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CHAPTER I: GENERAL PROVISIONS

ARTICLE 1: FORMAT OF CONTRACT

1.1 Jurisdiction of the local authority

The commune (or the consortium, district, etc.), hereinafter called the local authority, shall exercise jurisdiction over production, transportation and distribution of drinking water throughout the whole territory¹.

Variants: in the case where the local authority has transferred one or more of its jurisdictions to another local authority², use variants A and B below.

Variant A: *the local authority (or the consortium, district, etc.), hereinafter called the local authority, shall exercise the jurisdiction of transportation and distribution of drinking water to the public throughout its territory, the production of drinking water being the responsibility of....*

Variant B: *the local authority (or the consortium, district, etc.), hereinafter called the local authority, shall exercise the jurisdiction of distribution of drinking water to the public throughout its territory, the transportation of drinking water being the responsibility of... and the production of drinking water being the responsibility of....*

Warning:

The delegating local authority must carefully verify that it holds the jurisdiction to manage the utility. It must particularly ensure that it has not transferred it and that it maintains control of the property and activities under lease, failing which it could become null and void.

- See Notes 1 and 2 respecting the application of this rule of jurisdiction.
- In the event of transfer of jurisdiction, use the aforementioned variant.

1.2 Assignment of the lease

By means of a resolution dated ..., the local authority has decided to delegate by lease the utility of production, transportation and distribution to the public of drinking water³.

By means of a resolution dated ..., the local authority has approved the present contract entrusting this lease to ... [corporation] and has authorized ... (*titles and powers*) to sign it⁴.

... [corporation], hereinafter called the lease-holder, represented by ... (*titles and powers*) agrees to take charge of the administration of leased utility under the conditions of the present contract.

Warning:

The local authority must of necessity pass two successive resolutions: one ruling on the very principle of the delegation of the service; the other approving the choice of lease-holder and the lease contract. This latter resolution must also of necessity be sent to the legal authorities before the contract is signed by the executive body. In this respect, see Notes 3 and 4.

ARTICLE 2: SUBJECT OF THE LEASE

By means of the present contract, the local authority delegates to the lease-holder the task of providing administration of the utility for production, transportation and distribution of drinking water within the area defined in Article 3 hereinafter.

Administration of the utility includes the operation, including specifically the maintenance and supervision of the facilities, the carrying out of work assigned to the lease-holder by the present contract, as well as the conduct of relations with users of the utility.

It shall be provided by the lease-holder at his own risk and peril, in compliance with standard practice, in order to ensure the preservation of the asset base for the utility, the rights of third parties and quality of the environment.

For this purpose, the local authority shall provide the lease-holder with the facilities necessary for the functioning of the utility dealt with in Article 12; confer on him the exclusive right of administration of the said facilities; authorize him, by way of compensation, to collect from the users a fee calculated under the conditions provided for in Article 39, and also undertake to carry out the work for which he is responsible under the present contract.

ARTICLE 3: LEASE AREA

3.1 Determination of the lease area

Administration of the utility shall be provided within the limits of the territory of the local authority called the lease area⁵.

Variant:

In the event that the lease area does not coincide with the limits of the local authority territory, adopt the following wording:
Operation of the leased utility shall be provided within the area described and is shown on the plan attached to the present contract. This area is called the lease area.

Recommendation:

- in the event that the local authority is a group of consortia, a list of the consortia making up the group should be indicated.
- In the event that the lease area is defined on a plan, it is recommended that this plan be signed by the parties to the contract.

3.1 Revision of lease area

The lease area may be amended during the term of the present contract in the interest of service⁶. This amendment shall be the subject of an contract amendment drawn up by common accord among the parties, as well as an update of the inventory.

When the local authority or the lease-holder requests a revision of the area, the lease-holder shall be required to present an operating forecast corresponding to the new area planned, indicating either the savings realized by the lease-holder or the additional operating costs.

Amendment of the geographical extent of the utility shall result in a review of compensation to the lease-holder. The new tariff shall take into account the savings or the additional operating costs. They shall be provided for in the above-mentioned amendment.

If an extension of the lease area results in the carrying out by the lease-holder of concession work requested by the local authority, this work shall be defined by the above-mentioned amendment in compliance with the provisions of Article 37 hereinafter⁷.

ARTICLE 4: TERM OF THE LEASE

The term of the present lease contract shall be ... years starting from the effective date, which is set at⁸

Warning:

The term of the lease must of necessity be specified. It must also be determined on the basis of the services requested from the lease-holder and, on the basis of the capital expenditures for which he is responsible.

It can never in principle, exceed twenty years. With respect to the application of these rules, see Note 8 below.

ARTICLE 5: SUBDELEGATION AND ASSIGNMENT OF THE LEASE CONTRACT

5.1 Subdelegation

Warning:

The text of the article below suggests two variants: one prohibiting subdelegation, the other authorizing it under certain conditions. It must be emphasized that the choice is open between these two possibilities.

Variant A: Total or partial subdelegation of the present contract is prohibited.

Variant B: The lease-holder is authorized to subdelegate a portion of the administration of the utility under his full responsibility and under the conditions defined by the present contract⁹. Any subdelegation is subject to express prior approval of the deliberating body of the local authority, in terms of both the person of the subdelegatee and the conditions of the subdelegation¹⁰

Comment:

Subdelegation may concern, for example, the production of the water or its distribution.

It is distinguished from the assignment dealt with hereinafter (Art. 5.2) by the fact that the subdelegatee does not become a cocontracting party with the local authority. It is the initial farmer who alone remains contractually bound to the local authority and continues to assume full responsibility for the proper execution of the agreement.

Subdelegation is also distinguished from the contracts entered into by the lease-holder that do not involve any transfer, albeit partial, of the utility, but are limited to entrusting the cocontracting parties with certain services necessary to its functioning. (see *Rep. min. n° 9105, JOAN (Q)*, August 31, 1998, p. 4818). Such contracts, which concern the responsibility of the lease-holder, as well as his freedom of administration, do not have to be authorized by the local authority. If, however, the local authority wishes to supervise them, it is free to compel the lease-holder to provide it with the information it desires to have available to it concerning them in the report provided for in Article 53.

There are occurrences where the word *subcontracting* may be used instead and in place of *subdelegation*. This usage, however, is to be avoided insofar as the term *subcontracting* refers to a precise legal relationship that is specific to public contracts and is governed by the law of December 31, 1975 respecting subcontracting, as well as by the provisions of the *Code des marches publics* [public contracts code].

Suggestion:

In order to prevent any risk of degradation in the functioning of the utility, it is recommended that the communities opting for the variant authorizing subdelegation be vigilant as to the conditions – specifically financial – under which the lease-holder plans to subdelegate a portion of the utility, and to issue him a refusal if they do not appear compatible with proper functioning of the said utility, or if the planned subdelegation does not include all the technical or financial guarantees required. These precautions are also the same that legal texts and jurisprudence authorize the administration to take concerning subcontracting or, in a wider sense, assignment of public contracts and delegation of public utility.

In addition, even if, by reason of the nature of the subdelegation, the lease-holder's obligations vis-à-vis the local authority remain unchanged, in all respects, including with respect to the portion of the service that has been delegated, **it may be useful to remind the delegatee that his accounts must meet the same conditions of transparency as if he had himself provided all the services included in the administration of the delegated service.**

5.2 Assignment of the contract¹¹

Full or partial assignment of the present contract is subject to express prior authorization from the deliberating body of the local authority with respect to both conditions of the assignment qualifications of the assignee.

Variant:

Full or partial assignment of the present contract is prohibited.

Warning:

Assignment must be understood as the transfer of a contract to a third party. There is, therefore, no assignment when the changes involving the party to the contract do not give rise to a new corporate entity. Such is the case in the event of change in the capital of the lease-holder corporation, of control thereof, change in the corporate form or even other statutory changes. On the other hand, there is assignment, not only when the contract is transferred to a person distinct from the contracting party, but also when the operations affecting the latter result in the creation of a new corporate entity. The same applies in the event of a split, merger, assignment of assets or other forms of transmission of asset base resulting in the above situation (in this respect, see *CE [Conseil d'Etat]* [council of state], *Section des finances* [finance section], *Avis* [notice] No. 141654 of June 8, 2000, *AJDA 2000.758, obs. L. Richer; Contrats marches* [public market contracts] No. 1 by F. Llorens: *La cession des marches publics et des delegations de service public – Une clarification du Conseil d'Etat* [assignment of public contracts and delegation of public utilities – a clarification from the council of state]).

