# TERMS OF REFERENCE

# FOR

# CONSULTANT SERVICES

# Private Sector Participation Option for Improvement and Expansion of Water Supply and Sewerage Services to the City of [ ]

**INTRODUCTION**

Consulting firms are invited to submit proposals for consultancy work associated with the Private Sector Participation Options for the Improvement and Expansion of Water Supply and Sewerage Services to the City of [ ]. The project aims at improving the water supply and sewerage services for the city in order to meet both the present and future demands for water supply and sewerage services, within the context of an introduction of private sector participation in the operations and management of the company.

The consultant appointed shall carry out the work in accordance with the TERMS OF REFERENCE outlined in this document and shall report their findings to a Steering Committee to comprising various stakeholder agencies and in adherence to the programme detailed in their proposal and agreed with the Steering Committee.

1. **BACKGROUND INFORMATION**

##### 1.1 Location

[ ]

The capital city of [COUNTRY] is [ ]. It is the largest city and also the administrative centre of [COUNTRY]. The city extends over an area of approximately [ ] square kilometres and lies on a gently rolling plateau having an average elevation of [ ] metres above sea level.

The estimated population of [ ] is [ ]2 million.

* 1. **Historical perspective**

###### 1.2.1 Water Supply for the City of [ ].

[DESCRIPTION OF FACILITIES, CONDITION, AGE]

* + 1. **Waste water treatment facilities for the City of [ ].**

[DESCRIPTION OF FACILITIES, CONDITION, AGE]

#### 1.3 The Water Sector in [COUNTRY]

The Water Supply and Sanitation sector in [COUNTRY] faces many challenges. One major challenge is the need to meet the demand for safe and adequate potable water as well as to provide access to adequate sanitation for the ever rapidly increasing national population.

In the past, provision of water supply and sanitation services were the responsibility of Local Authorities in urban areas and the Department of Water affairs in the rural areas. However, with the coming of water sector reforms, these functions have been delegated countrywide to Local Authorities and private enterprises.

The Water supply and Sanitation services in the country are generally poor, for example, most towns receive intermittent water supply and have inadequate or poor sanitation facilities. There are a number of reasons which led to this state of affairs, among which include:

1. Run down and in-adequate water supply and sanitation infrastructure.
2. Inadequate investment in the sector.
3. Partial cost recovery for the services provided.
4. Water wastage and inefficient use.
5. Lack of qualified personnel in the sector.
6. Lack of institutional framework to assure sustainable provision of water supply and sanitation services.
   * 1. **Water Sector Reforms.**

The Government of the Republic of [COUNTRY] having recognised the need to improve the performance of the Water Supply and Sanitation sector embarked on a Water Sector Reform Programme in [ ].

The Water Sector Reforms were based on seven sector principles namely:

1. Separation of water resource management from water supply and sanitation.
2. Separation of regulatory and executive functions.
3. Devolution of authority to Local Authorities and private enterprise
4. Achievement of full cost recovery for the water supply and sanitation services through user charges in the long run.
5. Human resource development leading to more effective institutions.
6. The use of technologies more appropriate to local conditions.
7. Increased Government priority and budget spending to the sector.

The result of the Water Sector Reforms has been the development of a *[NATIONAL WATER POLICY]* and the enactment of the requisite legislation, [*LEGISLATION*]*.*

## 1.3.2 The National Water Policy

The National Water Policy is aimed at promoting sustainable water resource development with a view to facilitating an equitable provision of adequate quantity and quality of water for all competing groups of users at acceptable costs and ensuring security of supply under varying conditions. The Policy recognises the need to establish a well-defined institutional structure that will achieve the intended policy objectives.

1.3.3 [LEGISLATION]

*[LEGISLATION]* defines the institutional framework that would assure sustainable provision of water supply and sanitation services in the country.

The framework is based on the principles of commercialising the provision of water supply and sanitation services in the urban areas but involving communities for the rural and peri-urban areas and devolution of authority for provision of these services to Local Authorities and the Private sector. This has resulted in the formation of water utility companies in the country to conduct the business of provision of water supply and sanitation services.

