicant that is an agency of the Government, a copy of a duly authorized letter empowering such representative to act on behalf of the agency along with identity documents of such representative satisfactory to the Assignee shall constitute sufficient proof of authority and identity.

#### **4.2.1.3 Purpose**

Every Service Application shall merely constitute a written request for Service and shall not bind any Service applicant to take any Service for a period of time longer than that upon which the minimum charge is based, nor shall it bind the Assignee to provide any Service, except under reasonable conditions.

#### **4.2.1.4 Individual Liability for Joint Service**

Two (2) or more parties who join in one (1) Service Application shall be jointly and severally liable for payment of all Bills related to such Service and shall be billed by means of single period Bills.

#### **4.2.1.5 Customer Request for Service**

The Assignee shall provide a written or electronic response to any request for water or wastewater service from a domestic and non-domestic Customer within five (5) working days of receiving the request. The Assignee's response shall include specific instructions regarding the actions required by the person or entity making the request and a timeframe and actions to be taken by the Assignee to respond to the request.

### **4.2.2 Contracts with Customers**

#### **4.2.2.1 Service Contracts**

Every new Service Applicant or new Customer seeking any Service shall be required to sign a Service Contract as a condition precedent to receiving any Service or other assistance from the Assignee in relation to the same.

The terms and conditions of every Services Contract shall be set by the Assignee but shall comply with and be subject to every provision of every Regulatory Document.

#### **4.2.2.2 Change in Customer's Equipment or Operations**

The Assignee shall insure that every Customer shall declare any subsequent additions or changes in building and equipment or change of use of the property. Such an undertaking shall be included as a commitment on the Customer in the Services Contract.

#### **4.2.2.3 Service Area Maps**

The Assignee shall prepare separate maps showing existing Service Areas for Water Service and Wastewater Services. Each of such maps shall clearly identify the Planned Areas and Non-Planned Areas. These maps may be amended from time to time as the Planned Areas are extended or modified by virtue of an urban development plan.

#### **4.2.2.4 Water and Wastewater Connection Charges outside Planned Areas**

Customers located outside the Planned Areas, shall be charged for water connection fees and tariffs (under Jordanian law) differently from the Customers in the planned areas. Whereas Customers located outside the planned areas that will be connecting to wastewater facilities shall be charged the same tariffs as those within Planned Areas.

Customers outside the Planned Area located in areas with little or no prospect for additional development in the near future shall pay all the cost for the main extension.

Certain Applicants, such as special developments, industrial estates, or certain commercial properties situated within or outside of the Service Area, may require additional consideration by the Assignee. In such cases, the Assignee shall review the application and, using the principles for full cost-recovery, shall specify the cost of connection before an approval of the application for service.

### **4.2.3 RENDERING AND PAYMENT OF BILLS**

The Assignee shall establish a policy of notices available to the public. Such notices shall contain the following at a minimum:

#### **4.2.3.1 Billing Periods**

The Assignee shall endeavour to render every bill to every Customer on a monthly basis, unless otherwise provided for by any rate schedule or agreed upon with the Assignor.

#### **4.2.3.2 Delivery of Bills to Customers**

The Assignee shall endeavour to offer every Customer a variety of options for receiving the bill for service, including mail, delivery to the Customer by the Assignee, delivery to a designated address, or via the internet.

#### **4.2.3.3 Contents of Bill**

Every bill for every Service shall show at least the reading of the meter at the end of the period for which the bill is rendered, and the consumption over said period and date of the

current meter reading. The bill should also show any unpaid charges, in advanced paid deposits, credits, taxes, and levies, as applicable.

#### **4.2.3.4 Separate Meter Readings**

Every meter on every Customer's premise shall be considered separately by the Assignee and readings of two (2) or more meters shall not be combined except where combinations of meter readings is specifically provided for in any applicable rate schedule or where the Assignee's operating convenience or necessity requires the use of more than one (1) meter or a battery of meters.

In the event that more than one (1) meter or a battery of meters is used, the minimum charge shall be prorated from the minimum charge from the applicable rate schedule upon the basis of a meter size equivalent in diameter to the total combined discharge area of every such meter.

#### **4.2.3.5 Payment Terms**

Bill presentation and payment may be made at any commercial office of the Assignee, or to any representative of the Assignee authorized to make collections, or by any other means that the Assignee shall make available in the future, including bank, mail, internet, and etc. collection of any closing bill may be made at the time of presentation.

#### **4.2.3.6 Payments**

The Assignee may charge administrative fees for any unsettled check or electronic fund transfer presented by any Service Applicant, Customer, or guarantor not honoured by any financial institution in receipt of the same. This unsettled payment administrative fees will be added to the balance owed by the Customer.

#### **4.2.3.7 Customer Inquiries/Complaints**

The Assignee shall insure that a written, verbal, or electronic response is provided to all Customer inquiries/requests/complaints. The Assignee shall maintain written documentation of all contacts by Customers and potential Customers and keep a record of all responses. This information shall be available to the Assignor for review and inspection at any time.

As to Customer objections regarding bills issued by the Assignee, the Assignee shall insure that a written, verbal, or electronic response is provided to all Customer

objections.

#### **4.2.4. WATER AND WASTE-WATER INSTALLATIONS**

The Assignee (as the case might be as per Clause 4-2-2-4 above) shall furnish and install every Service pipe, curb stop, and meter, at its own expense, using its own means or through registered and approved water contractors, to connect its water and wastewater network to every Customer's piping for the purpose of providing water and waste water Service, provided that every such Service connection, curb stop, and meter shall be installed by the Assignee.

The Customer (as the case might be as per Clause 4-2-2-4 above) shall bare the cost of furnishing and installing every Service pipe, curb stop, and meter, provided that the execution shall be done by water and waster water contractors accredited by the Assignee.

##### **4.2.4.1 Point of Delivery**

Every Service connection shall determine the relevant point at which the Assignee delivers Service to every Customer.

##### **4.2.4.2 Conditions Precedent to Receiving Service**

As a condition precedent to receiving any Service from the Assignee, every customer shall:

- I. Furnish and lay all internal plumbing necessary to make the connection from the Service connection to its place of consumption and shall keep such plumbing in good repair;
- II. Furnish inside the property line (as per WAJ specifications) a ground manhole or install an insulated meter box approved by the Assignee which shall, at a minimum, be sealed and covered with a tight metal cover, or provide a wall-hung metal closet for apartment properties or office buildings that are approved by the Assignee;
- III. Provide a shut-off valve on that piping between the Service connection and its point of use; and
- IV. Where Service is rendered at or near any Service Area boundary for use beyond any Service Area, install, operate, and maintain any facility necessary to provide such Service, provided that the Assignee may, in the event that any Customer fails to realize any such condition precedent, furnish, provide, or otherwise satisfy any such condition precedent of the Customer, for a charge agreed in advance with any such Customer.

##### **4.2.4.3 Piping**

Every Customer's piping shall extend to that point inside the property line which has the easiest access for the Assignee to connect from its existing water pipe. Every Customer shall consult the Assignee and obtain prior approval of the location of such point for such piping prior to installation of the same.

#### **4.2.4.4 Installations**

The Assignee shall retain full ownership of every Service pipe and meter furnished by or on behalf of the Assignee at its own expense and located wholly or partially upon any Customer's premises.

#### **4.2.4.5 Prohibition against Rental Charges**

No Customer or any other party shall charge the Assignee any rent or other charges of any nature whatsoever where any facilities are located on any Customer's premises.

#### **4.2.4.6 Access to Installations**

The Assignee shall have access at reasonable hours to every meter, Service connection, and other property owned by it which may be located on any Customer's premises for purposes of installation, maintenance, operation, or removal of the same.

Every Customer shall ensure that such property is accessible to authorized representatives of the Assignee for inspection at all reasonable times.

#### **4.2.4.7 No Charge for Inspection Work or Recommendations**

Any inspection work or recommendations made by the Assignee or its agents as a result of a reasonable request, in connection with any plumbing after the meter or maintenance on any Customer's premises, as a result of such request, shall be made without charge.

#### **4.2.4.8 Indemnity**

The Assignee shall not be responsible for any loss or damage caused by any negligence or wrongful act of any Customer or any Customer's authorized representative in installing, maintaining, operating, or using any appliance, facility, or piece of equipment related to any Service supplied by the Assignee in any manner or form whatsoever.

#### **4.2.4.9 Liability**

Every Customer shall be responsible for any damage to the Assignee property, including, but not limited to, any meter, arising from any use or operation of any appliance or facility on any Customer's premises, including, but not limited to, any damage caused by any steam,

hot water, or any chemical.

## **4.2.5 SERVICES**

### **4.2.5.1 Size of Service Pipe**

- I. The Assignee shall require every Customer to provide such data as necessary for the Assignee to properly size any Service pipe.
- II. Every Water Service pipe installed by the Assignee shall be not less than half of one inch (1/2 of 1”) nominal size, and consistent with pressure requirements.
- III. Similarly, the Wastewater Service pipe shall be no less than six (6”) inches in diameter.

### **4.2.4.2 Installation of Connections**

Every Service pipe from the Assignee’s network to the location of every Service connection shall be installed only by duly authorized employees or agents of the Assignee or approved third-party contractors under the supervision of the Assignee.

The Assignee shall make every connection from every meter to every Customer’s piping, provided that any repair or replacement to any such connection may, at the option of the Assignee, be made by any Customer or their agent.

### **4.2.5.3 Cross-Connections and Backflows**

For the purpose of this Sub-Article, a cross-connection means as any actual or potential physical connection between the Assignee water network or a Customer’s water system and any source of non-potable liquid, solid, or gas that could contaminate the potable water supply by backflow. This includes reuse water of any kind.

Backflow is the reversal of flow of water or other substances into the Assignee’s water network or Customer’s potable water system. Under backflow conditions, unprotected cross-connections can introduce biological, chemical, and/or physical contaminants into the drinking water supply.

### **4.2.5.4 Cross-Connection Prohibited**

Cross-connections, as previously defined, are prohibited throughout the Assignee's water network. Damages caused to the Assignee installations from a backflow shall be the

responsibility of the customer.

#### **4.2.5.5 Backflow Preventers**

All domestic and non-domestic customers shall install when necessary, backflow preventer of a design and size acceptable to the Assignee. The Customer shall bear all of the costs of the backflow preventer and its installation.

#### **4.2.5.6 Backflow Preventer Requirements**

The Assignee shall ensure that every backflow preventer is installed, operated, and maintained by and at the expense of every applicable Customer in a manner approved by the Assignee.

#### **4.2.5.7 Notification Requirements**

The Assignee shall notify every Customer of the need to test any backflow preventer associated with the same, and every such notice shall specify the date by which every such test must be completed.

#### **4.2.5.8 Refusal of Service or Discontinuance of Service**

The Assignee may refuse or discontinue water service to any Customer on its premises:

- I. Until such time as any such Customer installs an approved backflow preventer of the required type on its Service pipe or such other part of its Service connection if so required by the Assignee;
- II. If any such Customer denies access to its premises to enable the Assignee to make any evaluation;
- III. If any such Customer refuses to test any backflow preventer on its premises or refuses to repair or replace any faulty backflow preventer on its premises following a written request to perform the same from the Assignee;
- IV. If any direct or indirect connection exists between any sewer line on any such Customer's property and the Assignee's water network;
- V. If any unprotected direct or indirect connection exists between any system or equipment containing any contaminant on any such Customer's premises and the Assignee's water network;

- VI. If any unprotected direct or indirect connection exists between any auxiliary water system on any such Customer's premises and the Assignee's water network; or
- VII. If the Assignee reasonably regards the continued provision of any water service to any such Customer at any such premises to constitute an immediate health hazard to its water supply or water network.
- VIII. If the Customer fails to pay and/or settle the costs of consumed water with a period to be specified by the Assignee.
- IX. If the Customer fails to undertake necessary maintenance of its network in order to stop leakage and /or misuse of water.
- X. If the Customer violates any of the condition Service Contract with the Assignee and/or any written undertaking associated with the same.

#### **4.2.5.9 Requirements of Pumps and Boosters**

No Customer is allowed to directly connect any kind of pump to increase the pressure within its premises, to the water connections pipe. If a customer wants to install such a pump it shall build a storage tank, with an air gap to the connection pipe, from which the pump can draw water.

#### **4.2.5.10 Illegal Connections to Sewerage System & Network**

##### **4.2.5.10.1 Connections to the Sewerage System & Network**

No connection to, or extension of, any sewer line or any construction, alteration, or repair of any pipe, conduit, or facility between the sanitary sewer line and any building shall be made without prior permit by the Assignee authorizing the connection.

Any connection that is performed without a prior permit of the Assignee shall be deemed to be illegal and shall therefore be subject to a fine in accordance with Applicable Law. Such connections may be removed by the Assignee, with the costs borne by the person or company responsible for the illegal connection.

The Assignee employees must be present to witness and approve a connection or disconnection of a Customer's sewer service.

##### **4.2.5.10.2 Prohibited Connections**

No person shall provide for, or permit, the drainage of any cellar, water-cooled air-conditioned system, or any storm water or surface water, roof drains, foundation drains, sump pumps, or area drains, directly or indirectly, into any sanitary sewer. The Assignee shall have the right to disconnect the Water Service until such violation has been removed.

Furthermore, no connection from the internal wastewater system to the outside public drainage system is allowed.

#### **4.2.6 METERS, RELOCATION OF METERS, METER TESTS, AND ADJUSTMENT OF BILLS FOR METER ERRORS**

##### **4.2.6.1 Meter Location**

Each applicant for Water or Wastewater Service shall sign an application and shall furnish the Assignee with a plot plan, and, in the case of Water Service set a stake showing the desired location of the water meter. The final meter location shall be determined by the Assignee's representative.

##### **4.2.6.2 Handling of Meters**

No Customer shall deal with any meter in any manner whatsoever, including the relocation of any such meter, without the express prior written consent of the Assignee.

The Assignee may, at its sole cost and expense, relocate any meter without any notice to any Customer affected by the same.

##### **4.2.6.3 Application for Relocation of Meters**

Any Customer may apply to the Assignee to relocate any meter related to any Service it obtained from the Assignee.

Every application by every Customer to relocate any meter shall contain, at a minimum, the following information:

- I. The reason for seeking relocation of such meter;
- II. A copy of the latest bill related to such meter, including a financial clearance from customer service for bills payment;
- III. A waiver of any liability against the Assignee arising from any act or omission related to the relocation of such meter.

#### **4.2.6.4 Relocation Fees**

Every application to relocate any meter shall be accompanied by payment of a one-time, non-refundable relocation. All expenses related to the relocation of the meter shall be borne by the Customer.

#### **4.2.6.5 New Location for Meters**

##### **4.2.6.5.1 Preparation of New Location**

Every Customer shall be responsible, at its sole cost and expense, for preparing the proposed new location of every meter to those specifications reasonably required by the Assignee.

Every Customer shall deliver written notice to the Assignee once it has prepared the proposed new location.

##### **4.2.6.5.2 Relocation of Meter**

Upon receipt of that notice contemplated by Article 4.2.6.3 herein, the Assignee shall:

- I. Disassemble the subject meter from current location;
- II. Cancel the connection associated with the current location of the subject meter;
- III. Install the subject meter in the new location;
- IV. Establish a connection for the subject meter at the new location; and
- V. Place a seal on the new meter in accordance with applicable practices.

#### **4.2.6.6 Tests at Customer's Request**

##### **4.2.6.6.1 Request for Test**

Any Customer may request the Assignee to test the accuracy and functionality of any meter providing Service to such Customer's premises. The Assignee shall execute every request received, in the manner the Assignee deems fit.

##### **4.2.6.6.2 Testing Facilities**

Any meter tested pursuant to this Article may be tested by the Assignee meter workshop or any reliable organization equipped to perform meter-testing subject to the Assignee's decision, provided that the Assignee's reliance upon any such means shall, upon demand by any affected Customer, furnish such Customer with a statement certifying the method used in making such test and the accuracy of the meter so tested.

Every test conducted pursuant to this Article shall use sufficient methods to verify the accuracy and functionality of the meter so tested.

#### **4.2.6.6.3 Test Procedures**

Every test conducted pursuant to this Article shall be tested in the condition found at the applicable Customer's premises prior to any alteration or any adjustment, in order to determine an average meter error.

#### **4.2.6.6.4 Reporting Requirements**

The Assignee shall report the results of every test to every applicable Customer.

#### **4.2.6.6.5 Test Charges**

If, as a result of any test, any meter used for any Service is found to be registering more or less than ten percent (10%) the amount of any overcharge or undercharge based on a corrected meter reading for any period that any such meter was in Service, shall be either billed or refunded, provided that any such period shall not exceed twenty four (24) months.

#### **4.2.6.7 Adjustments of Bills for Meter Errors**

In the event that any error in any meter is due to some cause, the day of which can be ascertained or otherwise fixed, any overcharge or undercharge arising therefrom shall be computed back to, but not beyond, any such date.

### **4.2.7 SEPARATE PREMISES AND MULTIPLE UNITS AND RESALE OF WATER**

#### **4.2.7.1 Number of Services to Separate Premises**

Unless it elects otherwise, the Assignee shall supply Service to separate premises under a single or separate Service pipes.

#### **4.2.7.2 Services to Multiple Units on Same Premises**

The Assignee shall supply Service to separate houses, buildings, living units, and business quarters on the same premises or on any adjoining premises under or through any of the following means as the Assignee deems appropriate:

- I. Separate Service pipe: separate Service pipes to each and every unit provided with Service provided that the piping system from each Service is independent of each other and not interconnected in any way; or
- II. Single Service Pipe: A single Service pipe to supply the entire premises, in which case only one (1) minimum charge shall be applied.

#### **4.2.7.3 Resale of Water**

#### **4.2.7.4 Unauthorized Usage**

No Customer shall use water in a manner other than that covered by its application for service; knowingly permit leaks or the Wastage of Water; or knowingly bypass or damage a water meter.

##### **4.2.7.4.1 Resale of Water**

No Customer within the Service Area shall enter into any contract or agreement to resell any portion of the water to which its entitled for without prior written permission of the Assignee.

No Customer outside of the Service Area shall enter into any contract or agreement to resell any portion of water received by that Customer under any conditions whatsoever.

##### **4.2.7.4.2 The Assignee's Right of Inspection**

The Assignee and its employees shall have unrestricted access at reasonable hours to inspect the any water distribution system, service connections, and water meters to ensure that the rules and regulations concerning the taking, metering, using and/or reselling of water and Wastewater are being observed, and that its facilities are not damaged.

##### **4.2.7.4.3 Service Termination**

The Assignee reserves the right to disconnect or suspend the Water Service of any customer violating the rules and regulations concerning the taking, metering, using, or reselling of water or who is found to have deliberately damaged the Assignee's facilities. The Assignee's remedies herein are in addition to any other remedies and/or penalties due under the relevant regulations and/or the Applicable Law.

## **4.2.8 SERVICE INTERRUPTIONS**

### **4.2.8.1 Prevention and Cure Requirements**

Subject to the terms under the rationing program of water supply within the Service Area, the Assignee shall make every reasonable effort to prevent an interruption to any Service and, when any such interruption occurs, endeavour to re-establish such interrupted Service within the shortest possible time period with due regard to the safety of its Customers and public welfare.

### **4.2.8.2 Fire Department Notice Requirements**

Subject to the terms of the rationing program of water supply within the Service Area, in the event that any interruption of the water supply affects the Service to any public fire protection device, the Assignee shall promptly notify the appropriate fire authority or other public official responsible for fire protection of such interruption and of any subsequent restoration of Service.

### **4.2.8.3 Scheduled Interruptions**

#### **4.2.8.3.1 Notice Requirements**

Subject to the terms under the rationing program of water supply within the Service Area, should the Assignee find it necessary to reschedule any interruption to any Service that affects any Customer, it shall, wherever and whenever feasible, promptly notify every such Customer by public means (e.g., newspaper, television, etc.) and include in every such notice the date, time, and approximate duration of every such interruption.

The Assignee shall make every reasonable effort to reschedule every interruption at such a time as to minimize inconvenience to every Customer.

#### **4.2.8.3.2 Apportionment of Supply during Times of Shortage**

During any time of any threatened or actual water shortage, the Assignee shall apportion its available water supply among its Customers in such a manner that appears most equitable under the prevailing circumstance and with due regard to public health, safety, and welfare.

## **4.2.9 WATER CONSERVATION**

### **4.2.9.1 Use of Water Saving Devices and Practices**

The Assignee shall encourage, through public awareness campaigns and other similar means, every Customer to install devices to reduce the quantity of water to flush toilets and to reduce the flow-rate of showers.

#### **4.2.10 CUSTOMER SERVICES**

The Assignee shall meet, at a minimum, WAJ regulations relating to customer services and shall:

- (a) Periodically recommend to the Assignor improvements to existing rules (rights and obligations) covering its relationship with Customers, including handling of service requests and complaints;
- (b) Respond to all customer complaints;
- (c) Respond to all other issues related to disconnection and reconnection of Water Service;
- (d) Establish and/or develop customer service centres in convenient location(s) to provide customers with adequate facilities to pay bills, receive request for service, and handle all inquiries and complaints promptly and in accordance with the quality standards;
- (e) Develop a customer services training program for Assignee Staff who deal directly with Customers;

#### **4.2.10 FIRE PROTECTION**

##### **4.2.10.1 Furnished Under Filed Rate Schedules**

The Assignee shall provide water to fire-protection services at the rates and under the conditions set forth relevant regulations.

##### **4.2.10.2 Other Specific Considerations**

I. Every specification, location, installation, and responsibility for the maintenance of every fire hydrant, public and private fire-protection facility, connecting main, and their ownership may be subject to negotiation between the Assignee and any Service Applicant.

II. Every fire hydrant and public and private fire-protection facility shall be installed to the requirements of the Assignee and, when owned by the Assignee, shall be subject to such conditions as the PMU/WAJ may determine based upon compensation received for Service.

III. The Assignee shall charge the permanent locations of the civil defence based on the meter readings.

IV. The Assignee shall bear the cost of water used through the fire hydrants for fire fighting purposes only. Civil Defence or any other parties shall not carry the water by tankers from the fire hydrants for the use of their permanent locations.

### **4.3 TARIFFS AND COLLECTION OF REVENUES**

#### **4.3.1 TARIFFS**

The Assignee will charge the rates and other charges contained in the Tariff Schedule approved by the Council of Ministers.

##### **4.3.1.1. Rate-Setting Proceeding**

As needed to maintain its financial viability, the Assignee may submit, to the consideration of the Council of Ministers, proposed revisions of the Tariff Schedule and other charges which have been previously discussed and approved by its Management Committee.

##### **4.3.1.2. Authorization of billing and collection activities**

WAJ and the Government shall take all measures necessary to legally authorize the Assignee to undertake full billing and collection activities, and to assist as per the Collection of The Amiri Funds Collecting Law for the Year 1952, as amended including the enforcement of pertinent statutes, regulations, and instructions regarding Customer billing and payment.

#### **4.3.2 COLLECTION**

The Assignee shall collect all Revenues related to the Services provided within the Service Area and prepare, present for payment, and collect all statements for Services to Customers. The Assignee shall design the format and content of such statements. The Assignee shall retain all Revenues and interest earned thereon for the purposes of paying the costs of, but not limited to, the operation, maintenance, repair, and management of the Assets; investment, expansion, renewal, and renovation of its Assets; and the delivery of the Services to the Customers per the terms of this Agreement.

- (a) The Assignee shall maintain and update a computerized database of Customer's Water and Wastewater connections.
- (b) If deemed cost-effective, the Assignee shall upgrade the computerized

meter-reading billing and collection system including, but not limited to:

- a. Tracking water use by each Customer;
- b. Tracking all billing concepts (fixed and variable charges, fines, and surcharges) and average prices to different Customers;
- c. Tracking collections and receivables;
- d. Tracking service cut-off because of non-payment or other causes; and
- e. Tracking Customer service requests, complaints, and response time.

(c) To the extent possible, the Assignee shall ensure that the billing system is linked to and compatible with the computerized management information systems and financial reporting systems of the Assignor.

## **4.4 TREATMENT OF WATER AND WATER QUALITY TESTING**

### **4.4.1. Bulk Water**

In discharging the Services, the Assignee shall:

- (a) Efficiently manage all bulk water extracted or received to avoid wastage;
- (b) Manage all water, from extraction to delivery to Customers, to protect its quality from contaminating sources;
- (c) Ensure that all raw water is metered and that accurate records are maintained;

### **4.4.2 Treatment of Water**

In discharging the Services with regards to treatment of water, the Assignee shall ensure that drinking water is treated to meet Jordanian Raw Water Quality criteria, as may be from time to time amended.

### **4.4.3 Water Quality Testing**

- (a) As of the Effective Date, the Assignee shall maintain a water-quality monitoring program, and shall update it as required in accordance with the Prudent Industry Practice.
- (b) In the event of an unanticipated degradation in the quality of the water from different sources, the Assignor shall endeavour to take appropriate and prompt action to provide an alternate source of water.

- (c) For the plants it operates, the Assignee shall prepare a wastewater effluent-monitoring program in accordance with the Prudent Industry Practice.
- (d) The Assignee shall monitor water quality in the wastewater collection system and the discharge of harmful substances into the system by Non-Domestic or other users.
- (e) The Assignee shall promptly notify the Assignor of any failure to meet drinking water quality or effluent quality standards.
- (f) WAJ or the Ministry of Health of Jordan may direct the Assignee to discontinue using, either temporarily or permanently, raw water from any source if WAJ or the Ministry of Health determine, in their sole discretion, that the quality of the raw water no longer meets the Jordanian Raw Water Quality Criteria. The Assignee shall not use a well which it has been directed by WAJ or the Ministry of Health not to use until such time as the Assignee receives the prior written consent of WAJ or the Ministry of Health to do so. The Assignee retains the right to develop new water resources and Wells to replace those producing substandard raw water.
- (g) The Assignee shall promptly alert Customers of water quality failures that may affect their health or wellbeing.

#### **4.5 WATER DISTRIBUTION AND COLLECTION OPERATIONS**

The Assignee shall manage the water distribution and wastewater collection systems as described below.

##### **4.5.1 Water Distribution**

In discharging the Services with regards to its water distribution system, the Assignee shall:

- (a) Install pressure-reducing facilities and service reservoirs to maintain pressure, to the extent possible, levels in the water distribution system of no less than two (2) bars and no more than seven (7) bars at the water connections.

- (b) Install metered service connections for all Customers according to the regulations in force;
- (c) Ensure that pumps, storage tanks, pressure reducing stations, water distribution pipes and accessories are operating efficiently at all times;
- (d) Produce a plan to provide continuous Water Service to all the population;
- (e) Produce a best-practice cost-effective plan to reduce the response time to levels that reflect best practice in the industry, regarding water main breaks and wastewater blockages;
- (f) Develop and implement a comprehensive program to monitor the hours of water supply to different zones and to monitor the constancy of supply to Customers; and
- (g) Develop information systems to monitor quality standards for the water supply system;
- (h) Ensure that all equipment associated with the pumping, transmission, and metering of raw water to the distribution systems is operating within acceptable accuracy limits and is fully functional at all times;
- (i) Develop a comprehensive and systematic detection and repair program to monitor Non-Revenue Water in the water distribution system; and cooperate with the relevant Jordanian authorities among, which are the district administration, Civil Defence Department of Jordan, and any other third party with respect to the provision of Services and the operation and maintenance of same.

#### **4.5.2 Wastewater Collection**

In performing the Services with regard to Wastewater Services, the Assignee shall:

- (a) Design and supervise any Contractors carrying out the installation of service connections for new Customers to the wastewater collection system according to regulations in force;
- (b) Regularly inspect sewers, identify causes of blockage, and take corrective and preventive measures.
- (c) Develop a plan to detect and correct illegal rain water connections to the wastewater collection system and wastewater discharges to the drainage system;
- (d) Develop and implement a program for the periodic cleaning of sewers and appurtenances; and

- (e) Develop information systems to monitor performance standards for the Wastewater system. To the extent possible, such information systems shall be compatible with PMU's system;
- (f) Monitor the quality of Non-Domestic discharges into the wastewater collection system through a sampling program and take enforcement measures, including assessment of prescribed financial penalties;
- (g) Develop and implement a comprehensive and systematic repair and maintenance program for the collection system; and
- (h) Operate and maintain the wastewater treatment plants to achieve the effluent standards set out in the Monitoring Protocol.

#### **4.6. HEALTH AND SAFETY MANAGEMENT**

- (a) The Assignee shall ensure that all activities undertaken in performing this Agreement, by it or by its Subcontractors, are carried out in such a manner as to:
  - (i) Protect the health and safety of all personnel of the Assignee, Assignor, any Contractor, Customers, and all third parties who may be potentially affected; and
  - (ii) Protect the work and the property of the Assignee, the Assignor, any Contractor, Customers, and all third parties; and
- (b) Such activities shall be performed in accordance with the Assignee health and safety requirements and with the requirements of the relevant health and safety management system. The Assignee shall be responsible for familiarizing personnel and those of its Subcontractors with these requirements.

#### **4.7. SUBCONTRACTING**

- (a) The Assignee may enter into any Contract with a Contractor(s) to perform some elements and/or parts of the Services. The Assignee may also contract the management of the whole Company to any other experienced utility company through a management contract.
- (b) The Assignee shall ensure that any of its obligations which are relevant to the scope of work of the Contractor pursuant to this Agreement are incorporated in

the terms and conditions under which such Contractor is retained, including, without limitation, any applicable performance measurements.

- (c) Contracting shall not relieve the Assignee of any of its obligations under this Agreement. The Assignee shall guarantee the performance of any and all Contractors that it may engage at any time for any purpose.
- (d) While the Assignee shall at all times and for all purposes remain the sole and exclusive Party vis-à-vis WAJ/MWI WAJ/MWA shall have the right to enforce its rights and privileges against either the Assignee or the Assignee's Contractor(s), or both of them. All sub-contracts or agreements entered into by the Assignee with any Subcontractor shall contain language to that effect.
- (e) Consistent with the Jordanian rules for procuring services from public-sector providers, the Assignor shall be eligible to supply Services to the Assignee as a Contractor, provided that the quality of services offered and the price proposed are market-competitive and that the award of the right to provide such Services is consistent with normal procurement practices and have been competitively tendered out.

#### **4.8. LEGAL REQUIREMENTS AND REGULATIONS**

The Assignee shall ensure that all activities undertaken in relation to performing this Agreement, either by it or by its Contractors, complies with all applicable international, national, and local laws, regulations, and instructions relating to safety and health. The Assignee warrants that it is familiar with the contents and implications of all applicable legislation, regulations, and instructions.

#### **4.9. EXCLUSIVITY OF SERVICES**

So long as the Assignee is (i) continuously providing the Services in compliance with the provisions of this Agreement and the Applicable Law, and (ii) not found in breach of any of its commitments and obligations under this Agreement, the Assignee shall have the exclusive right to provide the Services in the Service Area and the Assignor shall refrain from allowing any third party to provide any part of the Services in the Service Area without the Assignee's express written consent.

## **ARTICLE 5 –EXTRACTION AND BULK WATER SUPPLY**

### **5.1. OWNERSHIP OF UNDERGROUND WATER RESOURCES**

All raw water resources in the Service Area shall be expressly excluded from Transferred Assets.

### **5.2 OWNERSHIP OF WELLS AND USE OF SURROUNDING LAND**

- a. The Wells supplying the Assignee shall be included in Transferred Assets
- b. Land adjacent to the wells and land upon which the wells are situated shall be transferred to the Assignee.
- c. The Assignor shall grant to the Assignee such easements to the land in order to operate and maintain the wells.

### **5.3 ASSIGNOR’S DUTY TO ALLOW EXTRACTION OF GROUNDWATER TO ASSIGNEE**

#### **5.3.1 Existing Wells**

In normal withdrawal conditions, the Assignor shall allow the Assignee to extract all water required to serve Users from the Wells in the Service Area. The Assignor and the Assignee shall agree on the maximum limit allowed for the extraction from Wells and groups of Wells by the Assignee.

#### **5.3.2 New Wells**

The Assignee may develop water resources from new Wells inside the Service Area provided that it shall procure required permits from WAJ according to relevant bylaws, regulations, and WAJ's technical criteria.

#### **5.3.3. Extraction Fee**

On the Effective Date, there shall be an extraction fee of 0.02 JD per m<sup>3</sup> payable by the Assignee to the Assignor. This extraction fee is defined by WAJ (*or later by the regulator of the Jordan Water Sector*) and in accordance with the relevant bylaws and instructions.

## **5.4 ASSIGNEE'S RIGHT TO CONSTRUCT ADDITIONAL IMMOVABLES ASSETS**

- (a) Should one (1) or more Wells plug or foul, thereby depriving the Assignee of the water it requires, then the Assignee shall, in consultation with the Assignor, have the right to construct or acquire, at its own expense, extraction, treatment, and transmission fixed Assets in addition to the existing fixed Assets.
- (b) Subject to WAJ/MWI's approval, the Assignee shall have the right to develop additional water resources. The Assignee shall be the owner of any newly constructed assets relating to such additional water resources.

## **5.5 QUANTITY AND QUALITY OF WATER**

- (a) The Assignor shall have the sole responsibility for the quantity of water that the Assignee may extract from any sources.
- (b) The Assignor shall have responsibility for the quality of water it delivers to the Assignee at the point of delivery.
- (c) The Assignee shall have sole responsibility for the water it extracts, treats, distributes, and provides to Users within the Service Area.
- (d) The quality of water that the Assignee shall provide to Users shall at least meet, or even exceed, all applicable Jordanian Raw Water Quality criteria..
- (e) In its operations Assignee shall meet and enforce all environmental standards and requirements specified in the relevant laws and regulations of Jordan.
- (f) Failure of the Assignee to meet the standards described in this Agreement, it shall be responsible for such failure under relevant laws, regulations, and contractual remedies.