As it has just been defined, the assignment, even partial, of the contract produces much more extensive effects than subdelegation because it results in replacement of the cocontracting party, the assignee taking on himself all the rights and obligations resulting from the contract. That is why it is subject to strict basic procedural conditions and, in particular, must not be accompanied by a substantial change in the organization of the contract. See Note 11 below with respect to these conditions.

Comment:

The purpose of the variant clause prohibiting the assignment of the contract is to protect the local authority against legal or administrative risks that such a transaction may present.

It has, however, lost some of its rationale since the *Conseil d'Etat* clearly admitted the possibility of assignment of delegations without creating an arms-length contract status (in this respect, see *CE, Section des finances*, notice of June 8, 2000, cited above). Moreover, the prohibition of this assignment presents the problem of having to introduce into the administration of the utility an element of considerable rigidity, not very compatible with business activities.

Lastly, the assignment of the contract does not deprive the local authority of any protection because, on one hand, it cannot result in any substantial change in the organization of the lease; on the other hand, it is subject to prior approval, at which time the local authority may be assured that the proposed assignee presents professional and financial guarantees sufficient to ensure satisfactory administration of the utility (see Note 11 below with respect to all these points).

**CHAPTER 2:
UTILIZATION OF PUBLIC AND PRIVATE ROADS**

ARTICLE 6: APPLICATION OF THE HIGHWAY CODE

In the exercise of his rights to administration of the utility, the lease-holder must comply with the provisions of the highway code and local highway regulations.

The entry of the lease-holder onto public and private roads not belonging to the local authority is subordinated to the obtaining of the necessary authorizations that the lease-holder is responsible for obtaining from the local authority.

ARTICLE 7: Moving of piping

7.1 Moving of piping transferred by the local authority

When the moving of water piping located under a public road and transferred to the lease-holder proves to be necessary, the local authority shall carry out the administration of the work involved, in compliance with the legislative provisions in effect¹².

The local authority shall consult the lease-holder in order to limit, insofar as possible, disruption of water distribution resulting from the work.

Optional variant:

In the event that the contract places the renewal of piping under the responsibility of the farmer in the context of a capital investment program, the following clause should be added:

The lease-holder shall make to the local authority the financial contribution provided for in Article 36.2.2 for the moving of the piping whose renewal is made his responsibility by the present contract.

7.2 Moving of piping installed by the lease-holder

When the moving of piping located under a public road and installed by the lease-holder is made necessary by the performance of work, specifically road work, it shall be carried out by the lease-holder.

It does not give rise to the right of compensation for the lease-holder, except when the work is performed for purposes of the road system, whether or not it constitutes a development operation in compliance with the road in question, or if it is carried out under unusual conditions¹³.

ARTICLE 8: STRUCTURES ON PRIVATE PROPERTY

8.1 Existing structures

Within two months from the effective date of the present contract, the local authority shall send the lease-holder a copy of all the easement agreements in its possession concerning the leased utility.

The lease-holder shall provide his collaboration to the local authority in searching for missing servitude agreements, by providing it specifically with all the information required that is at his disposal on the location of structures.

In the case of non-existent servitudes, proceed as with new structures.

8.2 New structures

New structures shall be set up preferably on or under the property of the local authority.

When structures must nevertheless be set up on or under private property, the local authority shall undertake to conclude the necessary servitude agreements¹⁴. The lease-holder shall provide it with the necessary documents and information that they request for this purpose.

The collaboration provided under Article 8.1 above shall form part of the responsibilities of utility administration assumed by the lease-holder within the context of the compensation provided for in Chapter 9 of the present contract.

ARTICLE 9: FORWARDING STRUCTURES

Piping for transporting drinking water or raw water, as well as their ancillary structures, may be set up within the lease area when they are necessary for the organization of public utilities for distribution outside this area.

Authorization to set up these forwarding structures shall be given by the local authority. The lease-holder shall be so informed in advance, and shall draw up a technical notice when the carrying out of the work is likely to affect the structures of the leased utility.

Drinking water and raw water forwarding structures shall not form part of the lease, and shall not be connected to the facilities of the leased utility, except by prior agreement of the local authority given after consultation with the lease-holder.

ARTICLE 10: ROYALTY FOR OCCUPANCY OF PUBLIC PROPERTY

10.1 Occupancy of public property by the local authority

Occupancy of public property by the local authority shall take place under the conditions provided for in Article 48.1 of the present contract.

10.2 Occupancy of public property not belonging to the local authority

Rent for occupancy of public appurtenances not belonging to the local authority shall be the responsibility of the lease-holder

**CHAPTER 3:
PHYSICAL FACILITIES OF THE UTILITY**

ARTICLE 11: INVENTORY OF FACILITIES

11.1 Purpose of the inventory

The purpose of the inventory is to draw up a list of structures, equipment and facilities that constitute the asset base of the leased utility. It must provide information on their condition, and monitor any changes in it

11.2 Composition of the inventory

a. The structures, equipment and installations appearing on the inventory shall be classified by chapters according the following nomenclature:

- intake structures;
 - civil engineering;
 - electromechanical;
- piping;
- distribution lines;
- meters;
- treatment structures;
 - civil engineering;
 - electromechanical;
- pressure boosting;
 - civil engineering;
 - electromechanical;
- reservoirs;
 - civil engineering;
 - electromechanical;
- administrative premises;
- technical premises;
 - civil engineering;
 - electromechanical.

b. In each chapter, structures, equipment and facilities shall be arranged according to the following headings:

- property financed by the local authority and forming part of the leased utility;
 - return property financed by the lease-holder by way of application of the present contract or its future amendments¹⁵;
- property forming part of the lease-holder's asset base, which he is assigning exclusively to the administration of the leased utility and which constitute resumption property¹⁶

- For each structure, piece of equipment and facility, the inventory shall include, insofar as possible:

- a brief description¹⁷;
- geographical location¹⁸;
- date of construction or acquisition;
- initial cost of acquisition or construction;
- condition, including possible significant malfunctions;

c. For structures, equipment and facilities that are part of a pool (piping, meters located with customers), the inventory shall include statistical information that provides information on an item's importance, nature and development.

Suggestion:

The nomenclature used in Article 11.2 above must be as detailed as possible in order to cover all the structures, equipment and facilities that the utility's base assets may include. It shall be only of an informational nature, and may be adapted on the basis of the reality of each utility. For example, it may happen that for utilities of limited scope, one building may house both technical and administrative premises. In that case, the two headings for these premises should be combined under a single heading. In addition, if certain types of equipment were only of very minimal importance, it would be unnecessary to assign them a specific heading.

11.3 Initial inventory

The inventory that was previously sent to the applicants for the purpose of drawing up their offers shall be attached to the present contract and constitutes a contractual document¹⁹.

Except for hidden defects or a provision referred to by the lease-holder in his offer, it may not be questioned²⁰.

Variant:

In the case where no inventory has been drawn up before competitive bidding on the lease contract, use the variant reproduced below:
Within ... months from the effective date of the present contract, the farmer shall draw up an inventory composed as defined in Article 11.2 above.
The local authority shall provide its support to the lease-holder in the production of the inventory. It shall undertake specifically to send him all the documents in its possession concerning the structures for the leased utility.
The draft inventory prepared by the lease-holder shall be presented to the local authority. The inventory shall then be adopted by common accord.
Except for hidden defects or provisions from the lease-holder, it may not be challenged.
The cost of producing the inventory forms part of the administrative charges for the leased utility assumed by the lease-holder within the context of the compensation provided for in Chapter 9 of the present contract.

Suggestion:

It is very strongly recommended that an inventory be drawn up before competitive bidding on the lease contract, in order to both inform as fully as possible all the applicants for delegation, and to avoid any subsequent discussion on the substance of the asset base of the utility.

Warning:

For this reason it is this hypothesis that the basic text of the present book of specifications reflects. The case in which the inventory is not drawn up until after the conclusion of the contract is dealt with in a variant.

- With respect to the conditions of drafting the inventory prior to competitive bidding, see below in Note 19.

11.4 Supplement to inventory

The inventory shall be supplemented no later than two months after the signing of the contract, by a specific chapter containing the list of buildings forming part of the asset base of the lease-holder, which he shall allocate exclusively to administration of the leased utility, and which constitute resumption property

The format of this chapter repeats that set out in Article 11.2.

Comment:

There is no need to retain this article in the event that the inventory is drawn up after the signing of the contract, under the conditions set out in the variant of Article 11.3 above.