Under the [LEGISLATION], a local authority may resolve to establish a water supply and sanitation utility as a company under the Companies Act as follows:

1. as a public or private company.
2. As a joint venture with an individual or with any private or public company.
3. As a joint venture with another local authority or several other local authorities.

Provided that the local authority shall hold the majority shares.

The articles of a utility incorporated in accordance with the Companies Act, shall state that the utility’s primary business is to provide water supply and sanitation services.

* + 1. [REGULATORY BODY]

The act also provides for establishment of a regulatory body, [ ]*,* whose main functions are:

* To advise Government on water supply and sanitation matters.
* To advise local authorities on commercially viable institutional arrangements for the provision of water supply and sanitation services.
* To licence utilities and other service providers as well as other activities relating to the provision of water.
* To develop guidelines for:

1. the provision of water supply and sanitation services.

1. the establishment of water supply and sanitation utilities.
2. the technical and financial management of utilities.
3. the setting of tariffs for the provision of water supply and sanitation services.

* To establish and enforce standards for:

1. water supply and sanitation services.
2. the management of utilities and other service providers.
3. the design, construction, operation and maintenance of water supply and sanitation facilities.

* To advise utilities and other service providers on procedures for handling complaints from consumers.
* To disseminate information to consumers on matters relating to water supply and sanitation services.
* To carry out any other activities relating to the regulation of water supply and sanitation services which are necessary or conducive to better performance of its functions under the Act.

## 1.4 [UTILITY]

The [UTILITY] is responsible for the provision of water and sewerage services in [ ]. The company is registered as a private company under the [Companies Act]. Currently, the [ ] City Council is the sole shareholders.

Prior to the formation of the company, water supply and sewerage services were provided by the city council through the Engineering Services Department and later the Water and Sewerage Department of the [ ] City Council.

The [ ] City Council is however still responsible for the collection of solid waste and liquid waste from on site sanitation such as septic tanks and pit latrines. Other private companies are also involved in the collection of liquid waste from on site sanitation facilities.

The City Council is also responsible for the storm water drainage system, which is generally inadequate and has adversely impacted on city’s sewer system by spilling into the sewer system and consequently overloading it.

* + 1. Water Supply

The current average water production capacity from both groundwater and surface water sources is about [ ] cubic metres per day with each source accounting for about 50% of the total production.

It is obvious that the current production levels cannot meet the water demand for both the present and the future. It will be necessary for the purpose of this project to revisit both the population and water consumption projected figures.

The average level of un-accounted for water now stands at about 56% and this comprises both physical and commercial losses. Most of the water distribution network is old and dilapidated leading to frequent water leaks in the water supply network.

The customer metering coverage is about 40% with the rest of the customers being on assessed consumption.

These factors greatly contribute to the high levels of un-accounted for water.

**1.4.2 Sewerage Services**

The waterborne sewerage system covers only about 30% of the areas to which the company has water supply services. The rest of the city relies on the on-site sanitation such as pit latrines, septic tanks, soakaways etc. In addition the sewage treatment facilities are old and dilapidated resulting in the discharge of sewage effluent into the environment, which does not meet standards for disposal.

**1.4.3 Commercial Services**

The number of registered customers is about [ ]. Of these, [ ] are commercial customers while [ ] are domestic customers. There currently exists a potential for [ ] extra customers within the city.

The current average billing is about [AMOUNT AND CURRENCY] per annum and the current collection ratio is about 60%. The revenue collected is barely sufficient to meet operational costs leaving no extra resources for capital investment or expenditure.

Despite these constraints, the [UTILITY] has the duty and obligation to rehabilitate, expand and maintain the water supply and sewerage system for the City of [ ].

The strategic objectives of the Company in this regard are to:

* *Meet the present and future water demands for the City.*
* *Ensure stable and gradual growth of the water supply and sewerage systems for constant adequate service delivery to the City for the present and the future.*
* *Ensure stable and sustainable economic supply of water and sewerage services to the City.*

2.0 PROJECT OBJECTIVES.

**2.1 Introduction**

The main project objective is to strengthen and expand the water sector serving the City of [ ] by establishing the [UTILITY] on a sustainable commercial basis through the participation of the private sector in the provision of services.