## **5.6 PRICE AND TERMS OF PAYMENT**

The Assignee shall pay to the Assignor the price defined in the Bulk Water Agreement for water purchased from the Assignor, the Jordan Valley Authority (JVA) or other water companies to be distributed to Users in the Service Area. The fees and water volumes set in the Bulk Water Agreement shall apply until the Parties modify the terms of such agreement. Payments by the Assignee shall be made monthly.

The Assignee shall have the right to export bulk water from the sources in its area to other

water companies (i.e Miyahuna) with the approval of the Assignor. The fees and water volumes set in the Bulk Water Agreement shall apply until the Parties modify the terms of such agreement. Payments to the Assignee shall be made monthly.

The Assignor and JVA shall install meters on every source of bulk water supply to measure the quantities of water purchased or sold.

## **ARTICLE 6-ACCOUNTING DATA, INFORMATION, AND RECORDS PROVIDED TO WAJ**

### **6.1 INFORMATION**

- (a) The Assignee shall provide the Assignor with reasonable access to all data, information, and documentation of any kind whatsoever, whether stored in hard copy or electronically, related to the Assets, Services, and Service Area, and any other matters related to this Agreement.
- (b) Pursuant to WAJ's general and specific authority to regulate the Assignee and its reasonable exercise of the same, the Assignee shall provide the Assignor with unrestricted access and make immediately available to the Assignor every account, Record, and any such other information related to any activity governed by or related to the Rules, and the Assignor shall have the right to make and retain copies of the same.
- (c) The Assignee shall ensure that its accounts, Records, and other information are organized and indexed in such a manner to provide immediate accessibility to the Assignor.
- (d) The data, information, and documentation shall include, but not be limited to:
  - (i) All information of any kind related to Revenues;
  - (ii) All files, documents, plans, drawings, specifications, notes, minutes of meetings and conversations; and
  - (iii) All manuals, reports, condition surveys, safety records, audit records, inventories, laboratory test results, procurement records, Customer information, financial information, financial statements, complaints, invoices, accounting records, contracts, staffing and personnel records, whether held by the Assignee or its Subcontractors, related to the Services provided.

- (iv) Access to the data, information, and documents shall not disturb the operations or constitute undue inconvenience to the Assignee and shall be granted for appropriate dates and hours.
- (v) The Assignor's rights to reasonable access all data, information, and documentation including the right to make and retain copies of such data, information, and documentation.

## **6.2 RECORDS MANAGEMENT, ACCOUNTING, INSPECTION, AND AUDITING**

- (a) The Assignee shall keep up-to-date, accurate, and systematic accounts based on Prudent Industry Practice, accounting systems and financial records in respect of the Services, immovable and movable assets, and Service Area in accordance with IAS, Jordanian law, and the requirements of this Agreement.
- (b) The Assignee shall store, organize, catalogue, index, and manage all data, information, and documentation related to the Services, Assets, Service Area, and any other matters related to this Agreement in keeping with Prudent Industry Practice with regard to records management.
- (c) The Assignor shall have the right to audit all accounts, financial information, financial statements, and all technical information and performance in respect of any matters related to this Agreement at any reasonable times. The Assignor may exercise the audit or audits itself or may retain an independent auditor, at the Assignor's expense, to complete them.
- (d) No government agency other than the shareholder or its designated representative shall perform financial audits of the Assignee.

## **6.3 FISCAL YEAR AND ANNUAL REPORT**

The Assignee shall have a fiscal year starting on January 1<sup>st</sup> and ending on December 31<sup>st</sup> in each year. No later than sixty days (60) days following the end of the fiscal year, the Assignee shall issue an annual report to its shareholders in the form prescribed by its Management Committee. Such reports shall be disclosed as per the Applicable Law.

### **6.3.1 Information in Annual Financial Statements**

The Assignee shall ensure that its annual financial statements:

- a. Accurately present the state of its business, financial results, performance against

predetermined objectives, and financial position as at the end of the financial year concerned;

- b. Compare its performance in the financial year concerned to its performance in the financial year immediately preceding the same;
- c. Include, at a minimum, clear and transparent cash flow statements, income statements, and balance sheets; and

Include particulars of:

- (a) Every material loss through criminal conduct or Force Majeure and any irregular expenditure that occurred during the financial year;
- (b) Every criminal, civil, and disciplinary step taken as a consequence of any such loss or irregular expenditure;
- (c) Every loss recovered or written off; and
- (d) Any other matter prescribed by WAJ.

#### **6.4 QUARTERLY FINANCIAL REPORTS**

The Assignee shall prepare quarterly financial statements in accordance with IAS. Such statements shall be reviewed by the auditors. The un-audited quarterly financial statement shall be submitted to the Assignor within thirty (30) business days after the closing of the books of each calendar quarter. Within sixty (60) days after the closing of the books for that quarter, the Management Committee of the Assignee shall prepare and submit to the Assignor quarterly reports on the management, operations, and finances of the Assignee, including copies of the quarterly financial statements (audited if required by law); any notes and comments by the auditors; all calculations required to be set out for purposes of this Agreement; progress reports made with reference to the business plan; and reports on any other matters which the management committee may deem relevant or which may reasonably be requested by the Assignor.

#### **6.5 ANNUAL AUDIT AND FINANCIAL REPORT**

The Management Committee of the Assignee shall cause to be prepared audited annual financial statements for the Assignee in accordance with IAS and Jordanian laws. Within ninety (90) days after the end of each calendar year the Management Committee shall prepare and submit to the Assignor an annual report on the management, operations, and finances of the Assignee during the preceding year, including copies of the audited

financial statements with the auditors' notes and comments; all calculations required to be set out therein for purposes of this Agreement; progress reports made with reference to the business plan for the preceding year; and reports on any other matters which the management committee may deem relevant or which may reasonably be requested by the Assignor.

### **6.5.1 Independent Auditor**

The Assignee shall engage an independent auditor duly licensed in the Jordan who shall audit its annual financial statements for each and every year (or any portion thereof).

### **6.5.2 Submission of Audited Statements**

For each and every year, the Assignee shall submit to the Assignor two (2) copies of its audited annual financial statements and any reports communicating the results of the audit, including management letters, not later than one hundred twenty (120) days, or such extended period as the Assignor may determine, after the end of its most recent financial year.

### **6.5.3 Duty of Care**

The Assignee shall ensure that those audited financial statements submitted to the Assignor comply with the following requirements:

#### **(a) The Assignee's Duty of Care**

They contain an unqualified statement unanimously passed by the Management Committee that:

- i. Warrants the veracity of the underlying financial information; and
- ii. Warrants the accuracy of the audited financial statements.

#### **(b) Auditors' Duty of Care**

They contain an unqualified statement made by the auditors that they have:

- (i) Conducted their audit in accordance with applicable accounting and audit standards, practices, procedures, and Applicable Law so as to obtain reasonable assurance that the Assignee's financial statements are free from any material misstatement;
- (ii) Specifies the scope of their audit; and
- (iii) Provides an unqualified audit opinion that the Assignee's financial statements fairly present, in all material aspects, the financial position of the Assignee, or, in the absence of such unqualified statement, a qualified statement which explicitly declares every matter and qualification which prevents them from providing such

unqualified statement and further declares the specific nature of their concerns with each of the same.

## **6.6 OWNERSHIP OF DATA, INFORMATION, AND DOCUMENTATION**

The Assignee shall own all data, information, and documentation related to the Services, immovable assets, and Service Area, whether the data, information, and documentation were in existence prior to the Effective Date or came into existence thereafter, and whether the data, information, and documentation were produced by WAJ or PMU or the Assignee.

## **6.7 WAJ AUTHORITY OVER RECORDS**

### **6.7.1. Request for Additional Information**

Pursuant to WAJ's general and specific authority to regulate the Assignee and its reasonable exercise of the same, WAJ may request additional information or documents from the Assignee or its auditor regarding the Assignee's Records or the services performed by its auditor.

### **6.7.2 WAJ Audit of Information**

Pursuant to WAJ's general and specific authority to regulate the Assignee and its reasonable exercise of the same, WAJ may, at its sole discretion, audit the accounts, financial information, financial statements, technical information, Records, and other information of the Assignee in respect of any matter governed by or related to any regulatory document at any time and without any prior notice to the Assignee.

### **6.7.3. Retention of Records**

Unless otherwise specified by any regulatory document, the Assignee shall keep every account, record, evidence, and every other piece of information required to be kept by the same for a period of at least five (5) years following the close of the financial year in which it was created.

### **6.7.4. Execution of Rights**

In executing its rights under this and any other regulatory document, WAJ or any authorized employee or agent shall exercise their best efforts to:

- (a) Use the least intrusive means to realize such rights, as reasonably available in the circumstances at hand; and
- (b) Minimize disruption to other activities at the Assignee not affected by the realization of such rights, as reasonably possible in the circumstances at hand.

## **6.8 INSPECTORS AND INSPECTIONS**

WAJ may appoint any person or entity in its service, subject to control and direction by WAJ, as well as those requirements hereunder, as an inspector or adjunct inspector to perform any or every function assigned to inspectors hereunder.

The Assignee shall allow WAJ or its delegate unrestricted access to its premises and operations and otherwise assist the same in executing any of their powers and functions permitted by any regulatory agency, including, but not limited to, those described herein.

## **6.9 EMERGENCY SITUATIONS**

In the event of the occurrence of any emergency that relates to the provision of the Services in the Service Area, the Assignor shall have the right to access any and all facilities operated by the Assignee, to conduct any necessary investigation and to review all documents and/or technical information which are directly related thereto.

# **ARTICLE 7 - INDEMNITY AND INSURANCE**

## **7.1 INDEMNIFICATION BY THE ASSIGNEE**

- (a) The Assignee shall indemnify and hold harmless WAJ and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property arising in connection with providing the Services and by reason of the conduct of the Assignee or its Contractors or their employees, or the Assignee's officers or agents.
- (b) If any proceedings are brought or any claim is made against the Assignee that might subject WAJ to liability under this provision, the Assignee shall promptly give WAJ written notice thereof. At its own expense, the Assignee may conduct the proceedings and any negotiations for the settlement of the

claim. If the Assignee fails to notify WAJ within twenty-eight (28) days after receipt of a notice of claim that it intends to conduct the proceedings, then WAJ shall be free to conduct the proceedings on its own behalf. Unless the Assignee has failed to notify WAJ within the (28) day period, WAJ shall make no admission that may be prejudicial to the defence of the proceedings. At the Assignee's request, WAJ shall afford all available assistance to the Assignee in conducting the proceedings and shall be reimbursed by the Assignee for all reasonable expenses incurred in so doing.

## **7.2 INDEMNIFICATION BY WAJ**

- (a) WAJ shall indemnify and hold harmless the Assignee and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person, or loss of or damage to any property arising in connection with providing the Services and by reason of the conduct of WAJ or its Contractors or their employees, or WAJ's officers or agents.
- (b) If any proceedings are brought or any claim is made against WAJ that might subject the Assignee to liability under this provision, WAJ shall promptly give the Assignee written notice thereof. At its own expense, WAJ may conduct the proceedings and any negotiations for the settlement of the claim. If WAJ fails to notify the Assignee within twenty-eight (28) days after receipt of the notice that it intends to conduct the proceedings, then the Assignee shall be free to conduct the proceedings on its own behalf. Unless has failed to notify the Assignee within the (28) day period, the Assignee shall make no admission that may be prejudicial to the defence of the proceedings. At WAJ's request, the Assignee shall afford all available assistance to WAJ in conducting the proceedings and shall be reimbursed by WAJ for all reasonable expenses incurred in so doing.

## **7.3 MITIGATION BY PARTIES**

The Party entitled to the benefit from an indemnity under this Agreement or due to the operation of Services shall take all reasonable measures to mitigate any loss or damage that has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

## **7.4 LIMITATION OF LIABILITY**

Save as provided for under the Applicable Law, and except in cases of criminal negligence or

wilful misconduct, neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or interest costs.

## **7.5 SURVIVAL OF INDEMNIFICATION RIGHTS AND OBLIGATIONS**

The foregoing indemnity rights and obligations shall survive the completion or termination of this Agreement and remain in full force and effect.

## **7.6 INSURANCE**

7.6.1 The Assignee shall at its expense take out and maintain throughout the Term of this Agreement in effect, or cause to be taken out and maintained in effect, during the performance of the agreement, at a minimum the insurances set forth below.

- (a) Professional Liability Insurance. Covering any loss or damage resulting from professional negligence occurring in connection with the Services.
- (b) Third-Party Liability Insurance. Covering bodily injury or death suffered by third parties, including the Assignee's employees, and loss or damage to property occurring in connection with the Services.
- (c) Automobile Liability Insurance. Covering use of all vehicles used by the Assignee or its Contractors, whether or not owned by them, in connection with the Services.
- (d) Insurance of its Assets.

7.6.2 Contractors and Subcontractors shall be named as co-insured under all insurance policies taken out by the Assignee except for the workers' compensation and employer's liability insurances. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of this Agreement shall be waived under such policies.

7.6.3 The Assignee shall keep certificates of insurance, or copies of the insurance policies, as evidence that the required policies are in full force and effect. Such certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Assignee by insurers prior to cancellation or material modification of policy.

7.6.4 The Assignee shall ensure that, where applicable, the contractors and Subcontractors shall take out and maintain in effect adequate insurance policies for their employees and vehicles and for work executed by them, unless such Subcontractors are covered by the policies taken out by the Assignee.

- 7.6.5 The Parties shall consider whether there is a need to procure insurance against risks of the Assignee's business interruption. The Assignee's Management Committee shall consider a resolution of whether such insurance is needed.
- 7.6.6 With regard to each policy issued to the Assignee, except for policies relating to the Assignee's property, the Assignee and WAJ shall be named as co-insured parties.
- 7.6.7 All insurers' rights of subrogation against co-insured parties for losses or claims arising out of the performance of this Agreement must be waived.
- 7.6.8 The Assignee shall deliver to WAJ certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. Such certificates shall provide that no less than twenty-one (21) days' notice shall be given to WAJ by insurers prior to cancellation or material modification of a policy.
- 7.6.9 Where applicable the Assignee shall ensure that its Contractor(s) obtain and maintain in effect adequate insurance policies for the Contractor(s) and their personnel, equipment, and work executed by them, unless the Contractor(s) are covered by the policies taken out by the Assignee.
- 7.6.10. If the Assignee fails to take out or maintain in effect the insurance referred to in this Article, WAJ may take out and maintain in effect any such insurance and the Assignee shall cover all associated premiums and expenses incurred by WAJ.
- 7.6.11 The Assignee shall prepare and pursue all claims made under the policies and all monies payable by any insurers shall be paid to the Parties, as their respective interests may appear. WAJ shall give to the Assignee all such reasonable assistance as may be required by the Assignee. With respect to insurance claims in which the Assignee's interests are involved, the Assignee shall not give any release or make any compromise with the insurer without the prior written consent of the Assignor. With respect to insurance claims in which the Assignee's interests are involved, the Assignor shall not give any release or make any compromise with the insurer without the prior written consent of the Assignee.

## **ARTICLE 8 -TAXES, CHARGES, & AUTHORITIES**

The Assignee is exempted from all taxes, duties, and fees, including, but not limited to, the following:

- (a) Registration fees, duties fees and levies imposed or to be imposed on the transfer, conversion of vehicles "red plate" to "white plate", licensing and renewal of such licensing of all vehicles owned or to be owned by the Assignee;
- (b) Land and Property: transfer fees and service charges;
- (c) All stamp imposed or to be imposed on water bills or otherwise levied;
- (d) Capital Increase Duties;
- (e) Sales tax and custom duties relating to its operation within the Service Area and from sales of Services; and
- (f) Social service taxes and fees.

On behalf of the Assignee, WAJ shall request the Council of Ministers to grant the Assignee, the right to exercise WAJ authorities, as specified in WAJ Law and to benefit from rights of way and easements in the Service Area among which the right to carry out public works in public and private lands at no costs, fees or other reimbursements to the Assignee.

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## **ARTICLE 9-REGULATION AND PERFORMANCE MEASUREMENTS**

Until the Government establishes a national agency to regulate the provision of Water and Wastewater Services in Jordan, the Assignee will be regulated by the PMU. For the purposes of this Agreement, PMU shall be referred to as (Regulator) according to a Monitoring Protocol which will be agreed on by the Regulator and the Assignee.

The Parties acknowledge that they will apply the Monitoring Protocol once finalized by the Regulator, coordinated and agreed with WAJ and the Assignee, and thereafter made applicable to the Assignee. Pending the application of the Monitoring Protocol to the Assignee, the Regulator shall regulate the Assignee pursuant to applicable existing regulations and the terms.

## **ARTICLE 10 - REPRESENTATIONS, WARRANTIES, AND COVENANTS**

### **10.1 REPRESENTATIONS AND WARRANTIES OF ASSIGNOR**

The Assignor represents and warrants to the Assignee, and acknowledges that the Assignee is entering into this Agreement in reliance on, the following representations and warranties. Except for the express representations and warranties described below, the Assignor makes no representation or warranty, express or implied, concerning the Transferred Assets, this Agreement, or the Associated Documents.

#### **10.1.1 Due Diligence**

This Agreement includes the transfer of Appointed WAJ Employees who shall be performing substantially the same work as that being performed for the Assignor by such employees. The Assignee has engaged in such due diligence as it deems appropriate under these circumstances. The transfer of the Transferred Assets is based upon the results of that due diligence and there has been no reliance upon the representations of the Assignor to the Assignee other than as set forth below.

#### **10.1.2 Authority**

As of the Effective Date, the execution and delivery of this Agreement and Associated Documents have been authorized appropriately by the Assignor and by the Council of Ministers as required by Article 28 of the Water Authority of Jordan Law, No. 18 of 1988. The Assignor shall defend any action or challenge to this Agreement respecting the authority of the Assignor to conclude and perform this Agreement.

#### **10.1.3 No Legal Proceedings**

There is no action, suit, or proceeding pending or threatened against the Assignor OR THE Assignee which would materially affect the Assignor's or the Assignee's ability to enter into or perform its obligations pursuant to this Agreement.

#### **10.1.4 Compliance with Regulations**

The Bylaws, regulations, and instructions of the Assignor permit an Assignment Agreement such as this Agreement to be made with an entity such as the Assignee.

#### **10.1.5 Access to Land**

After the Effective Date, and upon receipt of a request from the Management Committee of

the Assignee, the Assignor shall render all reasonable assistance to the Assignee to gain access to public and private land that the Assignee may require to provide Services.

#### **10.1.6 Title to Personal Property**

The Assignor has good title to all Assets used in the Service Area, free and clear of any liens or encumbrances.

#### **10.1.7 No Conflicts**

The execution and delivery by the Assignor of this Agreement shall not:

- (e) Conflict with, or result in a breach of, any of the provisions of its statutory authority or Bylaws;
- (f) Breach, violate, or contravene any applicable law, rule, or regulation of the Hashemite Kingdom of Jordan or any political subdivision thereof, or any order, writ, judgment, injunction, decree, determination, or award;
- (g) Create any right of termination or acceleration or encumbrance that would have a material adverse effect on the Transferred Assets; or
- (h) Conflict in any respect with, or result in a breach of or default under, any contract, license, franchise, permit, or any other agreement or instrument to which the Assignor is a party or by which it or any of the Transferred Assets may be bound that would have a material adverse effect on the Transferred Assets (except for agreements and instruments that require the consent or approval of a third party for the transactions contemplated by this Agreement).

#### **10.1.8 Government Authority**

The Assignor and the Assignee have the necessary authority to operate in Jordan. All such authority is valid and in full force and effect. Other than the foregoing authority, no license, permit, consent, or other government authorization is required in connection with the execution or performance of this Agreement or the Associated Documents.

#### **10.1.9 No Rights for Others to Transferred Assets**

The Assignor is not a party to any outstanding contract or other arrangement giving any person or entity any present or future right to require the Assignor to transfer to any person or entity ownership or possessory interest in, or to grant any lien on, any of the Transferred Assets, other than pursuant to this Agreement.

#### **10.1.10 Contracts**

The Assignor has performed and is performing all material obligations required to be performed by it under the contracts and is not in breach or default (with or without notice, lapse of time, or both) in any material respect under any of these contracts. To the knowledge of the Assignor, no other party to any of these contracts is in breach or default (with or without notice, passage of time, or both) in any material respect.

#### **10.1.11 Environmental Liability**

Notwithstanding the limitation on warranty period, none of the immovable assets contains any materials of environmental concern in amounts or concentrations which (i) constitute a violation of, or (ii) could reasonably give rise to liability under, Jordanian environmental law. All operations of the immovable assets are in substantial compliance with all applicable Jordanian environmental laws. There is no contamination at, under, or about any facility which could materially interfere with the operation of the facility. The Assignor has received no substantial written or oral notice, nor is it subject to any claim or proceeding by any person, alleging liability or potential liability relating to environmental matters, nor does the Assignor have knowledge or reason to believe that any such claim or proceeding will be received or is being threatened. Materials of environmental concern have not been transported or disposed of from any facility in violation of any Jordanian environmental law. No materials of environmental concern have been used, handled, generated, treated, stored, or disposed of at, on, or under any portion of the immovable assets in violation of, or in a manner that could reasonably give rise to liability of the Assignor under, any Jordanian environmental law. The Assignee's operational practices should eliminate the release or threat of release of materials of environmental concern at or from any facility related to the operations of the Assignor in violation of or in amounts or in a manner that could reasonably give rise to liability of the Assignor or the Assignee under any environmental law. Based on past and present practices, there are no past or present activities, events, conditions, or circumstances that reasonably could give rise to liability with respect to the immovable assets, the Assignor or the Assignee under any Jordanian environmental law. The Assignee shall not be responsible for any environmental violations occurring prior to the Effective Date nor for any pollution found after the Effective Date, whose origin can be traced back in whole or in part to any date prior to the Effective Date.

#### **10.1.12 Compliance with The Applicable Law**

At the Effective Date and Execution Date, the Assignor warrants that the immovable and movable assets and all Plant and Equipment are in compliance with the Applicable Law(s) in Jordan.

## **10.2 REPRESENTATIONS AND WARRANTIES OF ASSIGNEE**

The Assignee represents and warrants to the Assignor and acknowledges that the Assignor is entering into this Agreement in reliance on the following representations and warranties. Except for the express representations and warranties made below, the Assignee makes no representation or warranty, express or implied, concerning the Transferred Assets, this Agreement, or the Associated Documents.

### **10.2.1 Good Standing**

The Assignee was formed for purposes of entering into this transaction, is a duly incorporated and existing Limited Liability Company, and has taken all necessary steps to carry on business in Jordan in accordance with Jordanian law.

### **10.2.2 Authority: Execution**

The Assignee has the full corporate power and authority to execute and deliver this Agreement and perform its obligations hereunder. The Assignee shall defend any action or challenge to this Agreement respecting its authority to conclude and perform this Agreement.

### **10.2.3 Information Review**

The Assignee confirms that it has entered into this Agreement on the basis of its own proper examination of all relevant data and information relating to the Assets, Services, and Service Area.

### **10.2.4 No Conflict**

The execution, delivery, or performance of this Agreement and the fulfilment of its obligations do not conflict with or result in:

- (a) A breach of any Applicable Law or the Memorandum and Articles of Association or Bylaws;
- (b) Conflict with, or result in a breach of or default under, any contract, license, franchise, permit, or any other agreement or instrument to which the Assignee is a party.

### **10.2.5 No Litigation**

There are no actions, suits, claims, investigations, or proceedings pending or threatened against the Assignee that would materially affect its ability to enter into or perform its obligations pursuant to this Agreement.

### **10.2.6 Governmental Authorizations**

No consent, approval, or authorization of, or designation, declaration, or filing with, any government agency or authority on the part of the Assignee is required in connection with the execution or delivery of this Agreement or the Associated Documents.

## **10.3 SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

All representations and warranties made by the Parties in this Agreement shall survive the Termination Date for a period of twenty-four (24) months.

## **ARTICLE 11 - CHANGES; FORCE MAJEURE**

### **11.1 CHANGES IN LEGISLATION**

If after the signing of this Agreement any enactment of or amendment to any statute, regulation, instruction, decree, or other law of Jordan materially affects the rights or the reasonable economic expectations of any of the Parties to this Agreement, the Parties agree to enter into negotiations in good faith with a view to making such amendments to this Agreement or the Associated Documents as may be necessary to give effect to the original intentions of the Parties.

### **11.2 FORCE MAJEURE**

Issues of Force Majeure shall be decided by reference to relevant provisions of the Jordanian Civil Code, including, but not necessarily limited to, Article 205 thereof, which provides: "If general abnormal incidents which could not be foreseen occur and due to their occurrence the performance of the contractual obligation, though not becoming impossible is rendered cumbersome to the debtor, threatening him with serious loss, the court may, according to the circumstances and after balancing the interests of both parties, reduce the cumbersome obligation to the reasonable extent, if so prescribed by equity, and every agreement to a contrary effect shall be void."

## **ARTICLE 12 - DISPUTE RESOLUTION**

### **12.1 RESOLUTION THROUGH NEGOTIATION**

In the event any dispute or disagreement arises between the Assignor and the Assignee in connection with this Agreement, including without limitation, any question regarding the existence, validity, or termination of this Agreement, execution of the Services, or interpretation of Performance Measurements and other regulatory features, the Parties shall use their best efforts to resolve the dispute or controversy by negotiation and discussion conducted in good faith. The Parties may request the assistance of a mediator, the costs for whom shall be divided equally between Assignor and Assignee.

### **12.2 ARBITRATION**

In the event any dispute or disagreement cannot be resolved through negotiation or mediation, the dispute or disagreement shall be resolved by arbitration. Either Party may give notice in writing to the other Party, of its intention to commence arbitration of the matter in dispute. Arbitration shall be carried out in accordance with the Arbitration Law of Jordan No. 31 for the Year 2001 as modified. The Arbitration shall be conducted in Amman (Jordan) in accordance with this Agreement's language in Article 1.3 above. The decision of the Arbitrator shall be in writing, with reasons stated and shall be final, binding, and enforceable in any court of competent jurisdiction. The Parties waive all objections to enforcement of the award. To the fullest extent allowed by law the Parties waive all rights to appeal decisions of the Arbitrator.

### **12.3 TERMINATION OF ARBITRATION**

The arbitration procedures may be terminated by mutual agreement of both Parties.

### **12.4 ONGOING PERFORMANCE DURING SETTLEMENT OF DISPUTES**

Notwithstanding any reference to negotiations, mediation, or arbitration, the Parties shall continue to perform their respective obligations under this Agreement throughout the negotiations, mediation, or arbitration unless they agree otherwise.

## **ARTICLE 13 - DEFAULT AND TERMINATION**

### **13.1. FAILURE TO PROVIDE THE SERVICES**

Without prejudice to any other rights or remedies it may possess, the Parties confirm their respective understanding to the nature of the Project and the Assignment Agreement which is related to a vital utility and its relevant importance to the Users. Therefore it is agreed that should the Assignee fail in any way to provide the Services, the Assignor may issue an instruction requiring the Assignee to request external assistance to provide the Services properly and in accordance with this Agreement. The instruction shall state in detail the ways in which the Assignor considers that the Assignee should be assisted. The instruction shall specify a date, which shall not be unreasonable given the urgency and technical practicalities involved, by which the Assignee assisted by an external party shall be required to correct the deficiency. By such date the Assignee shall correct the deficiency in the Services. If the Assignee considers that there has been no failure to provide the Services, within three (3) working days of its receipt of the Assignor's instruction, or such other period agreed to by the Assignor if proposed by the Assignee, it shall advise the Assignor why it considers that there has been no failure to provide the Services.

Notwithstanding the aforementioned generality, the Assignor, pursuant to the Articles below, may, in case of breaches by the Assignee, recourse to the following relevant actions.

### **13.2 BREACHES BY THE ASSIGNEE**

#### **13.2.1 SERIOUS Breach**

Any of the following shall be construed and interpreted as a serious breach by the Assignee, if the Assignee or its Subcontractors:

- (a) Gives notice of or becomes insolvent, bankrupt, or is otherwise unable to pay its debts or admits in writing its inability to pay its debts as they fall due, or gives notice of any intention to enter, or enters into, any composition or arrangement with or for the benefit of its creditors, or makes a general assignment for the benefit of its creditors, or has execution or distress levied on it and such execution or distress is not lifted within thirty (30) days after it is imposed;
- (b) Has an administrator or receiver, or receiver and manager, appointed over the whole or any part of its undertaking or assets, or has a receiving or adjudicating order made against it;

- (c) In the final judgment of any court of competent jurisdiction reached as a result of any civil or criminal proceeding in which all normal means of appeal have been exhausted or lapsed or pursuant to any final decision reached as a result of any arbitration proceeding taken under this Agreement, has engaged in any corrupt practice or deceptive practice; provided, however, that said court or arbitration panel has specifically found that such corrupt practice or deceptive practice was committed by the Assignee and/or by the Assignee's management and/or employees;
- (d) Fails to adhere to the decision of any dispute-resolution mechanism as required by this Agreement;
- (e) Fails to remedy any material breach committed by it within that time period provided for the same under this Article ; or
- (f) Terminates, repudiates, cancels, or otherwise negates any obligation under this Agreement, actually or constructively.

### **13.2.2 Material Breach**

Except for any serious breach contemplated by Article 13.2.1 herein, any of the following shall be a material breach of this Agreement by the Assignee, if the Assignee or its Subcontractors:

Commits any breach or becomes otherwise in default of, or fails to observe or perform, any Service or any other term, condition, obligation, warranty, representation, or stipulation contained in this Agreement and on its part to be observed or performed;

- (a) Submits to WAJ any statement which the Assignee knows, or it is practically possible for the Assignee to know in its capacity as a prudent person, to be false and has a material adverse effect on WAJ's rights, obligations, or interests;
- (b) As it relates to any inspection conducted by WAJ pursuant to any provision of this Agreement:
  - i. Without the consent in writing of any inspector concerned, wilfully removes from the place where it has been left by such inspector or adjunct inspector, or tampers with, destroys, or makes alterations to anything seized by any inspector or adjunct inspector; or

- ii. When asked by any inspector or adjunct inspector for an explanation or information relating to any matter within their knowledge, gives any explanation or information which it knows, or reasonably should have known, to be false or misleading;
- (c) Fails to maintain its operational performance, whether in whole or partially that is equivalent to %15 of the normal operation, or at or above any Performance Measurements and specifications specified in this Agreement;
- (d) Effects any change in its ownership or effective control, directly or indirectly, however remotely, without WAJ's prior expressed written consent, or to assign, without the Assignor's written consent, all or parts of the Services or the Service Area to third party. For the avoidance of doubt, the subcontracting of any obligation to contractor or subcontractor that is limited in time and for one time only shall not be considered as an assignment;
- (e) Fails to comply with any final decision reached as a result of any dispute-resolution proceeding undertaken pursuant to this Agreement;
- (f) Fails to comply with any Applicable Law that will materially effect the obligations and commitments assigned to the Assignee;
- (g) Makes any representation or warranty herein which is found to be materially incorrect, incomplete, or misleading in a way that prejudices WAJ hereunder;
- (h) As it relates to any inspection conducted by WAJ pursuant to any provision of this Agreement:
  - i. Wilfully obstructs, hinders, or delays, any inspector, adjunct inspector, or other party permitted to accompany any inspector or adjunct inspector in the performance of any of their functions; or
  - ii. Refuses or fails to comply to the best of their ability with any request made by any inspector or adjunct inspector;
  - iii. Fails to take reasonable and appropriate disciplinary steps against any Staff, other employee, agent, or representative who contravenes or fails to comply with any provision of this Agreement related to the same or their duties or responsibilities;
  - iv. Fails to comply with or otherwise observe any rule, prescription, determination, order, or requirement issued by WAJ pursuant to WAJ's authority under this Agreement or any agreement entered into

between WAJ and the Assignee; or

- v. Causes or otherwise engages in any business that reasonably reflects discredit upon the repute of the Kingdom.

### **13.3 VICARIOUS RESPONSIBILITY FOR EMPLOYEES**

If any Staff does or omits to do any act which would constitute a serious breach or material breach contemplated by this Article, the Assignee shall be deemed to have committed such serious breach or material breach, as applicable, unless it demonstrates, to the satisfaction of the Assignor, on the balance of probabilities that:

- (a) It neither connived at nor permitted such act or omission;
- (b) It took reasonable steps to prevent such act or omission; and
- (c) Any act or omission of the nature charged on no condition and under no circumstance fell within the scope of the authority or employment of the relevant employee.

### **13.4 IMPACT OF INSTRUCTIONS**

For the purposes of Article 13.2 herein, the fact that the Assignee issued any instruction whereby any act or omission of that nature contemplated by Article 13.2 is prohibited shall not necessarily in itself be sufficient proof that it took reasonable steps to prevent any such act or omission.

### **13.5 NOTICE OF BREACH TO THE ASSIGNEE**

In the event of any breach contemplated by Article 13 herein, WAJ shall deliver to the Assignee a written notice of its breach, with particulars, and specify the consequences arising from such breach as available pursuant to this Agreement.

### **13.6 CURE PERIOD FOR ALLEGED MATERIAL BREACH; PENALTIES FOR FAILURE TO CURE**

Within five (5) working days after the Assignee's receipt of the notice, WAJ and the Assignee shall attempt to agree on a period of time within which the Assignee shall cure the alleged breach.

#### **13.6.1 Cure Period Agreed**

Should WAJ and the Assignee agree to a cure period, and

- (a) the Assignee cures the alleged breach within such period, then the Assignee shall pay no penalty;
- (b) the Assignee fails to cure the alleged breach within such period, then the Assignee shall pay a penalty of five hundred Jordanian Dinars (JOD 500.000) per day, beginning on the first (1st) day after it received the notice described in Article 13.5, until it cures the alleged breach.
- (c) Notwithstanding the Assignee's obligation to pay a penalty, in the event that the material breach is not cured by the Assignee within the agreed upon cure period, then such breach shall be automatically considered as a serious breach by the Assignee.

