

AGREEMENT ON THE CONDUCT OF RAIN WATER, DRAINAGE WATER AND OTHER SOIL AND SURFACE WATER FROM PUBLIC ROADS, STREETS AND SQUARES TO THE PUBLIC SEWERAGE SYSTEM AND TREATMENT THEREOF AND THE CONSTRUCTION OF STORM WATER FACILITIES

Tallinn, 22 June 2001

1. PARTIES TO THE AGREEMENT

- 1.1. TALLINNA LINN, as represented by Ain Valdmann who is acting pursuant to the Tallinn Municipal Government Order No 2729-k dated 20 June 2001 (hereinafter the “**City**”), and
- 1.2. AKTSIASELTS TALLINNA VESI, registration code 10257326, with the registered office at Ädala 10, Tallinn 10614, as represented by a member of the Board of Directors Brian Hill who is acting pursuant to law and the Articles of Association of the company (hereinafter the “**Company**”),

hereinafter the City and the Company separately and jointly referred to as the “**Party**” and the “**Parties**”, respectively, have entered into this agreement (hereinafter the “**Agreement**”) as follows:

2. DEFINITIONS

- 2.1. In interpreting the terms used in this Agreement the Parties shall be directed by the terms used in the Share Sale and Subscription Agreement and the Shareholders’ Agreement concluded between the City, the Company and International Water UU (Tallinn) B.V. on 12 January 2001 and the terms used in the Services Agreement concluded between the City and the Company on 12 January 2001, unless expressly stated below or otherwise in this Agreement or evident in the context:

“**Agreement**” shall mean this Agreement on the Conduct of Rain Water, Drainage Water and Other Soil and Surface Water from Public Roads, Streets and Squares to the Public Sewerage System and Treatment thereof and the Construction of Storm Water Facilities and any and all amendments thereto.

“**Facilities and Equipment**” shall mean facilities and equipment which form a part of the System and are necessary for the provision of the Storm Water Services.

“Storm Water”	shall mean storm water, drainage water and other soil and surface water.
“Storm Water Facilities”	shall mean the facilities to be designed and built and that are designed for draining of Storm Water from public roads, streets and/or squares and including facilities that are necessary for their operation and maintenance.
“Storm Water Services”	shall mean the services referred to in Section 6.1 below.

3. BASIS FOR THE AGREEMENT

- 3.1. The Tallinn City Council has passed Resolution No 214 dated 15 June 2000 dividing the territory of Tallinn into 12 public water supply and sewerage services areas.
- 3.2. The Tallinn City Council has passed Resolution No 396 dated 30 November 2000 appointing the Company to be the water company (as defined in the PWSSA) for the Services Area and thereby granting the Company the exclusive right and obligation to operate in the Services Area during the Mandate Period.
- 3.3. At the date of this Agreement the Company holds a valid Water Permit issued by the Tallinn Environmental Board.
- 3.4. According to subsection 9(2) of the PWSSA the provision of the Storm Water Services shall be regulated by a respective agreement between the City and the Company as the owner or possessor of the System.
- 3.5. According to Section 1.5.3 of the Council Rules and Regulations, the costs of the provision of the Storm Water Services shall be paid according to a respective agreement between the City and the Company as the water company for the Services Area.
- 3.6. According to Section 6.10 of the Regulation on Connection to the Public Water Supply and Sewerage System of Tallinn, established by the Tallinn City Council Decree No 24 dated 15 June 2000, the construction costs of the Storm Water Facilities shall be compensated by the City pursuant to a respective agreement between the City and the Company as the owner or possessor of the System.
- 3.7. This Agreement shall be interpreted in accordance with the Share Sale and Subscription Agreement, the Shareholders’ Agreement and the Services Agreement and their annexes. In case of controversy between the Services Agreement and this Agreement the provisions of the Services Agreement shall prevail and they shall be taken as a basis in a way that is in accordance with the Share Sale and Subscription Agreement and the Shareholders’ Agreement and their annexes.
- 3.8. In the case the City shall amend any applicable law or regulation or other document that affects the provisions or application or interpretation of this Agreement, the Parties shall in their conduct be directed by the principles set forth in this Agreement and, if necessary, shall in good faith negotiate amendments to this Agreement that are

necessary to maintain the balance of their rights and obligations as set forth in this Agreement.