This is envisaged to entail:

1. The improvement, rehabilitation of existing facilities and/or construction of new facilities to ensure the adequacy of supply commensurate with the projected demand requirements from existing and potential customers, including the poorer section of the urban community currently not serviced by [UTILITY].
2. The improvement and restructuring of [UTILITY] management and organization structure for optimal efficiency in delivering the services to all existing and potential consumers in the most cost-effective manner.
3. The maximum possible private sector participation in the operations of [UTILITY] to efficiently deliver the improvements in (i) and (ii) above.

**2.2 The Assignment**

In order to assist [UTILITY] and the Government of [COUNTRY] achieve the stated objectives above, the Consultant is expected to carry out the tasks as described below.

The Consultant will carry out a diagnosis of the water and sewerage sector, and an assessment of the technical, financial, operational and management situation [UTILITY], and make recommendations of CHANGES TO THE LEGAL AND INSTITUTIONAL FRAMEWORK which need to be taken prior to the involvement of the private sector in [UTILITY] management and operations.

Following a diagnosis of the water and sewerage sector, and of the [UTILITY] operational and financial aspects, the consultant will present to various private-sector participation options to involve the private sector in the operations of the [UTILITY], and make a recommendation as to the optimum and preferred private sector participation option.

## 2.3 Tasks of the Consultants

Specific tasks contained in this scope of work are intended to serve as minimum requirements for the Consultant to undertake the assignment. Additional tasks that add to a greater understanding of key issues may be addressed, as appropriate.

To implement the objectives of the proposed assignment, the Consultant should organize the assignment into two phases of activities.

**2.3.1 Phase I.** Private Sector Participation Options Study

The Consultant shall analyze the technical, legal, financial, economic and regulatory aspects of the water and sewerage sector pertaining to [UTILITY], and assess the feasibility of various private sector participation options for [UTILITY]. The Consultants shall consult widely with key stakeholders on the acceptability of the various private sector participation options. Based on these activities, the Consultants shall make a recommendation as to the preferred private sector participation options.

In selecting the best option for private sector participation in [UTILITY], the Consultant would have to assess the various risks involved, including political risks, regulatory risks, technical risks, commercial risks, financial risks and foreign exchange risks.

The Consultant shall consider the merits of the various private sector participation options while taking into account the technical, financial, economics, commercial, and regulatory situation prevailing in the water and sewerage sector and [UTILITY], and the best possible developments in these areas under the various private sector participation options. At a minimum, the Consultant would have to carry out the following activities and utilize their results in comparing the various private sector participation options.

*Review:*

* Review all existing reports, studies and documentation regarding the [UTILITY].

*Demand Assessment:*

* Carry out an assessment of the water market through the review of existing studies, demand and population projections, and sales data. Based on these reviews and comparison with other African cities with well managed water supply and sanitation (WSS) services, recommend realistic consumption statistics per category of consumer. The review should be concluded by a forecast of demand and water sales (up to [YEAR]) and an identification of key parameters of the commercial and pricing policies that could influence them. If the realistic consumption is lower than current consumption statistics, the Consultant should investigate this in relation to production, unaccounted for water and leakage/wastage data, and recommend plans to reduce consumption and wastage patterns to the realistic projected levels.
* Assess the requirements for sewerage and wastewater facilities in line with the demand assessment for water supply.

*Social/Consumer Assessment:*

* Review existing consumer assessment studies and willingness-to-pay surveys, and conduct site visits to seek a consumer profile information (e.g. consumption levels, ability/willingness to pay for services) among the various consumer categories which would be used in demand assessment and financial projections.
* The Consultant would also seek to understand how and why some consumers (mainly in the poorer section of the community) are not connected to [UTILITY]’s service, and the circumstances (e.g. connection policy, tariff, service levels) which will encourage their connection.

*Water System:*

* Assess the existence of any standards or requirements established for the provision of water supply and sanitation services, and recommend the adoption of a set of rules and regulations that will permit the establishment of procedures and standards for an efficient and effective provision of water and sanitation services.
* Analyse the status of existing solid waste management in relation to underground water sources, and recommend the adoption of a set of rules and regulations in relation to safe underground water sources.