### **13.6.2 Cure Period Not Agreed**

Should WAJ and the Assignee fail to agree to a cure period, then the Assignee shall pay the penalty described in Article 13.6.1 (b), beginning on the first (1st) working day after its receipt of the notice described in Article 13.5, until it cures the alleged breach, but in no case shall the Assignee pay more than fifty thousand Jordanian Dinars (JOD 50,000.000) as penalties for such a breach. This clause is not intended to limit or to restrict WAJ's rights for compensation under law, contract, or equity. Notwithstanding the Assignee's obligation to pay a penalty under this clause, in the event that the material breach remains uncured for a term of three (3) months following the notice served by WAJ, then such breach shall be automatically considered as a serious breach by the Assignee.

### **13.7 REMEDIES FOR ALLEGED SERIOUS BREACHES BY THE ASSIGNEE**

In the event of a serious breach, WAJ shall have the right to:

- (a) ***Terminate this Agreement:*** Immediately nullify every other authority for the Assignee to operate in the Service Area, at which time:
  - i. the Assignee shall immediately cease all operations in the Service Area;
  - ii. the Assignee shall be prohibited from operating in any manner or form whatsoever in the Service Area;
  - iii. If the Assignee has alienated any benefit of any right or any other permission to any third party, such alienation and permission shall, notwithstanding any terms agreed between the Assignee and any third party, immediately become null and void; and WAJ will arrange to have a qualified party to take over operations of the Assignee, including

ownership and operation of all assets free and clear of any encumbrance on the same which shall remain the sole obligation of the Assignee, and otherwise alienate, dispose of, or assign ownership and operation of any such assets to any third party on terms and conditions it sees fit in the best interests of the Service Area.

- iv As of the date of termination, the Assignee shall be deemed to represent and warrant to the Assignor that the assets transferred by the Assignor to the Assignee will be transferred back to the Assignor free and clear of any liens, charges, encumbrances, or any other third-party rights. This representation and warranty shall be deemed to survive termination of this Agreement.

(b) **Other Remedies:** Impose any such other restrictions, immediate or otherwise, on the Assignee, including, but not limited to, restrictions on the Assignee's operations and/or business, as well as any claimed liquidated damages,

### **13.8 LIQUIDATED DAMAGES FOR ALLEGED SERIOUS BREACH**

Notwithstanding anything else to the contrary herein, the Assignee shall be liable to pay WAJ liquidated damages for any alleged serious breach.

### **13.9 DISCRETION**

WAJ may, at its sole and absolute discretion, postpone, waive, remit, or otherwise determine specific terms and conditions related to the implementation of any remedy contemplated by Article 13 or any portion thereof, on any such terms and conditions for any such period of time as it deems fit.

### **13.10 APPEAL PROVISIONS**

Except as otherwise provided for herein, or in any agreement between the Assignor and the Assignee, any party subject to any remedy imposed by the Assignor, pursuant to Article 13 may appeal any such imposition through arbitration conducted pursuant to Article 12.2 herein.

### **13.11 BREACHES BY WAJ**

#### **13.11.1 Serious Breach**

WAJ's failure to remedy any material breach committed by it within that time period provided for hereunder shall constitute a serious breach by WAJ.

### **13.11.2 Material Breach**

Any of the following shall be a material breach by WAJ. If WAJ:

- (a) Commits any breach or becomes otherwise in default of or fails to observe any term, condition, obligation, warranty, representation, or stipulation contained in this Agreement and on its part to be observed or performed;
- (b) Submits to the Assignee any statement which has a material effect on the Assignee's rights, obligations, or interests which it knows to be false or misleading or should have reasonably known to be false or misleading;
- (c) Fails to adhere to the roling of any dispute-resolution mechanism as required by this Agreement, including any failure to comply with any final decision reached under the same; or
- (d) Fails to comply with the Applicable Law as it relates to its obligations under this Agreement.

## **13.12 NOTICE OF BREACH TO WAJ**

### **13.12.1 Notice**

In the event of any breach contemplated by Article 13.11 herein, the Assignee shall deliver to WAJ a written notice of its breach, with particulars, and specify the consequences arising from such breach pursuant to the applicable section in this Agreement.

### **13.12.2 Failure to Reply**

Any failure by WAJ to reply within thirty (30) days to any notice delivered pursuant to Article 13.11.1 herein shall:

- (a) If a serious breach, be deemed a waiver by WAJ of their right to any appeal provisions available under this Agreement, save and except for arbitration, and the consequences specified in the applicable notice shall take immediate effect; or
- (b) If a material breach be deemed to constitute a serious breach and the Assignee shall have immediate recourse to provisions applicable to the same contained in this Agreement.

## **13.13 REMEDIES FOR BREACHES BY WAJ**

### **13.13.1 Serious Breach**

Upon delivery of that notice contemplated by Article 13.11.1 herein specifying any serious breach by WAJ, the Assignee shall be entitled to seek liquidated damages against WAJ as determined by an arbitration hearing held pursuant to the dispute-resolution provisions contained in Article 12.2 herein, provided that any such damages shall not, under any circumstances, have the effect, directly, indirectly, constructively, expressly, or implicitly, in any manner whatsoever, however remotely, of impinging upon WAJ's ability to regulate the conduct of the Assignee in the Service Area or otherwise discharge its regulatory obligations under this Agreement or any other agreement so entered with the Assignee.

### **13.13.2 Remedies for Material Breach**

Upon delivery of that notice contemplated by Article 13.11.1 herein specifying any material breach by WAJ, the following remedies apply:

- (a) Cure Period:** WAJ shall have sixty days (60) days following delivery of that notice contemplated above to remedy every stipulated material breach in its entirety.
- (b) Grace Period:** If WAJ has made substantial progress towards remedying every stipulated material breach within that cure period stipulated by Article 13.13.2(a) herein, the Assignee may, at its sole discretion, grant WAJ another period of time not to exceed sixty (60) days to complete its remedial efforts.
- (c) Maximum Breach Period:** In the event that WAJ fails to remedy every stipulated material breach within that cure period stipulated by Article 13.12.2(a) herein or any subsequent grace period granted by the Assignee pursuant to Article 13.12.2(b) herein, then WAJ shall be deemed to have committed a serious breach and the Assignee shall have immediate recourse to provisions applicable to the same contained in this Agreement.
- (d)** If WAJ fails to cure the alleged material breach within such period, then WAJ shall pay a penalty of five hundred Jordanian Dinars (JOD 500.000) per day, beginning on the first (1st) day after it received the notice described in Article 13.12.1, until it cures the alleged breach.
- (e)** Should WAJ and the Assignee fail to agree to a cure period, then WAJ shall pay the penalty described in clause (d) herein, beginning

on the first (1st) working day after its receipt of the notice described in Article 13.12.1, until it cures the alleged breach, but in no case shall WAJ pay more than fifty thousand Jordanian Dinars (JOD 50,000.000) as penalties for such a breach. This clause is not intended to limit nor to restrict the Assignee's rights for compensation under law, contract, or equity. Notwithstanding the Assignee's obligation to pay a penalty under this clause, in the event that the material breach remains uncured for a term of three (3) months following the notice served by the Assignee, then such breach shall be automatically considered as a serious breach by WAJ.

### **13.14 DISCRETION**

The Assignee may, at its sole and absolute discretion, postpone, waive, remit, or otherwise determine specific terms and conditions related to the implementation of any remedy contemplated by this Article or any portion thereof, on any such terms and conditions for any such period of time as it deems fit.

### **13.15 APPEAL PROVISIONS**

Except as otherwise specifically provided for in this Agreement, or in any agreement between WAJ and the Assignee, the Parties may appeal any remedy imposed pursuant to this Article through arbitration.

## **ARTICLE 14 - GENERAL**

### **14.1 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Assignor and the Assignee and supersedes all previous communications, negotiations, and agreements (whether written or oral) made by either the Assignor or the Assignee prior to the Effective Date of this Agreement.

### **14.2 AMENDMENT**

No amendment to this Agreement shall be effective unless it is in writing, dated, mutual and has been approved by the governmental institute legally authorized in accordance with the Applicable Law to make such amendment on behalf of the Parties, has been approved by the MWI and is signed by a duly authorized representative of each Party and the MWI.

### **14.3 INDEPENDENT CONTRACTOR**

This Agreement does not create any agency, partnership, joint venture, or other joint relationship between the Assignor and the Assignee. All Staff and Subcontractors engaged by the Assignee in connection with performing this Agreement shall be under the complete control of the Assignee. Except as to the election of remedies with regard to Subcontractors afforded to the Assignor, nothing contained in this Agreement or in any contract awarded by the Assignee shall be construed to create a contractual relationship between the Subcontractors and the Assignor.

### **14.4 DELEGATION OF AUTHORITY**

#### **14.4.1 General Delegation**

- (a) The Assignee shall assume all responsibilities and authorities, to the extent acceptable by the Applicable Law and the decisions of the Counsel of Ministers, vested in the Assignor within the Service Area so long as this Agreement is effective;
- (b) The Assignee may (i) install private or public pipelines and maintain them through public roads or private lands, and (ii) enter private lands to carry out such activities, pursuant to Expropriation Law No. 12 of 1987 and other applicable laws and regulations, where appropriate;
- (c) The Assignee's projects and activities shall be considered as "Projects for Public Benefit," as described in Forfeiture Law No. 12 of 1987, with the Assignee having the same powers as bestowed on the Assignor;
- (d) The Assignee officials nominated by the Minister for Water and Irrigation or the Secretary General of WAJ, as the case may be, shall continue to have the authority of Judicial Police as stipulated in Article 31 of WAJ Law in relation to the restraint of any crimes that are committed in violation of the WAJ Law; and
- (e) Should the Assignee be unable to expropriate private lands or gain necessary easements over private lands required to perform its functions, the Assignor shall do so on behalf of, and at the cost to the Assignee, according to applicable WAJ Law. It is understood that the Assignor shall thereafter legally transfer and/or make available such expropriated lands or easements to the Assignee.

#### **14.4.2 Specific Delegation**

To the extent allowed under the Applicable Law, the Assignor delegates to the Assignee complete authority, under the Applicable Law, to carry out the Services under this Agreement. Such authority includes, but is not limited to;

- (a) Adequate legal authority to operate and provide Services to Users;
- (b) Authority to discontinue Services to Users;
- (c) Authority to collect fees and charges from Users;
- (d) Authority to take corrective action to assure the delivery of Services to Users; and
- (e) Authority to make acquisitions.

The Assignor shall execute any further instruments necessary to effect these delegations.

#### **14.4.3 Restrictions on Assignment**

Except as authorized by this Agreement, the Assignee shall assign none of its rights or obligations hereunder to a third party or parties without the prior written consent of the WAJ and MWI. This clause shall in no matter hinder the application of the provisions under Article 4.7, above.

#### **14.5 NON-WAIVER**

- (a) No forbearance or delay by either Party in enforcing any of the terms of this Agreement shall prejudice the rights of the other Party hereunder. No waiver by either Party of any breach of this Agreement shall operate as waiver of any subsequent or continuing breach thereof.
- (b) To be valid, any waiver of a Party's rights, powers, or remedies under this Agreement must:

- (i) Be in writing;
- (ii) Be dated and signed by a duly authorized representative of the Party granting the waiver;
- (iii) Specify the right or remedy being waived and the extent to which it is being waived; and
- (iv) Where the waiver is given by Assignor, be approved by the body legally authorized in accordance with Jordanian law to waive Assignor's rights or remedies.

#### **14.6 SEVERABILITY**

If any provision or condition of this Agreement is prohibited or rendered unenforceable, that prohibition or unenforceability shall not affect the validity or enforceability of any other provision thereof, unless the remaining provision cannot reasonably be carried out, or unless the invalid or unenforceable provision was the basis of the contractual relationship between the Assignor and the Assignee.

#### **14.7 NUMBER OF DAYS**

In computing the number of days for the purposes of this Agreement, all days shall be counted, including Fridays, Saturdays, and official holidays. However, if the final day of any period falls on a Friday, Saturday, or official holiday, then the final day shall be deemed to be the next day that falls directly after the said Friday, Saturday, or official holiday.

#### **14.8 REFERENCES TO CURRENCY**

All references to money shall mean Jordanian Dinars unless another currency is expressly stated.

#### **14.9 RATE OF INTEREST**

Wherever there is a reference to the payment of interest, the rate of interest shall be the rate the rate should be set herein.

#### **14.10 APPLICABLE LAW**

This Agreement, its meaning and interpretation, and the relation between the Parties shall be governed by Jordanian law, including any statute, regulation, instruction, rule, order, judgment, decree, policy, standard, treaty, code, manual, or other requirement having the force of law in Jordan, as they may be issued and in force from time to time.

#### **14.11 SOVEREIGN IMMUNITY**

The Assignor unconditionally and irrevocably:

- (a) Agrees that the execution, delivery, and performance by it of this Agreement constitute private and commercial acts done and performed for private and commercial purposes;
- (b) Agrees that, should any proceedings be brought against it or its assets in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from those proceedings shall be claimed by or on behalf of the Assignor or with respect to its assets;
- (c) Waives any right of immunity which it or any of its assets now has or may acquire in the future in any jurisdiction;
- (d) Consents to the enforcement of any judgment or award against it in any such proceedings; and
- (e) Consents to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including, without limitation, the making, enforcement, or execution in respect of any assets whatsoever, irrespective of their use or intended use, of any order or judgment that may be made or given).

#### **14.12 CONFIDENTIALITY**

- (a) Neither Party nor their Staffs and Subcontractors shall disclose any proprietary or confidential information relating to Jordan, Assignor, Assignee, or this Agreement without the prior written consent of both Parties.
- (b) The Assignor shall not divulge any information whatsoever about the Customers of the Assignee to any third party, without the prior written consent of the Assignee.
- (c) Confidential and proprietary information shall include but not limited to:

- (i) All data held in the computerized information system;
  - (ii) All financial information;
  - (iii) All information related to the Staff; and
  - (iv) All database and system design information.
- (d) Each Party may disclose any confidential information to any other person or entity:
- (i) To the extent it was known when received by the Party and was not received by the Party directly or indirectly from the other Party;
  - (ii) Which is or becomes public information or otherwise available to the public through no act or fault of either Party; and
  - (iii) To the extent it is received by a Party from a third party who did not receive the confidential information directly or indirectly from any other Party; as may be required by court order, law, or governmental authority; or to the Party's auditors, consultants, financial and legal advisors, who shall be advised of the confidential nature of the information and shall agree to assume this obligation of confidentiality.

#### **14.13 NOTICES**

- (a) Any notice or prior written consent required or permitted to be given pursuant to this Agreement shall be in writing. Any such notice or prior written consent shall be deemed to have been given when delivered in person to the Representative of the Party or when sent by courier to the Party at the addresses for courier delivery set out in this Agreement.
- (b) A Party may change its address for notice by giving the other Party written notice of the change within seven (7) days of the change of address in pursuant to this Article.
- (c) Notice to the Assignee shall be delivered to:  
  
Al\_Yarmouk Water Company , LLC  
Irbid –Alqerwan Street. P.O Box 378
- (d) Notice to Assignor shall be delivered to:  
  
Water Authority of Jordan Post Office

Box 2412  
Amman 11183  
Jordan

#### **14.14 COUNTERPARTS**

This Agreement may be executed by the Parties in one or more counterparts. Each counterpart shall be an original and all counterparts shall constitute the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date and year first above written.

---

Duly Authorized WAJ

Name: H.E. Eng. Mohammad Al-Najjar

Capacity: Minister of Water and Irrigation and Chairman of WAJ Board of Directors

---

Duly Authorized AL-  
YARMOUK WATER  
Company, LLC

Name: H.E. Eng. Munir Oweis

Capacity: Chairman of AL-YARMOUK WATER COMPANY Management Committee

**Management Contract for  
Al Yarmouk Water Company  
YWC**

**a Limited Liability Company (LLC)  
owned by WAJ, the Water Authority of Jordan**

**The Hashemite Kingdom of Jordan**

**Appendix 14  
Management Contractor's Proposal**

*[Note: Bidder's Technical Proposal to be attached here]*

**Management Contract for  
Al Yarmouk Water Company  
YWC**

**a Limited Liability Company (LLC)  
owned by WAJ, the Water Authority of Jordan**

**The Hashemite Kingdom of Jordan**

**Appendix 15  
Bidder's Price Form**

*[Note: To be completed by the Bidder]*

**The Bidder’s Price Form,**

[To be completed and attached to the Bidder’s Financial Proposal for the Management Contract for YWC PSC]

For all Contract Years, the Management Contractor’s Annual Fee (AF, including all taxes except the corporate income tax and the value added tax, as listed in Attachment 1 to this Appendix 15) shall be:

AF = \_\_\_\_\_ EUR/year.

*A breakdown of all taxes included in above Annual Fee shall be provided on a separate page attached to the Bidder’s Price Form together with the net Annual Fee.*

The AF includes (among others) the following annual rates (unit prices) for each of the Management Contractor’s staff:

- General Director: \_\_\_\_\_ EUR/year
- Director of Finance \_\_\_\_\_ EUR/year
- Director of Operations \_\_\_\_\_ EUR/year
- Technical Director \_\_\_\_\_ EUR/year
- Commercial and Customer Manager \_\_\_\_\_ EUR/year
- Human Resources Director \_\_\_\_\_ EUR/year
- Information Tech Director \_\_\_\_\_ EUR/year
  
- Short term professionals \_\_\_\_\_ EUR/year
- Services delivered from outside \_\_\_\_\_ EUR/year
- Jordan (e.g. backstopping)

The financial bid evaluation will be based on the sum of the Total Fee TF (which is the sum of the Total Fix Fee and the Total Variable Fee, wherein the Totals are the accumulated annual fees over the first five Contract years) and the Total Fix Fee (which is the sum of the Annual Fix Fees accumulated over the first five Contract years). Through this formula, the weight of the Total Fix Fee is doubled compared with the Total Variable Fee. This is done by intention, in order to award the bidders taking over the performance risks related to the Variable Fees.

*Note: Bidders may choose a lower alternate Fix Fee : Variable Fee ratio (FF:VF ratio) than the ratio defined in Appendix 8, Article 1. However, the annual ratio must not be increased and the sum of Fix Fee and Variable Fee must not exceed 100% in each year.*

\* If Bidders do not propose a lower Fix Fee percentage, the accumulated FF percentage is 315 (90 + 75 + 50 + 50 + 50)

	FF - Fix Fee [EUR/a]		VF - Variable Fee [EUR/a]		SUM
	Acc. to App. 8, Art. 1 (= maximum %)	Bidder's proposal	Acc. to App. 8, Art. 1 (= minimum %)	Bidder's proposal	= %FF + %VF
Year 1	90% Fix Fee	_____ % FF	10% Variable Fee	_____ % VF	100%
Year 2	75% Fix Fee	_____ % FF	25% Variable Fee	_____ % VF	100%
Year 3	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
Year 4	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
Year 5	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
	TFF = 315% * x AF	TFF = (accumulated %FF) x AF = _____ EUR	TVF = 185% x AF	TVF = (accumulated %VF) x AF = _____ EUR	

**[THE MANAGEMENT CONTRACTOR]** (Consortium Leader)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ (stamp)

(Name)

\* If Bidders do not propose a lower Fix Fee percentage, the accumulated FF percentage is 315 (90 + 75 + 50 + 50 + 50)

**Attachment 1  
To Appendix 15 “Bidder’s Price Form”**

<b>Taxes and Fees</b>
-----------------------

<b>Taxes and Fees</b>			
<b>Tax or mandatory contribution</b>	<b>Statutory tax rate</b>	<b>Tax base</b>	<b>Notes</b>
Social security contribution by employer	11.00%	gross salaries	
Property transfer tax	10% (buyer 6%, seller 4%)	estimated property value	applicable to lands and buildings
1% Educational & Vocational & Technical Training Support Fund on distributable profits	1.00%	distributable profit	
Vehicle tax	cm <sup>3</sup> and age	about 500 JOD for large vehicles	
Registration at Ministry of Industry and Trade	depend on the capital and type of business	about 1,000 JOD for a small company (llc)	
Municipality work permit	depend on the capital and type of business	about 500-1,000 JOD	
Custom duties		Depends on type of goods, source, and value	investigate exemptions
Tax on bank interest	5.00%	interest income	
Stamp duty	0.3% to 0.6%	contract value	
Value Added Tax VAT (“sales tax”)	16.00%	invoices	tax on invoices
Corporate income tax (“profit tax”)	15.00%	taxable profits	

*Note: This table is indicative and may not include all taxes and fees completely. Bidders are requested to do their own investigation about applicable taxes.*



HASHEMITE KINGDOM OF JORDAN  
**Ministry of Water & Irrigation**  
*Water Authority of Jordan*



**Management Contract for**  
**YWC – Al Yarmouk Water Company LLC**  
(the former Northern Water Governorates Administration, NGWA)

a limited liability company  
owned by the Water Authority of Jordan

Information Memorandum

June 2010

Tender Agent



PMU – Performance Management Unit

Transaction Advisor



**Prof. Dr.-Ing. Dr. rer. pol. K.-U. Rudolph GmbH**  
Consultants for Environmental Engineering and Management  
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### **Attachment: Questions and Answers Document**

(for better understanding, elaborated by PSP experts from KfW, amended and updated by the Transaction Advisor)

## DISCLAIMER

This Information Memorandum (the Memorandum) has been prepared by Prof. Dr. Rudolph GmbH and Jordan Rivers Consultancy Services LLC (the Transaction Advisor) on behalf of the Water Authority of Jordan (WAJ) and Al Yarmouk Water Company LLC (Al Yarmouk Water, YWC), the water and wastewater utility serving the Northern Governorates of the Hashemite Kingdom of Jordan. The Memorandum is being made available to a limited number of recipients for the sole purpose of assisting them in deciding whether (and if so, how) to make an offer for the Management Contract for Al Yarmouk Water.

This Memorandum is made available only to those parties who have signed and returned a confidentiality agreement with Al Yarmouk Water with respect to (amongst other information) this Memorandum. The recipient is therefore bound by that Confidentiality Agreement to keep this Information Memorandum confidential, with all information contained herein.

The information in this Memorandum has been provided for Al Yarmouk Water and has not been independently verified by the Transaction Advisor. No representation, warranty or undertaking, express and implied, is or will be made or given by Al Yarmouk Water or by the Transaction Advisor or by any of their respective directors, officers, employees, agents or advisers, in relation to the accuracy or completeness of this Memorandum and any other written or oral presentation made available. Every bidder should conduct his/her own investigation and analysis of the business, data and property described in this report (which does not purport to be comprehensive).

This Memorandum has been delivered to interested parties for information only and on the express understanding that they will use it only for the purpose set above. Al Yarmouk Water and the Transaction Advisor give no undertaking, and are under no obligation, to provide the recipient with access to any additional information related to this Memorandum or to update this Memorandum or to correct any inaccuracies in it which may become apparent.

Without prejudice to any liability for fraudulent misrepresentation, each of Al Yarmouk Water and the Transaction Advisor and their respective officers, employees and agents disclaims any liability which may arise from this Memorandum and any errors contained therein and/or omissions therefrom.

By accepting this Memorandum the recipient agrees to be bound by the foregoing conditions.

Information in this document was prepared as of June 2010.

## 1. COUNTRY INFORMATION

The Hashemite Kingdom of Jordan (Jordan) is a Middle Eastern Arab country in Southwest Asia, bordered by Syria to the north, Iraq to the northeast, Saudi Arabia to the east and south and Israel and west bank to the west. All these border lines add up to 1,619 km. Jordan has a coastline of 26 km on the Dead Sea and the Gulf of Aqaba.

According to the Jordan National Census for the year 2004, Jordan had a population of 5,100,000. However, during the years 2004–2007, Jordan saw a rapid increase in its population due to the heavy migration of Iraqi refugees. Today, estimates put the population of Jordan slightly over 6,300,000. Approximately 95 to 98% of Jordan's population is composed of Arabic-speaking / Arab-identified people. The majority of Jordan's population is Muslim by religion, with a Christian minority.

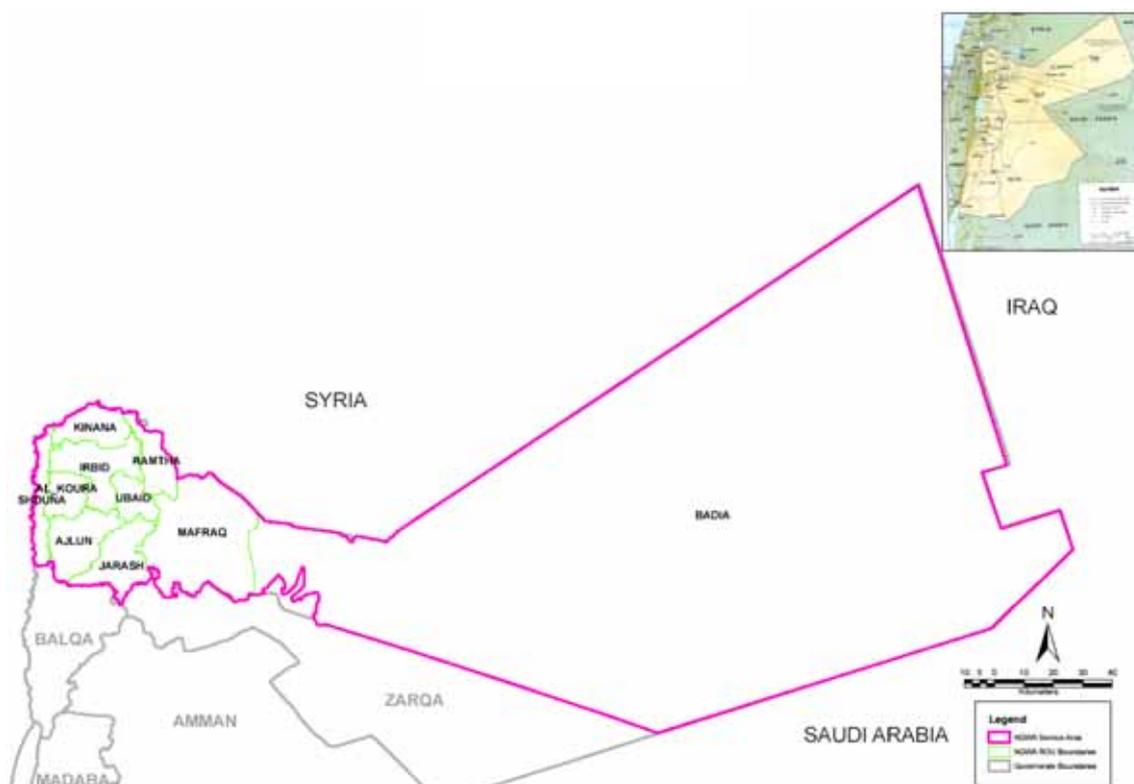


**Figure 1: Jordan's geographical location in the Near East (left), the Northern Governorates served by YWC (right)**

The Hashemite Kingdom of Jordan is a constitutional monarchy with representative government. The reigning monarch is the head of state, the chief executive and the commander-in-chief of the armed forces. The King exercises his executive authority through the prime minister and the Council of Ministers, or cabinet. The cabinet, meanwhile, is responsible before the elected House of Deputies which, along with the House of Notables (Senate), constitutes the legislative branch of the government. The judicial branch is an independent branch of the government.

Since 1989, all elements of the Jordanian political spectrum have embarked together on a road to greater democracy, liberalization and consensus building. These reforms, which were guided by the late King Hussein, have placed Jordan on an irreversible road to democratization. The result has been greater empowerment and involvement of everyday citizens in Jordan's civic life, contributing to increased stability and institutionalization.

Jordan is divided into twelve governorates, each headed by a governor and subdivided into administrative Governorates (muhafazat, singular - muhafazah): Ajloun, Amman, Aqaba, Balqa, Irbid, Jerash, Ma'an, Madaba, Kerak, Mafraq, Tafilah, Zarqa. The governorates are an extension of the central government, and are supervised by the Ministry of the Interior. Governors enjoy wide administrative authority, and in specific cases they exercise the powers of ministers.



**Figure 2: Service Area of YWC showing the boundaries of the single Regional Operation Units**

The service area of the Management Contract covers the four governorates of Ajloun, Irbid, Jerash and Mafraq, i.e. the Service Area of Al Yarmouk Water Company LLC (Figure 2).

**Table 1: Information about Jordan's governorates (highlighted: the four Northern governorates)**

<b>Province</b>	<b>Population</b>	<b>Area (km<sup>2</sup>)</b>	<b>Density (pers./km<sup>2</sup>)</b>	<b>Capital</b>	<b>Population</b>
Capital Governorate	2,027,685	8,231	246.3	Amman	1,919,000
Ajloun Governorate	118,496	412	287.1	Ajloun	55,000
Aqaba Governorate	107,115	6,583	16.3	Aqaba	95,408
Balqa Governorate	349,580	1,076	324.9	Balqa	96,700
Irbid Governorate	950,700	1,621	570.3	Irbid	650,000
Jerash Governorate	156,675	402	370	Jerash	39,540
Kerak Governorate	214,225	3,217	66.6	Kerak	68,810
Ma'an Governorate	103,920	33,163	3.1	Ma'an	50,350
Madaba Governorate	135,890	2,008	67.7	Madaba	83,180
Mafraq Governorate	245,671	26,435	9.3	Mafraq	56,340
Tafilah Governorate	81,000	2,114	38.3	Tafilah	38,400
Zarqa Governorate	838,256	4,080	205.5	Zarqa	447,880
<i>Northern Governorates</i>	<i>1,471,542</i>	<i>28,870</i>	<i>50.9</i>	---	---

## 2. INSTITUTIONAL BACKGROUND

The institutional framework of the Jordanian water sector is characterized by a top-down structure. The supreme authority is the Ministry of Water and Irrigation (2.1). The Water Authority of Jordan (2.2) is an independent administrative body subordinated to the Ministry of Water and Irrigation (MWI). It is responsible for public water supply and wastewater service. Furthermore, the Performance Management Unit (2.3) is responsible for coordination and implementation of projects co-financed by international development cooperation. Al Yarmouk Water Company LLC (2.4), contracting body and legal successor of the Northern Governorates Water Administration, is the public utility company in the Northern Governorates.

### 2.1. Ministry of Water and Irrigation (MWI)

The Ministry of Water and Irrigation (MWI, [www.mwi.gov.jo](http://www.mwi.gov.jo)) is the official body responsible for the overall monitoring of the water sector, water supply and wastewater system and the related projects, planning and management, the formulation of national water strategies and policies, research and development, information systems and procurement of financial resources. Its role also includes the provision of centralized water-related data, standardization and consolidation of data.

The MWI was established in 1988 by a by-law issued by the executive branch of the Government under the Jordanian Constitution. The establishment of the Ministry of Water and Irrigation was in response to Jordan's recognition of the need for a more integrated approach to national water management. Since its establishment, MWI has been supported by several donor organization projects that have assisted in the development of water policy and water master planning as well as restructuring the water sector.

The Ministry of Water and Irrigation embraces the two most important entities dealing with water in Jordan:

- The Water Authority of Jordan (WAJ): in charge of water & sewage systems.
- The Jordan Valley Authority (JVA): responsible for the socio-economic development of the Jordan Rift Valley, including water development and distribution of irrigation.

## 2.2. Water Authority of Jordan (WAJ)

The Water Authority of Jordan (WAJ, <http://www.mwi.gov.jo/English/WAJ/Pages/default.aspx>) was originally established in 1983, pursuant to the Water Authority Law No.34 of 1983 (temporary law), as an autonomous corporate body, with financial and administrative independence. It was directly linked with the Prime Minister. The main feature of this law was that the Water Authority took over all responsibilities of the entities responsible for water and wastewater. According to Article 23 of the said law, the Water Authority was responsible for the public water supply and wastewater services, as well as for the overall water resources planning and monitoring.

The permanent Water Authority Law No.18 of 1988 replaced the said law. According to Article 3, WAJ was established as an autonomous corporate body, with financial and administrative independence linked with the Minister of Water and Irrigation. WAJ carries full responsibility for the public water supply, wastewater services and related projects as well as for the overall water resources planning and monitoring, construction, operations and maintenance.

Eighteen Directorates under the direction of eight Assistant Secretary Generals (Water Affairs, Sewerage Affairs, Technical Affairs, Regional Affairs [Southern, Middle and Northern Region], Financial Affairs, Administrative Affairs), as well as five units directly subordinate to the Secretary General fulfil the said functions. WAJ Performance Management Unit (PMU) regulates water supply and wastewater utilities under private management.

## 2.3. Performance Management Unit (PMU)

The Performance Management Unit (PMU, previously Programme Management Unit, [www.pmu.gov.jo](http://www.pmu.gov.jo)) of the Ministry of Water and Irrigation (MWI) is a special task force that is currently charged with the execution of the Al-Meyyah Project (co-funded by the European Commission).

The Al-Meyyah Project aims at the enhancement and acceleration of this development through a systematic, sector-oriented approach in support of Jordan's adopted Water Strategies and Policies. The general strategies adopted to achieve such aims are:

- Establishment of operating principles that follow commercial practices;

- Preparation of the relevant institutions within the PMU so that they are able to provide a capable auditing and monitoring function.

The PMU was originally established in 1997 for the purpose of coordination and execution of the first large-scale management contract for the water and wastewater services in Jordan's capital, as well as a large capital investment programme for Greater Amman's water supply facilities. Building up on these major functions and also being the implementation unit for Donor agencies, namely for KfW ([http://www.kfw-entwicklungsbank.de/EN\\_Home/Countries\\_Programmes\\_and\\_Projects/North\\_Africa\\_and\\_Middle\\_East/Jordan/index.jsp](http://www.kfw-entwicklungsbank.de/EN_Home/Countries_Programmes_and_Projects/North_Africa_and_Middle_East/Jordan/index.jsp)) and, furthermore, the counterpart of the GTZ/OMS project, PMU gained a reputation for expertise, knowledge and innovation so as to enable it to address water sector problems in a broader sense.

#### **2.4. Al Yarmouk Water Company (YWC)**

Al Yarmouk Water Company LLC is responsible for water supply, sewerage and wastewater treatment in the Northern Governorates of Ajloun, Irbid, Jerash and Mafrq Governorates. It is the legal successor of the Northern Governorates Water Administration which has been, prior to its corporatization, a Department of the Water Authority of Jordan. Al Yarmouk Water has four Regional Operation Units, one in each governorate.