- 3.9. Hereby the Parties confirm that the sums indicated in the Agreement are not derived from the Business Plan included in the offer submitted by the investor International Water UU (Tallinn) B.V. in relation to the purchase of the shares of the Company and subscription of new shares, but these sums are based on the agreement between the Parties.

4. OBJECT OF THE AGREEMENT

- 4.1. The Parties have agreed the object of this Agreement to be the following:
- (A) The provision by the Company of the Storm Water Services to the City;
 - (B) The construction by the Company of the Storm Water Facilities;
 - (C) The payment by the City for the provision of the Storm Water Services and the reimbursement of the cost of the construction of the Storm Water Facilities.
- 4.2. The application of this Agreement is limited to the Services Area.
- 4.3. This Agreement shall not regulate the provision of or payment for any services or work related to waste water other than the Storm Water.

5. LEGAL STATUS OF THE SYSTEM AND SCOPE OF THE AGREEMENT

- 5.1. Subject to the terms and conditions of this Agreement and the Services Agreement, in providing the Storm Water Services according to this Agreement the Company shall use the Facilities and Equipment that are owned by the Company and/or constructed by the Company after the date of this Agreement.
- 5.2. In providing the Storm Water Services the Company shall be entitled to use the Facilities and Equipment that are used by the Company on the basis of usufruct, lease or other civil law arrangement to the extent that such use is not contrary to the agreements on the basis of which such Facilities and Equipment are used.

6. RIGHTS AND OBLIGATIONS OF THE COMPANY

- 6.1. Upon the terms and subject to the conditions set out in this Agreement, the Services Agreement and the relevant legislation, the Company shall, within the Services Area, provide to the City the Storm Water Services which shall comprise of the following:
- (A) Collection of the Storm Water flowing through the drains located at the ground level in the public streets, roads and squares owned by the City and/or in public use;
 - (B) Transport of the Storm Water referred to in (A) above through the System using either:
 - (i) the storm water network; or

(ii) the combined sewer network,

provided that the transport shall also include pumping of the Storm Water, if required;

(C) Disposal of the Storm Water referred to in (A) and (B) above by safe and environmentally acceptable means which are:

(i) in the case of (B)(i) above, by discharge to the water body indicated in the Water Permit as a receiving water body; and

(ii) in the case of (B)(ii) above, by discharge to the water body indicated in the Water Permit as a receiving water body after treatment in the waste water treatment plant situated at Paljassaare põik 14, Tallinn or in another suitable plant; and

(D) Maintenance and repairs of the Facilities and Equipment, including the storm water network and the combined sewer network, according to the principles set out below.

6.2. The Company shall maintain and repair the Facilities and Equipment owned by the Company to the extent that is necessary for the constant provision of the Storm Water Services. The maintenance and repairs of the Facilities and Equipment that have been given into the use of the Company by third parties shall be conducted pursuant to the agreements with such third parties.

6.3. The Company shall monitor the degree of contamination of the Storm Water in the storm water network and in case the levels of pollution established by applicable laws or regulations have been exceeded the Company shall immediately notify the City and the authority conducting the environmental supervision thereof.

6.4. Upon malfunction or breakdown of the Facilities and Equipment, the Company shall immediately take all measures to eliminate the malfunction or breakdown and liquidate the resulting damages.

6.5. Upon the scheduled repairs of the Facilities and Equipment, the Company shall inform the City not less than 5 (five) calendar days in advance and the general public through appropriate means of information required by the City not less than 3 (three) calendar days in advance. The Company shall inform the City and the general public of the need for emergency works as soon as practicable under particular circumstances.