11.5 Updating inventory

An updated statement of the inventory shall be submitted at least once a month by the lease-holder. It shall take into account, if applicable:

- a. new structures, equipment, and facilities completed or acquired since the initial inventory or the latest update, and integrated into the leased utility;
- b. significant changes involving structures, equipment and facilities already listed in the inventory;
- c. structures, equipment and facilities removed from utility, dismantled or abandoned.

The update shall be sent to the local authority no later than the annual report defined by Articles 53-55 of the present contract.

Failure to produce the inventory update at the request of the local authority and within the time limit set by it, may result in the imposition of penalty P1 provided for in Article 57.2.1 a. of the present contract.

ARTICLE 12: TRANSFER OF FACILITIES AT START OF CONTRACT

(cases in which an inventory has been drawn up before competitive bidding for the lease contract)

12.1 Conditions for transferring facilities

The lease-holder shall declare having examined the condition of the structures, equipment and facilities of the utility and having read the inventory related thereto prior to signing the contract.

The lease-holder shall also acknowledge having inspected water intakes and boundaries of the protected area, a list of which shall be attached, in compliance with Articles 18.1 and 18.3 hereinafter.

On the effective date set in Article 4, the local authority shall transfer all facilities listed in the inventory of the leased utility. This shall be attached to the present contract.

12.2 Work program

In light of information provided by the inventory and follow-up visits that the lease-holder is invited to make prior to signing the present contract, the local authority and the lease-holder shall decide to implement the utility upgrade program, including the following operations and work:

a. Boundaries of protected area:

- *Operations that are the responsibility of the local authority:*

Nature of the operations:

Completion deadline

-

-

- *Operations that are the responsibility of the lease-holder*

They form part of the concession work provided for in Article 37 of the present contract.

b. Intake structures

- *Work that is the responsibility of the local authority:*

Nature of the operations:

Completion deadline

-

- *Work that is the responsibility of the lease-holder:*

It forms part of the concession work provided for in Article 37 of the present contract

- *Lease-holder's interventions other than work* :²¹

c. Production and treatment structures

- *Operations that are the responsibility of the local authority:*

Nature of the operations:

Completion deadline

-

-

Operations that are the responsibility of the farmer:

They form part of the concession work provided for in Article 37 of the present contract.

d. Other structures, facilities and equipment

- *Operations that are the responsibility of the local authority:*

Nature of the operations:

Completion deadline

-

-

Operations that are the responsibility of the lease-holder:

Suggestion:

As far as time plan control in upgrading the utility is concerned, it is strongly recommended to the local authorities that they plan for the shortest possible completion time. In effect, the lease-holder's obligation to attain performance objectives set by the contract as regards quality of the water resource, objectives for performance or even water quality and pressure (Art. 18.6, 21.5 and 27.1) is not enforced until the

Attention should be drawn to the fact that this article must list very carefully all the work and operations that the condition of the utility necessitates at the start of the contract, for reasons that are both technical which deal with compliance with the regulations and legislation in effect.

We cannot emphasize too strongly the importance attached to this listing and, most specifically, the division that it makes between the work borne by the local authority and that which is the responsibility of the farmer.

Even if the work implemented is ultimately financed through the price of the water, such a close look is relevant, on one hand, to having the local authority take note of the financial responsibility that it is undertaking to assume when the lease contract is concluded; on the other hand, it should help it avoid that the lease-holder involves later on the condition of the structures of the leased utility or their non-compliance with the rules in effect in order to ask the local authority to take over certain work or request an increase in his compensation.

Article 18.6 hereinafter also excludes any possibility of the lease-holder's making a request in this regard, except cases that he lists on a limited basis.

In that way, the work listed in Articles 33 and following of the present book of specifications shall be limited to that which is necessitated by the operation of the utility.

completion of the work in question.
Pending its completion, the lease-holder is obliged, however, to have the utility function as well as possible. He can be exempted from his responsibility only insofar as malfunctioning of the utility is directly attributable to the carrying out of the said work.

ARTICLE 13: PURCHASE OF PROPERTY OF THE UTILITY

13.1 Purchase of materials and supplies

13.1.1 The lease-holder shall purchase from the local authority (*or the previous operator*) the materials and supplies (including vehicles) that are usable for and allocated to the functioning of the leased utility, a list of which is attached to the present contract.

The purchase shall take place on the effective date of the present contract pursuant to Article 4.

The amount of the purchases shall be set at the sum of Euros (duty free in the case of a utility not subject to the VAT) corresponding to the calculation attached to the present contract. This sum shall be paid by the lease-holder to the local authority (*or the previous operator*) within two months from the effective date of the present contract set in Article 4. In the event of arrears, the lease-holder shall pay interest at the legal rate plus two percent.

Warning:

This clause may only apply insofar as the property in question is owned by the local authority or, what should more generally be the case, resumption property that the previous operator was obliged to assign to the local authority or, by extension, to its new lease-holder, if it so requests. Its application also presumes that the previous contract has set the purchase price of the property in question, or that agreement on the value has been reached between the local authority and the previous operator. Failing this, the variant solution referred to above should be used.

Variant:

The lease-holder shall purchase from the local authority (or the previous operator) the materials and supplies (including vehicles) usable for and allocated to the functioning of the leased utility, a list of which is attached to the present contract.

The amount of the purchases shall be set on the basis of an appraisal entrusted to (indicate the name of the appraiser). The costs corresponding to this appraisal shall be shared equally by the local authority (or the previous operator) and the lease-holder

It is agreed that the appraiser's estimate be based on the following method²³: ...

Following approval by the local authority of the tally provided by the appraiser, the amount of the purchases shall be paid by the lease-holder r to the local authority (or the previous operator) within three months from the date on which he receives notification of the approved tally.

13.1.2 The local authority shall remove the materials and supplies for the leased utility that prove to be unserviceable. It shall execute its obligation within three months following the effective date of the present contract set out in Article 4.

Variant:

The responsibility for removal of materials and supplies may be given to the lease-holder or may have been given to the previous operator by the previous contract.

13.1.3 In case of disagreement on the serviceability of certain materials or supplies, the local authority (*or the previous operator*) and the lease-holder shall have an appraisal done by a qualified person designated by common accord or, failing agreement, by the chair of the competent administrative tribunal. The appraiser's compensation shall be shared equally between the local authority (*or the previous operator*) and the lease-holder

Suggestion:

In order to avoid any such disputes, it is naturally preferable that an agreement be reached on the useful nature of materials during the contract negotiation phase.

13.2 Purchase of meters

13.2.1 The system or plant monitoring meters shall form part of the facilities of the utility. They shall be made available to the lease-holder together with the rest of the facilities.

13.2.2 The local authority shall make meters for customers available to the lease-holder. This access shall not involve transfer of ownership to the lease-holder

Variant:

The local authority shall entrust the lease-holder with acquisition and ownership of the pool of meters. For this purpose, the lease-holder r shall purchase from the local authority – ore previous operator – the entire pool of meters, under conditions identical to those set out in Article 13.1.1 above.

Suggestion:

It is strongly suggested that the local authority maintain or acquire ownership of meters, in order to avoid, at the end of the contract, any difficulties as to the maintenance of their allocation to the leased utility or the financial conditions of this maintenance.

In the event that the local authority is not owner of the meters, it should purchase them from the previous operator. This purchase shall presume

that either, within the context of the previous contract, the meters were classified among the resumption property, or an amicable agreement was reached with the previous operator on the conditions of their purchase.

ARTICLE 14: DELIVERY OF DOCUMENTS RELATIVE TO THE UTILITY

14.1 Plans and documents relative to the facilities

On the effective date of the present contract, the local authority shall deliver to the lease-holder all the plans and documents in its possession concerned with the leased facilities. The lease-holder shall ensure their safekeeping at his own expense.

14.2 Customer file

On the effective date of the present contract, the local authority shall deliver to the lease-holder the file of the leased utility's customers under the following conditions²⁴:

.....

During the whole term of the present contract, the lease-holder shall maintain the customer file and keep it updated. He shall forward it to the local authority when it so requests.

The local authority and the lease-holder shall undertake to use the customer file in compliance with all legislative and regulatory provisions relative to individual freedom and privacy protection, and specifically law No. 78-753 of July 17, 1978, which contains various measures for improving relations between the administration and the public. The lease-holder shall carry out all the administrative formalities enabling him to hold the customer file, to use it and to forward it to the local authority. The cost of these transactions forms part of the administrative and service charges assumed by the lease-holder within the context of the compensation provided for in Chapter 9 of the present contract.