Al Yarmouk Water Company is a limited liability company with WAJ being its sole shareholder (at the moment).

The utility serves more than 1.5 million people. It had around 1,700 employees in 2008. In the same year its physical assets included 217 wells and springs, 11 water treatment plants, 83 water pumping stations, 6,210 km of water pipes, 225,207 water connections, 74,127 sewer connections, 966 km of sewer pipes, 4 major sewage pumping stations and 7 wastewater treatment plants. Almost all water connections are metered, although many meters are in poor working condition. Almost all of its water sources are located inside its geographical area and does not import significant amounts of water from other service areas.

## **2.5. Assignment Agreement**

The duties and responsibilities of Al Yarmouk Water Company as legal successor of the Northern Governorates Water Administration are specified and defined in an Assignment Agreement with the Water Authority of Jordan. This Assignment Agreement governs the working relationship between YWC and WAJ and will also be the basic framework to be followed by the Management Contractor.

## **3. PROJECT SCOPE**

### **3.1. Project Background**

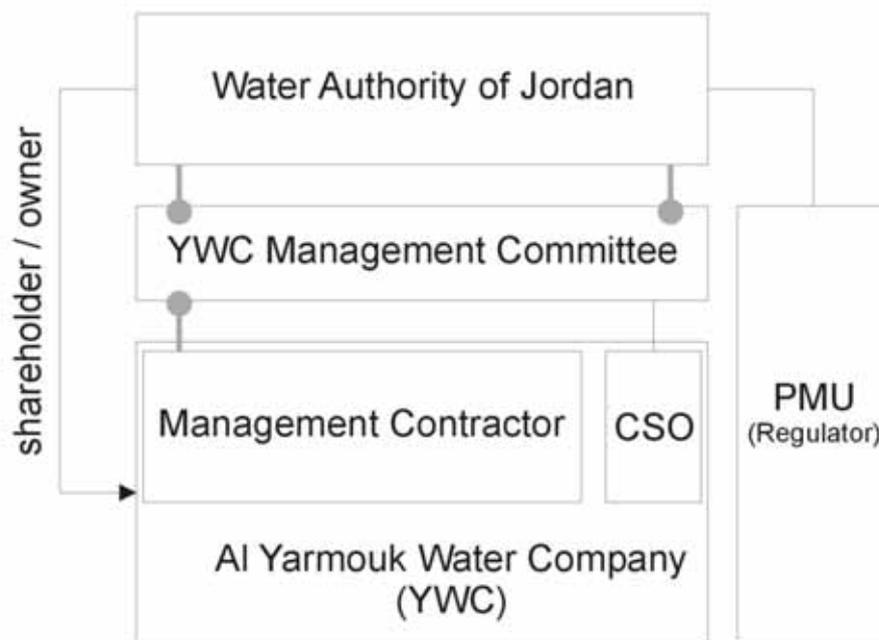
The Jordanian water sector strategy aims at commercializing the water utilities. Corporatization is expected to increase the transparency of financial flows and to allow decision about water supply and wastewater services closer to citizens. The government pursues a policy of creating regional water and sanitation companies throughout Jordan.

In 2004 an international tender to recruit a management operator for the Northern Governorates was launched. Due to the then political situation in the region (as a result of the Iraqi war in 2003), only one single proposal was received and the government decided not to award the contract. Instead, a managing consultant was recruited in 2006. Due to the fact that the original targets were not achievable, the performance indicators were modified after the midterm review, of which three were fulfilled by the expiration of the contract.

Taking the lessons learned, WAJ analysed and evaluated various options and, finally, decided to go for a full management contract, performance based, with a professional utility operator to be assigned as the Management Contractor. The Management Contractor shall be empowered to take and implement all operational decisions and actions, which the MC wants YWC to execute, without interventions from outside, within the corridor of the Management Contractor's obligations and responsibilities.

Currently the Northern Governorates Water Administration (NGWA) is in a process of reforming. (1) It has been corporatized through the establishment of a limited liability company, Al Yarmouk Water Company LLC and (2) a management contract will be implemented with an experienced operator. NGWA will hence be changed into an

independent legal entity with its own separate finances and management. Its Management Committee shall be chaired by WAJ and the General Manager will be appointed by this committee (without a Management Contractor being installed). Other committee members shall be assigned from both the public and the private sector.



**Figure 3: Simplified organisational diagram**

### 3.2. Project Objectives

The main objective of the reforms is to improve service delivery for the population of the Northern Governorates and the increase of management efficiency. Most households receive water only one day per week. Some localities receive water less frequently, especially during summer. The level of physical and administrative losses is high. Moreover, due to increased energy prices, operating costs are high, also the percentage of non revenue water (approx. 41 %). Presumably, a rapid measure of improvement would be to increase the billing efficiency.

The Assignment Agreement and Articles of Association to create NGWA (cf. 3.1) is intended to serve as a model for the corporatisation of other regional utilities in the Middle and Southern Governorates.

Throughout the assignment, the Management Contractor will be responsible for managing Al Yarmouk Water Company, i.e. to operate and maintain the facilities to

produce and deliver water to its customers and to transport and treat their wastewaters, esp. the goals of the Management Contract are,

- to improve the water and wastewater services to customers in the Northern Governorates;
- to improve the financial position of Al Yarmouk Water through the achievement of cost efficiencies and improved revenue management;
- to establish, for Al Yarmouk Water, the foundation for sustainable operational and business effectiveness and efficiency; and
- to reduce the amount of water lost or unaccounted for through, among other things, leakage and unauthorized connections to the Facilities.

#### **4. TENDER PROCEDURE**

As the corporatisation of Al Yarmouk Water Company (YWC) has only recently taken place and as the start of the Management Contract shall be close to the first day of operation of YWC, WAJ decided on an international competitive one stage tender procedure with integrated qualification of bidders. In other words, Bidders will be requested to submit Technical and Financial Proposals, while only the Technical Proposals of those Bidders who meet the eligibility criteria will be opened.

##### **4.1. Timing and Process**

###### *Tentative Time Schedule*

Deadline for the purchase of bidding documents	August 12, 2010
Pre-bid meeting	August 23, 2010
Site visits (tour)	August 24 & 25, 2010
Data Room	August 25 – October 3, 2010
Receipt of offers	October 3, 2010
Evaluation report	November 10, 2010
Negotiations completed	December 15, 2010
Contract Closure and Signing	December 20, 2010
Effective Date	January 1, 2011

## 4.2. Eligibility and Evaluation

### Eligibility Criteria

*Note: the eligibility criteria will be applied to the bidder consortium as a whole, if not stated otherwise*

1. Bidder (if the Bidder is a consortium: the Consortium Leader) must show that
  - a) it has been incorporated as operational service provider for at least 7 years;
  - b) it has executed at least one service contract to operate and manage water as well as wastewater services in an area with more than 120,000 customers for a period of 3 years or more;
  - c) Additionally, the Bidder (respectively the Bidding Consortium) must have had at least two more assignments (for operations, constructions or consulting) in relation to water or waste water services in Jordan in the past 5 years.

*Note: For each reference, Bidders have to deliver reference descriptions, technical data and contact details of the Client. The success of the projects must be documented by a positive reference letter from the Client, on request.*

2. a) The minimum annual turnover of the bidder must be 50 mio. Euro for each of the three fiscal years 2006, 2007 and 2008.
- b) Furthermore, the annual net profit of each company among the bidder group must have been positive before-tax-results in at least two of the three years 2006, 2007, 2008.

*Note: Bidders have to submit copies from their testified balance sheets, profit and loss accounts.*

3. The bidder has submitted the following documents, including
  - a) “No conflict of interest” – declaration (sworn statement) of each Bidder or consortium member
  - b) “No conflict with the law” – declaration (sworn statement) of each Bidder or consortium member
  - c) Tender Security provided, orderly issued as requested
  - d) Written statement to submit the Bank Guarantee and the Performance Security prior to Contract Closure

- e) A letter declaring that the Technical Proposal fulfils the required staff input of at least 200 Man Months during the contract period.
  - f) A “Declaration of Undertaking”
4. Only proposals from bidders, which fulfil all eligibility criteria, are subject of further evaluation. All other proposals will be returned unopened (Technical and Financial Proposal envelopes).

### Technical Evaluation Criteria

1. The technical evaluation shall be executed according to the “Technical Evaluation Sheet”.

<b>Technical Evaluation Sheet</b>	<b>Score</b>
<b>1. Organisation &amp; Methodology</b>	<b>15</b>
1.1.1 Form of application	1
1.1.2 Strategy & Methodological Approach	2
1.1.3 Organisation & Team composition	<u>9</u>
1.1.3.1 Overall Structure	2
1.1.3.2 Regional Capabilities	7
<i>(Note: maximum score to be awarded if the Bidder’s consortium includes a consortium partner with more than three years of operational experience in the Jordanian water sector, and the partner’s share is at least 30% of the Total Fix Fee. Zero points shall be awarded if the Bidder does not have at least 2 years of operational experience in the Jordanian water sector. Scores awarded in between these benchmarks depend on the quality and quantity of the input of partners with regional capabilities.)</i>	
1.1.4 Time and Workplan (incl. MC’s staffing schedule)	3
<b>2. MC Staff Quality</b>	<b>30</b>
2.1 <u>General Director</u>	<u>8</u>
2.1.1 Professional experiences	4
2.1.2 Educational background ( <i>max = doctorate degree</i> )	1
2.1.3 Regional knowledge ( <i>max = 2/5 projects from Jordan/MENA region</i> )	2
2.1.4 Language skills ( <i>max = native Arabic; English is compulsory</i> )	1

<b>Technical Evaluation Sheet</b>	<b>Score</b>
<b>2.2 <u>Financial Director</u></b>	<u>5</u>
2.2.1 Professional experiences	3
2.2.2 Educational background ( <i>max = doctorate degree</i> )	1
2.2.3 Regional knowledge ( <i>max = 2/5 projects from Jordan/MENA region</i> )	1
<b>2.3 <u>Technical Director</u></b>	<u>5</u>
2.3.1 Professional experiences	3
2.3.2 Educational background ( <i>max = doctorate degree</i> )	1
2.3.3 Regional knowledge ( <i>max = 2/5 projects from Jordan/MENA region</i> )	1
<b>2.4 <u>Operational Director</u></b>	<u>5</u>
2.4.1 Professional experiences	3
2.4.2 Educational background ( <i>max = doctorate degree</i> )	1
2.4.3 Regional knowledge ( <i>max = 2/5 projects from Jordan/MENA region</i> )	1
<b>2.5 <u>Non-Key Professionals (NKP)</u></b>	<u>7</u>
2.5.1 Number of NKP in relevant fields ( <i>max. = 15</i> )	3
2.5.2 Qualification and experiences of NKP	4
<b>3. Professional backstopping</b>	<b>20</b>
3.1 Previous operational experiences ( <i>measured against the eligibility criteria</i> )	5
3.2 Total staff employed for utility operations ( <i>max = 1,000</i> )	5
3.3 Total turnover p.a. for operational services ( <i>max = 500 mio EUR/a</i> )	5
3.4 Focus on water utility operations ( <i>max = 100%; no other business</i> )	5
<b>4. Time input of key professionals (KP)</b>	<b>22</b>
KP weighed according to 2. ( <i>from 11 scores for 200 to 22 scores for 400 working months</i> )	
<b>5. Capacity development and know-how transfer</b>	<b>13</b>
5.1 Concept (relevance and quality of curricula)	5
5.2 Trainers (experience and education)	5
5.3 Expenses (only as far as clearly dedicated)	3
<b>MAXIMUM TECHNICAL SECTION SCORE</b>	<b>100</b>

- Only the Financial Proposals of those Bidders achieving a Technical Section score of more than 75 points shall be opened.

### Financial Evaluation Criteria

Bidders shall offer one Total Annual Fee (TAF, in Euro per annum) for all Contract Years, as lump sum, to be subdivided in a Fix Fee (FF) and a Variable Fee (VF). Whereas the financial evaluation of the Bidders' Financial Proposal shall be as follows:

$$\text{Financial Section score} = \frac{\text{lowest Total Fix Fee}}{\text{Bidder's Total Fix Fee}} \times 100$$

with the Bidder's Total Fix Fee being the its Total Annual Fee multiplied by 315 (the accumulated Fix Fee ratio over five years, cf. section 5.2).

Bidders may choose a lower Fix Fee : Variable Fee ratio (FF:VF ratio) than the ratio defined in Appendix 8, Article 1. However, the annual Fix Fee percentage must not be increased and the sum of Fix Fee and Variable Fee must not exceed 100% in each year. For the financial evaluation, the Management Contractor's Fee for the whole contract period will be based solely on the Total Fix Fee (TFF), which is the accumulated annual Fix Fee for the 5-years contract period. The variable part of the Total Annual Fee (TAF) accumulated over the five Contract Years will not be considered for the evaluation.

	Fix Fee [EUR/a]		Variable Fee [EUR/a]		SUM
	Acc. to App. 8, Art. 1 (= maximum %)	Bidder's proposal	Acc. to App. 8, Art. 1 (= minimum %)	Bidder's proposal	FF%+VF%
Year 1	90% Fix Fee	_____ % FF	10% Variable Fee	_____ % VF	100%
Year 2	75% Fix Fee	_____ % FF	25% Variable Fee	_____ % VF	100%
Year 3	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
Year 4	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
Year 5	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
		TFF = (Accumulated FF percentage*) x TAF			

\* If Bidders do not propose a lower Fix Fee percentage, the accumulated FF percentage is 315.

### Weighting of the Proposals

The overall evaluation shall be calculated with 50% weight on the financial, and 50% weight on the technical proposal.

Total Score = 50% x Technical Section score + 50% x Financial Section score.

## 5. CONTRACT SCOPE

### 5.1. Type of Contract

The new contract is performance based and explicitly designed to attract professional operators instead of consultants. As utility operator, the management contractor will have the final decision power, learning from the experience that the parallel structures between the former NGWA management and managing consultant proved to be inefficient. Furthermore, the contract will not be signed with WAJ, but with the newly created public company Al Yarmouk Water Company. It will be awarded for 5 years, with an option to extend twice for two years each, up to a total of 9 years.

### 5.2. Remuneration

The remuneration will contain performance-based elements, including the threat of penalties if minimum levels for key indicators are not achieved. The private operator risks losing its variable fee and to pay penalties if it fails to achieve the minimum targets set in the contract. It also risks losing its reputation in Jordan and in the international market if the management contract should fail (caused by default of the Management Contractor).

The Management Contractor's Total Annual Fee is calculated is variable and subject to the achievement of the incentive performance indicators (as set out below) in the following manner:

Contract Year 1: 90% fixed, 10% variable (100% = Management Contractor's Total Annual Fee)

Contract Year 2: 75% fixed, 25% variable (100% = Management Contractor's Total Annual Fee)

Contract Year 3: 50% fixed, 50% variable (100% = Management Contractor's Total Annual Fee)

Contract Year 4: 50% fixed, 50% variable (100% = Management Contractor's Total Annual Fee)

Contract Year 5: 50% fixed, 50% variable (100% = Management Contractor's Total Annual Fee)

In case of a contract extension, the variable portion of the Total Annual Fee shall be the same as in the fifth contract year.

Bidders may lower the Fix Fee : Variable Fee ratio and this will increase the evaluation score of their financial proposal.

### 5.3. Incentive Compensation

The Incentive Performance Compensation will be based on four incentive performance indicators (IPI) which, in contrast to the managing consultant contract, can be measured reliably and which are not influenced by factors outside of the control of the management contractor. The four IPIs are:

IPI1 = AWS = Annual Water Sales (m<sup>3</sup> / a)

Water sales means: billed amount of water, for which payments have been received by YWC during the reported year; to be calculated based on the expected availability of raw water resources.

IPI2 = CST = Continuity of Supply Time (hrs / week)

Measured according to the following formula: Average hours of minimum water pressure per week in the reported week *multiplied* with the number of connections served in the pressurised areas [whereby the result shall be averaged for measuring points and all weeks in the reported year].

IPI3 = SPC = Specific Power Consumption (kWh / m<sup>3</sup>)

Measured as ratio of electric energy consumed by YWC and the volume of supply water produced, according to the following formula: Total annual electric power consumption billed (in kWh) excluding electric power consumption for wastewater facilities which have been newly built after the starting date of the Contract *divided* by the amount of water produced (in m<sup>3</sup>) during the reported year.

IPI4 = OCS = Operational Cash Surplus (JOD)

Calculated according to the following formula (with prices and tariffs from base year): Total revenues during the reported year *minus* total operational expenses (i. e. OPEX, not including CAPEX), excluding expenses for electric power and staff training activities.

Should the aggregated performance of all Performance Indicators exceed 100 % in one year, the Management Contractor shall receive a higher variable fee than scheduled. However, this additional fee shall be limited to the surplus of revenues generated in that year (compared to the base year).

#### 5.4. Funding and Guarantees

The Hashemite Kingdom of Jordan applied for a grant and two loans from Kreditanstalt für Wiederaufbau (“KfW”) for the benefit of the Northern Governorates which will be used as follows:

- the Grant (around 4.2 mio. Euro) will be used to finance a portion of the Management Contractor’s Fix Fee to be paid to the Management Contractor under the Contract;
- one of the Loans is used to make available to the HKJ funds to carry out the activities under the Water Loss Reduction Program; and
- one of the Loans is used to finance a Rehabilitation and Repair Fund to assist in the Management Contractor’s performance improvements as set out in the Contract.

WAJ will finance the Incentive Compensation to be paid to the Management Contractor in accordance with the Contract as well as any remainder of the Management Contractor’s Fix Fee. Further, WAJ is committed to subsidize any deficit of YWC throughout the duration of the Management Contract.

Bidder’s are required to submit beside a Tender Security, a Performance Security and a Bank Guarantee. The amount of the Bank Guarantee shall be 50% of the Management Contractor’s Total Annual Fee, as to be determined by the Bidder’s Price Form. The amount of the Performance Security shall be 10% of the contract value (which is equal to 50% of the Management Contractor’s Fee, as to be determined by the Bidder’s Price Form, Annex 16).

## 6. BACKGROUND INFORMATION AND DATA

**Table 2: General Information about the Hashemite Kingdom of Jordan**

Capital	Amman
Official language	Arabic
Ethnic groups	98% Arab and 2% others
Government	Constitutional monarchy
Independence	25 May 1946 [End of British League of Nations mandate]
Area	92,300 km <sup>2</sup>
Population	6,300,000
Density	68.4/km <sup>2</sup>
GDP (nominal, 2009)	\$22.929 billion \$3,828 (per cap.)
Currency	Jordanian Dinar (JOD)
Time zone	UTC+2 [Summer (DST): UTC+3]
Calling code	+962

**Table 3: Basic Data of Al Yarmouk Water Company**

Population served	1.65 million
Staff	1,600
Wells and springs under operation	217
Water treatment plants	11
Wastewater treatment plants	7
Pumping stations (water)	83
Pumping stations (wastewater)	4
Length of water network	6,210 km
Length of wastewater network	966 km
No. of water connections	225,207
No. of wastewater connections	36.958

**Table 4: No. of Customers and NRW ratio in the Northern Governorates (2006 – 2008)**

	Unit	2007	2008	2009
Registered water subscribers	No.	214,574	225,207	233,660
Registered wastewater connections	No.	34,832	36,057	36,958
New water subscribers (meters)	No.	8,106	10,633	8,453
New wastewater subscribers(connections)	No.	741	2,527	901
Total billing	JD	13,211,776	13,534,186	13,815,014
Total collections from billing	JD	11,488,512	12,383,870	12,564,858
Total revenues (sales+deposits+other incomes)	JD	16,796,555	17,684,686	17,102,278
Total NRW	%	39,0%	43,5%	40,8%

**Table 5: Water Balance in the Northern Governorates (2006 – 2008)**

	Unit	2007	2008	2009
Water produced	m <sup>3</sup>	67,866,845	69,387,525	68,332,028
Water export to other Governorates	m <sup>3</sup>	4,213,841	2,248,230	2,114,500
Water import from other Governorates	m <sup>3</sup>	331,346	319,150	500,656
Water supplied to NGWA	m <sup>3</sup>	60,529,232	66,129,960	65,854,960
Water billed	m <sup>3</sup>	36,101,877	36,414,364	38,061,280
Water sold or distributed legally by tankers	m <sup>3</sup>	805,875	962,003	917,334
Water sold to irrigation	m <sup>3</sup>	1,291,690	1,018,108	871,200

**Table 6: Current Water Tariffs in the Hashemite Kingdom of Jordan**

Consumption (m <sup>3</sup> per 3 months)	Water Tariff (JOD/m <sup>3</sup> )	Wastewater Tariff (JOD/m <sup>3</sup> )	Fixed Fee (JOD/Quarter)
<i>For Amman</i>			
0 - 20	2	0.6	2.15
21 – 40	0.14 * m <sup>3</sup> - 0.8	0.4 * m <sup>3</sup> - 0.2	4.15
41 – 130	0.006556 *(m <sup>3</sup> ) <sup>2</sup> - 0.12224 * m <sup>3</sup>	0.002889 * (m <sup>3</sup> ) <sup>2</sup> - 0.07556 * m <sup>3</sup>	5.15
≥ 130	0.85 * m <sup>3</sup>	0.35 * m <sup>3</sup>	5.15
<i>For all other Governorates (for Zarqa Governorate the wastewater tariff is augmented by 12 percent)</i>			
0 - 20	1.3	0.6	2.15
21 – 40	0.075 * m <sup>3</sup> - 0.2	0.035 * m <sup>3</sup> - 0.1	3.65
41 – 185	0.004517 * (m <sup>3</sup> ) <sup>2</sup> - 0.10568 * m <sup>3</sup>	0.001828 * (m <sup>3</sup> ) <sup>2</sup> - 0.038103 * m <sup>3</sup>	4.65
≥ 185	0.85 * m <sup>3</sup>	0.35 * m <sup>3</sup>	4.65

Note: The Hashemite Kingdom of Jordan has recently decided to increase the water tariffs and to change the billing period from a quarterly to a monthly basis. The new tariff system is anticipated to be effective from 2011 and may increase revenues for YWC by approximately 2 mio JOD p.a.

**Picture Gallery**

Administrative Buildings



### Customer Service Centers



### Reservoirs



(in use)



(under construction)

### Irbid Wastewater Treatment Plant



### Wells and Pumping Stations





Various



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Management Contract for AL Yarmouk Water Company LLC

Addendum No. 1

- 1) The deadline for interested companies or consortia of companies to register as bidding candidate by email is extended until 4:00 pm on Wednesday, 11 August (Amman time). The deadline for purchasing the tender documents remains unchanged 12 August 2010.

Eng. Basem Telfah

Director

Performance Management Unit

Management Contract for AL Yarmouk Water Company LLC

**Addendum No. 2**

The deadline for bidding companies or consortia of companies to submit their offers is extended until 1:00 pm (Amman time ) on Monday, 18 October 2010.

Eng. Basem Telfah  
Director  
Performance Management Unit

### Addendum No. 3

Following the Pre-Bid Meeting and the questions raised by the bidders during and after this event, the following amendments have been made to the Contract and Tender Documents in order to provide greater clarity. The complete set of Contract and Tender Documents will be uploaded on the last day on which clarifications and addenda can be issued (pursuant to RFP Section 3.10 (h)). Colored printing highlights new/changed wording, sentences or paragraphs.

#### Cover Sheet

Appendix 13	Assignment Agreement between YWC and WAJ; YWC's Articles of Association
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#### General Conditions

##### *GC Section 1.1*

“**Management Contractor’s Fee**” is defined in GC Section 6.2.1(1). The Fee is consisting of two components, which are the Fix Fee (FF) and the Variable Fee (VF). The Annual Fee (AF), Annual Fix Fee (AFF), Annual Variable Fee (AVF) is for each Contract Year. The Total Fee (TF), Total Fix Fee (TFF), Total Variable Fee (TVF) is the sum of the annual fees, accumulated over the first five Contract years;

##### *GC Section 1.2*

Appendix 13	Assignment Agreement between YWC and WAJ; YWC's Articles of Association
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##### *GC Section 1.9.1.*

(2) The Management Contractor acknowledges that its gross price includes all Taxes in effect as of the date which was set out as the Date for Determination of Taxes in the RFP. [Note: *The Contractor is expected to be exempted from VAT and corporate income tax, see Appendix 16.*]

##### *GC Section 3.15*

(2) The Performance Security shall be valid from the Effective Date **until the End Date (pursuant to GC Section 2.2) or** until YWC terminates the Performance Security by providing notice of termination to the bank that issued the Performance Security.

(3) The amount of the Performance Security shall be ten (10) percent of the contract value **(excluding the expected incentive compensation and penalties)**, which is equal to **10% of the Management Contractor’s Total Fix Fee**, as to be determined by the Bidder’s Price Form, Annex 16.

##### *GC Section 5.5 (2)*

(2) The Parties acknowledge and agree as follows:

- (a) **The Assignment Agreement and the Articles of Association (Appendix 13), under the Company Law and other relevant legislation of Jordan, define, which decisions are under the responsibility of the YWC shareholder WAJ, acting through the Management Committee, and which are under the**

responsibility of YWC's executive management, governed by the Management Contractor.

- (b) PMU shall be responsible for decisions of major significance and shall delegate to YWC the authority to make day to day decisions, in respect of project coordination and supervision.
- (c) The PMU has the right to assign an officer for the administration of the Contract, who shall be supported by technical and professional staff of YWC.
- (d) This officer and the professional and technical staff shall be located in the Service Area;
- (e) On decision of PMU, the role and function of the officer (pursuant to GC Section 5.5 (c) and (d)) may be combined with that of the CSO, which means that they may be one and the same person.
- (f) The CSO shall act as liaison between PMU, YWC and the Management Contractor. He shall monitor the Management Contractor's day to day operation and shall report directly to the Management Committee. Therefore, he shall have access to all information and data which are relevant for YWC. However, the CSO will have no operational powers.

#### *GC Section 6.1*

- (b) the Management Contractor's home office support (including, among others, short time expert missions to the service area as well as YWC's staff training in facilities of the Management Contractor);
- (e) reports, attendance and initiating of meetings with stakeholders of YWC;

#### *GC Section 6.2.1*

- (a) a **Fix Fee (FF)** for the services of the Management Staff (the "Management Contractor's Fix Fee") in accordance with the Bidder's Price Form (Appendix 16); and
- (b) an annual performance incentive payment (the "Incentive Compensation" i.e. the **"Variable Fee" VF**) in accordance with the Incentive Compensation and Liquidated Damages Appendix (Appendix 8).

#### *GC Section 6.3.1*

(1) On the Starting Date, and at the beginning of each subsequent contractual year, YWC shall within 45 days pay to the Management Contractor an advance payment equal to **the AFF, i.e. the Management Contractor's Annual Fix Fee** (the "Management Contractor's Fee Advance Payment") pursuant to Appendix 16 (Bidder's Price Form).

(2) **The Management Contractor's Fix Fee Advance Payments** will be due from YWC after the Management Contractor has provided YWC with a bank guarantee, in the form set out in the Bank Guarantee for Advance Payment Appendix, in Euros and in the amount of the Management

Contractor's **Fix** Fee Advance Payment. Such bank guarantee shall be renewed annually prior to the annual advance payment of the Fix Fee.

#### *GC Section 6.3.2*

(1) No later than 20 days after the Starting Date and on the fifteenth day of each subsequent Contract Year, the Management Contractor shall render an invoice to YWC for the services provided by the Management Staff in the forthcoming year. The invoice shall be in the amount of the Management Contractor's **Annual** Fix Fee.

(2) The **Management Contractor's Annual Fix Fee** shall be **determined according** to Appendix 8, Article 1, basing on the Management Contractor's proposal as set out in the Bidder's Price Form (Appendix 16).

(3) YWC shall **settle each invoice, and pay the due amount (as far as not already advance-paid)** in Euros, no later than 45 days after the date of the invoice, except to the extent that YWC is permitted and decides to withhold a portion of the Management Contractor's Fix Fee pursuant to the Contract, GC Section 2.7.2.

#### *GC Section 6.3.3*

(1) No later than 120 days after the Effective Date, YWC shall retain and pay for an independent auditor from a reputable international firm (the "Independent Auditor") to undertake an audit of the Management Contractor's achievements, calculate the Incentive Compensation and Liquidated Damages, **i.e. the Variable Fee** (Appendix 8) for the applicable Contract Year and to resolve all disputes with respect to the calculation of the Incentive Compensation. Notwithstanding GC Article 8, the decisions of the Independent Auditor, with respect to the calculation of the Incentive Calculation, shall be final and binding on the Parties and shall not be subject to the settlement of disputes process.

(2) No later than 90 days after the end of each Contract Year, the Management Contractor shall submit to YWC, the PMU and the Independent Auditor its calculations of the Incentive Compensation and Liquidated Damages for the previous Contract **Year together with the Annual Report (pursuant to the SA Article 5)**. The Management Contractor shall prepare the calculation in accordance with the Incentive Compensation and Liquidated Damages Appendix.

(5) **Not earlier than 18 days after the Independent Auditor's recommendations pursuant to the GC Section 6.3.3(3), the Management Contractor shall submit its invoice for payment of the Annual Variable Fee to YWC, with copy to PMU. This invoice shall be paid by YWC within 45 days.**

## **Appendix 2**

### *Article 5*

- e) The Management Contractor shall, no later than **90 days** after the last day of each Contract Year, submit to YWC an annual report.

### **Appendix 3**

#### *Article 9*

9.2 The deliverables determined, comprehensively, under No. 1, are essential, whereas the deliverables listed under No. 2 to 19 refer to strategic papers, plans, programmes, data information sheets etc., which the Management Contractor will probably need **as internal papers, in order to organise its** own work. YWC has the right to request these deliverables No. 2 ff, if the Management Contractor fails to fulfil Performance Standards, or fails to reach Performance Targets, or if the performance of water or wastewater services is doubtful for whatever reason.

### **Appendix 8**

#### *Article 1*

Contract Year 1: 90% fixed, 10% variable (100% = Management Contractor's **Annual Fee**, as offered in Appendix 16)

Contract Year 2: 75% fixed, 25% variable (100% = Management Contractor's **Annual Fee**, as offered in Appendix 16)

Contract Year 3: 50% fixed, 50% variable (100% = Management Contractor's **Annual Fee**, as offered in Appendix 16)

Contract Year 4: 50% fixed, 50% variable (100% = Management Contractor's **Annual Fee**, as offered in Appendix 16)

Contract Year 5: 50% fixed, 50% variable (100% = Management Contractor's **Annual Fee**, as offered in Appendix 16).

In case of a contract extension, the variable portion of the **Annual Fee** shall be the same as in the fifth contract year.

#### *Article 2*

IPI4 = **OCS** = Operational Cash Surplus (JOD)

calculated according to the following formula (with prices and tariffs from base year):  
Total revenues (pursuant to GC Section 1.1) during the reported year minus total operational expenses (i. e. OPEX, not including capital expenses CAPEX, as defined in Attachment 2),

excluding the Management Contractor's Fee, expenses for electric power, logger installation pursuant to Attachment 3, other Additional Expenses (as listed in Attachment 4 to Appendix 14) and staff training activities (as far as distinctively proposed by the Management Contractor), in Jordanian Dinar (JOD), with all expenses and revenues basing on prices of the starting date of the Contract (Attachment 4 to Appendix 8 contains the current tariff scheme for the Hashemite Kingdom of Jordan) **and adjusted to any general change in salaries of YWC's employees, if imposed by the Management Committee against the vote of the Management Contractor.**

#### *Article 3*

3.2 Should new and different information be discovered and different data be found, the incentive performance figures shall be revised and adjusted by the Independent Auditor, to correct any major deviations during the term of the Contract. The objective of any adjustment shall be to achieve a fair contract for both Parties. **If any of the Parties disagree with the Independent Auditor's adjustment, the controversy shall be resolved through arbitration.**

3.3 Such adjustment may be executed by

(i) correcting **physical** performance figures that need to be corrected for the Base Year, or

*Article 4.1*

4.1 The Incentive Compensation (IC [in EUR/a] shall be awarded to the Management Contractor according to the performance measured by the four Incentive Performance Indicators, IPI, with the indices 1, 2, 3 and 4. The performance, it has achieved in the reported year, shall be measured against the Incentive Performance Targets (IPT) and the Minimum Performance Targets (MPT) that have been scheduled for each Contract Year. The Incentive Compensation (IC) for the reported year shall be calculated, depending on the **Annual Fee (AF [in EUR/a])**, and is equal to the **Variable Fee (VF [in %])**, which is defined in Article 1.

*Article 4.4*

**(2) Expected performance improvement – physical figures** (Of contractual relevance are the physical Base Year Figures, whereas for the Target Figures the relative figures from the table (1) above are relevant (the physical Target Figures are provided for information and better understanding, only)).

*Attachment 2 to Appendix 8*

- 4. There are various additional expenditures, listed in Attachment 4 to Appendix 14 and in the Financial Model, **all expenditures**, which had not been registered in the past, but which are needed for sustainable operations of YWC. These expenses shall be called “Additional Expenditures” and shall be financed through the revenues of YWC.

**Appendix 9**

In accordance with the provisions of the contract the Contractor is obligated to provide a performance bond (Guarantee) for \_\_\_\_\_ Euro (in words: \_\_\_\_\_ Euro) which equals ten (10) percent of the contract value (which is equal to **10% of the Management Contractor’s Total Fix Fee**).

This Guarantee shall expire not later than **[insert End Date of Contract]**. By this date we must have received any claims for payment by letter or encoded telecommunication. It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

**Appendix 12**

In accordance with the provisions of the contract the Contractor receives an advance payment in the amount of ....., which represents **100 %** of the Management Contractor’s **Annual Fix Fee**.