*Investment Plan:*

* Review [UTILITY]’s investment program and propose a realistic investment program for the next ten years (in water production, transmission, and distribution; wastewater facilities; on-site sanitation servicing facilities) taking into account the demand assessment above. This should include improvements (e.g. unaccounted for water) to the system to increase existing supply capability prior to major capital works to increase production capacity..
* The Consultant should investigate and propose realistic financing instruments and sources which may be possible, in relation to the private sector participation options being considered (e.g. private equity and commercial debt in a ‘concession’, public or concessionary financing in a ‘lease’, etc.). This would be done in conjunction with the financial analysis of [UTILITY], assessing the cash generating capacity of [UTILITY] operations. In particular, the Consultant should consider the ability of [UTILITY] to fund from internal cash generation, at least rehabilitation, maintenance, and extension of distribution.
* In considering the financing instruments, the Consultant should take into account the activities of the various donors that may be active in the water and sewerage sector in [REGION], including coordination for infrastructural development works.

*Legal:*

* Establish and document the financial, labor and environmental obligations and liabilities of [UTILITY]. This should include a review of existing financial obligations (e.g. size of trade creditors, and arrears owing); size of any subsidies received, if any; a review of employee related liabilities; estimation of cost of any staff reductions program in the privatization option recommended; and a review of environmental obligations (e.g. from solid waste dump sites, etc.), if any.
* Review of the legal structure of [UTILITY] in relation to its establishment statutes, its shareholder [ ] City Council and the preferred institutional arrangement. If required, the Consultant will make recommendations of the required changes or amendments to the legal framework/statutes to accommodate the recommended private sector participation option.
* Review existing legislation related to, among others, (i) surface water resource management and abstraction, (ii) groundwater resource management and abstraction, (iii) competition for and in the water and sewerage services including the role of small scale independent private operators, (iv) regulation of privately provided water and sewerage services, (v) setting of tariffs, (vi) tax regimes, and make all relevant recommendations for the implementation of the selected private sector participation options, including new legislation.

*Accounting:*

* Analyze the financial reports of [UTILITY] for the years [ ].
* In conjunction with the legal review, identify and quantify all creditor liabilities, including debt.
* Document the inventory of physical assets and their value.
* Compile a staff profile of [UTILITY].
* Identify tax and investment incentives.
* In conjunction with the legal review, establish the fiscal and environmental liabilities of [UTILITY].
* In conjunction with the financial assessment, propose an opening balance sheet for the privatized system.

These findings would be used in the financial analysis of [UTILITY].

*Economic:*

* Recommend to (in line with the principle of sustainable commercial operations) a pricing policy for water supply and sewerage services, cost of connection to piped water and to sewerage. This would be done in conjunction with and in justification of the assessment of projected demand. In particular, the Consultant would consider how these policies affect the poorer sections of the community currently not receiving service and recommend measures (including by [UTILITY]) to enhance the quality and quantity of service to them.
* Review the current tariff level and tariff structure and recommend a basic tariff structure; recommend an implementation schedule for cost recovery strategy; recommend a subsidy mechanism (if applicable); level and financing mechanism.

*Financial:*

* Develop a long term financial model for the water and sewerage system. In particular, this would include the financing of and projected revenue from the proposed the investment program.
* Utilize the financial model to consider the attractiveness of various private sector participation option. This would include the utilization and estimation of forecast parameters (unaccounted for water, staffing numbers and ratio, organization structure and resources, unit operating costs, accounts receivables, etc.) using well run WSS operations in [REGION] as the benchmark. The Consultants would present a fully developed financial model and forecast for the recommended preferred private sector option to demonstrate the economic and financial viability of the recommended option.