CHAPTER 4: STAFF OF THE UTILITY

ARTICLE 15: SOURCE OF STAFF

15.1 Various categories of employees

The utility's staff shall consist of one or more categories of employees, as follows:
employees of private interest (droit privé) from the lease-holder enterprise, or employed by the previous lease-holder or the previous concessionnaire and taken on by the lease-holder corporation.;

- employees from the territorial public service previously assigned to the utility operated under state control or previously employed by an operator of private interest with whom they carried out their duties in secondment²⁵.

15.2 Employees of the territorial public service employed with the government or in secondment with the previous operator

The lease-holder shall offer the positions available for operation of the utility, with priority given to employees of the territorial public service previously employed with the government, a list of whom shall be attached to the present contract.

Variant:

The lease-holder shall offer positions available for operation of the utility on a priority basis to employees of the territorial civil service employed in secondment status positions by the previous operator..

Warning:

The clauses of Article 15.2 are of particular importance insofar as Article L 122-2 of the *Code du travail* [labour code] does not oblige the lease-holder to take on employees of the territorial public service employed by the utility under government control or placed in secondment status positions with the previous operator. (*Cass. Soc.*, July 4, 1990. Bull. V No.543). In light of the sensitive nature of the problem associated with hiring these workers, the local authority has a stake in broaching and settling it at the negotiation stage of the contract.

15.3.1 Employees of private interest employed by the previous operator

When the lease-holder is obliged to take on the staff of the previous operator in application of Article L 122-2 of the *Code du travail*, no compensation shall be paid to him by the local authority because of the fact of this hiring²⁶.

ARTICLE 16: STATUS OF STAFF

Workers employed by the lease-holder shall be placed under the jurisdiction of the collective and/or corporate agreement, which are kept at the disposal of the local authority.

However, employees from the territorial civil service employed in application of Article 15.2 above are subject to legislative and regulatory provisions related to their statutory position. Throughout the whole term of the present contract, the lease-holder shall apply to them the rules of compensation applicable thereto²⁷.

ARTICLE 17: WORKING CONDITIONS**17.1 Working conditions of the lease-holder 's staff**

- 17.1.1 The lease-holder shall be obliged to operate the structures and facilities of the utility in compliance with legislation and regulations related to employee working conditions.
- 17.1.2 Subject to the work referred to below, the lease-holder shall acknowledge that the structures and facilities transferred to him on the date the present contract was signed comply with the provisions in effect.

As far as the non-compliance of the structures and facilities of the utility with the provisions in effect, is concerned, in order to ensure that they are brought into compliance, the local authority and the lease-holder shall agree to carry out the necessary work, broken down as follows:

- a. Work that is the responsibility of the local authority:
- | <i>Nature of operations:</i> | <i>Completion deadline</i> |
|------------------------------|----------------------------|
| | |
| | |
- b. Work that is the responsibility of the lease-holder:
It forms part of the subcontracted work provided for in Article 37 of the present contract.

17.2 Change in legislation and regulations in effect

The lease-holder shall inform the local authority of work required to bring the structures and facilities of the utility into compliance, that is necessitated by change in legislation and regulations in effect during the contract, when he is aware of it, by registered letter with acknowledgement of receipt, providing all information in his possession.

This work is the responsibility of the local authority.

It may, if applicable, give rise to a contract amendment providing for its division between the local authority and the lease-holder on the basis of terms identical to those provided for in Article 17.1.2 above.

In case of serious emergency, the lease-holder shall proceed with the necessary work on the basis of the terms provided for in Article 27.4 of the present contract relative to the crisis situation.

17.3 Liability

Each party shall assume all the civil and criminal liability resulting from carrying out, within the time provided, the work that is its responsibility.

17.4 Provisions specific to the staff of the farmer

The lease-holder shall be obliged to have a permanent representative in residence at

The employees that the lease-holder has assigned to supervision of water distribution and his outbuildings shall wear some distinguishing sign, and shall be given a title indicating their duties.

The employees of the lease-holder shall have free access to the facilities of the customers for all statements, checks and any necessary work.

**CHAPTER 5:
FUNCTIONING OF THE UTILITY**

Warning:

Production and distribution of drinking water are governed by very strict legislation and regulations, with which the local authority and its lease-holder must naturally comply. These regulations originate, in particular, from the *Code de la santé publique* [public health code] (Art. L 1321-1 and following) and law No. 92-3 of January 3, 1992 respecting water, as well as decrees dealing with its enforcement.

ARTICLE 18: PRODUCTION OF WATER

(General case in which water production structures shall be included in the lease)

18.1 Production structures

Distributed water shall originate from the following production structures:

.....

These structures shall be shown on a site plan indicating their geographical location, which shall be attached to the present contract. This plan shall be kept continuously updated by the lease-holder and kept available to the local authority, to which it shall be given at the end of the contract.

18.2 Authorization to abstract water²⁸

The local authority shall deliver to the lease-holder , at the time the facilities are transferred, a copy of authorization to abstract water relative to each of the intakes

In cases where, for certain intakes, authorization is non-existent, or non-compliant with operating conditions, the local authority shall undertake to initiate procedures necessary for obtaining authorizations required a the time the contract is signed, on the basis of information that has been communicated to it by the lease-holder , in compliance with legislation and regulations in effect²⁹.

The lease-holder shall inform the local authority of any amendment to operating conditions for water production structures that necessitate either new authorization or amendment to existing authorizations or declaration to the competent authorities.

To this effect, it shall draw up files provided for by regulations in effect.

The local authority shall inform the lease-holder without delay of any amendment to authorizations to abstract water that involve the leased utility.

Warning:

Abstract water in a natural environment is governed by specific provisions, and may also give rise to enforcement of distinct legislation or regulations with which the local authority must take measures to comply. In this regard, see Note 28 below.
- Attention should be drawn to the fact that owners of unauthorized structures or intakes and their operators are liable to charges, if applicable, of offence under Article 23 of the law respecting water, or contravention of Article 44 of executive order No. 42 of March 29, 1963.

18.3 Protection area boundaries

Warning:

Establishing protection area boundaries is mandatory for all new intakes, and must take place at the same time as authorizations to abstract water (Art. L-1321-2 of the *Code de santé publique*).

18.3.1 Establishing protection area boundaries

The local authority shall give the lease-holder extracts from the survey plans on which are shown intakes provided with protection area boundaries compliant with legislation and regulations in effect. It shall also give him a copy of authorization to establish said boundaries.

In order to ensure compliance of water intakes with legislation and regulations in effect, the local authority and the lease-holder shall implement the action program provided for in Article 12 of the present contract.³¹

Warning:

Article 13-1 of the law of January 1, 1992 respecting water rules that intakes, structures and reservoirs existing as at the date of proclamation of law No. 64-1245 of November 16, 1964 respecting water flow and distribution, which have no effective natural protection, be provided with protection area boundaries within five years from proclamation of the law respecting water (Art. L-1321-1 of the *Code de la santé publique*).
- For further details on the question, see Note 31 below.

18.3.2 Monitoring water protection boundaries

The lease-holder shall be responsible for monitoring protection area boundaries for structures of the leased utility.

He shall notify the local authority as soon as possible of all infractions noted against the special rules instituted within these boundaries. He shall provide information that he has to the local authority, which shall decide what follow-up should be carried out.

In cases of emergency, the lease-holder shall be empowered to take, on his own, any protective measures that he deems necessary when a serious infraction noted within the protection area boundary threatens the water resource used by the leased utility.

The lease-holder shall give an account to the local authority of his monitoring activity on protection area boundaries. To this effect, in the technical portion of the annual report described in Article 53 of the present contract, he shall indicate means that were utilized for this activity, the principal findings made during the year, and the results obtained.18.4 Quality of the raw water

The lease-holder shall acknowledge that, on the date the present contract is signed, the quality of raw water provided by the water intake structures described above complies with regulations in effect and exhibits the following characteristics:

Intake points: (designation)

Parameter	Raw water provided	Water after treatment by facilities of the utility
-----------	--------------------	--

- quality
-----------	-------	-------

Suggestion:

- for parameters related to quality, guidance may be found in schedule 1.3 of decree No. 89-3 of January 3, 1989 (amended) relative to quality requirements for surface water used or intended for production of water intended for human consumption.
- in certain special cases where they deem it necessary, the parties may add the parameter “pressure”.

For intake structures, a list of which shall be attached to the present agreement, that do not provide raw water of quality compliant with regulations in effect, or for which foreseeable deterioration of the resource poses a threat to compliance with the standard in effect during the term of the present contract, the parties shall implement the action program provided for in Article 12.2 of the present contract.