This Guarantee shall expire not later than **[6 Months after the Advance Payment has been credited to the account of the Contractor]**. By this date we must have received any claims for payment by letter or

encoded telecommunication. It is understood that you will return this Guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

**Appendix 16**

For all Contract Years, the Management Contractor’s **Annual Fee (AF)**, including **all taxes except the corporate income tax and the value added tax**, as listed in Attachment 1 to this Appendix 16) shall be:

$$AF = \text{_____} \text{ EUR/year.}$$

A breakdown of all taxes **included in** above **Annual Fee** shall be provided on a separate page attached to the Bidder’s Price Form **together with the net Annual Fee**.

**The AF** includes (among others) the following annual rates (unit prices) for each of the Management Contractor’s staff:

The financial bid evaluation will be based on the sum of the Total Fee TF (which is the sum of the Total Fix Fee and the Total Variable Fee, wherein the Totals are the accumulated annual fees over the first five Contract years) and the Total Fix Fee (which is the sum of the Annual Fix Fees accumulated over the first five Contract years). Through this formula, the weight of the Total Fix Fee is doubled compared with the Total Variable Fee. This is done by intention, in order to award the bidders taking over the performance risks related to the Variable Fees.

	FF - Fix Fee [EUR/a]		VF - Variable Fee [EUR/a]		SUM
	Acc. to App. 8, Art. 1 (= maximum %)	Bidder’s proposal	Acc. to App. 8, Art. 1 (= minimum %)	Bidder’s proposal	= %FF + %VF
Year 1	90% Fix Fee	_____ % FF	10% Variable Fee	_____ % VF	100%
Year 2	75% Fix Fee	_____ % FF	25% Variable Fee	_____ % VF	100%
Year 3	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
Year 4	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
Year 5	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
	TFF = 315% x AF	TFF = (accumulated %FF) x AF = _____ EUR	TVF = 185% x AF	TVF = (accumulated %VF) x AF = _____ EUR	

Attachment 1 to Appendix 16

<b>Taxes and Fees</b>			
<b>Tax or mandatory contribution</b>	<b>Statutory tax rate</b>	<b>Tax base</b>	<b>Notes</b>
Social security contribution by employer	11.00%	gross salaries	
Property transfer tax	10% (buyer 6%, seller 4%)	estimated property value	applicable to lands and buildings
1% Educational & Vocational & Technical Training Support Fund on distributable profits	1.00%	distributable profit	
Vehicle tax	cm <sup>3</sup> and age	about 500 JOD for large vehicles	
Registration at Ministry of Industry and Trade	depend on the capital and type of business	about 1,000 JOD for a small company (llc)	
Municipality work permit	depend on the capital and type of business	about 500-1,000 JOD	
Custom duties		Depends on type of goods, source, and value	investigate exemptions
Tax on bank interest	5.00%	interest income	
Stamp duty	0.3% to 0.6%	contract value	
<i>Value Added Tax VAT ("sales tax")</i>	<i>16.00%</i>	<i>invoices</i>	<i>tax on invoices</i>
<i>Corporate income tax ("profit tax")</i>	<i>15.00%</i>	<i>taxable profits</i>	

**Request for Proposal**

*RFP Section 2.3*

2.3.1 The Management Contractor shall receive an **Annual Fee (AF)**, covering all its services according to the contract, consisting of a Fix Fee (FF) and a Variable Fee (VF) as incentive compensation.

*RFP Section 3.10*

(a) Advertisement	July 26, 2010
(b) Deadline for the purchase of bidding documents	August 12, 2010
(c) Pre-bid meeting	August 23, 2010
(d) Site Visits (tour)	August 24 & 25, 2010
(e) Data Room opened	August 25 – October 18, 2010
(f) Last Day for Bidders to Submit Requests for Clarification/ and the List of negotiation issues	September 17, 2010
(g) Date for Determination of Taxes	September 26, 2010
(h) Deadline for the Issuance of Clarifications and Addenda	October 4, 2010
(i) Deadline for Submission of Proposals	October 18, 2010 1:00 pm, Amman
(j) Evaluation report	November 18, 2010
(k) No objection to the evaluation report	November 25, 2010
(l) Identification of the Preferred Bidder and Negotiations	
(m) Negotiations completed	December 20, 2010
(n) Notification of Award (Note: After “no objection” from KfW)	January 13, 2011
(o) Contract Closure and Signing	January 23, 2011
(p) Effective Date	February 1, 2011
(q) Commencement of Work	April 1, 2011

*RFP Section 4.3 (e)*

*Note: The General Director and his staff have to accept and support the Chief Supervising Officer (CSO) of YWC, **nominated by the Management Committee**. The responsibilities of the CSO will be to report directly to the Management Committee (always with copy to the Management Contractor), about all issues of importance to YWC and the Management Contract. The CSO shall have access to all information and data, any time, which are relevant for YWC. The CSO has, whatsoever, no operational powers.*

*RFP Section 4.3 (g)*

A **comprehensive** methodology for capacity development and know-how transfer activities (pursuant to RFP Section 6.4.1(b)) providing (inter alia) background information on the concepts and curricula

to be used as well as the qualification and experience of the trainers. **The methodology should be concrete and understandable for bid evaluation and should also detail the related input (staff, facilities, total expenses) as well as the expected results.**

*RFP Section 4.10.2*

Each Bidder shall submit a completed and properly executed Bidder’s Price Form in the form contained in **Annex B** to this RFP. Bidders shall complete the Bidder’s Price Form in full and shall not change the form in any way. The Bidder shall state all amounts in the Bidder’s Price Form in both words and figures.

*RFP Section 4.10.4*

For the purpose of submitting Proposals, Bidders should note that the price set out in the Bidder’s Price Form shall **include** all taxes, duties, levies or charges applicable to the Contract as of the Date for Determination of Taxes set out in RFP Section 3.10.1 (**except for the VAT and the corporate income tax**). But Bidders shall **also** include in the Financial Proposal a separate breakdown of **these** taxes, duties, levies or charges **included in** the Bidder’s price (the “Tax Breakdown”). For the information of Bidders, the provisions with respect to taxes, duties, levies and charges appear at GC Section 1.9.

*RFP Section 6.4*

<b>Technical Evaluation Criteria</b>	<b>Score</b>
<b>1. Organisation &amp; Methodology</b>	<b>15</b>
1.1.1 Form of application (clarity and completeness of the proposal)	1
1.1.2 Strategy & Methodological Approach	2
1.1.3 Organisation & Team composition	<u>9</u>
1.1.3.1 Overall Structure	2
1.1.3.2 Regional Capabilities	7
<i>(Note: Maximum score to be awarded if the Bidder’s consortium includes a consortium partner with more than three years of operational experience in the Jordanian water sector, and the partner’s share is at least 30% of the Total Fix Fee. Zero points shall be awarded if the Bidder does not have at least 2 years of operational experience in the Jordanian water sector. Scores awarded in between these benchmarks depend on the quality and quantity of the input of partners with regional capabilities.)</i>	
1.1.4 Time and Workplan (incl. MC’s staffing schedule)	3
<b>2. MC Staff Quality</b>	<b>30</b>
2.1 <u>General Director</u>	<u>8</u>
2.1.1 <b>International</b> professional experiences	4
2.1.2 Educational background <b>and training</b> ( <i>max = doctorate degree</i> )	1
2.1.3 Regional knowledge ( <i>max = 2 projects from Jordan or 5 from MENA region</i> )	2
2.1.4 Language skills ( <i>English is compulsory, Arabic is a plus</i> )	1

2.2 <u>Financial Director</u>	<u>5</u>
2.2.1 <b>International</b> professional experiences	3
2.2.2 Educational background <b>and training</b> ( <i>max = doctorate degree</i> )	1
2.2.3 Regional knowledge ( <i>max = 2 projects from Jordan or 5 from MENA region</i> )	1
2.3 <u>Technical Director</u>	<u>5</u>
2.3.1 <b>International</b> professional experiences	3
2.3.2 Educational background <b>and training</b> ( <i>max = doctorate degree</i> )	1
2.3.3 Regional knowledge ( <i>max = 2 projects from Jordan or 5 from MENA region</i> )	1
2.4 <u>Operational Director</u>	<u>5</u>
2.4.1 <b>International</b> professional experiences	3
2.4.2 Educational background <b>and training</b> ( <i>max = doctorate degree</i> )	1
2.4.3 Regional knowledge ( <i>max = 2 projects from Jordan or 5 from MENA region</i> )	1
2.5 <u>Non-Key Professionals (NKP)</u>	<u>7</u>
2.5.1 Number of NKP in relevant fields ( <i>max = 15</i> )	3
2.5.2 Qualification and experiences of NKP	4
<b>3. Professional backstopping</b>	<b>20</b>
3.1 Previous operational experiences ( <i>measured against the eligibility criteria</i> )	5
3.2 Total staff employed for utility operations ( <i>max = 1,000</i> )	5
3.3 Total turnover p.a. for operational services ( <i>max = 500 mio EURO/a</i> )	5
3.4 Focus on water utility operations ( <i>max = 100%; no other business</i> )	5
<b>4. Time input of key professionals (KP)</b> KP weighted according to 2. ( <i>from 0 scores for 200 to 22 scores for 400 working months</i> )	<b>22</b>
<b>5. Capacity development and know-how transfer</b>	<b>13</b>
5.1 Concept (relevance and quality of curricula)	4
5.2 Trainers (experience and education)	4
5.3 Expenses (only as far as clearly dedicated)	5
<b>Maximum Technical Section Score</b>	<b>100</b>

**Note: International experience is experience gained outside the Hashemite Kingdom of Jordan.**

#### RFP Section 6.4.2

A Technical Section must receive at least a total score of **65** to be considered further in the evaluation process and to have the corresponding Financial Section opened. Any eligible Bidder whose Technical Section meets this criterion is a “Qualified Bidder”.

*RFP Section 6.5.4*

The Bidders shall offer **one Annual Fee (AF) in Euro for all Contract Years**, as lump sum, to be subdivided in a Fix Fee (FF) and a Variable Fee (VF). Bidders may choose a lower Fix Fee : Variable Fee ratio (FF:VF ratio) than the ratio defined in Appendix 8. However, the Fix Fee percentage must not be increased and the sum of Fix Fee and Variable Fee must not exceed 100% in each year. **The financial bid evaluation will be based on the sum of the Total Fee TF (which is the sum of the Total Fix Fee and the Total Variable Fee, wherein the Totals are the accumulated annual fees over the first five Contract years) and the Total Fix Fee (which is the sum of the Annual Fix Fees accumulated over the first five Contract years). Through this formula, the weight of the Total Fix Fee is doubled compared with the Total Variable Fee. This is done by intention, in order to award the bidders taking over the performance risks related to the Variable Fees.**

*RFP Section 6.5.5*

For the financial evaluation, the Bidder’s Financial Section score shall be calculated as follows (pursuant to Appendix 16 to the Management Contract):

	FF - Fix Fee [EUR/a]		VF - Variable Fee [EUR/a]		SUM = %FF + %VF
	Acc. to App. 8, Art. 1 (= maximum %)	Bidder’s proposal	Acc. to App. 8, Art. 1 (= minimum %)	Bidder’s proposal	
Year 1	90% Fix Fee	_____ % FF	10% Variable Fee	_____ % VF	100%
Year 2	75% Fix Fee	_____ % FF	25% Variable Fee	_____ % VF	100%
Year 3	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
Year 4	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
Year 5	50% Fix Fee	_____ % FF	50% Variable Fee	_____ % VF	100%
	<b>TFF = 315% x AF</b>	<b>TFF = (accumulated %FF) x AF = _____ EUR</b>	<b>TVF = 185% x AF</b>	<b>TVF = (accumulated %VF) x AF = _____ EUR</b>	

$$\text{Financial Section score} = \frac{\text{lowest (Total Fee - Total Fix Fee)}}{\text{Bidder's (Total Fee + Total Fix Fee)}} \times 100$$

## **Addendum No. 4**

Following the Requests for Clarification issued by the bidders, the following amendments have been made to the Contract and Tender Documents in order to provide greater clarity.

The complete set of Contract and Tender Documents will be uploaded shortly. Colored printing in below paragraphs highlights new/changed wording, sentences or paragraphs.

### **Form of Contract**

B E T W E E N

Al Yarmouk Water Company LLC  
(hereinafter “YWC”)

– and –

[Name of Management Contractor’s Company] incorporated under the laws of [place of incorporation]  
with its principal place of business at [Address of the Management Contractor]

(hereafter the “Management Contractor”)

– and –

[Name of the Management Contractor’s company, or (if this company is still under foundation) name  
of the company authorised to act on behalf of the future Management Contractor’s company]

### **General Conditions**

*GC Section 1.1*

“**End Date**” is defined in GC Section 2.2(2);

“**Man Month**” is defined to be equal to 21 working days (net presence), one working day equals 8 working hours;

“**Material Change in Law**” means any adoption, promulgation, repeal or modification after the Effective Date of any laws, regulations, statutory instruments within Hashemite Kingdom of Jordan and/or any part of the Applicable Law that may adversely affect the rights and obligations of Parties under this Agreement.

*GC Section 2.2*

(1) Unless terminated earlier pursuant to GC Section 2.8 or extended pursuant to GC Section 2.5, the duration of this Contract is five (5) years.

(2) The End Date shall be the day following the last working day of the Contract, which will be 5 years after Starting Date, unless the Contract is terminated or extended (pursuant to GC Section 2.2(1)).

(3) The Completion Date shall be the day after the day, on which the Contractor has fulfilled all its obligations under this Contract.

*GC Section 2.8.1(f)*

(f) the Liquidated Damages exceed the maximum of 35% of the Annual Fee (pursuant to Appendix 8, Clause 5.5) in two consecutive years;

### GC Section 3.3.2

- (c) capital investment programs of YWC; and
- (d) except with the prior written consent of PMU, the goods, works and services purchased from the Annual Operations and Maintenance Budgets of YWC.

### GC Section 3.3.3

(3) PMU may in its sole discretion allow any company affiliated with the Management Contractor, or co-operating with the Management Contractor or any of its affiliates, to deliver goods, works or services, especially technology and equipment within the service area of YWC or any other area where YWC under the Management Contractor are delivering whatever services. With no exception, such delivery shall be awarded through a public tender process. The Management Contractor must hire independent Consultants, to be appointed by PMU, to elaborate the design, the terms of reference and the tender documents, and to advise PMU with bid evaluation and to select the best bidder for the delivery. In no way is the Management Contractor allowed to influence the tender process.

### GC Section 3.8

(1) To the extent specified in GC Sections 3.8(1)(a) and (b), the Management Contractor shall take out and maintain in effect, or cause to be taken out and maintained in effect, during the prevalence of the Contract, the insurances set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of YWC, which shall not unreasonably withhold such approval. Furthermore, YWC shall on the Effective Date notify the Management Contractor of those assets, operations and insurable risks that shall be subject to the obligation of the Management Contractor under this Section 3.8(1)(a) and (b) herein.

(a) On behalf and at the expenses of the Management Contractor:

Professional Liability Insurance

Covering any loss or damage resulting from professional negligence occurring in connection with the Services with a minimum coverage of 2,000,000 Euros;

Third Party Liability Insurance

Covering bodily injury or death suffered by third parties, including the Management Contractor's employees, and loss of damage to property occurring in connection with the Services with a minimum coverage of 5,000,000 Euros;

(b) On behalf and at the expense of YWC all insurances as stipulated under the Assignment Agreement (Appendix 12), Clause 7.6, plus any other insurances on decision of YWC.

(2) YWC shall be named as co-insured under all insurance policies taken out by the Management Contractor pursuant to GC Section 3.8(1), except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Subcontractors shall be named as co-insured under all insurance policies taken out by the Management Contractor pursuant to GC Section 3.8(1) (a). All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

### GC Section 3.14

(1) The Management Contractor shall, in accordance with the Services Appendix, collect Revenues on YWC's behalf. All Revenues of YWC, including collected water tariffs, subsidies from WAJ, disbursements from donor agencies, shall be transferred to a Revenue Account, as described in GC Section 3.14(2) ff.

Expenses on behalf of YWC (such as for capital investments, including goods and services from construction companies or equipment manufacturers, and for operations and maintenance, including salaries, consumables, repairs) shall be paid from a separate Expenditures Account, as further described in GC Section 5.3.2.

The Expenditures Account shall be balanced through transfers from the Revenue Account.

Whereas the Expenditures Account shall be under full control and withdrawal power of the

Management Contractor, the Revenue Account shall be under the joint withdrawal power of both Parties.

(2) YWC shall maintain a deposit account at a bank that has branches in the Service Area to be used solely for the deposits of all Revenues collected by the Management Contractor on behalf of YWC (the "Revenue Account"). YWC may, in its sole discretion, choose the bank at which the Revenue Account is to be held. The authority to sign for withdrawal from this Revenue Account shall be jointly with YWC's General Director and two of YWC's Management Committee members.

(3) The Revenues to be deposited on the Revenue Account are the Revenues (pursuant to GC Section 1.1) and any subsidy amounts from WAJ including the working capital of 2 million JOD as stated in the Assignment Agreement, Article 2.5. b, plus other revenues including disbursements from donor agencies to YWC.

(4) The Revenue Account shall be used only for two kinds of withdrawals, namely transfers to the Expenditures Account and payments of the Management Contractor's compensation according to GC Section 6.2. The withdrawals from the Revenue Account dedicated to transfer the needed capital to the Expenditures Account shall not happen more than once every month, except for urgent situations.

(5) YWC commits to have a positive balance in the Revenue Account of at least two (2) million Jordanian Dinars at the end of each month. WAJ shall support YWC regarding this commitment.

(6) YWC is entitled to conclude an agreement with the bank for over draft amount not to exceed one million Jordanian Dinars, WAJ shall facilitate the guarantee if needed.

(7) YWC shall open other bank account/accounts (sub-accounts or side-accounts to the Revenue Account), if required to process capital projects' financial procedures. This account can be in Jordanian Dinar, Euro, or any other currency as required by the donors. The foreign and local contribution in the projects shall be deposited to this account, withdrawal authority from this account will be defined according to the donors requirements.

(8) The Management Contractor shall directly deposit all of the collected Revenues of the Customers into the Revenue Account. The Management Contractor acknowledges that at all times ownership of the collected Revenues rests with YWC. The Management Contractor shall deposit all collected Revenues, whether in the form of cash, cheques or other form, to the Revenue Account on the day of receipt. If it is not possible for the Management Contractor to deposit Revenues on the day of receipt, the Revenues shall be deposited by the Management Contractor on the next banking day.

(9) At all times, all Revenues collected by the Management Contractor are the property of YWC. Until such time as the Management Contractor deposits the Revenues into the Revenue Account, the Revenues shall be in the care and custody of the Management Contractor.

(10) The Management Contractor shall not deposit nor permit the deposit of the Revenues into any account other than the Revenue Account.

(11) The Management Contractor shall be liable for any loss, theft or destruction of the Revenues which occurs due to defective or negligent management by the Management Contractor prior to the deposit of the Revenues into the Revenue Account. In the event of such loss or theft of Revenues before they are deposited to the Revenue Account, the Management Contractor shall pay the amount of such losses to YWC forthwith and without recourse to any defense or objection.

(12) The Management Contractor shall put in place, prior to the receipt of any of the Revenues, security measures, to protect such Revenues from loss, theft or destruction. [Note: *YWC and the winning bidder shall agree through negotiations prior to the awarding of the contract on the measures required to prevent misuse or loss of cash from the Expenditures Account.*]

Footnote to GC Section 3.14: This section is matter to further specification, adjustment and updating, in accordance with the business plan of the Management Contractor, and in accordance with the available budgets respectively decisions of WAJ and KfW, regarding the final handling and administration of cash.

#### *GC Section 4.2*

- (1) The Management Contractor shall not change his Authorised Representative (pursuant to Section 1.8) without prior written notification to PMU.
- (2) The Management Contractor shall not change any levels of responsibility that any member of the Management Staff is committed to the Contract or any other matter set out in the Management Staff Appendix without the prior written notification to YWC.

#### *GC Section 5.3.2*

- (1) No later than the Starting Date, YWC shall deposit to an account reserved exclusively for funds in respect of YWC's expenditures (the "Expenditures Account"), an amount of 2 million JOD as start-up capital granted from WAJ (cf. Article 2.5 b of the Assignment Agreement, Appendix 12). This amount is equal to 8 percent of the estimated operations and maintenance budget for the YWC, for the remaining period of the then current YWC Fiscal Year (the "Initial Partial Year").
- (2) Starting 30 days after the Starting Date and at the beginning of each month and continuing until the commencement of the first full YWC Fiscal Year after the Starting Date, YWC shall deposit an amount equal to the remaining 92 percent of the estimated operations and maintenance budget for the Initial Partial Year divided by the number of months in the Initial Partial Year, excluding the first month, minus an amount equal to any portion of the previous month's payment which is unused.
- (3) Starting on January 1 of the first full YWC Fiscal Year during the term of the Contract, and on the first day of each consecutive month during the term of the Contract, YWC shall deposit to the Expenditures Account an amount equal to one twelfth of the estimated operations and maintenance budget for YWC for the applicable YWC Fiscal Year.
- (4) If the last YWC Fiscal Year during the term of the Contract is not a full YWC Fiscal Year, the approach set out in the provisions in respect of the Initial Partial Year as set out in GC Sections 5.3.2(1) and (2) shall be applied with the following exceptions: For the period of the last YWC Fiscal Year that falls within the term of the Contract (the "Last Partial Year") YWC shall deposit an amount equal to the remaining estimated operations and maintenance budget, divided by the number of months remaining in the Last Partial Year.
- (5) For the purpose of clarity, the intention of GC Sections 5.3.2(1), (2) and (4) is to ensure that for the Initial Partial Year and the Last Partial Year YWC is obliged to deposit only a pro-rated portion of the estimated operations and maintenance budget for the YWC for the applicable partial YWC Fiscal Year.
- (6) All amounts remaining in the Expenditures Account on the End Date, including interest accrued, if any, shall be the property of YWC and shall be paid to YWC on the End Date.
- (7) The Management Contractor shall not withdraw or use, in any way, funds from the Expenditures Account for any purpose other than expenditures that have been generally approved by the Management Committee under the applicable Capital Investments and Operations and Maintenance Budgets.
- (8) The Management Contractor shall collect deposits from Customers as part of the Customers' water subscription payments, maintain accurate records with respect to these deposits and deposit the amounts collected in a separate bank account as directed by YWC.
- (9) To ease operations, the new water subscribers' deposits shall be collected by the Management Contractor. They shall be considered as part of the revenues provided that they are registered in the financial books as deposits, and the Management Contractor shall be responsible to repay the deposits to the subscribers who terminate their contracts regardless when these deposits were collected.
- (10) The Management Contractor has been put fully aware of the nature and extent of YWC's obligation under the Assignment Agreement (Appendix 12), and/or the implication of the said obligations on its duties under this Management Contract.
- (11) Notwithstanding the above, YWC, through WAJ, will guarantee that a minimum monthly cashflow equal to 1/24 of the Annual Operations and Maintenance Budget for YWC is transferred to the Expenditures Account.

Footnote to GC Section 5.3.2: This section is matter to further specification, adjustment and updating, in accordance with the business plan of the Management Contractor, and in accordance with the available budgets respectively decisions of WAJ and KfW, regarding the final handling and administration of cash.

*GC Section 5.5*

(2) (c) The PMU has the right to assign an officer for the administration of the Contract.

(3) YWC through its Management Committee and with support of PMU shall carry out the Management Contract coordination and supervision responsibilities under this Contract including,

*GC Section 6.1(d)*

(d) all secretarial and administrative support staff providing assistance and services to the needs of the Management Contractor (not to the needs of YWC);

*GC Section 6.2.2*

(3) The Management Contractor shall make no claim whatsoever for additional costs, expenses or reimbursement for any costs or expenses associated with the Management Staff and acknowledges that the Management Contractor's Annual Fee constitutes full payment to the Management Contractor for the Management Staff and the services carried out by the Management Staff.

*GC Section 6.4*

YWC shall pay the Management Contractor the Management Contractor's Fee in Euros.

*GC Section 6.7*

(7) The reference date for all currency exchange rate related adjustments shall be 28 days prior to the Bid Submission Date. The base year for all inflation related adjustment shall be the Base Year as defined in GC Section 1.1.

(8) Should any Material Change in Law take place that may cause the performance of this Management Contract cumbersome or may result in a loss to any such Party, then the Parties shall endeavor to discuss in good faith and agree on the positives and or negative remedies resulting from such a change. If both Parties fail to settle their disputes over this Material Change in Law, then any Party may decide at its own discretion to invoke Clause 8 of these General Conditions.

**Appendix 2**

*Article 3(g)*

The Management Contractor shall operate modern systems for management information, customer service and financial and cost, whether by improving and developing those in use or by designing and installing new ones if deemed necessary.

## **Appendix 8**

### *Article 2, IPI 3*

IPI3 = **SPC** = Specific Power Consumption (kWh / m<sup>3</sup>)  
measured as ratio of electric energy consumed by YWC and the volume of supply water produced,  
according to the following formula:

Total annual electric power consumption billed (in kWh)  
excluding electric power consumption for wastewater facilities which have been **taken into operation  
after 31 December 2010**.  
divided by the amount of water produced (in m<sup>3</sup>) during the reported year.

### *Article 3.2*

Should **the working conditions change materially or should** new and different information be discovered and different data be found, the incentive performance figures shall be revised and adjusted by the Independent Auditor **on request of either Party**, to correct any major deviations during the term of the Contract. The objective of any adjustment shall be to achieve a fair contract for both Parties. If any of the Parties disagree with the Independent Auditor's adjustment, the controversy shall be resolved pursuant to **GC Section 8 (Settlement of Disputes)**.

### *Article 5.5*

**5.5 The annual Liquidated Damages (negative IC) shall be limited to a maximum of thirty (30) percent of the Annual Fee (pursuant to the Bidder's Price Form, Appendix 15).**

### *Attachment 2 to Appendix 8*

**11. Rehabilitation of any segment from the water networks consisting of main and secondary pipe systems, as well as from the tertiary pipe system any segment, which is fed with water from a main or secondary pipe system, provided this segment is serving more than 20 house connections.**

**12. Rehabilitation of any segment from the wastewater collection networks, which is consisting of main sewers, or which is serving more than 10 house connections.**

## **Appendix 15**

The AF includes (among others) the following annual rates (unit prices) for each of the Management Contractor's staff:

- General Director:	_____	EUR/year
- Director of Finance	_____	EUR/year
- Director of Operations	_____	EUR/year
- Technical Director	_____	EUR/year
- Commercial and Customer Manager	_____	EUR/year
- Human Resources Director	_____	EUR/year
- Information Tech Director	_____	EUR/year
- Short term professionals	_____	EUR/year
- <b>Services delivered from outside Jordan (e.g. backstopping)</b>	_____	<b>EUR/year</b>

## **Request for Proposal**

RFP Section 4.3(e)

~~Note: The Management Contractor is free to combine heads and fields of expertise etc. Explanations regarding district officers, impairing managers shall be made in the Request for Tender documents.~~

RFP Section 5.1.1

(b) an electronic copy of the Proposal on CD (one CD containing the Technical Section, one CD containing the Financial Section, to be included in the relevant envelopes).

RFP Section 5.1.3

The authority of the person or persons signing the Proposal to bind the Bidder shall be demonstrated by a written power of attorney included in the Proposal and submitted as Part VI of the Technical Section of the Proposal.

RFP Section 5.3.1

One of the seven copies (as hard copy and soft copy) shall be sent directly to KfW, to the address set out in RFP Section 3.8 (a copy of the dispatch notice to KfW shall replace copy no. 7 in the package sent to PMU).

RFP Section 6.4.1(b)

<b>3. Professional backstopping</b>	<b>20</b>
3.1 Bidders' previous operational experiences (measured against the eligibility criteria)	5
3.2 Total staff employed for utility operations (max = 1,000)	5
3.3 Total turnover p.a. for operational services (max = 500 mio EURO/a)	5
3.4 Focus on water utility operations (max = 100%; no other business)	5
<b>4. Time input of professionals (from 0 scores for 200 to 22 scores for 400 working months)</b>	<b>22</b>
4.1 Key Professionals (from 0 scores for 150 to 15 scores for 300 man months)	<u>15</u>
4.2 Non-Key Professionals (from 0 scores for 50 to 7 scores for 100 man months)	7
<b>5. Capacity development and know-how transfer</b>	<b>13</b>
5.1 Concept (relevance and quality of curricula)	4
5.2 Trainers (experience and education)	4
5.3 Expenses (outside YWC's budget, only as far as clearly dedicated)	5

Annex A, Format of Curriculum Vitae (CV) for Proposed Key Staff

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe me, my qualifications, and my experience I further declare that I am able and willing to work for the period(s) foreseen for the position for which my CV has been included in the event that this tender is successful, namely:

<b>From</b>	<b>To</b>

I confirm that (if this tender is successful) I will not be engaged in another project in a position for which my services are required during the above period(s).

\_\_\_\_\_  
[Fill in name of Bidder here.]

# Corporatization and Management Contract for the Northern Governorates of Jordan

## Questions and Answers Sheet June 2010

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### Purpose

The purpose of the Questions and Answers (Q&A) sheet is to provide relevant information to concerned parties such as prospective bidders, decision-makers in Jordan and possibly the media. The Q&A sheet is intended to be customized for different audiences, so that each audience will be informed about the issues that are of concern to them. The Q&A sheet is intended to be updated regularly as the corporatization and transaction process moves on. The sheet is written in non-technical language, as far as possible. It will be translated to Arabic to reach a broader audience.

### 1. Background

The Northern Governorates Water Administration (YWC) is currently in a process of reforming. This includes two processes. First, following a Cabinet decision in April 2010 the institution is in the process of being corporatized through the establishment of a Limited Liability company to be called Al Yarmouk Water Company. Second, until January 2010, a management contract will be implemented with an experienced international operator. The main objective of the reforms is to improve service delivery for the population in the Northern governorates.

### 2. The current situation (as of June 2010)

**What is Al Yarmouk Water Company?** Al Yarmouk Water Company is a limited liability company owned by the Water Authority of Jordan (WAJ). It is responsible for water supply, sewerage and wastewater treatment in the Northern Governorates of Ajloun, Irbid, Jerash and Mafraq Governorates. It used to be the Northern Governorates Water Administration (NGWA), a former Department of WAJ. During the transition

period until Al Yarmouk Water Company will be effectively established, it is being headed by an Assistant Secretary General of WAJ. Al Yarmouk Water Company has four Regional Operation Units, one in each governorate. YWC still relies on WAJ for some specific services that remain to be transferred. YWC serves more than 1.5 million people. It had 1,699 employees in 2008.

**What are the main physical assets of YWC?** In 2008 YWC's physical assets included 217 wells and springs, 11 water treatment plants, 83 water pumping stations, 6,210 km of water pipes, 225,207 water connections, 74,127 sewer connections, 966 km of sewer pipes, 4 major sewage pumping stations and 7 wastewater treatment plants. Almost all water connections are metered, although many meters are in poor working condition. Almost all YWC's water sources are located inside its geographical area and it does not import significant amounts of water from other service areas. By far the main water source is the Mafraq well field in the Eastern part of the service area, followed by the Wadi el-Arab well field in the Western part of the service area. The towns of Jerash and Ajloun are partly supplied by springs. While most of the network in the service area is integrated, there are also a few small isolated networks such as in Ruweished near the Iraqi border and in the Northern Jordan Valley. Many water treatment plants are small reverse osmosis units that treat brackish groundwater from specific wells with high salinity.

**What are the major challenges related to water supply and sanitation in the Northern Governorates?** First, intermittent supply is a major problem. Most households in the Northern Governorates receive water only one day per week. Some localities receive water less frequently, especially during the summer when the population increases significantly due to Jordanians returning from work in the Gulf. Households store water in tanks, which are not always cleaned regularly. This may impact bacteriological water quality. The level of physical and administrative losses is high. There are no accepted and reliable figures about the actual level of losses, which is estimated to be between 40% and 45%. About half of these losses are estimated to be physical losses, the remainder being administrative losses. Some parts of the network extend over substantial differences in altitude with no pressure zones, so that system pressures can reach up to 30 bars or more than ten times the normal operating pressure.

Second, operating costs are high due to high energy costs, high percentage of non-revenue water (NRW) and other reasons concerning the management efficiency. The staff ratio of YWC is 7.5 employees per 1,000 water connections, compared to international good practice of less than 4 employees/1,000 connections.

A third problem is that not everyone pays their water bill. Billing efficiency - the share of bills paid compared to bills issued - was estimated at 96% in 2008, up from an estimated 91% in 2006. Estimates of billing efficiency vary. While billing efficiency appears to be high, it requires continued attention. There is also a backlog of unpaid bills that requires attention.

**What are major achievements related to water supply and sanitation in the Northern Governorates?** Water coverage is almost universal and is not considered a major problem. The quality of water at the delivery point to customers is in general acceptable, although there has been an incident of water contamination in 2007. Sewerage coverage is 33 % and is increasing as part of projects funded by the German Government through KfW development bank. Wastewater treatment plants operate largely satisfactorily. Most of the water systems have been mapped into a Geographical Information System (GIS), a commercial and billing system (Coboss 2+) has been installed and a customer call center has been established. Under an Operations and Management Support (OMS) project financed by the German Government - through the technical cooperation agency GTZ - meter reading and billing have been improved substantially in a pilot area in Al-Koura.

**How much subsidies were paid to NGWA?** The operation and maintenance cost recovery ratio is on the range 70-85%, cash deficit of NGWA is currently estimated at JD 4 million in 2007 and JD 6 million in 2008. Total losses, including depreciation are even higher. The government has paid an annual subsidy in the order of JD4-5 million to NGWA. The government is expected to continue to provide an operating subsidy to YWC.

**Where can more detailed information be found?** A data room with all the available reports on former NGWA / today's YWC will be established as part of the bidding process and bidders will be given an opportunity to review the information in the data room with sufficient time prior to the deadline to submit bids. This includes data from the Geographical Information System established between 2006 and 2009 and data from a hydraulic model that was established shortly before that period.