*Consultations:*

The Consultant’s recommendations would have to take into account its consultations with all stakeholders on the acceptability of the various private sector participation options. The Consultants would have to organize a series of consultations (Consultant shall propose the number and format of these consultations) with the various stakeholders with the main objectives of assessing:

* The ‘political’ acceptability of the various private sector participation options being envisaged (this would include consultations of how the needs of the various consumers, including poor consumers, would be addressed and met under the different private sector participation options). The stakeholders who need to be involved are central and local politicians, [ ] City Council, consumer associations or groups, the media, local and international NGOs, management and staff of [UTILITY].
* The ‘technical’ acceptability of the options among potential private sector operators. The consultants would have to establish contacts and interview all parties concerned and/or interested by the privatization of the [ ] Water and Sewerage Company.
* The ‘financial’ acceptability of the options among potential financing sources for in investments considered under each private sector participation options. The consultants would have to establish contacts and interview all potential financing sources being considered (e.g. World Bank Group and other IFIs, bilateral agencies, international and local banking institutions and institutional investors).

In all consultations, the Consultant would need to ensure that all stakeholders participating in the consultation exercise are fully ‘equipped’ for a meaningful participation, through education of the various private sector participation options (using summary descriptions of concessions, lease, etc., description of contractual arrangements in the various options, regulatory arrangements, etc.).

The Consultant would prepare a Phase I Options Report, incorporating the findings of all the activities stated above. The consultant is expected to present various possible scenarios for private sector participation (at a minimum – management contracts, lease, and concession), and their relative costs and benefits (ECONOMIC, FINANCIAL AND SOCIAL). The Consultants would have to consider its findings in relation to the possible private sector participation options and with appropriate justifications, make a recommendation as to the preferred private sector participation option for [UTILITY]. In making the recommendations, the consultant will describe the institutional arrangement relating to:

(i) the ownership of the assets (the consultant should take into account the provisions of the various legal statutes, including the [LEGISLATION]), the autonomous management of the assets, and the operations of the services.

(ii) form of agreement between the various parties above.

(iii) responsibility for the financing of the development of the assets.

(iv) responsibility for signing the contract(s) with the operator(s).

(v) responsibility for monitoring the performance of the parties signatory

to the contract(s).

(vi) the responsibility for tariff monitoring, recommendation and revision (including the role of [UTILITY] and [REGULATOR]).

The Consultant will also recommend any transitional arrangements such as transfer of assets and liabilities, and identify all constraints and opportunities which might deter or attract private investors to buy into the company.

The Phase I report should also describe detailed time-bound road-map and action plan, for the private sector participation in [UTILITY], in particular:

(i) List of required amendments to existing legislations, or legislation being prepared to provide a solid legal basis to the preferred option.

(ii) List of all transaction documents (a non-exhaustive lists of which is described in the description for Phase II below) required for the implementation of the preferred option.

(iii) Proposal of a realistic timetable for the implementation of the preferred option including approval of amendments to legislations, preparation of all transaction documents, selection of private sector operator, and sourcing and approval of investment financing.

The Consultant would organize a one-day stakeholders workshop for about 60 participants to present its findings and the draft options report. This workshop would be held in the [ ] area.

**2.3.2 Phase II.** Preparation of Transaction Documents

Phase II of the assignment shall commenced upon the approval of the Phase I final report by the Steering Committee (see section 2.4). The consultant will prepare and complete all the necessary documents for the private-sector participation in the [UTILITY], per the private sector participation option which was recommended in the Consultant’s Phase I report. The consultant will prepare the documentation package to be made available to potential investors, including, but not limited to: (i) the prospectus, tender documents, (ii) minimum qualification requirements of investors, (iii) all technical specifications, (iv) the content and format of the bidding documents, and (iv) criteria which will be used to evaluate the bids. (v) the main legal documents governing the institutional arrangement; contract between the owner of assets and operator, contract between owner of assets and agency responsible for financing new assets; contract between operator and customer; contract between operator and foreign shareholder*.*

## 2.4 Reports and Review

Upon completion of Phase I activities, the Consultant will prepare and submit twenty (20) copies of a complete draft report to the Steering Committee (see section 2.8 for details of the committee). The Steering Committee will transmit a copy of the report to the Task Team.

The draft report will then be reviewed, and comments will be provided to the Consultant before or during the one-day stakeholder workshop.The Consultant will then review and revise the report based on all comments received during and discussions during the workshop.