18.5 Conditions for water production and treatment structures

Subject to the second subparagraph of the present article, the lease-holder shall acknowledge that on the date the present contract is signed, production and treatment structures forming part of the lease are in working order and have sufficient capacity to produce the quantity and quality of drinking water necessary to supply the leased facility, satisfying requirements defined in Article 27.2.1 and 27.3.1 of the present contract.

For production and treatment structures forming part of the lease, a list of which is attached to the present contract, that are not in working order and/or do not allow for satisfaction of the above-mentioned requirements, the parties shall implement the work program provided for in Article 12.2 of the present contract.

18.6 Lease-holder’s responsibility^{31a}

The lease-holder shall be responsible for production of drinking water necessary for continuity of services, as well as pressure and quality of water under conditions and limits set forth in Article 27 of the present contract.

He should bear responsibility for damages resulting from the noncompliance with legislation or regulations in effect relative to abstracting water, sampling points and water quality, as well as resulting from the condition of the water intake, production and treatment structures forming part of the present lease contract.

After signing the present contract, the lease-holder shall be prohibited from raising any objection whatever regarding abstracting water, intakes, water quality, as well as the structures, facilities and equipment of the utility, except in the following cases: hidden defects, damage occurring before expiration of the time granted to him to carry out operations or work that is his responsibility under Article 12.2 of the present contract; failure by the local authority to carry out, in the time granted to it, work or operations made its responsibility by above-mentioned Article 12.2.

Until execution of work referred to in Article 12, the lease-holder must nonetheless operate the existing structures under such conditions as to best satisfy the users’ needs.

ARTICLE 19: WATER SALES OUTSIDE THE LEASE BOUNDARIES (Water exported)

19.1 New contracts

19.1.1 Conclusion of the contract³³

Sales of water outside contract boundaries shall take the form of agreements reached between the local authority on one hand and another local authority, public institution or, if applicable, another public utility delegatee on the other hand.

They shall take place on the initiative of either the local authority or the lease-holder.

In all cases they shall require prior authorization of the deliberative assembly of the local authority.

They must not create risk for water supply to subscribers to the leased utility under conditions provided for by present specifications.

When water sales take place on the initiative of the local authority, the lease-holder shall first be consulted and give a reasoned opinion on consequences of any kind that planned water sales is likely to have on conditions of execution of the lease contract.

When sales take place on the initiative of the lease-holder, he is obliged to propose to the local authority any useful measure to guarantee fulfillment of all the obligations for which he has been made responsible by the lease contract. He shall be responsible for any disregard of these obligations resulting from them.

The lease-holder shall intervene in the agreement regarding stipulations concerning him.

Warning:

As indicated in the text of the above article, the lease-holder cannot proceed on his own authority with water sales. Even if he takes the initiative to do so, they may only take place with express authorization from the delegating local authority, and require a decision from its deliberative assembly.

At the time of deliberation, the local authority must weigh the consequences of the planned decision as much from a financial point of view, as with regard for the interests of its own public water utility and its users. In case of uncertainty as to the effects of the proposed sales, it is strongly recommended that the local authority avail itself of all meaningful advice in order to assess their advisability.

19.1.2 **Purpose of contract**

The sole purpose of the agreement set out in Article 19.1.1 is selling of bulk water to public communities or institutions or public utility delegates located outside lease boundaries, for the purpose of supplying the drinking water distribution system for which they are responsible, excluding servicing by the lease-holder of customers outside the lease boundaries.³⁴

Warning:

As indicated in the text of the annotated stipulations, the contracts referred to are only those relative to the sale of bulk water to a purchaser who is not the end user, but, according to a common expression, is an "intermediate user", whose responsibility is to distribute the water to his customers. They cannot, therefore, be confused with contracts that the farmer enters into with a local authority, a public institution or another delegatee of a public utility as customers for their own consumption. Respecting this distinction, see L. Richer, *L'usager intermédiaire* [the intermediate user] *CJEG* 1996.371.

19.1.3 **Content of contract**

The agreement referred to in Article 19.1.1 shall be established on the basis of the model attached to the present contract.

It shall, of necessity, contain a clause authorizing the cessation of the sale of water or reduction in the volume of water sold when these measures are necessary for the proper functioning of the public utility under the conditions provided for in the present contract.

The price of water sold consists of three components:

- community (or intercommunity) share that reverts to the local authority;
- share that reverts to the lease-holder ;
- equivalent of the charges for conservation of water resources and the taxes and charges appertaining thereto

19.1.4 **Amendment of contract**

Amendment of the contract shall be subject to the same conditions as those provided for entering into it in Article 19.1.1.

19.2 **Contracts in effect**

Agreements in effect on the date the present contract is signed shall be attached to it. The conditions of sale that they provide for shall be as follows:

- a) **Points of delivery**
.....
- b) **Quantities of water to be delivered**
.....
- c) **Pressure limits to be guaranteed**
.....

Quality⁹⁵: water complies fully with standards in effect.

YES - NO

The lease-holder shall apply stipulations of agreement(s) in effect that concern him.

19.2.3 **Emergency relief water sales**

By way of exemption from the stipulations of Article 19.1.1, the lease-holder shall be authorized to sell water produced by structures of the leased utility before obtaining agreement of the local authority, on injunction from health authorities, in the event of a crisis situation that creates major difficulties for another drinking water distribution utility.

The lease-holder shall inform the local authority, as soon as possible, of measures he was compelled to take in this regard.

19.2.4 **Provisions common to all water sales**

The lease-holder is responsible for quantity and quality of water supplied, subject to stipulations relative to water production referred to in Article 18 of the present contract.

Suggestion:

Before concluding a contract for sale of water, the local authority has a stake in ensuring that the production structures of its utility permit it to deliver water that satisfies the conditions of quantity and quality set out in the said contract or, failing this, to draft the contract accordingly.

ARTICLE 20: BULK WATER PURCHASES (Water imported)**20.1 New contracts**

Drinking water or raw water purchases may be made when water produced by structures of the leased utility (and/or the water purchased on the basis of agreements in effect) does not allow for satisfaction of customer needs³⁷.

They require a decision of the deliberative assembly of the local authority and agreement of the lease-holder , without his being able, however, to oppose bulk water purchases indispensable to supplying customers with necessary quantities of water and improvement of quality of water distributed.

They shall take the form of a written agreement in which the lease-holder intervenes for stipulations that concern him³⁸.

Warning:

See comments below, Note 38, respecting the nature of bulk water purchase contracts and the procedure to be followed for awarding them.

20.2 Contracts in effect

The lease-holder shall apply stipulations that concern him from water purchase agreement(s) in effect on the date the present contract is signed, which are attached hereto.

Their amendment is subject to the same conditions as those provided for concluding the new contracts in Article 20.1.

20.3 Water purchases for emergency assistance³⁹

The lease-holder may, in cases of emergency, under his own responsibility, take the initiative to purchase bulk water from public or private water producers. He shall so inform the local authority immediately.

These purchases of water shall not change rights and obligations of the lease-holder as derived from the present contract.

They may be of a temporary nature only. Otherwise, they may give rise to creation of a contract under conditions provided for in Article 20.1.

ARTICLE 21: WATER BALANCE OF THE WATER SUPPLY SYSTEM AND SERVICE CONNECTIONS**21.1 Definition of water balance**

Water balance shall be defined by [linear loss ratio] calculated for the whole system, that is:

$$LR = \frac{\text{annual volume put into the system} - \text{authorized annual volume consumed}}{\text{length of system} \times 365 \text{ days}}$$

Authorized volume consumed is the annual volume of metered and /or non-metered water taken by registered customers, the water supplier, and others who are implicitly or explicitly authorized to do so by the water supplier, for residential , commercial and industrial purposes. It includes water exported.

Length of the system shall be measured excluding service connections.

21.2 Water balance targets

Within the time period set in section 21.5 of the present article, *linear loss ration (LR)* calculated on average over 3 consecutive years for the whole network, that is:

$$LR = \frac{LR1 + LR2 + LR3}{3}$$

or

LR1 is the value of linear loss ratio for the financial year being in question
LR2 and *LR3* are values of *linear loss ration* for the two preceding years,

must be lower, in m³/day/km, than:

$$\text{target } LR = \frac{R \times \text{number of service connections}}{\text{length of system}}$$

Insufficient water balance by the system may result in enforcement of penalty P7 under conditions set out in Article 57.2.2 c) of the present contract.

Comment:

In the formula given in Article 21.2 above, whose purpose is to determine the maximum loss ratio to which the lease-holder shall commit, the order of magnitude to be used for **I** is $1/10^{\text{th}}$, subject to its adaptation to each particular system.