**How reliable are the baseline data and how will they be verified?** As in the case of other management contracts, baseline data for YWC are not always reliable. Therefore baseline data will be reviewed during the first year of the contract with the help of an independent technical and financial auditor to be hired and paid for by a donor agency.

### **3. The corporatization of YWC**

**What does the corporatization of YWC mean?** Corporatization means that YWC is in the process of being effectively established as an independent legal entity with its own separate finances and management. Its Board would be chaired by the Water Authority of Jordan (WAJ) and its General Manager would be appointed by its Board. Other board members will be nominated by from both the private and public sectors. (envisaged to be 60% private and 40% public).

**Why has the government decided to corporatize YWC?** The Water Sector Strategy calls for commercializing the water utilities. Moreover it adopts the principle of separation of bulk water supply (wholesale) from water distribution (retail). The government pursues a policy of creating regional water and sanitation companies throughout Jordan. YWC would be the third company, to be followed by two more

companies in the Middle and Southern Governorates. Corporatization is expected to increase the transparency of financial flows and allow decisions about water and sewer service provision to be made in closer proximity to citizens. The Assignment Agreement and Articles of Association to create YWC could serve as a model for other regional companies.

**What will be the transition period until YWC will be functionally established?** There will be a transition period until YWC will be functionally established. The management contractor will play an important role during this period. During this period staff, assets and liabilities need to be effectively transferred. The exact duration of this period cannot be determined in advance, but it is expected to last for at least one year.

**What are other examples of corporatization of water companies in Jordan?** There are two commercial water companies in Jordan: The *Aqaba Water Company* (AWC) is a public company established in 2004. It is owned by WAJ (85%) and the Aqaba Special Economic Zone Authority (ASEZA) which owns 15%. The company *Miyahuna* serving the Amman governorate was created in 2007 after the end of the management contract. All of its shares are owned by WAJ.

**What has been the experience so far with the existing water companies?** The performance of the *Aqaba Water Company* is perceived as very positive. One year after the creation of the company, water supply was increased from six to seven days per week. Response time for breakdowns and consumer complaints were reduced and water quality improved. Aqaba benefits from relatively low water production costs and a unique customer base with a high share of large customers. (NRW is in the range of 20-35% in 2008). Concerning *Miyahuna*, it is still too early to assess performance. So far, there have been improvements concerning customer services. *Miyahuna* started a public water awareness campaign in 2007.

#### **4. Private sector participation in water supply and sanitation: Lessons from experience**

**Are there cases of private operators in water and sanitation in Jordan?** Yes. Outside the Northern Governorates there have been three experiences with private sector participation (PSP) in water in sanitation in so far. The earliest experience is the management contract for Amman from 1999-2006. It was followed by a 25-year Build-Operate Transfer (BOT) contract for the As Samra wastewater treatment plant awarded in 2002. Finally, in 2006 a Jordanian firm was recruited to improve meter reading, billing and collection in a pilot area in Madaba, that will be followed soon by a second contract in Balqa (Micro-PSP advertised in 2009).

**What were the results so far?** The management contract in Amman gave mixed results. 12 of 15 performance indicators were achieved after an extension of the initial contract duration (4 years) by another 3 years. The targets which were not achieved included increased continuity of supply, reduction of power consumption and reduction of accounts receivable. Evidence shows that the contractor did not have influence on a part

of the necessary processes. Some of the target values, such as an increase of the accounted for water by 25%, had been set at levels that proved to be too ambitious in retrospect which is why they were adapted during the contract period. The contract led to significant improvements in several aspects. Water losses were reduced from 54% to 42%. Staff productivity increased from 5.6 employees per 1,000 connections to 4. Service improvements also took place concerning metering, network mapping, leak detection and repair and public information, among others.

Performance issue	Performance Indicator	1999	2006	Trend
Service Coverage	HH with piped water connections (%)	90	100	+
	HH with piped sewerage connections (%)	69	90*	+
Quality of Service	Per cap consumption (lcd)	70	65 (90 in 2005)	-
	Hours of supply (hrs/day)	4	4.4	+
	Customers with continuous supply	0	13	+
	Negative for pathogens (%)	98.8	99.9*	=/+
Efficiency of Service	NRW (%)	49	43	+
	Accounts with operating meters (%)	55	100*	+
	Staff/1000 subscribers	6	3	+
Sustainability of service	Collection ratio %	90	98.4	+
	Working ratio %	110	87	+

The BOT contract for As Samra is generally considered successful. The micro-PSP contract for the Middle Governorates is also considered to be successful, reaching a billing efficiency of 108% in 2007 through the recovery of arrears from previous years. In Madaba, water losses decreased from 48% to 38%.

**Have other countries in the Middle East and North Africa used private operators in water and sanitation?** Yes. The Palestinian Water Authority signed management contracts for the Gaza Strip in 1996 and for Bethlehem in 1998. The Lebanese government signed a management contract for Tripoli in 2004. The Gaza contract achieved a significant reduction in non-revenue water from about 50% to 30%. It was extended twice before it collapsed in 2002 due to the general conditions prevailing in Gaza. The management contract in Tripoli was not renewed, despite having achieved many of its objectives. The Algerian government signed management contracts for Algiers in 2006 and for two other cities, Oran and Annaba, in 2007.

The Moroccan government has signed 30-year concessions for water supply, sewerage and electricity distribution in four large cities (Casablanca, Rabat, Tangiers and Tetouan) beginning in 1997. The Moroccan concessions are different from management contracts. One of their main objectives is to increase coverage, not necessarily to improve service quality which is already good in Morocco.

**What are some lessons from this experience?** It is difficult to distil general lessons from diverse settings in different countries. However, establishing clear responsibilities from the start and ensuring transparency are important determinants of the success of public-private partnerships. Achieving early successes during the first year or two years of the contract is essential to build credibility. Also, establishing trust between the operator on the one hand and employees and contractual partners on the other hand in the initial phase is very important, so that disagreements can be resolved amicably. Another lesson is that baseline data are often not reliable, so that contract renegotiations may become necessary once better data become available.

**A private managing consultant has been recruited previously for the Northern Governorates. What were the results?** An international tender to recruit an operator for the Northern Governorates was carried out in 2004. Only a single proposal was received and the government decided not to award the contract. Subsequently a managing consultant (MaCo) was recruited in April 2006. For three years to provide technical assistance to YWC. The contract was awarded to a joint venture of Severn Trent International and the Jordanian company Consulting Engineering Center. After the mid-term review it became clear that the original objectives were not achievable and the following five objectives were adopted:

- Disbursement of KfW funds of 20m Euros
- A 5% reduction in the number of staff of NGWA
- A 4% reduction in the use of energy per cubic meter of water supplied
- Achievement of a collection ratio of 96%
- Achievement of non-revenue water of 37.5%

Three indicators were achieved: Staff reduction, NRW and billing of accounts receivable. However, the operator did create a system map in a Geographical Information System, a Customer Call Centre and a computerized commercial system for customer billing. It also carried out staff training in technical, finance and commercial areas. The operator also paid incentives to staff, which were not differentiated based on performance, but only based on staff grades. The contract expired in April 2009 without being renewed.

**What will be different under the new contract?** The new contract is designed to attract operators rather than consultants. As such, the management contractor will have the final decision power, learning from the experience that the parallel structures between NGWA management and managing consultant proved to be inefficient. The new contract will also include a higher element of performance-based remuneration, including the threat of penalties if minimum levels for key indicators are not achieved. The objectives have also been modified. One of the reasons is that some indicators, such as water losses, were difficult to measure reliably. Others, such as the reduction of staff, have proven to be difficult to achieve due to factors outside of the control of the management contractor. Another difference is that the contract will not be signed with WAJ, but with the newly created public company YWC.

## **5. The basics of the management contract**

**Why has the government decided to recruit a private operator for the Northern Governorates?** The Jordanian Water Strategy 2008-2022 provides for increased private sector involvement. Specifically the government intends to recruit a private operator in the Northern governorates in order to improve continuity of supply and increase the efficiency of operations. The contract is also expected to generate sufficient income for YWC to undertake more routine and preventive maintenance. This is expected to reduce the risk of breakdowns in the future. It will thus also reduce the need for the government to mobilize emergency funding in the future to fix breakdowns of key infrastructure.

**What will the management contract do to address these problems?** The operator will have four specific targets:

- To increase the amount of water sold to customers from around 41 million cubic meters (MCM) per year in the base year to about 58 million cubic meters per year after five years (water production was 69 MCM in 2008)
- To significantly increase the number of hours of water supply per week (the operator will have to collect baseline data for continuity by installing pressure gauges throughout the distribution network)
- To reduce specific power consumption from 3.2 kilowatt-hours/cubic meter in the base year to 2.7 kilowatt-hours/cubic meter after five years
- To improve the company's financial performance

**What are the management contractor's responsibilities related to wastewater?** The management contractor will have the responsibility to operate and maintain the sewer and wastewater system in the Northern Governorates. In doing so it will have to abide by Jordanian regulations, including regulations for the quality of discharged wastewater and the disposal of sludge. A wastewater treatment plant in Wadi Shallala is currently under construction and is expected to be completed during the contract period. The contractor in charge of the construction of the plant will operate and maintain it for a period of two years, while training YWC staff in its operation and maintenance. After this 2-year period management contractor will bear the responsibility for the operation and maintenance of the plant.

**What is the duration of the contract?** 5 years, with an option to extend twice for two years each, up to a total of 9 years.

**Who will select the private operator?** The private operator will be selected by a selection committee nominated by PMU. The selection committee will include a transaction advisor paid by a grant from the German government.

**How will the operator be selected?** The operator will be selected based on an international tender. Firms have to meet stringent criteria in terms of previous operating experience. Only technical and financial proposals from firms that meet these criteria will be opened. The operator will be selected based on both technical and financial criteria.

**How will the operator be supervised?** The Board of YWC will select a Chief Supervising Officer (CSO) who will supervise the operator on a regular basis without interfering into the day-to-day management activities. In particular the CSO will have no role in making staff or investment choices. However, it will serve as a liaison between the operator and the Board. He will report directly to the Board about all issues of importance to YWC. The CSO shall have access to all relevant information and data. The CSO has, however, no operational powers.

**How will disputes be settled?** In the case of disputes, first an attempt at an amicable settlement has to be made. Disputes about the achievement of contractual indicators will be settled through an independent technical and financial auditor, which will be a firm with international reputation. Furthermore, although this is not foreseen specifically in the contract, the Minister of Water and Irrigation can use his convening power to informally assist parties in coming to an amicable agreement. If this should fail, disputes can be brought to binding arbitration, which can be done through a single arbitrator or a three-person arbitration panel. The sole arbitrator or the third arbitrator shall not be a national of the operator's home country or of Jordan.

**Who will pay for the independent technical and financial auditor and who will recruit him?** The auditor is expected to be paid through a grant from a donor agency which will also be responsible to recruit the auditor.

## **6. The management contract: Benefits, costs, financing and risk**

**What are the benefits of the management contract for the people in the Northern Governorates?** The main benefit will be improved continuity of supply by at least doubling the hours of supply per week. Other benefits include a more reliable water quality through professional management and improved customer service. The likelihood of system breakdowns will also be reduced due to better maintenance. Tariffs will also be more stable, because more efficient operations reduce the deficit of the company and thus the pressure to increase tariffs in the long.

**Who will pay for the management contract?** The fees will partially be paid for by the German government through a grant administered by the German Development Bank KfW and partially by the Jordanian government through the budget of WAJ.

**What will be the financial benefits for the public sector from the contract?** If the operator achieves all his contractual targets, it is estimated that the publicly owned company YWC would reap substantial financial benefits from increased water sales and lower operating costs. These benefits are estimated to far exceed the costs of the management contract, leaving a net financial benefit that is expected to be used to improve maintenance or to reduce the level of subsidies received from the government.

**How will the private operator be paid?** The private operator will receive a fixed fee and a variable fee (also called incentive compensation). The fixed fee will decline from

90% of remuneration in the first year to 50% of remuneration in the third and subsequent years.

**What are the criteria that will determine the variable fee paid to the operator?** The variable fee will depend on whether the operator will achieve the four targets listed above under item 5. If the targets are fully achieved, the operator will receive the full variable fee. If the targets are overachieved, the operator will receive an even higher variable fee. If they are partially achieved, the fee will be reduced proportionally. If a certain minimum performance is not achieved (which can be higher than the value in the first year), the operator will have to pay a penalty called liquidated damages.

**How will staff hired by the operator be approved?** The management contractor should have maximum flexibility in choosing its staff, since he is accountable for and will be remunerated on the basis of outputs, not inputs. Any approval of staff by the Board of YWC should be limited to key staff and a refusal of proposed staff should be the exception and must be well justified in writing citing reasonable technical grounds.

**What is the Repair and Rehabilitation Fund?** The Repair and Rehabilitation Fund (RRF) is a fund that is financed by the German government through KfW and the Jordanian government. This fund is part of the comprehensive ongoing investment programme focused in the Northern Governorates to reduce non-revenue water (see below).

**What investments are ongoing in the service area of YWC?**

Ongoing projects in the framework of the German-Jordanian financial cooperation are:

- The Repair and Rehabilitation Fund to finance measures for water loss reduction up to total costs of 32.4 million EUR, some of which has already been spent. Most remaining measures have already been selected. The management contractor might influence to a limited extent the targeting of final investments. Implementation is scheduled to be completed until mid 2012.
- The project “Water loss reduction Irbid/Jerash” includes investments for water loss reduction measures in all Northern Governorates up to total costs of 28.4 million EUR. Construction contracts under this project are signed and should be finalized by mid 2011
- Wastewater project “Irbid II” comprising the construction of the wastewater treatment plant Wadi Shallala and various networks. All construction contracts are signed. Implementation is scheduled to take place until mid 2012.

**What investment funds will be at the disposal of the management contractor?**

- The Water Resources Management Programme (WRMP), partially financed by German-Jordanian Financial Cooperation provided by the German Government through KfW), includes water loss reduction and re-use investment measures, as well as consulting services for preparation, design, tendering and construction supervision throughout Jordan, including the Northern Governorates. For the component “water loss reduction in the YWC service area” funds of about 12 million EURO are foreseen. For preparation of detailed activities, the tendering

- process for Engineering Consultants is ongoing. It is intended that his general design concept of priority measures in the Northern Governorates is available at the commencement date of the management contractor. The management contractor should have the opportunity to review the concept and influence the final design. The final decision on what measures will be implemented under this WRMP component in the Northern Governorates will be taken by YWC in consultation with WAJ and KfW.
- Energy Efficiency Programme: This programme shall provide funds for partial financing of investment and consulting measures for energy efficiency measures at pumping stations or from the redesign of networks. The funding is still subject to approval by the German Government. Upon such approval, it is intended to dedicate a certain portion of this programme exclusively for the YWC service area, leaving it to the management contractor upon consultation with KfW and formal approval of the YWC Board to decide on priority measures to be implemented under this programme..
  - Pending the result of intergovernmental discussions between Germany and the Hashemite Kingdom of Jordan, it is probable that funding for a second phase of the WRMP could be committed, from which again one component could be focused in the Northern Governorates.
  - Pending the outcome of discussions with other governments, additional assistance may become available from the governments of Belgium, Spain and the United States.

**Who carries out the designs for works?** For new works, Engineering Consultants will carry out preliminary designs. Under the WRMP and under the intended Energy Efficiency Programme, these concept designs will be discussed between the Consultant, YWC-management contractor and KfW. Upon the outcome of this review, the consultant will then prepare the final design. The consultant for the ongoing WRMP is currently under tender. A second tender will be launched for engineering consultancy for the energy Efficiency Programme. Here, WAJ shall be responsible for the tendering process, but YWC should be represented in the steering committee for the contract. Subsidiaries of the management contractor will not be eligible to bid.

**What will be the respective roles of the consultants. The management contractor, WAJ and YWC concerning the assignment and supervision of consultancy and works contracts in the Northern Governorates?**

The tasks of the Engineering Consultants comprise preliminary concept design, final design, specification, support of YWC and management contractor in tendering of construction works and services, implementation supervision.

YWC/the management contractor will be responsible for the selection and the monitoring of the engineering consultants, for overall budget control of the investment programme funding, and for final take-over of the implemented investments. WAJ shall delegate the implementation responsibility for investment programmes in the Northern Governorates, or of relevant components of nation-wide programmes, to YWC. Hence, all decisions to be taken in the context of implementation shall be taken by YWC/ management contractor in consultation with KfW and after approval by the YWC Board.

**What risk does the management contractor take?** The private operator risks losing its variable fee and to pay penalties if it fails to achieve the minimum targets set in the contract. It also risks losing its reputation in Jordan and in the international market if the management contract should fail.

**Will a performance bond be required?** The management contract will foresee the posting of a performance bond at contract signature. The amount of the performance bond is expected to be in the order of 10% of the contract value (which is equal to 50% of the Management Contractor's Fee).

**What are the risks for the government?** The main risk for the government is the payment of its share of the costs of the contract if no improvements at all should be achieved. This is balanced by the expected benefit of improved service quality and increased efficiency if the contract succeeds.

**The Jordanian government envisages passing a new Water Law. What would be the impacts on the management contract?** The water law currently exists only as an early draft. It is therefore difficult to assess potential impacts of the law on a future management contract. It is expected that an autonomous water regulatory agency would be created under the law. Among other things, the agency would most likely review requests for tariff adjustments. It would also establish a performance benchmarking system.. All these elements are expected to improve the transparency in the sector and the availability of reliable data. The law may also strengthen the autonomy of regional public companies such as YWC. WAJ may become a bulk water supplier, which could imply that YWC would have to pay for any bulk water it may import from outside of its service area. If the law, once passed, should materially affect the management contract, a renegotiation may be necessary. However, this is not expected to be the case.

## **7. Tariffs and billing**

**Who will send out the water bills and who will they be paid to?** Bills will be sent out by YWC and will have to be paid to YWC, under the operational control of the management contractor.

**How high are water and sewer tariffs now?** Water tariffs in Jordan are structured in increasing blocks, meaning that the tariff per cubic meter increases with consumption.. A family with a consumption of 73 liter per capita per day pays about JD 0.21 per cubic meter. This corresponds to a tri-monthly water bill of JD 8.28 for a family of six or less than 2% of the income of a poor family.

**Who decides about the level of water and sewer tariffs?** YWC can request tariff increases that have to be approved by the Cabinet. So far there is no specific tariff for the Northern governorates, but only a tariff for the governorates outside Amman governorate. Tariff reviews are typically requested, discussed and approved for all of Jordan, even if tariff levels are differentiated geographically.

**Will tariffs increase because of the private operator?** The general arrangement for tariff reviews in Jordan is not expected to be modified because of the corporatization of YWC and the recruitment of an operator. No tariff increase is expected because of the private operator. However, tariffs could increase due to reasons unrelated to the management contract, at the discretion of the Jordanian government.

## **8. Addressing potential concerns about the management contract**

**Will the recruitment of a private operator mean that water will be privatized?** No. Water resources will remain in public hands. Also, all infrastructure assets will remain in public hands. Decisions about changing tariffs also remain the prerogative of the government. The purpose of the public-private partnership is to help improve the quality of service, while maintaining public control, transparency and accountability.

**Will YWC control its water sources?** YWC will own all the wells that supply its service area. However, the water resources are publicly owned and their use is subject to permits issued by WAJ. Farmers use water from the same aquifer that also supplies the YWC network. In general, the aquifers supplying the Northern governorates are overexploited and groundwater levels are declining, which can lead to supply bottlenecks especially during the summer. In emergency situations a small part of the water from wells in the YWC service area could be diverted to supply Greater Amman and Zarqa. On the other hand, more water is expected to become available. The Agib well field North of Amman that currently supplies Greater Amman with about 2 million cubic meters per year is expected to be used exclusively for the Northern Governorates in 2010. A well field in Mafraq that currently provides water to Greater Amman is expected to provide water to Jerash and Ajloun once a transmission pipeline that is currently under construction with funding from the US government (trunk line) and the German government (branch lines to Jerash and Ajloun) will be completed. A water treatment plant, pumping facilities and a transmission line are planned to be built from Wadi Arab reservoir to Irbid to supply about 10 million cubic meter per year through a Build-Operate-Transfer scheme. Finally, once the Disi-Amman water conveyer will be completed, the Northern governorates could become a water importer and the water situation would become less strained.

**Will the employees remain employees of WAJ or will they be employees of the management contractor?** The employees of WAJ in the Northern Governorates will become employees of YWC. However, the management contractor will be in charge of day to day supervision of staff, the evaluation of their performance and paying them. This arrangement has been commonly used throughout the world for management contracts.

**How will tax issues be treated?** The issue of tax exemptions concerning income tax for expatriate staff and sales tax exemptions for local sub-contractors will be clarified as soon as possible. Sales tax exemptions for local sub-contractors will have to be confirmed by a letter from the Primer Minister citing the concerned company by name once the contract has been awarded.

## **9. The time after the management contract**

**Can the contract be terminated before the term ends, if it is not successful?** Yes, YWC can suspend and then terminate the contract if the operator fails to perform its obligations. It can also terminate the contract for convenience with a 180 days notice. The operator can also terminate the contract under certain conditions, such as non-payment of fees.

**Can it be extended, if it is successful?** Yes, the contract can be extended by up to four years (two plus two years). If the government should desire a longer or a different partnership with a private operator after that date, a new contract would have to be bid out. In both cases, financing for a possible extension remains to be identified.

## **The Role and Function of the CSO within the Governance of YWC under the MC**

Since the Yarmouk Water Company YWC has been registered, and its statutes (Articles of Association) have come into force, under the Company Law of Jordan, the governance structure of YWC under the Management Contractor MC can be further defined, as well as the role and function of the Chief Supervisory Officer CSO.

The MC is operating YWC under the Management Contract.  
The MC's staff is including the executive directors of YWC, which might form an EXECUTIVE DIRECTORS BOARD, to decide on and to execute all operational issues.

The Water Authority of Jordan WAJ, which is the owner of YWC, is responsible for the **MANAGEMENT COMMITTEE**, to decide on issues of relevance to the company YWC, and to instruct YWC's management, accordingly.

The General Director GD of YWC (which is staff from the MC) shall participate in all regular meetings of the Management Committee (comparable in its role to a supervisory management board). These meetings will take place minimum 6 times per year, and the Management Committees members will not be on site, permanently.

The Management Committee will decide (among others) about the YWC's annual budget, about investment programmes, staff development strategies etc. - in a similar way, like a shareholders meeting would decide on such issues upon its companies GD's proposal.  
The Management Committee shall not intervene in day-to-days operations of YWC under the MC.

The Management Committee, supported by PMU, shall select one staff member of YWC as **CSO**. The CSO shall be permanently on site, able to monitor the MC's and YWC's activities, continuously, and to report to the Management Committee, and to attend the Committees regular meetings. The CSO shall sign a confidentiality agreement with YWC (represented through its GD, which is staff of the MC), and shall have access to all information and data relevant for the CSO's monitoring obligations. See also: Management Contract General Conditions, Article 5.5. f: *"The CSO shall act as liaison between PMU, YWC and the Management Contractor. He shall monitor the Management Contractor's day to day operation and shall report directly to the Management Committee. Therefore, the CSO shall have access to all information and data which are relevant for YWC. However, the CSO will have no operational powers."*

The GD shall invite the CSO to regular meetings of the directors. If the MC decides to establish an Executive Directors Board within YMC, probably under the GD, which might be called Chief Executive Officer CEO as well, with members like the Financial Director FD, which might be called Chief Financial Officer CFO as well, and the other directors of YWC), then the CSO shall be invited by the GD to all regular meetings of the Executive Directors Board. In other words: the CSO shall be in the position to know what is going on in YWC, but have no operational powers to intervene.

It is up to the MC, to further detail and develop the Governance structure of YWC, within the limits set through the Company law, the YWC Articles of Association, the Assignment Agreement and the MC. The bidders are expected to outline their ideas about the Governance structure of YWC in their proposals.

Management Contract for Al Yarmouk Water Company LLC

Clarifications on Contract and Tender Documents

No.	Document	Section / Article	Page	Question	Answer
1	Addendum No. 2			New submission deadline for the proposal – in this context we would kindly ask you to inform us swiftly whether the deadline for submission of “Requests for Clarification” will be extended accordingly by 2 weeks.	See Addendum No. 3.
2	Addendum No. 2			New submission deadline for the proposal – Furthermore according to Clause 3.4.1 of the RFP, Bidders shall submit a “list of negotiation issues”, not later than the deadline which also applies to submission of request for clarification. We kindly ask you to consider whether the submission deadline for the “list of negotiation issues” could be postponed, as some issues might already be resolved by the Client’s answers to the questions.	<p>Please note that the purpose of the “list of negotiation issues” is to separate issues that Bidders will want to negotiate about from queries that are related to unclear sections of the Contract and Tender Documents. A postponement of the deadline for the submission of the “list of negotiation issues” therefore is not necessary.</p> <p>For greater clarity: The question “Will the Incentive Calculation have to be submitted together with the Annual Report?” is a Request for Clarification. Whereas the following question should be on the “list of negotiation issues”: “Can the Fix Fee Advance Payment be paid in two installments instead of one?”</p>

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3	RFP	3.10.1	6	Request for a further extension of the bid submission deadline	A further extension would be to the disadvantage of those Bidders, which are ready to submit until the current deadline. Therefore, and because of the time schedule of YWC, there will be no further extension.
4	General Conditions	3.15(3)	28	We understand that upon contract signature the Management Contractor has to provide the Advance Payment Guarantee, and prior to contract signature the Performance Security. No other guarantee (i.e. "Bank Guarantee") is required. Please confirm.	See Addendum No. 3, the Management Contractor will only have to provide the Performance Security.
5	General Conditions	3.15(3)	28	We understand that the "Contract Value" is considered to be 50% of the Management Contractor's Total Fixed Fee, and consequently the Performance Bond shall be in the amount of 10% of this "Contract Value". Please confirm.	See Addendum No. 3.
6	Form of Contract		2	<p>"[Name of the Management Contractor's Parent Company or <b>any other entities YWC may require to be parties to the Contract</b>]"</p> <p>This is not specific. The Bidder cannot assess the impact of this provision. With regard to his proposal (and hence with regard to the Tender Security to be submitted), the Bidder can only commit himself. The Bidder cannot take an engagement for a 3<sup>rd</sup> Party (unknown at the time of the</p>	<p>Should the case be that a Bidder wants to utilize references or capacities of the bidder's parent company or of affiliated companies, YWC may require these parties to confirm its obligations by signing appropriate documents, too.</p> <p>Please read this along with GC Section 1.3.8. "Entities" here refer only to party/parties comprising the Consortium or the Joint Venture Company (JVC).</p>

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				<p>bid) which shall later be requested to join the contract or to issue Guarantees.</p> <p>Please confirm that no 3<sup>rd</sup> Party will be requested to become Party to the contract or will be asked to issue guarantees/bonds of whatever nature and amount.</p>	<p>The winning Bidder will have to incorporate a JVC. YWC may require any party comprising the Consortium or the JVC to sign on the Form of Contract, including the parent companies of the JVC.</p> <p>Confirmed, apart from what has been explained above. Note: Guarantees, bonds are to be issued through a Bank, not by the Bidder or the JVC or else.</p>
7	General Conditions	3.7 & App. 8		<p>Liquidated Damages: except for the general provisions of “Limitations of Liability” according to GC Section 3.7 there is no cap for the Liquidated Damages, whereas the Appendix 8 clearly indicates the caps/limitations for the Incentive Compensation.</p> <p>This seems to us unbalanced and it is particular very unusual. This situation might lead that Bidders consider the consequent risk to be unacceptable.</p> <p>Please review this aspect in order to include a balanced provision of limitation of liquidated damages.</p>	<p>For this contract, Liquidated Damages need to be understood as “negative Incentive Compensation”, applicable upon failure to meet the Minimum Performance Targets.</p> <p>The amount of the Liquidated Damages (LD) is linked to the Variable Fee component.</p> <p>PMU has decided to set a cap by limiting the annual LD to 30% of the Annual Fee (see new Clause 5.5 in App. 8).</p>
8	General Comment			<p>The contractual partner of the MC will be YWC.</p> <p>On the one hand, the Management Contractor (MC) shall</p>	<p>There will be an executive management (YWC’s directors, governed by the MC) and a non-executive management (the Management Committee, governed</p>

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				<p>take over the entire operational responsibility of YWC, the Management Staff of the MC being fully entitled and responsible to take decisions for YWC, under the given contractual conditions.</p> <p>On the other hand “YWC” shall supervise the MC and shall take over contractual obligations and rights through the Management Contract (e.g. with regard to Operational Staff hiring, dismissals, redundancies – Appendix 7, or many other subjects).</p> <p>Please clarify who are the persons or entities who shall be representing YWC with regard to fulfilling the contractual obligations and to assume the contractual rights of YWC out of this contract.</p>	<p>by WAJ). The Management Contractor will bring in all directors for the executive management. The Articles of Association of the newly established YWC are available in the data room.</p> <p>The Management Committee will decide (among others) about YWC’s annual budget, about investment programmes, staff development strategies etc. – in a similar way, like a shareholders meeting would decide on such issues upon its companies General Director’s proposal.</p> <p>The Management Committee shall not intervene in day-to-days operations of YWC under the MC.</p>
9	General Comment			<p>Is it possible to send an email to all Bidders each time a new document is added in the virtual data room, website, or physical data room with the title of the documents added?</p> <p>This will avoid the obligation to check every day the website to identify new documents for example.</p>	<p>Bidders will be informed by email when new documents have been added to the data room.</p>
10	General Comment			<p>Is it possible to add in the data room the current organization charts of YWC (or NGWA)?</p>	<p>The chart is available in the data room, now.</p>

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11	General Comment			Is it possible to have in the electronic data room a list - updated each time there is a new document – of the documents provided in the physical data room and their main content?	Bidders will be informed by email when new documents have been added to the data room.
12	General Comment			Please confirm that the Board of Directors of YWC is different from the Management Committee and that the members of the Board of Directors will be appointed by the Management Contractor.	Confirmed. Anyhow, there will be no “Board of Directors”, unless the Management Contractor will decide to establish such board, e.g. consisting of YWC’s Executive Directors, appointed by the Management Contractor.
13	General Comment			Please confirm that the Management Committee’s role is solely to assess the performance of the Management Contractor and to approve the payment and liquidated damages and that it has no role in the management of YWC.	<p>The assessment of the Management Contractor’s performance is done by an Independent Auditor, see GC Section 6.3.2. See also Addendum No. 3 (Role and Function of the CSO).</p> <p>The Management Committee is a governing body. Its members are elected by WAJ as YWC’s shareholder to govern YWC and look after WAJ’s interests. The Management Committee has the ultimate decision-making authority, and has the role of setting YWC’s policies, goals and directions, and of adopting the by-laws. Though all of the Management Committees members shall not be engaged in YWC’s day-to-day operations, the entire Management Committee (as a</p>

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					body) is held liable for the consequences of YWC's policies, actions, and failures to act. Unless invoked by specific conditions in the by-laws, the Management Committee, as a body, shall not manage and must not intervene in YWC's day-to-day operations.
14	RFP	3.9.1	6	This clause states that the contractor shall have no claim for a price increase in the event of incorrect information provided during the bidding procedure. On the contrary, will the client expect a reduction in price if the incorrect information is proved to benefit the contractor?	As for the Fix Fee, the answer is no. As for the Variable Fee, please note that if either party finds out that the actual base year figure for any IPI differs significantly from the figures given in the Contract Documents, it may ask for a revision of this figure pursuant to the methodology laid out in Appendix 8.
15	RFP	4.2	8	<p>The Bidder's cover letter will include a lot of documents (declaration letters, copy of tender security, proof of eligibility).</p> <p>Shall all these documents be bound in a folder? In a specific envelope? In which case does it need to be specifically identified, and if so how?</p>	The attachments to the Bidder's cover letter can be bound in a separate folder. A specific envelope is not required.
16	RFP	4.2	8	<p>Please confirm that Part I.1 - Declarations Letters include only the following documents:</p> <ul style="list-style-type: none"> <li>- "No conflict of Interest" declaration</li> <li>- "No conflict with the Law" declaration</li> </ul>	Confirmed, except for the Bank Guarantee, which – according to Addendum No. 3 – is not required anymore.