6.6. The Company shall observe the terms and conditions of the Water Permit.

6.7. The Company shall monitor Storm Water overflows discharging directly or indirectly into the Baltic Sea in places stated in the Water Permit. The permitted Storm Water quality levels shall be in accordance with Article 23¹ of the Government of the Republic Decree No 11 dated 20 January 1998 and detailed in the Water Permit. The Company shall report the monitoring data to the City in accordance with the Water Permit no later than 90 (ninety) days after the end of the year under review.

6.8. The Company shall plan, design and build additions to the storm water network

(including the Storm Water Facilities) at the cost of the City according to the Services Agreement and additional programmes agreed with the City from time to time and pursuant to the public water supply and sewerage development plan established by the City from time to time.

- 6.9. The Company shall report to the City the length of the storm water network constructed annually and the number of new clients connected annually. Such report is due within 90 (ninety) days from the end of the year under review.
- 6.10. The Company shall have the right to limit or discontinue the provision of the Storm Water Services in the case of emergency and scheduled repairs of the System, provided that it has duly fulfilled the notification requirements set forth in Section 6.5 above.
- 6.11. Upon non-payment of amounts payable by the City pursuant to this Agreement, the remedies set forth in Section 13(12) of the Services Agreement for non-payment by the City shall be applicable.

7. RIGHTS AND OBLIGATIONS OF THE CITY

- 7.1. Upon the terms and subject to the conditions set out in Section 8 below and taking account of Section 7.2 below, the City shall pay to the Company for the Storm Water Services the following sums, these being agreed by the Parties as a correct assessment of the cost of providing the Storm Water Services:
 - (A) For the year 2001 the gross sum of 40,962,000 (forty million nine hundred and sixty-two) kroons (this includes VAT (*käibemaks*) of 6,248,440 kroons);
 - (B) For the year 2002 the gross sum of 48,335,160 (forty-eight million three hundred and thirty-five thousand one hundred and sixty) kroons (this includes VAT (*käibemaks*) in the amount of 7,373,160 kroons);
 - (C) For the year 2003 the gross sum of 48,335,160 (forty-eight million three hundred and thirty-five thousand one hundred and sixty) kroons (this includes VAT (*käibemaks*) in the amount of 7,373,160 kroons);
 - (D) For the year 2004 the gross sum of 48,335,160 (forty-eight million three hundred and thirty-five thousand one hundred and sixty) kroons (this includes VAT (*käibemaks*) in the amount of 7,373,160 kroons);
 - (E) For the year 2005 the gross sum of 48,335,160 (forty-eight million three hundred and thirty-five thousand one hundred and sixty) kroons (this includes VAT (*käibemaks*) in the amount of 7,373,160 kroons);
 - (F) The basis of charges and the payable sums shall be reviewed in year 2005 for application in year 2006 when a volumetric charging system for the Storm Water Services shall be introduced by the Parties to replace the payment of fixed charge.
- 7.2. As of the year 2002 the amounts set forth in Section 7.1 above shall be adjusted in January of the respective year by reference to the change in the Customer Price Index

(*tarbijahinnaindeks*), as published by the Statistical Office (*Statistikaamet*) of Estonia, between 1 November 2000 and 1 November of the year preceding the respective year. These sums shall also be adjusted in case the current rate of VAT (*käibemaksumäär*) applicable to these sums (18 per cent) will change.