The formula used to define water balance is traditional, different from that adopted (see below regarding this formula). Unlike the latter, its concern is to relate volume to size of the system. It also allows for better comparison of the physical state of two different systems, independent of volumes consumed. The loss ratio may, in effect, vary from a few to 10-15 m³/day/km depending on the type of system, and particularly on the concentration of service connections that it has.

- For all practical purposes, we are using the old output formula that was being used up to the present time, and may still be adopted:

Definition of water balance

Water balance (Y) of the system and service connections serving customers of the leased utility

Y is calculated as follows:

$$Y = \frac{A + B}{B + C}$$

A = annual volume consumed by subscribers to the leased utility;

B = annual volume sold outside the lease boundaries;

C = annual volume produced by facilities of the leased utility;

D = annual volume originating from facilities outside the leased utility.

Water balance target

Average balance , calculated over three consecutive years (AY 3) must be greater than ...% after expiration of the time period set in § 5 of the present article. It shall be calculated as follows:

$$AY3 = \frac{Y1 + Y2 + Y3}{3}$$

Y 1 is the value for water balance of the system and service connections for the financial year in question; **Y 2** and **Y 3** are values for the same output for the two preceding years.

Warning:

The existence of volumes consumed without a meter, referred to in article 21.1 above, covers certain municipal consumption (e.g. watering of municipal gardens, public fountains, frost protection, fire fighting, flushing of mains and sewers, street cleaning). It must, however, constitute the exception. When it consumes water, the local authority is, in effect, acting as a single user, just as a private customer. It is normal, then, that volumes it consumes be measured according to the same rules as for the latter, that is, using a meter. This is particularly true of municipal buildings. It may, however, occur that, particularly because of the cost represented by installation of meters at sites of public water use, some may not be so equipped. It is this situation, which must remain an exception, and which must be progressively remedied, that calculation of consumption must be carried out on the basis of average time of use.

The preceding observations do not apply to water delivered to fire hose connections on public property, whose provision is free of charge and unmetered (see Art. 23 of the present contract).

21.3 Diagnostic of the water supply system (in the event that there is no previous diagnostic study of the system)

21.3.1 Setup of metering equipment

During the first six months of implementation of the contract, the lease-holder shall install or reset metering equipment and ancillary equipment to allow for determination of water balance (networks and service connections) as well as their potential weak points. He shall also specifically install meters on connections serving structures used by the municipality and local authority.

Operations that the lease-holder carries out in this regard shall be indicated in Article 37.1.1 of the present contract.

A plan of metering equipment and installation or repair structures, as well as their positions on the system, shall be attached to the present contract.

When these operations have been completed, the lease-holder shall submit to the local authority an inventory of metering equipment in working order on the system. This inventory shall identify:

- meters installed on the system for monitoring purposes;
- meters to measure volumes of water abstracted for production.

The inventory shall also include metrology documents in effect that contain the information provided by the regulations for each metering device, as well as its location on the system, indicated on an updated plan.

21.3.2 Carrying out the diagnostic study (optional article)

Before the end of four years from the effective date of the present contract set in Article 4, the local authority and the lease-holder shall collaborate for the purpose of carrying out, or having carried out, a diagnostic study of the system under the following conditions:

- a) The local authority and the lease-holder shall jointly issue specifications for the study.⁴⁰
- b) The local authority shall carry out the study or have it carried out. It shall be the project owner.
- c) The cost of this study shall be financed in the following manner:
- d) The content of the study shall include at least the following points:

Suggestion:

The diagnostic study provided for by the above article is intended to permit the local authority to evaluate the precise condition of its system early enough before the end of the contract and future competitive bidding.

It seems appropriate, moreover, to allow each local authority the responsibility of determining if such work is truly useful, and if, in consequence, it wishes to carry it out.

This is why the article providing for it was conceived as optional.

21.4 Monitoring water balance

During the full term of the contract, the lease-holder, at his own expense, shall take measurements of the water balance of the system and service connections according to the following program: (*indicate here the nature and frequency of measurements to be taken*).

Every years, the lease-holder shall have inspected by an authorized agency the accuracy of meters installed on his system, excluding meters at service connections. This inspection shall include an accuracy test carried out under conditions set out by regulation.

Every year, the lease holder shall provide to the local authority, in the technical portion of the annual report provided for in Article 53 of the present contract:

- a summary of measurements that he took;
- results of periodic inspection of the system's meters;
- change in water balance since the beginning of the contract.

The local authority may call in a qualified expert of its choice to assess water balance independent of the farmer. Compensation of the expert is the responsibility of the local authority if it confirms the validity of the lease-holder's calculations. In the opposite case, the lease-holder shall reimburse the local authority for the cost of the expert's intervention.

21.5 Reaching water balance target (situations where upgrading of the system is the responsibility of the local authority)

21.5.1 Deadline for reaching target

Target output set in Article 21.2 must be reached no later than

However if, on this date, the lease-holder deems it impossible for him to reach this target because the work program for which the local authority is responsible under Article 12.2 is totally or partially incomplete, he shall so inform the local authority by annotated letter with notice of receipt by mail.

In case of agreement between the local authority and the lease-holder on reasons for not reaching the water balance target, the deadline on which this target must be reached shall be deferred until the date of completion of work for which the local authority is responsible.

In case of disagreement, an expert shall be designated by the local authority and the lease-holder or, failing that, by the President of the competent administrative tribunal. The expert's mission consists of determining reasons why the target set in Article 21.2 could not be achieved, and conditions, as well as deadlines, necessary for its achievement. Compensation of the expert shall be the responsibility of the party that did not comply with the contractual commitments and thus rendered the investigation necessary.

In any case, the lease-holder shall ensure operation of the existing facilities to their full capability until the conditions necessary for achievement of water balance target have been met.

21.5.2 Penalty for not reaching target

If the target indicated in Article 21.2 above is not achieved before the deadline set under the conditions provided for in the preceding paragraph, the lease-holder may have the penalty provided for in Article 57.2.2 c) enforced against him.

21.5 Emergency response

The lease-holder shall undertake to respond at the time a leak in the public system or service connection is detected or he is notified of one.

In the technical portion of the annual report described in Article of the present contract, the lease-holder shall present a report of his responses. If applicable, he shall inform the local authority of the measures he is taking to shorten response time.

ARTICLE 22: THIRD PARTY RELATIONS

22.1 Obligations of the lease-holder

During the term of the present contract, the lease-holder shall be solely responsible for the contracts of goods, works and consulting services necessary for the functioning of the leased utility. He shall administer them freely according to rules of private interest and, if applicable, in compliance with legislative or regulatory provisions applicable thereto.

In all cases, the lease-holder shall provide for strict implementation of legislative and regulatory provisions relative to transparency of cost-effective practices, specifically as to billing and communication by the service provider or supplier, of the price schedule and conditions of sale. Lump sum contracts and orders that do not specify quantities of goods or services provided or unit prices are prohibited. Every invoice shall indicate possible discounts, reductions, allowances or rebates granted by the service provider or supplier. When amounts corresponding to these cost benefits are paid to the lease-holder, that is, when the discounts, reductions, allowances or rebates are not directly deducted at the time of invoicing, they shall be recorded in the receipts of the leased utility.

The lease-holder shall ensure the mission defined in the present article in such a way as to guarantee continuity of service provided to subscribers.

The lease-holder shall undertake to set out, in all contracts essential to the continuation service, the possibility of the local authority's replacing him when the present lease contract expires for whatever reason.

22.2 Resumption of an contract in process

The lease-holder shall resume contracts for leasing, supplies and services attached hereto before the effective date of the present contract. He may renegotiate them for the purpose of optimizing service charges.

22.3 Monitoring by local authority

The lease-holder shall keep available to the local authority invoices relative to acquisition of goods and services that he makes, as well as, if applicable, price schedules and conditions of sale from service providers and suppliers, subject to implementation of legislative and regulatory provisions in effect relative to third-party rights.

22.4 Special case

The present article shall not apply to bulk water purchase and sale contracts that are the subject of special provisions found in Articles 19 and 20 of the present contract.

ARTICLE 23: FIREFIGHTING

23.1 Provision of water

- a) The lease-holder shall deliver free of charge the water dispensed by fire hose connections located on public property, when it is used to extinguish blazes or for firefighters' manoeuvres.
- b) In cases of fire, all the lease-holder's qualified and available staff shall be made available free of charge to the competent authorities and, at their request, to carry out system assignments.
- c) Fire hose connections may only be used by qualified municipal staff, firefighters or the lease-holder's staff.