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				<ul style="list-style-type: none"> <li>- Copy of the tender security</li> <li>- Written statement to submit Guarantee and Security</li> <li>- Letter declaring the fulfilment of staff input</li> <li>- Declaration of undertaking</li> </ul> <p>Please also indicate the required order of these documents.</p>	<p>As listed in RFP Section 6.3.1(3).</p>
17	RFP RFP Appendix 6	4.3(c) &(e)  6.4.1	9  19  2	<p>According to RFP 4.3.c, the key positions are those described in Attachment 1 of Appendix 6 of the Draft Management Contract. 8 key positions are listed. In RFP 4.3.e, only 7 key positions are described, some of them being even different from Appendix 6. In RFP 6.4.1, the assessment is done only on 4 key positions, the others being mentioned as non-key positions.</p> <p>Could you please confirm that the key position are the following: General Director (or CEO), Financial Director (or CFO), Technical Director, Director of Operations, Human Resources Director, Commercial and Customer Manager, IT Manager?</p> <p>Could you also please confirm that each key position will be assessed separately in the technical evaluation (and not only 4 as the 3 others are very important for the success of the Management Contract, especially the Human</p>	<p>“Key Staff” means the persons providing expertise set out as “Key Staff Expertise” in the Management Staff Appendix to the General Conditions. In Appendix 6, there are eight key expertises given which need to be covered by the seven key experts described in RFP Section 4.3(e).</p> <p>Confirmed.</p> <p>Only the four key positions mentioned in RFP Section 6.4, Criterion 2, will be assessed separately. The evaluation of the other three key experts will be included in the evaluation of Criterion 1 “Organisation</p>

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				Resources Manager)?	& Methodology”. This is due to these experts’ required minimum input which is lower than the minimum input of the other key experts.
18	RFP	4.3(d)	9	<p>Subject to the written consent of the MWI, the Bidder may include WAJ staff and YWC staff as Management Staff:</p> <ul style="list-style-type: none"> <li>- In such case, shall this staff be paid by the Bidder or will it still be paid by WAJ and YWC</li> <li>- In order to assess the competence of WAJ or Al Yarmouk staff, is it possible to interview the key staff during the bid process?</li> </ul>	<p>Presuming that “Management Staff” means the Management Contractor’s Management Staff (see Appendix 6), the answer is:</p> <ul style="list-style-type: none"> <li>- In such case, this staff (key or non-key experts) shall be paid by the Bidder.</li> <li>- This is possible.</li> </ul> <p>But please note: The release of any YWC employee depends on WAJ internal staff policy.</p>
19	RFP			<p>Please confirm that, as the Management Contractor is fully responsible for the staff, YWC will be able to appoint new staff on the request of the General Director and Human Resources Director.</p> <p>Please mention the constraints to this, if any.</p>	<p>Yes, the Management Contractor is fully responsible, and YWC will be able to appoint.</p> <p>Any hiring and firing through the Management Contractor must be in accordance with the strategic planning, staff policies, annual budgets etc. approved by the Management Committee, acting under the existing legal regulations and in compliance with the Articles of Association and the Assignment Agreement.</p>

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20	RFP	4.3(e)	9	Please confirm that the envisaged minimum assignment refer to the position and not to the person who will hold the position.	Confirmed, though it is expected that the Management Contractor's key staff will be deployed as offered. Further, any staff replacement will need to be in accordance with GC Section 4.
21	RFP	4.3(e)	9	<p>What is expected by the sentence "Explanations regarding district officers impairing manager shall be made in the Request for Tender documents"?</p> <p>What is meant by 'impairing managers' in the note in italics?</p> <p>Are the Request for Tender documents the RFP (in such case, the explanation has to be given by the Client) or the Bidder's proposal?</p>	RFP Section 4.3(e): " <i>Explanations regarding district officers, impairing managers shall be made in the Request for Tender documents.</i> " – sentence shall be deleted.
22	RFP	4.8	11	Any form or specific wording requested under the declaration of commission and gratuities?	No. The declarations should be clear and straight forward.
23	RFP	4.11.1.b)	12	<p>We understand that the Bidder:</p> <ul style="list-style-type: none"> <li>- shall initial the Draft Management Contract without mark-up [to check where it's written],</li> <li>- is not allowed to make qualification or departures (no statement which are inconsistent with the RFP documents as written in clause 4.11.2)</li> </ul>	<p>The remedies referred to in RFP Section 7.5 are only applicable once the Notification of Award has been issued. This notification will only be issued if negotiations with the Preferred Bidder have been successful.</p> <p>The same applies for the Tender Security which shall not be forfeited in case negotiations have not been</p>

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				<ul style="list-style-type: none"> <li>- cannot base Proposals on the premise that we will negotiate departure according to the list of negotiation (clause 4.11.1 b)</li> <li>- shall sign the Form of Contract sent by the PMU (clause 7.3.2)</li> </ul> <p>In these conditions, could you please confirm that, if the Bidders disagree with the proposed risk allocation, the sole solution for him is not to bid in order to not take the risk of forfeiture of the Tender Security and other remedies (as described in 7.5) in case of disagreement during the negotiation?</p>	successful.
24	RFP	5.1.1(b)	13	<p>Please clarify if the electronic copy has to be included in the original and in each copy (including the copy of KfW according 5.3.1)?</p> <p>Could you also please clarify if the electronic copy has, as the Tender, to be split in 3 CDs, one for the Cover Letter, one for the Technical Section in the Technical Section Envelope and one for the Financial Section in the Financial Section Envelope?</p>	<p>The electronic copy has to be included in the original copy as well as in the copy for KfW (see also no. 29).</p> <p>The electronic copy shall consist of two CDs (or similar devices). One containing the Technical Section and the Cover Letter, the other one containing the Financial Section. The CDs shall be included in the relevant sealed envelope.</p>
25	RFP	5.1.3	13	Please confirm that the reference to Part V in this clause should have been a reference to Part VI?	Confirmed.

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26	RFP	5.1.3	13	Shall the Power of Attorney be notarized? authenticated? Any specific procedure to follow-up?	Simply copy of power (like excerpt from commercial registry) is sufficient. In case of doubt, and for the Preferred Bidder, further proof (like notarization) will be requested.
27	RFP	5.2	13	Please confirm that all of Part I of the Technical Section will directly be in the Outer Envelope together with the Technical Section Envelope and the Financial Section Envelope?	Confirmed.
28	RFP	5.2.2	13	Are the copies described in Para (a) to be numbered in the same way as the envelopes / packages described in Para (c)	No.
29	RFP	5.3.1	14	It seems that the Bidder has to directly send one of the seven copies to KfW which contradicts clause 5.2.3 in which all envelopes or packages have to be addressed to the PMU.  Could you please confirm that the 8 envelopes or packages (one original and 7 copies) will be addressed to the PMU which will be able to control their compliance and be sure that all documents are delivered before the submission deadline?	One of the seven copies has to be directly sent to KfW. Therefore only one original and six copies need to be sent to the PMU. In order to allow PMU to assess that the seventh copy has been sent to KfW please include a copy of the dispatch notice in the package sent to PMU.
30	RFP	5.3.2	14	During the pre-bid meeting, the Transaction Adviser has	See Addendum No. 3.

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				verbally informed the Bidders of an extension of the Submission Deadline. Is it possible to have an amended RFP incorporating an update of all other deadlines?	
31	RFP	6.3.1(1) (a)	18	Please confirm that the incorporation could be in any country, not especially in Jordan?	Confirmed, the Bidder can be incorporated in any country.
32	RFP	6.3.1(2) (a) and (b)	18	Please confirm that the three fiscal years can also be 2007, 2008 and 2009 if the requested documents are available?	Not confirmed. The requested documents have to be submitted for the three years mentioned in the RFP documents.
33	RFP	6.3.1(2) (a)	18	In the note to this section it states “Bidders have to submit copies from their testified balance sheets and profit and loss accounts”  Please confirm that the Bidders need only make a copy of their audited financial statements that are relevant for the eligibility and evaluation of the Proposals? Shall the copy be certified and if so, by whom?	Confirmed. The copies shall be stamped and signed by an authorized representative of the company.
34	RFP	6.3.1(3) (a)	18	Any form or specific wording requested under the declaration of “No Conflict of Interest”?	Attached template may be used.
35	RFP	6.3.1(3) (b)	18	Any form or specific wording requested under the declaration of “No Conflict with Law”?	Attached template may be used.

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36	RFP	6.4.1(b)	19	<p>Please clarify in which Part and under which form shall the Bidder provide its input for the different criteria of evaluation (for ex, where shall the Bidder describe its Strategy &amp; Methodological Approach)?</p> <p>Is it a specific chapter or do you expect to find the info in several parts?</p>	<p>In Part II. Bidders may structure Part II in accordance with RFP Section 4.3 or in accordance with RFP Section 6.4.1.</p> <p>It will be welcomed if Bidders, which will follow the structure of RFP Section 4.3, add a table with the structure of RFP Section 6.4.1 which includes references to where this information can be found in the Bidder's proposal – and vice versa.</p>
37	RFP	6.4.1(b) Criterion 2	19	<p>In the table showing the technical evaluation criteria under 'Section 2 MC Staff Quality' maximum points are required for staff with a doctorate. What guarantee will be sought that the staff proposed are actually deployed?</p> <p>A situation can be envisaged whereby a Bidder submits staff with high qualifications to gain maximum points but who are then substituted prior to contract commencement thus unfairly disadvantaging other Bidders.</p>	<p>By Para (vii) of the Bidder's Commitment Letter, Bidders commit themselves to deploy the staff as offered. Further, pursuant to GC Section 6.2.2(2), YWC has the right to reduce the Annual Fix Fee payment by deducting the value of undeployed Man Months.</p> <p>Note: Commitment and availability of staff is to be documented through the signed CV's delivered with the bid. If any replacement of the Management Contractor's staff is unavoidable, the Contractor needs the approval of the Employer, YWC.</p>
38	RFP	6.4.1(b)	19	<p>Please refer to our clarification request n°17 regarding the discrepancies in the number of key staff and the fact that</p>	<p>See answer to no. 17.</p>

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		Criterion 2		all key staff should be assessed in the Technical Evaluation.	
39	RFP	6.4.1(b) Criterion 4	20	Please confirm that the key professionals are the Key Experts as described in the attachment 1 of Appendix 6 of the Draft Management Contract?	Not confirmed. See answer to no. 17.
40	RFP	6.4.1(b) Criterion 5.3	20	What is it meant by 'expenses only as far as dedicated' ? What sort of expenses should be included in this item from your point of view as the training expenses are normally paid by YWC?	Included should be expenses for training initiated by the Management Contractor and paid from its budget, such as management training, specialized technology training, cost-efficiency training – exceeding YWC's normal training covering regular operation issues. Preferably, a breakdown of costs is given by the Bidders and not just only a global figure.
41	RFP	6.4.1(b) Criterion 5.3	20	How will the expenses be assessed from the technical proposal? Is the Bidder allowed to put prices in the technical proposal?	See no. 40. The expenses for training can be given in the Technical Section.
42	RFP	6.4.2	20	According to Addendum No. 3, the threshold related to the Technical Section has been lowered from 75 to 65. The main success of the Management Contract is related to the experience of the Bidder, quality of the proposed staff and capacity to develop and transfer know-how. This lowering	According to the RFP Documents issued on 26 <sup>th</sup> July 2010, a minimum of 11 points and a maximum of 22 points could be awarded for the staff input offered by the Bidders (Criterion 4, RFP Section 6.4.1). With Addendum No. 3, this evaluation criterion was

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				<p>of the threshold leads to reduced likelihood of success in achievement of the initial objectives. Please explain the rationale behind this lowering?</p>	<p>changed to a minimum of 0 points up to a maximum of 22 points.</p> <p>The lowering of the threshold related to the Technical Section only reflects the lowering of the minimum points to be awarded for the staff input offered by the Bidders.</p>
43	RFP	6.5	20	<p>As the Technical score will probably be very close between the Bidders, the preferred Bidder will most probably be the one with the lowest Financial Score.</p> <p>Saying that, it is in the interest of the Bidders to have the lowest Total Fix fee. As the Bidders are allowed to decrease the Fix Fee percentage, how would you prevent a Bidder to decrease the percentage to the lowest level (in the worst case 0%) but with a very high Total Fee, enabling him to achieve the IPIs without risk?</p> <p>In general, this system forces the Bidders to take the maximum risk by lowering the Total Fix Fee to win the bid which is a disadvantage for an experienced company whose broad knowledge and experience would benefit the client most but are always more prudent than new Bidders with correspondingly much less experience. Would it be possible to fix the Total Fix Fee and not allow Bidders to</p>	<p>This aspect was amended by Addendum No. 3.</p>

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				modify them to ensure fairer competition?	
44	General Conditions			We do not notice any clause for changes of Law and change of Taxes in the General Conditions. We assume that it is an omission (as change in Applicable Law is mentioned in Article 3 of Appendix 3) and that such clauses will be included. Could you please confirm?	<p>The assumption is correct. PMU has decided to amend GC Section 1.1:</p> <p>Material Change in Law: “means any adoption, promulgation, repeal or modification after the Effective Date of any laws, regulations, statutory instruments within Hashemite Kingdom of Jordan and/or any part of the Applicable Law that may adversely affect the rights and obligations of Parties under this Agreement. ”</p> <p>PMU will amend GC Section 6.7 as follows:</p> <p>"Should any Material Change in Law take place that may cause the performance of this Management Contract cumbersome or may result in a loss to any such Party, then the Parties shall endeavor to discuss in good faith and agree on the positives and or negative remedies resulting from such a change. If both Parties fail to settle their disputes over this Material Change in Law, then any Party may decide at its own discretion to invoke Clause 8 of these General Conditions.”</p>

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45	General Conditions	1.1 “End Date”	6	End Date is not defined in GC Section 2.2. Please add the definition.	End Date will be defined in the updated contract version.
46	General Conditions	1.1 “Man Month”	6	Regarding work organization, could the staff of the Management Contractor work 48 hours in 5 days, and totalizing 200 hours a month to perform a Man Month?	The work organization is up to the Management Contractor. YWC expects the contracted managers to be on site at working hours matching with the relevant YWC staff in the relevant departments.
47	General Conditions	1.1 “Man Month”	6	Does a Man Month include holidays of the staff?	One man year equals 12 Man Months (incl. official holidays in Jordan and individual staff holidays [max. 30 days per year, proportionally distributed over the years, months]). The Definition “Man Month” in GC Section 1.1 will be modified, accordingly.
48	General Conditions	1.9.1(4)	12	Please confirm that this article refers only to any fees or dues from the Management Contractor’s side and not to any fees or dues that another entity should have to pay in relation with the award of this Management Contract.	Confirmed.
49	General Conditions	2.1	13	Please clarify if the “Effective Date” is the date the Form of Contract is executed by YWC or the date it gets the final approval by KfW after execution by YWC.	The Effective Date is the date the Form of Contract is executed by YWC.
50	General Conditions	2.3.1(1)	13	Please confirm that, according to Addendum No. 3, the Starting Date is 60 days after execution of the contract.	Confirmed.

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51	General Conditions	2.5	14	<p>Please confirm that the written notice can be sent from either Party.</p> <p>Please confirm that the issuance of the written notice is also a cause for termination in 2.8.1 and 2.8.4.</p>	<p>Confirmed.</p> <p>Non-extension and Contract Termination are different issues.</p>
52	General Conditions	2.6.5(2)	15	<p>The fact that Incentive Compensation is not paid contradicts article 2.6.5(1) where it is said that YWC shall continue to pay the Management Contractor under the terms of this contract. Please confirm that the Incentive Compensation is paid during the Force Majeure and that the achievement of the IPIs will be specifically assessed by the Independent Auditor taking into account the impact of the Force majeure on the Contractor's ability to perform.</p>	<p>Confirmed.</p>
53	General Conditions	2.7(2) and (3)	16	<p>These articles mention that the Deliverables have to be submitted within a time constraint and could lead to a suspension of the contract if not submitted or be subject to withholding of payment. Whereas Addendum No. 3 – minutes of meeting – specifies that the Deliverables do not need to be submitted according to a specific time schedule. Please confirm that the clarifications in the minutes of meeting prevail and that article 2.7(2) shall be deleted.</p>	<p>Addendum No. 3 referred to Deliverables No. 2 - 19 of Appendix 3, Article 9. GC Section 2.7 refers to the Quarterly and Annual Reports, which the Management Contractor is obliged to submit as well as those reports that YWC has to submit in accordance with the Assignment Agreement as explained in SA Section 5(b) (Appendix 2).</p>
54	General	2.8.3	17	<p>Please confirm that the sole reason for Termination for</p>	<p>Confirmed.</p>

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	Conditions			Convenience is the one described in 2.8.1.(h)	
55	General Conditions	3.3.3	20	Please confirm that this article only applies to Services paid by YWC and not to Services paid by the Management Contractor.	If the Management Contractor (and not YWC, WAJ or donors) pays for Goods and Services, this would be allowed under this contract, unless a Conflict of Interest would arise for other reasons (e.g. preparation of tender documents).
56	General Conditions	3.3.3(3)	20	Please confirm that the independent consultants hired by the Management Contractor will be paid by YWC.	Confirmed, but limited to activities which are related to YWC's obligations under the AA, not for activities which are related to the Management Contractor's obligation under the Management Contract.  Furthermore: See amendment to GC Section 3.3.3 (3).
57	General Conditions	3.6	21	Please confirm that in this article YWC is also considered as one of the Authorities.	Confirmed.
58	General Conditions	3.7	21	Please confirm that in this article YWC is also considered as one of the Authorities.	Confirmed.
59	General Conditions	3.7(a)	21	Please clarify which sort of Liquidated Damages should be paid to the Authorities.	Limited to those clearly defined in the contract.
60	General Conditions	3 8	22	According to the Assignment Agreement, YWC shall take out and maintain a Professional Liability Insurance and	GC Section 3.8 has been revised, see new amendment.

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				Third-Party Liability Insurance in which the Contractors and Subcontractors are co-insured. Please clarify the rationale for the Management Contractor to take an additional Professional Liability Insurance and Third-Party Liability Insurance with YWC as co-insured.	
61	General Conditions	3.8.1(b)	21	Please clarify why the Third Party Liability Insurance should include the Management Contractor's employees when these employees are specifically covered by the Worker's compensation and Employer's Liability.	Whatever set of specific insurances the Management Contractor provides, the risks described in GC Section 3.8 must be covered, with no gaps on one hand, but no overlapping on the other hand.
62	General Conditions	3.8.2	21	Please clarify if the Subcontractors are co-insured or additional insured.	See above. Sub-Contractors shall bring in their own insurances.
63	General Conditions	3.9.1(2)	24	Please confirm that the Contract Records shall only include the documents listed when they are available (for example there is no obligation to record all minutes of conversations for the Contract Records).	Confirmed. The Contract Records shall only include the documents listed that have to be available.
64	General Conditions	3.9.4	24	Please clarify if this article only applies to the Joint Venture incorporated by the Bidders or if it also applies to each member of the Joint Venture.	This Article only applies to the Joint Venture incorporated by the Bidder.
65	General Conditions	3.10(1)	24	Please clarify if it also applies to affiliates of the member of the Joint Venture or even members of the Joint Venture	Anyhow, in case of member affiliates, the MC must provide transparent and complete information.

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				which could be subcontractors of the Joint Venture.	
66	General Conditions	3.14(1)	24	Please clarify what is the intention of that article as the Revenues will be collected through YWC collectors.	As the successful Bidder will be responsible to nominate the executive management of YWC and to – through this executive management – operate YWC, it will also be responsible for collection of the Revenues.
67	General Conditions	3.14(5)	24	Please clarify what is the intention of that article as the Revenues will be collected through YWC collectors and they will directly deposit all of the collected revenues, not the Management Contractor.	As the successful Bidder will be responsible to nominate the executive management of YWC and to – through this executive management – operate YWC, it will also be responsible for collection of the revenues and in this sense it will also be responsible for the (mis-)conduct of his staff.
68	General Conditions	3.14(6)	24	Please clarify how the Management Contractor can be responsible when the revenues are collected by YWC staff.	By managing YWC, see GC Section 3.14.9 et al.
69	General Conditions	3.14(7)	24	Same request for clarification.	See comment above.
70	General Conditions	3.14(8)	24	Please clarify how the Management Contractor can be liable for any loss, theft or destruction of the Revenues when the collection is done by YWC employees.	See comment above.

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71	General Conditions	3.14(9)	24	Please clarify which insurance coverage you are referring to as this process is done by YWC staff.	See comment above.
72	General Conditions	4.2(1)	29	Please confirm that this should read 'without prior written notification to YWC'	No, to PMU.
73	General Conditions	4.2.1(2)	29	Please confirm that this should read 'without prior written notification to YWC'	Confirmed.
74	General Conditions	4.3	29	Reference is made in this section to the position of 'General Manager'. In Appendix 2 Article 2 b) reference is made to 'General Director'. Is this the same person or is the client anticipating 2 distinct staff members?	The General Director and the General Manager are the same person.
75	General Conditions	4.3	29	Does the requirement of being resident in the Hashemite Kingdom of Jordan at all times mean that the General Manager cannot leave the country, nor take leave? Please clarify.	This requirements means that the General Manager is not expected to work on other assignments outside Jordan. He, of course, is free to leave the country for holidays or for businesses related to the management of YWC – on the condition that his absence will not significantly affect the performance of YWC.
76	General	4.3	29	Does "his team of professionals" refer to the key staff of	Confirmed.

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	Conditions			the Management Contractor?	
77	General Conditions	5.3.2	30	Please clarify the rationale of such an account and what happens if the real Operations and Maintenance Costs exceed the amount funded by YWC	<p>The rational of this account is</p> <p>(i) to provide the Management Contractor with a budget to work with, and</p> <p>(ii) to provide transparency for all parties with regard to the expenses and revenues.</p> <p>If the real Operations and Maintenance Costs exceed the amount funded by YWC, WAJ is committed to subsidize any deficit.</p>
78	General Conditions	5.3.2	30	Please clarify what is included in the Operations and Maintenance Costs and what is not included but that YWC are still expected to implement.	App. 8, Att. 2 defines CAPEX. All other expenses are deemed to be OPEX.
79	General Conditions	5.5(c)	32	Please confirm that the PMU officer and director are the same person and that they will be supported by technical and professional staff from PMU not from YWC who in turn will be supported by the CSO who has access to all information.	GC Section 5.5 has been modified. Both issues (PMU director, technical support...) have been eliminated.
80	General Conditions	6.1(d)	30	Please confirm that this is restricted to support staff performing specific tasks related to the management of the contract only, not support staff involved in the delivery of	Confirmed, provided the assistant assists the General Director in affairs related to YWC's obligations. Any staff

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				the services (for ex., the personal assistant of the General Director should be a YWC employee,...).	supporting the Management Contractor and its employees with activities related to the Management Contractor's obligations under the Management Contract, or related to individual needs of the Management Contractor's employees must be paid by the Management Contractor (like personal servant, personal translator, private driver, lawyers not on side of YWC etc.).
81	General Conditions	6.2.2(3)	34	By stating that the Fix Fee shall only constitutes full payment for the Management Staff and the services, do you mean that the variable fee has to be seen only as a bonus for good performance which could be attained in year 3, 4 and 5 100% of the Fix Fee? Will YWC accepts that the Management Contractor get such level of profits in its audited accounts?	Please replace "Fix Fee" by "Annual Fee".
82	General Conditions	6.3.1(2)	35	Please clarify how the contractors Annual Fix Fee in Appendix 8 Article 1 will be determined, especially if the Bidder has changed the allocation of Fix Fees in its Bidder's Price Form.	The Annual Fix Fee in Appendix 8 Article 1 will be changed in accordance with the allocation of Fix Fees offered in the Bidder's Price Form.
83	General Conditions	6.3.2(3)	35	Please confirm that this should read 'GC Section 2.7.3'	Confirmed.

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84	General Conditions	6.4	36	As the amount of the contract is in Euros and the invoice is in Euros, please confirm that the amount that the Management Contractor will receive will be exactly the amount mentioned in the invoice and that the rest of the sentence after “in Euros” can be deleted.	Confirmed.
85	General Conditions	6.5	36	Please confirm that in case of the described adjustments, the Incentive performance Target and the Minimum Performance target will be revised in a common agreement between the Management Contractor and YWC.	Confirmed.
86	General Conditions	6.6	36	In order to better understand the principle of the adjustments, could you please provide the adjustment formulas.	According to normal professional practice. (If Bidders are not sure, they may re-submit this question with an exemplary calculation for confirmation.)
87	General Conditions	6.6(4) and (5)	36	Please confirm that the home country has the same meaning as the one described in article 8.6 and that it is up to the Management Contractor to define which definition will be used for the determination of the index and rate of exchange.	Home country is the country in which the Consortium Leader is registered.
88	General Conditions	6.6(7)	36	Please confirm that the Base Year has the definition of Article 1.1 and not the one in this sentence to avoid misunderstanding.	Confirmed.

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89	Appendix 2	Article 3 g)	3	If new information systems are required are they provided by YWC through capital investment managed by the contractor or by another method?	Unless no other means are available (e.g. donors' support), it shall be provided through the capital investments management by the Management Contractor.
90	Appendix 2	Article 3 i)	3	If YWC invites the Management Contractor to carry out such actions after contract execution, will YWC pay an agreed additional amount for these services?	Yes, if agreed on by both parties, beforehand.
91	Appendix 3		4	Please confirm that articles 7, 8 and 9 will be redrafted according to Addendum No. 3 – Minutes of Meeting stating that these documents are for internal use without time constraint.	See next comment.
92	Appendix 3		4	Section 9.1 requires the contractor to deliver the 19 deliverables listed in the table but Section 9.2 implies that deliverables 2 to 19 are only required if requested by YWC following a failure on the part of the contractor. Please clarify.	It is understood that the Management Contractor will need Deliverables No. 2 – 19 anyway to fulfil its contract. Therefore and to reduce the reporting obligations the Management Contractor is not obliged to submit these documents on a specific date. By requesting these deliverables following a failure on the part of the contractor, YWC can check whether the Management Contractor had operated YWC according to international best practice, i.e. by having elaborated the necessary manuals etc., or whether he operated YWC without following any business plans,

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					guidelines etc.
93	Appendix 5	Article 1 Section 1.1	2	<p>Para (2) requires the contractor to accommodate changes in the service area.</p> <p>Will there be an adjustment of the payment schedule and IPIs if such changes are significant? For example additional contractor staff may be required or IPIs may need to be revised. Section 1.2 refers to this but implies that such adjustment will only apply at the request of YWC.</p>	Confirmed.
94	Appendix 6	Art.1.2(2)	2	Please confirm that the Management Staff mentioned in this article required to be in place at the beginning of the Contract is only the Key Staff.	Confirmed.
95	Appendix 7	Art.2.2(1)	3	Please confirm that all documentation necessary to pay the Operations Staff is prepared by YWC staff under the supervision of the Management Contractor but not prepared directly by the Management Contractor.	Confirmed.
96	Appendix 7	Attachm. 1		Please mention all staff of NGWA (position, qualification, department, Grade,...) who will not be transferred to YWC.	Attachments 14 & 15 of Appendix 7 include the names, positions, qualifications and grades of all NGWA employees as of May 2010, so far, none of them expressed their wish not to work under the

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					Management Contractor. However, provisions related to the employees in the Assignment Agreement should be read.
97	Appendix 7	Attachm. 1		Is the sign “,” to be interpreted in the table as a separator between units and decimals?	Yes.
98	Appendix 8	IPI1	2	Please confirm that, should the expected availability of raw water resources not be achieved, the corresponding targets will be revised.	In this case, the first step would be to adjust the performance of the Management Contractor pursuant to the methodology set out for IPI 1 in Article 2 of Appendix 8. Upon constant non-availability of raw water resources, the corresponding targets could be revised pursuant to Appendix 8 Article 3.
99	Appendix 8	IPI3	2	Please confirm that the Specific Power Consumption shall also exclude the increase of electric power consumption related to the additional flow related to all new WW connections.	No. IPI 3 monitors specific (not total) consumption. Only electric power consumed in the WW treatment plants which comes in operation after the starting date is excluded for calculating IP3, see App 8, Article 2.
100	Appendix 8	IPI4	2	Please explain how the Management Contractor can distinctively propose staff training activities which are not part of its Management Contractor’s Fee and not part of the OCS?	See no. 40.

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101	Appendix 8	Attachm. 2, Article 3		Please confirm that CAPEX paid by YWC is excluded from the OCS calculation.	Confirmed.
102	Appendix 8	Attachm. 2, Article 3		Please explain who are the parties mentioned in the article (“....according to investment program agreed on between the two parties”).	The Management Contractor and YWC (but YWC will decide only in consent with WAJ, its Management Committee, see also no.’s 8, 13).
103	Appendix 8	Attachm. 2, Art. 3		<p>Rehabilitation of networks (water or wastewater). Please detail on which criteria the replacement of a pipe will be declared as CAPEX or OPEX.</p> <p>Same clarification for meters which are out of order or generating a significant error.</p>	<p>See modified Article 3 of Attachment 2 to Appendix 8, whereafter CAPEX includes the following items:</p> <p>11. Rehabilitation of any segment from the water networks consisting of main and secondary pipe systems, as well as from the tertiary pipe system any segment, which is fed with water from a main or secondary pipe system, provided this segment is serving more than 20 house connections.</p> <p>12. Rehabilitation of any segment from the wastewater collection networks, which is consisting of main sewers, or which is serving more than 10 house connections.</p> <p>As for meters the cost for refurbishment of meters is considered as Additional Expense to be paid by YWC but to excluded for calculating IP4 OCS.</p>

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104	App. 10			<p>Could you please provide details of the amount of four lots, description and main objectives?</p>	<p>Amounts budgeted for the four lots are:</p> <p>7.2 million JD</p> <p>6.9 million JD</p> <p>5.5 million JD</p> <p>12.5 million JD (financed through RRF!!)</p> <p>After revision through WAJ, the budget still open by 2011 will be around 6.8 mio JD.</p> <p>Main objective: Water loss reduction</p> <p>Description: Rehabilitation and repairs in the networks (mainly tertiary) and re. house connections</p>
105	App. 11			<p>Could you please provide details of the main rehabilitation and repair performed as the amount remained and the works already scheduled / planned?</p>	<p>The main focus of the RRF-measures is also water loss reduction through the rehabilitation/repair of the drinking water networks (&gt;80%).</p> <p>In addition, measures have been implemented which support the improvement of the repair teams (repair cars, call center, IT infrastructure) and in small parts rehabilitation in the wastewater network.</p> <p>Furthermore, a new SCADA system is under planning for water supply of YWC, to be financed under</p>

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					<p>additional funds.</p> <p>The Management Contractor will have its role to update, revise, optimize the planning, as far as budgets and planning are still open.</p> <p>See in the data room Att. 26 and the summary of the programme.</p>
106	Assignment Agreement			<p>Please confirm that the insurances mentioned in the Assignment Agreement (AA) will be taken by YWC and not by the Management Contractor.</p> <p>Please also confirm that the conditions of the insurances to be taken by the Management Contractor are the one described in the General Conditions and not the one described in the Assignment Agreement.</p>	<p>Confirmed.</p> <p>Please see revised GC Section 3.14.</p> <p>See above.</p>
107	Assignment Agreement	1.3(c)	10	<p>This states that the language of the service area being Arabic the correspondence between YWC and WAJ will be the same. Which language is envisaged to be used for correspondence to and from the management contractor?</p>	<p>The language to be used for correspondence to and from the Management Contractor will be the English language.</p> <p>Anyhow, according to the AA (App. 12), YWC will have to submit certain reports in Arabic language.</p> <p>And Arabic language is needed for all day-to-day operations.</p>

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108	Assignment Agreement	2.4	12	Has the transfer of assets as described in the agreement been completed?	Transfer is under progress. Until the Starting Date, all necessary assets will be available for utilization through YWC.
109	Assignment Agreement	3.1B	15	Has YWC 'set up' all of the required systems to manage the personnel affairs and/or regulations? If not which have been completed and which are outstanding for the Management Contractor to address?	<p>Article 3 in the Assignment Agreement defines 1 year as a transition period to accomplish employees' transfer, the real actions did not start yet, by that the MC has the chance to practice this article including returning back to WAJ some of the employees.</p> <p>Human resource policies shall be developed and implemented through the Management Contractor, upon approval of the Management Committee.</p>
110	Assignment Agreement	4.1.1(c)	16	<p>Can the Bidders be provided with a copy of the 'special agreement' referred to?</p> <p>If not, can a summary of YWC's obligations under the agreement be provided?</p>	<p>No, because special agreements are not yet concluded.</p> <p>Special Agreements referred to are agreements expected to be signed between WAJ (as owner of the water, wastewater) with operators. YWC under the Management Contractor may act as such operator.</p>
111	Assignment Agreement	4.1.1(f)	17	Is YWC currently in compliance with all Jordanian Standards? If not, can details of those not currently being met be provided?	There were no serious failures reported from NGWA, the legal predecessor of YWC.
112	Assignment	4.1.4	17	Is YWC currently in compliance with the	See above.

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	Agreement			laws/bylaws/instructions and standards listed? If not, can details of those not currently being met be provided?	<p>There was no serious breach of laws under the response of NGWA.</p> <p>In any case, YWC would be indemnified acc. to the Assignment Agreement (Article 7.1 ff, Appendix 12).</p>
113	Assignment Agreement	4.2.1	18	Will the contractor be reimbursed for additional costs incurred to meet new instructions issued by the competent authorities?	<p>These costs will very likely be for the account of YWC.</p> <p>Should these actions affect the performance indicators of the Management Contractor, these can be adjusted pursuant to the methodology set out in Appendix 8.</p>
114	Clarification regarding the CSO			<p>It is not clear exactly what the CSO is expected to report upon except that he is to have access to all information about the management of the contract. The reporting requirements need to be more clearly defined so all parties fully understand the role and expectations of this position.</p> <p>It appears that the CSO will be an employee of YWC who will represent WAJ and PMU with regard to the execution of the contract and management of YWC.</p> <p>This represents a clear conflict of interest for the CSO in that:</p> <p>1 He will be an employee of YWC and therefore will report to the General Director (GD) or one of the</p>	<p>See Addendum No. 3.</p> <p>It should be understood that the CSO is not “party” to the contract but in a trustee / referee role to support the contract parties and to secure transparency.</p> <p>1 The CSO will report to the Management</p>

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				<p>other senior managers yet he will also be expected to report to other bodies about their actions and proposals.</p> <p>2 The CSO will attend Management Committee meetings at which the GD, and possibly other key staff from the management contractor, will also be in attendance. It is not clear what the CSO's role will be at these meetings but there is the clear possibility that the Management Contractor's key staff and the CSO will have different views on issues being discussed leading to the meeting being distracted from the essential business of providing guidance to YWC's management team.</p> <p>3 The CSO will be an employee of YWC, and presumably one of its current senior managers, and as such will have a commitment to the current management practices which may be the subject of changes under the contractor.</p> <p>4 As a current member of YWC's management team it is conceivable that, during periods of stress such as can occur during restructuring of organisations, the</p>	<p>Committee, which is a body of YWC.</p> <p>2 This is intended. The Management Committee shall have access to information about YWC not only from the Management Contractor.</p> <p>3 It is open, who will be elected as CSO by the Management Committee. As the objective of hiring an external Management Contractor is exactly to improve the existing management, it is unlikely that a CSO "with commitment to the current management practices" will be elected.</p> <p>4 Unlike the Management Contractor, which has all executive powers to operate YWC, the CSO has no operational powers. Therefore, the fear expressed in</p>

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				personal relationship between the CSO and his colleagues may lead to his loyalties being severely tested.	the question is not justified.
115	General Conditions	3.3.3	20	Please clarify the scope of the conflict of activities described in point 3.3.3 of the General Conditions to the Management Contract.	<p>The Management Contractor will carry out the executive management of YWC. Any situation resulting in YWC awarding a contract to a company affiliated with the Management Contractor is prohibited, unless PMU has allowed such awarding (ex ante).</p> <p>Of course, the Management Contractor and its affiliates are allowed to enter all other tenders in Jordan, which are not paid from the YWC budget under control of the Management Contractor.</p>
116	General Comment			Please confirm whether in the case of consortia what are the WAJ/YWC expectations as to when the Joint Venture Company would need to be incorporated? Please note that limited time is available to complete all the necessary formalities for the incorporation of the Joint Venture Company.	If prior to contract signature (pursuant to RFP Section 4.6.3) a Joint Venture Company cannot be established / registered the consortium leader might act on behalf of the Joint Venture Company under foundation, until this company's registration.
117	RFP	4.3(g)	9	Please, could you clarify or give an example of the content of the "comprehensive presentation of the Bidder's	E.g. a staffing list featuring information about each person's age, years of experience, educational background and current residence, other capacities or

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				backstopping activities" ?	<p>advantages the Bidder can generate for this Project – just as usual.</p> <p>This information could also be aggregated, for instance: 10 engineers with more than 5 years working experience (working in Washington, USA).</p>
118	RFP	4.6.1	11	<p>In the case of consortia, does the JV agreement need to contain any minimum terms and conditions of the JV members' relations?</p> <p>Does the JV agreement between consortium members need to be notarized and legalized, or a private document containing the arrangements of the JV members is sufficient?</p>	<p>There are no specific minimum terms and conditions (except for a breakdown of the members' percentage share and the issue highlighted in no. 119).</p> <p>A private document is sufficient if the document is dated, stamped and signed by an authorized representative of each company (see also no. 123).</p>
119	General Comment			Does the person duly authorized to bind the Bidder to the Proposal and the Contract on behalf of a JV consortium need to be granted specific powers of attorney by all the members of the consortium or is it sufficient that this person is authorized by all members of the consortium in the JV agreement entered into by them?	The person duly authorized to bind the Bidder to the Proposal and the Contract on behalf of a Joint Venture needs to have a power of attorney from his/her company. If this <u>company</u> is the leader of the Joint Venture and if the Proposal contains a Joint Venture agreement empowering the lead company to act on behalf of the Joint Venture then the <u>person</u> signing the proposal does not need to be separately authorized by all members of the Joint Venture.