- 7.3. Upon the terms and subject to the conditions set out in Section 8 below, the City shall also pay to the Company the planning, design and construction costs incurred by the Company for the new works referred to in Section 6.8 above. Such costs are to be agreed between the Parties prior to commencing the works.
- (A) The Company shall agree with the City the costs related to the works set forth Section 6.8 to be performed in the year 2001 by 1 July 2001 at the latest.
- 7.4. Upon malfunction and breakdown of the Facilities and Equipment, the City shall provide assistance to and co-operate with the Company according to its capabilities.
- 7.5. If the City becomes aware of the possible arbitrary draining of waste water into the System by third parties, the City shall immediately notify the Company thereof.
- 7.6. The City shall within its competence guarantee to the Company the granting of all required permits, authorisations and approvals necessary for or connected to the provision of the Storm Water Services by the Company, provided that the Company has fulfilled all conditions necessary to obtain them.
- 7.7. The City shall have the right to request from the Company reports regarding the use of the sums paid by the City according to Section 7.3 above.

8. FORM OF PAYMENT

- 8.1. The annual charges for the Storm Water Services referred to in Section 7.1 above shall be invoiced by the Company to the City in 4 (four) equal quarterly instalments on the 15th (fifteenth) day of February, May, August and November of each calendar year, and shall be paid by the City within 28 (twenty-eight) days of the date of the invoice.
- 8.2. For the year 2001 only, the amount applicable for the whole year shall be invoiced by the Company to the City in 2 (two) equal instalments on 15 September and 15 December, and shall be paid by the City within 28 (twenty-eight) days of the date of the invoice.
- 8.3. The costs of planning, design and construction referred to in Section 7.3 above shall be reimbursed by the City to the Company as justified and documented, against invoices submitted twice a year – 15 January and 15 July – for the work performed during 6 (six) preceding months, such invoices being payable within 28 (twenty-eight) days of receipt.
- (A) After the establishment of the Mandate Monitoring Unit described in Schedule H to the Services Agreement, the Company shall agree the costs of planning, design and construction referred to in Section 8.3 with the Mandate Monitoring Unit before submitting them to the City for reimbursement.
- 8.4. In the year 2001 only, no payments shall be made on the basis of Section 8.3 and the costs of work performed in 2001 shall be reimbursed by the City against the invoice submitted in January 2002 payable within 28 (twenty-eight) days of receipt.

9. ACCOUNTABLE REPRESENTATIVES

- 9.1. The Parties hereby agree to appoint certain persons as their accountable representatives who shall submit to each other all notices between the Parties under this Agreement, hold negotiations to achieve the agreements stipulated in this Agreement, organise the reporting established in this Agreement and inspect the execution of this Agreement.
- 9.2. The Parties shall notify each other in writing of their accountable representative(s) by stating the name, position, address, phone, fax and e-mail address of such person(s). Each Party may change their accountable representative(s) unilaterally as they choose but a Party who wishes to do so shall immediately notify the other Party thereof in writing. The same rule applies if the data regarding the accountable representative(s) has changed. All notices referred to above in this Section shall be appended to this Agreement.

10. LIABILITY OF THE PARTIES

- 10.1. Upon non-performance or non-complying performance of the obligations under this Agreement the Parties shall bear liability according to the provisions regulating liability under the Services Agreement.

11. ENTRY INTO FORCE OF THE AGREEMENT AND TERMINATION

- 11.1. This Agreement shall enter into force as of the date of its signing by the Parties and shall remain effective as long as the Company is the water company in the meaning of the PWSSA and the Services Agreement is effective.

12. AMENDMENTS TO THE AGREEMENT

- 12.1. Any amendments to this Agreement shall be in writing and shall have no effect before signed by the duly authorised representatives of all Parties.

13. DISPUTE RESOLUTION

- 13.1. Any dispute arising under this Agreement shall be resolved according to the provisions of Section 37 of the Services Agreement unless the Parties agree on another method in writing.

14. CONFIDENTIALITY

- 14.1. In applying the confidentiality requirement to this Agreement the Parties shall be directed by the provisions of Section 32 of the Services Agreement.

15. GOVERNING LAW

- 15.1. This Agreement shall be governed by, and construed in accordance with, the laws of the Republic of Estonia.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day and year first above written.

Tallinna Linn

Aktsiaselts Tallinna Vesi