23.2 Lease-holder's liability

The lease-holder's liability may be invoked because of unavailability or malfunctioning of fire protection equipment against fire in the case where the lease-holder is alleged to have been in breach of any of his obligations that were made his responsibility under the present article⁴¹.

<p>CHAPTER 6: SUBSCRIBER RELATIONS</p>

ARTICLE 24: GENERAL CONDITIONS FOR SUBSCRIBER WATER SUPPLY

24.1 General obligations of the lease-holder

During the term of the present contract, the lease-holder is obliged to:

- a) provide water to the properties directly connected to the distribution lines forming part of the leased utility, under the conditions set by the present contract, the administrative regulation of the utility and the subscriber contracts in effect;
- b) respond to requests for new connections under the conditions set out in Article 24.3.1 below and to provide new service connections when necessary.

24.2 Administrative regulation of the utility

- 24.2.1 The administrative regulation of the utility, drafted in compliance with provisions of the present contract, shall set conditions under which provision of water and other benefits associated with this provision are provided to the subscribers⁴².

It shall be issued by the local authority, after consulting the lease-holder, attached to the present contract on the date it is signed⁴³.

The administrative regulation of the utility shall be communicated to subscribers in the context of measures provided for by Article 28 of the present contract.

The lease-holder shall undertake to enforce, throughout the whole term of the present contract, the administrative regulation of the utility, under the same conditions as the contract itself⁴⁴.

Warning:

According to the *Cour de Cassation* [highest court of appeal in France], an administrative regulation of a utility that is not communicated to the users is not enforceable against them (*Civ. 1^{ère}*, November 7, 1987, *Cie générale des eaux v. Demont. Gaz. Pal.*, February 14, 1998, *Summ.*, p. 14). However, the utility's administrative regulation with which users have agreed to comply through clauses in their subscription contracts, and which has been posted regularly at the town hall (*Civ. 1^{ère}*, November 3, 1999, *Association de consommateurs de Fontaulières* [Fontaulières consumers' association] v. *SNC Cie de services et d'environnement* [utility and environmental company], *JCP Ed. 200, Pan.*, p.11; *FNCCR Bull. No. 208, p. 161*) is enforceable..

- 24.2.2 During the term of the present contract, the utility's administrative regulation may be amended on the initiative of the local authority or at the request of the lease-holder, particularly if amendment is rendered necessary by new legislative or regulator provisions. Consequences of such amendment on the contractual obligations between the lease-holder and the local authority shall be identical to those of an amendment of the present contract. To acknowledge it, an endorsement shall be drawn up, if necessary, simultaneous to amendment of the administrative regulation

Warning:

Amendment of the administrative regulation may take place only in the same form as amendment of the contract itself, that is, by decision of the deliberative assembly.

24.3 Subscriber contracts⁴⁵

- 24.3.1 The lease-holder shall be obliged, under the terms of the present contract, and by the administrative regulation of the utility, to provide drinking water to any person who asks to enter into a subscription contract for any property located on the distribution system covered by the present lease⁴⁶.
- 24.3.2 Beyond the limits of the lease boundaries, the lease-holder may only provide service with authorization from the local authority.
- 24.3.3 The lease-holder shall resume the subscription contracts in effect on the effective date of the present contract, as set in Article 4. He may, if he deems it useful, to renegotiate these contracts when they expire.

ARTICLE 25: SERVICE CONNECTIONS

25.1 Definition of service connections

Service connections are installations connecting public drinking water distribution piping to properties served. The administrative regulation of the utility shall specify the definition of service connections, including a description of facilities of which they consist.

25.2 Service connection status

Service connections form an integral part of the lease. The lease-holder has no right of ownership over them⁴⁷.

25.3 New service connections

The lease-holder shall establish a new service connection every time a request for providing water is presented for a property not yet served⁴⁸, located on the distribution piping system forming part of the leased utility. This provision shall also apply when there is an existing service connection whose flow is insufficient to deliver volume of water requested

When the distance between the public piping and the property limit exceeds ... linear metres, the subscriber may request that work be carried out under conditions defined in Article 36.3 of the present contract.

The cost of installing the service connection, as well as charges for connecting to the public distribution system shall be paid to the lease-holder by the subscriber under conditions set in Article of the present contract. As well, the subscriber requesting a modification to his service connection shall bear the cost of the corresponding work.

25.4 Service connection work

25.4.1 The lease-holder is solely responsible for carrying out service connection maintenance. These operations include:

a. routine service connection maintenance, which includes:

- monitoring of the portion of the service connections located under public property, and location of leaks up to the meters at the entry to the properties;
- repair
- and replacement of plumbing fixtures, except when the whole service connection is replaced;
- elimination of leaks;
- periodic checking of back-flow valves installed on the public portion of the service connection and their replacement, if necessary;
- repair of maintenance holes, pits, chambers, housings and other sites where service connection units and meters are housed when they are located on public property
- upgrading of curb valve boxes, when this operation does not resulted of roadway repair work ...

b. Renewal and major repair work to service connections, which includes:

- all renewal that prove necessary in addition to maintenance and repair operations;
- carrying out the program described in Article 35.3.2 of the present contract⁴⁹.

25.4.2 When roadway work necessitates upgrading of curb valve boxes, this operation shall not be the responsibility of the farmer. In cases of partial or total failure to finish upgrading curb valve boxes, the lease-holder must so inform the local authority within six months of completion of the work.

25.4.3 Cost of maintenance described above for all service connections, including connections supplying firefighting equipment, shall form part of the administrative charges of the leased utility, assumed by the lease-holder in the context of compensation set out in Chapter 9 of the present contract.

25.4.4 The lease-holder shall also intervene, at subscriber request, to perform certain service connection work not constituting maintenance operations. This work shall be performed under conditions defined by Article 42 of the present contract and by the utility's administrative regulation.

25.5 Work on private property

For parts of the service connections located on private property, maintenance includes detailed work and backfilling rendered necessary by intervention of the lease-holder, under conditions provided for by the utility's administrative regulation.

Suggestion:

- Work referred to in the present Article, and restoration that it involves, shall not be of such a kind as to raise any difficulties when – as is usually the case – the meter is located at the entry to the property. But, for cases where the meter is installed inside the property, the utility's administrative regulation should specify how far the lease-holder is obliged to proceed with restoration of the premises.
- However, it shall be recommended that the lease-holder be invited to draw up a varying opinion regarding the premises before the work is started.

25.6 Limits on lease-holder's intervention

Facilities located beyond the meter on the property shall not form part of the leased structures. They shall be installed and maintained through the care and at the expense of the owners or subscribers so as not to adversely affect normal functioning of the distribution system or water quality.⁵⁰

ARTICLE 26: METERS

26.1 General provisions

Water shall be supplied exclusively through the meter, including for municipal service connections and equipment used by the municipality and the local authority, with the exception of fire hydrants.

Meters used to measure quantities of water delivered to subscribers are of a type and model that comply regulations in force. They shall be certified by the local authority on recommendation from the lease-holder.

The lease-holder shall acknowledge having being informed of the locations of the meters in service at the time of the signing of the present contract. He shall undertake to formulate no claim or request any allowance or additional compensation in the event of difficulty of access.

26.2 Ownership of meters

Ownership of the meters and the conditions for their delivery shall be determined by stipulations in Article 13.2 of the present contract.

When the meters are delivered to the lease-holder, he shall become custodian thereof within the meaning of the regulations relative to cold water meters. He shall be immediately liable for consequences that may result from their breakdown.⁵¹

26.3.1 The lease-holder shall inspect the meters at his own expense as often as he deems useful. These inspections shall be carried out in compliance with regulations relative to monitoring measuring instruments⁵². They shall not give rise to any compensation or profit for the lease-holder
The subscriber shall be entitled to request that his meter be inspected, under conditions provided for by the utility's administrative regulation. If the meter complies with regulations in effect, the subscriber shall pay inspection costs. The lease-holder shall regularly update metrology documents in compliance with regulations in effect for the local authority's pool of meters.

26.3.3 The lease-holder shall be responsible for the reading of the meters at least ... time(s) a year.⁵³

The utility's administrative regulation shall determine conditions of access inside private property by the lease-holder's employees for any procedures concerning meters, specifically reading, when meters are not accessible from public property. Meter administration costs form part of responsibilities assumed by the lease-holder within the context of his compensation provided for in Chapter 9 of the present contract.