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120	General Comment			Would it be possible to subsequently replace any of the CVs contained in the Bidder's Bid by any other CVs of equal or more suitable conditions before the signing of the Management Contract?	See no. 37.
121	General Comment			Please confirm whether the official documents of foreign Bidders need to be legalized for Jordan.	Not for the bid but maybe later for contract execution.
122	General Comment			Please confirm whether in the case of a consortium, each legal entity member shall provide any corporate supporting documents such as certificates of existence or articles of association...	No, only the consortium leader shall provide e.g. a certificate of existence (see also no. 123).
123	RFP	6.3.1(3)	18	Please note that according to the RFP there are certain declarations required from each consortium member (i.e. 6.3.1 (3)). Please indicate whether each consortium member shall provide a different declaration and whether the authorized representative of each consortium member signing these declarations has to provide evidence of his/her powers of attorney to sign such declaration.	Each member of a consortium shall provide its own declaration.  No evidence is needed though the PMU reserves the right to request such evidence during tender evaluation – should doubts arise.
124	General Comment			Please confirm whether in the case a consortium is awarded the Management Contract and the consortium members create a JV Company to perform the Management Contract, they shall grant the JV Company	Confirmed. But please note: None of the companies active for the Joint Venture may enter into activities creating any Conflict of Interest.

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				<p>all necessary means (i.e. staff...) or it will be acceptable (provided that the Management Contract is sufficiently secured by the shareholders as warrantors) that the JV Company performs its duties through the means provided by its shareholders by means of subcontract agreements entered into by between shareholders and JV Company?</p> <p>Please confirm that in this case shareholders would not be considered Subcontractors according to the definition of the tender documents.</p>	
125	RFP	4.2	8	<p>Is there a form of “Declaration Letter” that we could use? If there is none, please, could you tell us the content of the letter?</p>	<p>Quote “Part I of the Technical Section of the Proposal shall contain the relevant information requested by RFP Section 6.3.2 to proof the Bidder’s eligibility: Part I.1 – Declaration Letters....” Unquote.</p> <p>The term ‘Declaration Letters’ is only the name of this section / package. For the declarations to be included in this package please see the templates attached to the RFP as well as the explanations given in no. 34, 35.</p>
126	RFP	5.1.1(a)	13	Each page of the Proposal has to be signed and initialled?	Confirmed.
127	RFP	6.3.1(1)	18	Should it be included in the proposal, the reference letters or just in case we are requested to do it after the proposal submission?	The reference letter needs to be provided on request only.

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128	RFP	6.3.1(3)(d)	18	The written statement to submit the Performance Security prior to Contract closure should be signed by the Bidder or the Bank? Is there a format that we could use?	By the Bidder. There is no specific format to be used.
129	RFP	6.3.1(d)	18	If the Bidder is a Consortium, could each Consortium member provide a Bank Guarantee according to their share in the Consortium? Or does the Bank Guarantee only apply to the Consortium leader?	A Bank Guarantee is no longer required (see Addendum No. 3).
130	General Comment			Please provide financial data for years 2009 and budget 2010.	Most important financial figures for 2006-2009 are included in the Base Year Data Report, Attachment 2 to App. 14 (Project Information Appendix). Detailed financial information for 2006-2009 and projections up to 2015 are in the Draft Financial Model which is for review only in the data room (not part of the contract).
131	Q&A Sheet			Will income tax for expatriates be a tax exemption? According to answer point 8 in "Question and Answers Sheet" answer it is not clear.	The Q&A Sheet is for information only and is not part of the Contract and Tender Documents.
132	Appendix 8	Article 2	2	IPI 4: OCS. - Please provide calculation of IPI 4 (OCS) for the last years.	- All available information is in the Data Room (Financial Model, non-binding background information).

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				<ul style="list-style-type: none"> <li>- Please confirm if Revenues are collected amounts or invoiced amounts.</li> <li>- Please confirm that OPEX expenses for IPI 4 (OCS) Calculation exclude General and Administration Expenses, depreciation and bad debt expenses.</li> </ul>	<ul style="list-style-type: none"> <li>- For the purpose of calculating IPI4, revenues are only the collected amounts.</li> <li>- For IPI4 calculation, the eligible OPEX exclude: Additional Expenses, depreciation, bad debt. provision, electricity cost, and training costs.</li> </ul>
133				<p>What exactly is the means by which the Management Contractor can get additional investment in the water supply system? On what criteria will proposals for additional investment be assessed?</p>	<p>Not clear to which Section or Article this query refers to.</p> <p>Any proposed additional investment, which looks advantageous to the Bid Evaluation Committee, will be positively evaluated as part of the Bidders Methodology.</p>
134	General Conditions	6.6(3)	37	<p>Does this clause mean that first and second year's Management Contractor fee will not be adjusted? Please clarify to which years these adjustments might apply.</p> <p>For clarification, please give an example of calculation of the adjustments of "Gen. Cond MC ap.6.6"</p>	<p>Correct, adjustments may only be applied from Contract Year 3 on.</p> <p>See no. 86.</p>
135	Addendum No. 3			<p>Please confirm that the Management Contractor's Fix Fee Advance Payment has been eliminated. Must the Contractor use his own financial resources from the</p>	<p>No, only the Advance Payment Guarantee has been deleted.</p> <p>With the beginning of the Contract, the Management</p>

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				starting of the contract?	Contractor can invoice one fourth of his Fix Fee for the first year. Therefore, no such pre-financing is requested from the Management Contractor.
136				What exactly has already been completed within the Rehabilitation and Repair Fund Programme (60%). What has already been identified for the remaining 40% of the fund?	See no. 104. For the remaining part of the fund, measures for rehabilitation/repair of the drinking water networks will represent the main focus.
137	General Comment			Is it possible to have the Energy consumption in sewage treatment plants and pump stations?	No. The consumption was estimated from accumulative electricity bills. In future, these bills can be split to achieve better data.
138	General Comment			Does the GIS system cover the whole of the Northern Governorates?	Yes. Coverage is around 90% of main pipes. Tertiary pipes not included, yet. And data not always reliable. So, the Bidder must make its own estimation.
139	General Comment			Has YWC negotiated different electricity tariffs with the Power Company, depending on the hour of the day (day rate / night rate)?	A special tariff for water facilities is set by the Council of Ministers. Until now, day and night tariffs are the same. YWC might negotiate about the peak factor tariffing, in future.
140	General Comment			What is the number of connections in the YWC company's area to whom 'estimated' accounts are sent because of stopped, missing or faulty meters?	No solid data are available.

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141	General Comment			How many stopped, missing or faulty meters were replaced in 2009?	meters replaced in 2008 = 8877 in 2007 = 6692
142	General Comment			Number of legal actions, court actions related to illegal connections in the last 5 years.	No data available.
143	General Comment			Is it possible to obtain information of the current program to reduce illegal connections ?	Reduction of illegal uses is a day to day activity , in each water administration a specialized task force looks for illegal connections or tampering with water meters, disconnect the service and ask the customer to legalize his status by paying accumulated water charges, if the customers do not respond, the case is sent to the court No. of discovered illegal cases in 2008 = 1747 No. of discovered illegal cases in 2007 = 2439
144	General Comment			Is there a web page for customers? Is there any forecast investment for web page and or electronic billing?	No website for customers existing.
145	General Comment			Who pays the meter test? The customer or the company?	YWC.
146	General Comment			When was the current customer service software implemented? (Coboss 2+)	This is an inhouse developed program, it started with COBOL in late 80's then was developed to COBOS1 and COBOS 2 about 6 years ago, the last development was done by a GTZ financed contractor through the Operation and Maintenance Support project known as

No.	Document	Section / Article	Page	Question	Answer
					O&M program.
147	General Comment			Is there any quality system implemented in the Customer Service? Are there processes charts for Customer Service? Do you have written processes related to Customer Service (metering, billing, payments, disconnections, debt recovery...)? If yes, a soft copy will be required.	The activities are practiced, No documentation available.
148	General Comment			Information about the results of the meter reading and billing pilot in Al – Koura.	Final report about Al Koura pilot project should be available at WAJ.
149	General Comment			Information about the Miyalma public water awareness campaign in 2007.	Not needed for this tender. If the Management Contractor would like to have access to such info later on, PMU will support that.
150	General Comment			Detail about the investment project 2033. Meter reading devices (handhelds). Tendering stage, when they are going to be available, number, specifications, requirements etc...	JD 175,000 are allocated in 2010 RRF program, 40 handheld units have been tendered with an estimated cost of JD 100,000, the units include printer, the tender is still under evaluation by NGWA technical committee.
151	General Comment			Detail about the investment project 2030 “Domestic meter replacement programme”. Number of meters to be replaced, calibre, geographical situation, decision report	JD 2.17 million was allocated within RRF for 2009. In 2010, 20,000 meters were delivered to YWC stores, 50,000 meters to be replaced through a local tender,

No.	Document	Section / Article	Page	Question	Answer
				of replacement (due to age, high consumptions etc...).	80% of the project is accomplished.
152	General Comment			Does the YWC have a meter replacement forecast for the next 5 years?	No.
153	General Comment			Detail of payment channels, cost of payment channel and billing efficiency per channel in the last 5 years	<p>Payment channels are :</p> <ul style="list-style-type: none"> <li>▪ Direct payment to the collector</li> <li>▪ Payment by customer in the office</li> <li>▪ Through housing bank</li> <li>▪ Through main post offices</li> </ul> <p>No data available about billing efficiency of each channel.</p>
154	General Comment			Evolution of the average payment period.	Data for each area can be found in the billing program, no centralized report available, meetings with customer services department can be arranged.
155	General Comment			Number of customers with more than 2 bills outstanding.	See above.
156	General Comment			Number of customers without meter.	All customers should be metered except illegal users or the disconnected from service.
157	Form of			Please clarify whether YWC may ask “other parties”	See no. 6.

No.	Document	Section / Article	Page	Question	Answer
	Contract			additionally to the Management Company, its parent(s) and shareholders to sign the Management Contract. Which “other parties”?	
158	Form of Contract			Will a company that may be engaged and described in the technical proposal as a subcontractor of the Joint Venture and not as a member count for the technical evaluation of the bidding joint venture?	No.
159	Form of Contract			Please clarify the order of precedence as among the appendices.	There is no order of precedences among the Appendices. All appendices shall have the same legal priority and should be read as an integral part of the Contract.
160	App. 2	2(d)	2	Please confirm that YWC will be the sole legal entity responsible for the actions made on its behalf by the Management Contractor – There seems to be a contradiction.	Confirmed.
161	App. 2	3(f)	3	In connection to the training of YWC’s employees in all functions. Are there specific functions that will have to be covered by the training?	It will be up to the Management Contractor to decide which training is best suited to improve the performance of YWC.
162	App. 2			In light of Section 4.3(g) of the RFP, can the description of capacity development and training outputs be assumed	Question unclear. Maybe the following info helps:

No.	Document	Section / Article	Page	Question	Answer
				to cover the required training services with not subsequent additional activities other than those described in the Bidder's proposal?	The Bidder shall outline its idea and concept for capacity development and training of YWC staff. This will include activities under YWC budget, but may also include activities provided by the Management Contractor's staff, affiliates, facilities etc. under the Management Contractor's budget. Even "additional activities", whatsoever, might be proposed. The Evaluation Committee will evaluate the proposed concept, the trainers' qualifications and the expenses NOT under YWC's budget (see RFP, Section 6.4.1, Criterion 5).
163	App. 2			Please clarify whether a non-exclusive description of training activities will have an advantage/disadvantage.	See above. The evaluation is up to the Evaluation Committee.
164	App. 2	3(g)	3	Regarding the reference to "financial and cost accounting individually for each company" in paragraph 3(g), please clarify which companies are envisaged by this paragraph.	<i>"individually for each company"</i> – this text is to be deleted.
165	App. 9 and 12			Applicable law is not specified. Please confirm that the applicable law to the bank guarantee is not material to YWC.	Confirmed. The Applicable Law of the Contract is not necessarily the law applied to the bank guarantees, bonds etc. (see templates for Performance Security, Tender Security etc.).

No.	Document	Section / Article	Page	Question	Answer
166	Q&A Sheet			Regarding point 2 at page 2; please confirm whether there are any remaining services pending to be transferred. Which are those remaining services and when are they expected to be transferred? Will the Management Contractor be required to provide any support or requirements to enable such services to be transferred?	The Q&A Sheet is for information only and is not part of the Contract and Tender Documents.
167	Q&A Sheet			Page 12; please confirm that the employees of WAJ/YWC will not be transferred or seconded to the Management Contractor, and that the Management Contractor will have no liability for employee compensations, salaries, and financial rights. Please confirm that the Management Contractor will not be held liable for payments or compensations arising from termination of any employment contract (if required under the performance targets) nor in case of work accidents or conditions beyond its actions or omissions.	The Q&A Sheet is for background information only and is not part of the Contract and Tender Documents.
168	Q&A Sheet			Clarify how the Contractor will be authorized to exercise disciplinary authority over the employees of WAJ/YWC.	The Q&A Sheet is for information only and is not part of the Contract and Tender Documents.
169	Q&A Sheet			Who will be the decision maker regarding the termination of employment contracts?	The Q&A Sheet is for information only and is not part of the Contract and Tender Documents.

No.	Document	Section / Article	Page	Question	Answer
170	Q&A Sheet			Page 12, will the issuance of relevant decisions of the Council of Ministers to grant tax exemptions to the Management Contractor be made conditions precedent to the effectiveness of the Contract? Is it envisaged that the Government will grant exemptions from taxes in addition to the sales tax exemption (e.g., stamp duties, etc. as listed in attachment 1 to Appendix 16)?	The Q&A Sheet is for information only and is not part of the Contract and Tender Documents.
171	Assignment Agreement			Please confirm whether the original Assignment Agreement in Arabic will be provided prior to the submission of the bids and that all Associated Documents will be provided to Bidders for review.	The original version is available in the Data Room (Attachment 29).
172	Assignment Agreement			Please confirm that there are no pending Associated Documents being negotiated by WAJ and YWC in parallel to the tender process.	Confirmed.
173	Assignment Agreement	3.1.B (d)	16	Regarding clause 3.1.B (d), please clarify the envisaged role of the Management Contractor in selecting the employees whose secondment will be terminated.	The Management Contractor is allowed to select staff, the contract with whom he wants to terminate. However, any dismissal of staff will need the Management Committee's approval.
174	Assignment Agreement	3.1.B (d)	16	Regarding clause 3.1.B (d), please confirm that any employees hired after the Grace Year will be hired by	The Management Contractor is responsible for hiring new staff for YWC, which will be paid by YWC.

No.	Document	Section / Article	Page	Question	Answer
				YWC and not the Management Contractor.	
175	Assignment Agreement	3.1.B (d)	16	Regarding clause 3.1.B (d), please clarify whether the 20% applies to the total number of WAJ's employees and not to a particular category of them (e.g., classified employees).	The 20% applies to the total number of seconded employees.
176	Assignment Agreement	3.1.B (d)	16	Regarding clause 3.1.B (d), please provide full information regarding the financial rights of WAJ's employees including incentives.	In case any employee is returned to WAJ, financial rights such as end of service award, unused annual vacations, contribution to the governmental retirement fund, all these rights will be settled by WAJ.
177	Assignment Agreement	3.1.B (d)	16	Regarding clause 3.1.B (d), please clarify whether any payments to any employees are expected to be made out of the revenues generated by the Management Contractor.	It is YWC to generate revenues and pay salaries, directed by the Management Contractor. The Management Contractor needs not to use parts of his Fix or Variable Fee to pay staff hired / employed by YWC. Though the Management Contractor is free to do so in addition if the Management Contractor thinks this is beneficial for him.
178	Assignment Agreement	3.1.B (d)	16	Regarding clause 3.1.B (d), please clarify the situation of daily workers and other employees who are subject to the Labor Law? How will they be seconded?	The contracted employees and laborers working under the labor law can resign or can be terminated by WAJ and can be hired by YWC which will be operating under the same law.

No.	Document	Section / Article	Page	Question	Answer
179	Assignment Agreement	3.1.B (d)	16	Regarding clause 3.1.B (d), will the Management Contractor be permitted to terminate any contract according to the Labor Law during or after the Grace Year?	Yes, the labor law defines the cases where termination for cause can take place, termination for no cause can be practiced but the employee will have some special compensation (through court).
180	Assignment Agreement	3.1.B (e)	16	Clause 3.1.B (e), please confirm that the Management Contractor will be notified some time prior to the termination of secondment by WAJ.	The Management Contractor shall be part of the decision process.
181	Assignment Agreement	4.1.4	17	Clause 4.1.4, if the performance targets cannot be achieved due to the required compliance with certain legal requirements (e.g., the permitted volume of usage of underground water) will the incentives/penalties be considered and determined taking into account the impact of compliance with relevant legal requirements?	If there is a significant impact, the Independent Auditor shall propose an amendment which shall be agreed on by YWC and the Management Contractor.
182	Assignment Agreement	4.2	18	Clause 4.2, should not the performance targets be considered as subject to a duty of care and due diligence as opposed to guaranteed outputs, especially if the Management Contractor has detected inadequate legal regulation and proposed amendments that have not been accepted or effected in due time?	Should there be such influence as described and should this influence be of significant nature, then the targets can be adjusted pursuant to the methodology laid out in Appendix 8.
183	Assignment Agreement	4.2.1	18	Clause 4.2.1, Please advise if any new law affecting customer services is forthcoming, e.g., consumer	Not up to our knowledge, except the monthly tariff will be applied starting of 2011 (see Appendix 8,

No.	Document	Section / Article	Page	Question	Answer
				protection law, data protection law, or water regulatory law re-defining quality standards and customer's rights?	Attachment 4).
184	Assignment Agreement	4.4.3 and 5.4	35 and 41	In light of paragraphs (b) and (f) of clause 4.4.3, and clause 5.4, will the Management Contractor be obliged to develop new water resources and Wells to replace those producing substandard raw water not approved by the Ministry of Health or WAJ?	Yes, the cost of such projects will be carried by YWC.
185	Assignment Agreement	4.7	38	Clause 4.7, will WAJ/MWI guarantee the obligations of YWC towards the Contractor on the other hand?	Yes.
186	Assignment Agreement	5.3 and 5.5	40 and 41	Clauses 5.3, and 5.5, how are the restrictions pertaining to WAJ's control reflected on the performance targets for the purposes of incentives and penalties?	The performance targets already reflect the restrictions pertaining to WAJ's control. Further, IPI 1 will be adjusted should available water resources significantly diverge from the forecasted amounts (cf. Appendix 8, Article 2).
187	Assignment Agreement	5.6	41	Clause 5.6; Please confirm that the Contractor will decide on possible exportation that may affect its performance and services.	Meeting the water shortage requires a close cooperation between all parties such as MWI, WAJ, and YWC, any water export or import should be agreed on between the parties.  Anyhow, the final decision about water allocation and exportation is with WAJ / MWI. The Management Contractor will not suffer, if the exportation should

No.	Document	Section / Article	Page	Question	Answer
					exceed the predicted volume, because the Variable Fee will be adjusted, accordingly (see Appendix 8). And YWC would be compensated for all exportation costs.
188	Assignment Agreement	7.2	48	Clause 7.2; Please confirm that the indemnification by WAJ should cover the Management Contractor as well.	Yes, as the MC will be considered as part of YWC.
189	Assignment Agreement	11.1	57	Clause 11.1; Please clarify what role is envisaged for the Management Contractor in the negotiations to amend the Assignment Agreement.	<p>The Management Contractor is encouraged to forward any improvements, clarification, specification of the Assignment Agreement regarding YWC through the Management Committee.</p> <p>Negotiations related to this tender are not possible, because the Assignment Agreement, as introduced through decision of the Cabinet, and must be accepted like any other Law.</p>
190	Assignment Agreement	14.3	68	Clause 14.3; Please clarify the envisaged scope of remedies that WAJ is retaining against subcontractors.	The Management Contractor will not be affected by this Clause. There is no legal relation between the Management Contractor and the Assignor.
191	App. 7	2.3	3	Please confirm that subcontractors engaged by the Management Contractor with the approval of YWC need not be approved by WAJ or the Management Committee.	Confirmed. Anyhow, YWC may raise objections, on instruction of its shareholder WAJ, and intervene with good reason (see Clause 2.3(2), Appendix 7).

No.	Document	Section / Article	Page	Question	Answer						
192	RFP	6.4.1 b Criteria 2.5.1	20	How would non key professionals be counted? Would a Bidder proposing 15 non key staff working 1 man-month receive the maximum score (3 points) while a Bidder proposing 8 non key staff assigned for 12 man-months would receive 1.5 point?	<p>Yes, Criterion 2.5.1 aims at the potential (not the time input) of the non-key experts.</p> <p>For greater clarity, the evaluation criterion 4 is now detailed as follows:</p> <table border="1"> <tr> <td><b>4. Time input of professionals</b> <i>(from 0 scores for 200 to 22 scores for 400 man months)</i></td> <td><b>22</b></td> </tr> <tr> <td>4.1 Key Professionals <i>(from 0 scores for 150 to 15 scores for 300 man months)</i></td> <td><u>15</u></td> </tr> <tr> <td>4.2 Non-Key Professionals <i>(from 0 scores for 50 to 7 scores for 100 man months)</i></td> <td><u>7</u></td> </tr> </table>	<b>4. Time input of professionals</b> <i>(from 0 scores for 200 to 22 scores for 400 man months)</i>	<b>22</b>	4.1 Key Professionals <i>(from 0 scores for 150 to 15 scores for 300 man months)</i>	<u>15</u>	4.2 Non-Key Professionals <i>(from 0 scores for 50 to 7 scores for 100 man months)</i>	<u>7</u>
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4.2 Non-Key Professionals <i>(from 0 scores for 50 to 7 scores for 100 man months)</i>	<u>7</u>										
193	Bidder's Price Form			In order to avoid any misunderstanding and as year is not defined, instead of annual rates for the staff, please consider man month rate instead. Otherwise, please confirm if the expected annual rate includes or not the vacation period of the staff or other items.	See no. 47.						
194	General Conditions	1.1	5	Please clarify the definition of Effective Date.	See answer to no. 49						
195	General Conditions	1.1	5	End Date to be 5 years from the Starting Date – Note 'Duration' is not a defined term.	If requested by the Preferred Bidder's legal advisors, this Article can be rephrased, then containing the						

No.	Document	Section / Article	Page	Question	Answer
					exact day 5 years on from the Starting Date.
196	General Conditions	1.1	5	End Date to be 5 years from the Starting Date – Note ‘Duration’ is not a defined term	See answer to no. 195.
197	General Conditions	1.9	12	Can the taxes be divided into foreign portion and local portion, this is to clarify taxes to be paid on invoices issued by foreign entities (home office support for example) that might be issued to the Management Contractor.	All taxes have to be included in the Management Contractor’s fee, except VAT and Company Income Tax, see modified Price Form, Appendix 15.  Home office support and taxes therefore are an internal issue of the Management Contractor.
198	General Conditions	1.9.1(4)	12	Please clarify these fees.	See answer to no. 48.
199	General Conditions	2.3.1	13	Are there any consents or other things to be done by YMC or other Authorities prior to the Starting Date? Please detail these and include them in the agreement.	No, except preparations for the Management Contractor to enter YWC.
200	General Conditions	2.5	14	Please clarify that either Party may cancel the extension by providing written notice to the other at least 12 months prior to the End Date (as may be extended)	Confirmed.
201	General Conditions	2.6.1	14	Please clarify the extent to which the Applicable Law modifies the definition of Force Majeure	It is the Bidders’ own obligation to research the Applicable Law.

No.	Document	Section / Article	Page	Question	Answer
202	General Conditions	2.7(1)	15	Please clarify in clause 2.7(1) that the suspension of payment is to be in accordance with clause 2.7(3)	No. GC Section 2.7(3) clarifies only the suspension of payment as a consequence of GC Section 2.7(2).
203	General Conditions	2.7(2)	16	Please clarify in clause 2.7(2) that YWC's approval is not to be unreasonably withheld.	See GC Section 5.6.
204	General Conditions	3.3.2	19	<p>Please define the terms in clauses (a) to (d) by reference to YWC, a geographical region and a scope of services. Does this mean we are disqualified from all future water projects in Jordan?</p> <p>Note that we are not able to disqualify organisations which are under the common control of our parent entities (eg OTV and Azaliya are under the common control of Veolia Eau).</p> <p>Given the size and breadth of activities of our parent companies this is not possible. Please amend the definition of Affiliates accordingly.</p>	<p>GC Section 3.3.2 can be rephrased as follows:</p> <p>(c) capital investment programs <u>of YWC</u>; and</p> <p>(d) except with the prior written consent of PMU, the goods, works and services purchased from the Annual Operations and Maintenance Budgets <u>of YWC</u>.</p> <p>Nothing prevents any Affiliate to participate in tenders and to deliver goods and services outside the area and budget controlled by the Management Contractor.</p>
205	General Conditions	5.2	30	Service Area is not defined.	Service Area is defined in the Service Area Appendix 5. Furthermore, detailed maps are available in the data room.
206	General Conditions	5.5(3) and	32 and 33	Please confirm that in these articles YWC should be replaced by YWC shareholder and/or Management	.See modified GC Section 5.5.

No.	Document	Section / Article	Page	Question	Answer
		(4)		Committee.	
207	General Conditions	6.3.1	35	<p>The Management Contract is a fix sum contract based on the achievement of performance indicators.</p> <p>In such type of contract, there is neither an obligation of the Contractor to provide its actual costs.</p> <p>Please clarify the rationale of this article?</p>	The rational is that actual costs may be needed for any fee adjustment.
208	Appendix 8	Article 2 as clarif. by Add. No. 3		<p>Reference is made to GC Section 1.1 – Definitions but there is no specific definition for ‘total revenue’.</p> <p>Is the definition the same as for ‘revenue’?</p>	Correct.
209	Appendix 8	Article 2 as clarif. by Add. No. 3		<p>Why are expenses for electrical power not included in the OCS calculation when reduction of specific power consumption is a key contributor to increasing cash surpluses?</p>	<p>Because, consumption of electric power is reflected in IPI 3, already, and double-counting shall be avoided.</p> <p>By the way: Electric power consumption is high, it is part of the OPEX, but if included for calculating the OCS, there might be a continuous financial loss.</p>
210	Appendix 8	Article 2 as clarif. by Add. No. 3		<p>Reference is made to Attachment 4 to Appendix 13 but this attachment is not in the data room. Can this be provided as the other attachments?</p>	<p>With Addendum No. 3, the need for a Bank Guarantee was cancelled which will change the numbering of the Appendices. Appendix 13 you are referring to, here, is the old Appendix 14.</p>
211	Appendix 8	Article 2		<p>Calculation of the OCS does not include training expenses</p>	<p>According to item 6 in table 9.2, Appendix 3, the MC</p>

No.	Document	Section / Article	Page	Question	Answer
		as clarif. by Add. No. 3		proposed by the contractor.  Can details of other training plans and costs be provided?	has to deliver staff training and development program, the costs of such program are unknown but they shall be paid from the revenues.
212	Appendix 8	Article 2 as clarif. by Add. No. 3		Can the items included in 'total operational expenses' be specified? Does this include only for day to day operation of the business as in the data room file "Cumulative BALANCE Clean English-Rev & Exp 11-8-2010.pdf" under the heading of expenditure both depreciation and bad debts are included.  Are these considered to be operational expenses?	Total Operating Expenses are shown in Attachment 16, in the draft financial model, they include day to day expenses and the additional expenses to be paid from revenues, they do not include depreciation or bad debts provisions.
213	Appendix 8	Article 2 as clarif. by Add. No. 3		Can we be provided with an aged debt analysis for each customer category i.e. Government, Industrial, Commercial, Domestic to enable us to better understand the 'Accounts Receivables' in the Income Statement shown on Page 3 of Attachment 1 to Appendix 14.	Not available, at the moment.
214	Appendix 8	Article 2	2	What is the definition of 'wastewater facilities that have been newly built after the starting date of the contract'?  Only wastewater (and water) facilities that were in service during the whole of the base year should be included	The no. of existing treatment plants is 10 (shown in Attachment 5 in the data room, a new waste water system including (Al Mi'rad) treatment plant is under construction and is expected to be put in operation after the starting date, other systems might be constructed in future.

No.	Document	Section / Article	Page	Question	Answer
				otherwise there is no information on which to assess actual power consumptions.	Article 2 (SPC) has been modified, accordingly (Note: No new wastewater plant taken into operation throughout the year 2010).
215	Appendix 8	Article 2 and Clause 4.4(2)	2 and 4	<p>Would the client consider extending the assessment period for CST to 1 year to avoid undue benefit or penalty being caused as a result of seasonal variations in demand for / availability of water? As performance in subsequent years is to be measured over the full year it would appear logical to carry out the assessment over the same time period.</p> <p>Is the minimum pressure 2 bars as mentioned on page 36 of the Assignment Agreement in Clause 4.5.1 (a)?</p> <p>Is the minimum pressure to be applied universally or will there be different minimum pressures for areas that cannot be served with a 2 bar pressure without the construction of booster stations through the CAPEX programme? (for example those connections supplied by gravity that are less than 20 metres below the bottom water level of a reservoir.)</p>	<p>Matter of negotiations.</p> <p>To be specified by the Bidders and to be agreed on by the Parties later. There may be different pressure levels, according to site-specific conditions.</p>
216	Appendix 8	Article 2	2	<p>The text only refers to 'billed amount of water'. Does this include charges for wastewater services?</p> <p>If so is the wastewater services tax also included in this</p>	No, the AWS indicator refers to water quantities, not to water charges.

No.	Document	Section / Article	Page	Question	Answer																		
				amount?																			
217	Appendix 8	Article 2	2	To permit an assessment of required staffing levels can the client provide a breakdown of the number of water and wastewater service connections in each governorate?	<table border="1"> <thead> <tr> <th>Governorate</th> <th>Water Subscribers</th> <th>W.W Subscribers</th> </tr> </thead> <tbody> <tr> <td>Irbid</td> <td>150,289</td> <td>55,997</td> </tr> <tr> <td>Jarash</td> <td>22,683</td> <td>7,650</td> </tr> <tr> <td>Ajloun</td> <td>16,658</td> <td>5,238</td> </tr> <tr> <td>Mafraq</td> <td>35,582</td> <td>5,747</td> </tr> <tr> <td>Total</td> <td>225,512</td> <td>74,632</td> </tr> </tbody> </table> <p>Total no of W.W connections is 36,057</p>	Governorate	Water Subscribers	W.W Subscribers	Irbid	150,289	55,997	Jarash	22,683	7,650	Ajloun	16,658	5,238	Mafraq	35,582	5,747	Total	225,512	74,632
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218	App. 10	Art. 1 (1) Art. 2 (1) and (5)	2	Who in YWC will be responsible for appointing the WLRP consultant, the selection of the projects, and the award of contract packages?	<p>For the parts under implementation, the Consultant has already been selected to carry out the design, tendering and supervision of the construction works (in 2004). The measures (see no. 104) are implemented, partly.</p> <p>The selection of consultants for following parts will be done in accordance with KfW's procurement regulations.</p>																		

No.	Document	Section / Article	Page	Question	Answer
219	App. 11	Art. 3 (4)	3	Who will appoint the engineering consultant and what will be his / her responsibilities and tasks? Will the engineering consultant be under the authority of the Management Contractor?	<p>See no. 218 and 136.</p> <p>The engineering consultant will not be under the authority of the Management Contractor.</p> <p>An engineering consultant is already working. Main tasks are the design and the preparation of tender documents (the ToR are defined).</p> <p>BUT: As mentioned under no. 136, the measures are to a large extent under implementation.</p> <p>The Management Contractor will work in the day to day work with the consultant.</p>

Eng. Basem Telfah

Director

PMU