The Consultant will submit (20) copies of the finalized report to the Steering Committee for approval. The Steering Committee will transmit a copy of the report to the Team Task. The Consultant will also submit an electronic copy of the final report on a computer-generated disk using Microsoft Word version [ ] for the word processing. However, the financial data may be presented using Microsoft Excel, while a time bound action plan can be presented under a Program Manager software.

**2.5 Duration of Assignment and Reporting Requirements**

The consultant will report to a Steering Committee to be set up as detailed in section 2.8.

Services are expected to start no later than [DATE]. The draft Phase I report must be completed within three months of the start of the consultancy, and the one-day workshop held no earlier than two weeks after the submission of the draft Phase I report. The revised final Phase I report shall be submitted no later than two weeks after the workshop. The final Phase II activities is expected to commence upon the approval of the final phase I report, approximately one month after the submission of the draft Phase I report and in any case must be completed within three months of the start of Phase II.

**2.6 The Consulting Team**

The Consultant should put together a team of highly qualified international and [COUNTRY] experts that would include:

* An international water and sanitation specialist with direct experience and excellent understanding of technical, economic, financial and private sector participation issues related to water supply and sewerage services in large cities in developing countries. This expert would lead the consulting team and oversee all its activities. This expert will be assisted by
* An international water resource management expert with relevant experience in groundwater management, hydrology, management of reservoirs and water resources legislation.
* A senior engineer or planner with relevant experience in demand assessment and preparation of a comprehensive investment program.
* A senior financial analyst with relevant experience in formulating forecasts parameters and preparing financial forecast of water and sewerage utilities.
* An international legal counsel with relevant experience in the privatization of water and sewerage companies in developing countries (assisted by a local lawyer with relevant knowledge of [COUNTRY] water laws and company law and a labor redundancy specialist with relevant experience in privatization).
* A social assessment and development expert with experience in water and sanitation and urban poverty.
* A senior local public relations and communications expert to design and facilitate all the consensus building exercise.

Prior experience in conducting operations in privatization, in the same industry, is a requirement that would need to be met. The consultant is required to involve local consulting resources for this assignment. The Consultant is expected to show familiarity with WSS utility operations and benchmarks in developing countries, the existing literature in the sector, and apply best practice from the different reports for this study.

**2.7. Available Budget**

A total budget of [AMOUNT AND CURRENCY] is earmarked for meeting the total cost of the consulting services. The budget should cover:

* All the fees, travel, and subsistence of the international and local staff of the Consultant team.
* All costs associated with the series of stakeholder consultations to be carried out by the Consultants during its Phase I activities.
* All costs associated with the one-day non-residential workshop for about 60 participants for the Consultant to present the findings and recommendations of the preferred options at the end of Phase I.
* All costs associated with the production of documents, reports and presentations.
* Costs associated with office space, local transport and secretarial services (unless otherwise stated below).

**2.8 Special Provisions**

1. Institutional and Liaison Responsibility: The Consultant will report directly to a Steering Committee to be set up to oversee and evaluate the activities under this project. The Steering Committee is expected to include representatives from [UTILITY], Ministry of [ ], [COUNTRY] Privatization Agency, [ ] City Council and [REGULATORY BODY].
2. Counterpart personnel at both the [UTILITY] and Ministry of [ ] will be available to work closely with the consultant.
3. Relevant documents and data will also be gathered and ready for the consultant team’s review upon its arrival. Such documents would include the National Water Policy, financial statements for the last 3 to 5 years, internal and/or external audit reports, background information and organizational chart, reports produced on the [UTILITY], among others.
4. Duty post: The work is to be performed in [ ]. Briefing and debriefing meetings will be held in [ ]. Draft and final reports will be submitted in [ ].
5. Personal Computers: The Consultants shall be responsible for the provision of their own computing and printing equipment. Alternatively, printing services are available locally on a fee basis.
6. Office Space: The [UTILITY] will provide office space for the consultant team during their stay in [ ].
7. Photocopying and Support Services: Photocopying, fax and other support services exist locally on a fee basis.
8. In-Country Travel/Transportation: Travel and transportation in [COUNTRY] will be the responsibility of the Consultant. Car rental is approx. [AMOUNT AND CURRENCY] plus gasoline.