26.4 Meter replacement

26.4.1 Regular replacement

a. It shall be compulsory to replace the meters:

- in compliance with the regulations in effect
- when, independently of the implementation of regulations in effect, it is found that a meter no longer functions, or cannot be brought back into compliance regulations in effect relative to cold water meters under acceptable economical conditions;
- and, in any case, when they are more than years old.

b. The cost of replacing meters shall form part of the responsibilities of the leased utility.

Suggestion:

- The local authority may set the deadline by which time the meters must be systematically replaced, particularly on the basis of their quality and the degree of aggressiveness of the water.
- It may also plan that the replacement of meters shall form part of the capital program set out in Articles 35.1 and 35.3 of the present contract.

26.4.2 Replacement requested by subscribers

The lease-holder shall provide replacement of a meter when it is requested by a subscriber specifically because of its unsuitability for his needs.

Meter replacement cost shall form part of the utility's administrative charges.

When unsuitability of the meter to a subscriber's needs results from error committed by the utility in assessing the subscriber's needs, or the needs of a previous subscriber for the same service connection, replacement costs shall be the lease-holder's responsibility, including a case where the meter was installed before the effective date of the present contract. The same applies to testing costs (gauging or calibrating on the meter testing rig operation).

In all other cases, the lease-holder may claim from the subscriber, aside from testing costs referred to in the above subparagraph, compensation for replacement whose amount is obtained by adding the two following items:

a. share (A) of supply cost borne by the subscriber, calculated using the following formula:

$$A = K \times V$$

K: coefficient defined by the utility's administrative regulation

V: value of the installed meter as defined in Article 42 of the present contract

Suggestion:

- coefficient K referred to above may be either lump sum or depreciation on the basis of the previous meter's age.
- the formula used to calculate cost of supplying the meter may possibly provide for the deduction of the resale value of the previous meter. In this case, it becomes: $A = (K \times V) - R$, R being the resale value of the meter.

b. installation charges (F) calculated using the following formula:

$$F = K2 \times Fo$$

K2: index of variation defined in Article 42.3 of the present specifications

Fo: diameter of service connection (mm)	value of Fo (Euros)
.....
.....

26.4.3 Replacement because of deterioration

The lease-holder shall provide replacement of meters which, because of deterioration, are no longer able to fulfill their function. Replacement cost of the meter shall form part of the utility's administrative charges.

However, the lease-holder may claim against subscriber compensation calculated under conditions set out in Article 26.4.2 in a case where deterioration is imputable to the latter.

For implementation of the present article, freezing shall be considered as negligence imputable to the subscriber, on condition that he was informed by the lease-holder of precautions to be taken before the freezing season.

26.5 **Meters on new service connections**

26.5.1 When a new service connection is established under the conditions set out in Article 25.3 of the present contract, the lease-holder shall equip this connection with a new Class C meter with nominal flow rate reflecting subscriber needs.

26.5.2 The cost of supplying meters installed on new service connections shall be borne by the owner of the pool. Installation shall be the subscriber's responsibility.

ARTICLE 27: QUANTITY, PRESSURE AND QUALITY OF WATER DISTRIBUTED

27.1 **General provisions**

All the production structures providing water to subscribers shall form part of the leased utility and shall be transferred to the lease-holder in compliance with Article 12 of the present contract.

When work or operations are necessary to bring water production and treatment structures into compliance, as well as, if applicable, rehabilitation of the quality of the resource, provisions of the present article shall apply, for each structure concerned, only to the issue of deadlines set in Article 12 of the present contract.

27.2 **Quantity and pressure**

27.2.1 Normal situation

a. **Quantity:** the lease-holder shall undertake to provide all water necessary for public needs and those of the subscribers within the lease boundaries.

b. **Minimum pressure:** the lease-holder shall provide each subscriber with minimal pressure at ground level in normal service in compliance with regulations in effect and at least equal to bars (or metres of a column of water). Times when fire and washout hydrants are open shall not constitute periods of normal service.

c. **Maximum pressure:** the lease-holder shall provide each subscriber with ground-level pressure not exceeding bars (or metres of a column of water).

d. **Exceptions to b. and c.:** for technical reasons, compliance with the obligations referred to in b. and c. above do not apply in the following areas:

.....

Comment:

Exceptions provided for by d. above are warranted by the fact that, because of configuration of the premises, it may be difficult – if not impossible – to avoid, on certain parts of the system, some occurrences of overpressure at low points or points of underpressure (near reservoirs) or even because compliance with pressure standards in certain areas (remote or uneven areas) would involve disproportionate capital expenditures.

Suggestion:

In order to identify relevant areas in d. above, consideration might be given to attaching to the contract a detailed plan showing said areas.

It might also be planned that the utility's administrative regulation bring these areas to subscribers' attention.

27.2.2 Inadequacy of facilities

In the event of growth in water needs that is unforeseeable at the time the contract is signed, and resulting in insufficiency of facilities in satisfying at least one of the conditions referred to in Article 27.2.1 a., b. and c. of the present contract, the lease-holder shall so inform the local authority immediately by registered mail with acknowledgement of receipt, providing it with all the details in his possession that would allow for appreciation of scope of assessable needs, as well means necessary to restore an adequate margin of safety to the situation.

Starting on the day this letter reaches the local authority, the lease-holder shall be exempt from obligations stipulated in the article cited above for users concerned if, on one hand, he has carried out all obligations for which he is responsible under the present contract and the utility's administrative regulation he (specifically with regard to proper functioning for which he is accountable) and if, on the other hand, he has immediately provided the local authority with complete information.

In any case, he shall remain obliged to operate the existing facilities to the best of their capability until the situation returns to normal.

Suggestion:

In principle, it is the responsibility of the local authority to reach a decision on how it intends to equip its utility and thus the means that it deems suitable to implement to relieve the facilities' inadequacy. It is therefore free to take any measure it deems most appropriate.

Nevertheless, by the very fact of the mission that he has taken on, the lease-holder is in a position to provide it with particularly useful advice on this point. This is why nothing prevents the local authority from asking him to initiate an improvement work project to be carried out for the purpose of restoring an adequate safety margin to the situation. In such case, if the local authority does follow up on proposals presented by the lease-holder, the work shall be carried out under conditions set out in Chapter 8 of the present contract, specifically Article 37.1.2.

Quality of water distributed

Normal circumstances. The water distributed must consistently comply with qualities imposed by regulations in effect⁵⁵.

The farmer shall check quality of water distributed as often as is necessary and shall comply with requirements of the health authority. He shall extend every courtesy for carrying out inspections from the health authority, visits, sampling and testing. He is responsible for damage that may be caused by poor water quality, without prejudice to recourse under ordinary rules of law that he may take against the originators of the pollution⁵⁶.

The lease-holder must implement a self-monitoring water quality program whose terms, (choice of parameters, frequency of testing, choice of intakes) shall be attached to the present contract on the date it is signed. These terms may be adapted by the lease-holder on the basis of the utility's operational needs of the evolution of the technical knowledge .. The lease-holder shall keep the local authority informed in writing of these adaptations.

The lease-holder shall also keep the local authority informed of results obtained through implementation of the self-monitoring program, particularly at the time of the annual report.

Expenses of self-monitoring of the quality of the water distributed shall form part of the administrative charges of the leased utility that shall be assumed by the lease-holder within the context of compensation provided for in Chapter 9 of the present contract⁵⁷.

27.3.2 Deterioration in the water resource⁵⁷

When the lease-holder finds that the raw water sources supplying the leased utility no longer allows for compliance with distributed water quality or when, although the level for maximum concentrations provided for in regulatory provisions has not yet been reached, the lease-holder notes that, because of progressive change in raw water quality, this level has become unavoidable, he shall inform by registered letters with acknowledgements of receipt:

- first of all, the local authority, sending it a detailed report analyzing the situation and proposing measures necessary, in the form of a distributed water quality improvement program, accompanied by an implementation schedule;
- secondly, the district level representative of the national government (Préfet)

The lease-holder shall be obliged to proceed with this disclosure in enough time to permit adoption and implementation of measures intended to remedy deterioration that has been discovered.

The local authority shall undertake to examine and implement measures necessary within a time period compatible with the state of affairs of the utility.

When deterioration discovered by the lease-holder was not foreseeable at the time the contract was signed, and in the event of inaction by the local authority after it has availed itself of reasonable time to examine and implement the reasoned proposals that were given to it by the lease-holder, he may implead the local authority if he is prosecuted by subscribers or third parties under his civil liability. This possibility is closed to him, however, if he has not, in due time, sent the committee information he was obliged to, or if his proposals for improvement proved unsuitable.

In any case, the lease-holder shall provide operation of existing facilities to the best of their capabilities until the situation returns to normal as a result of I implementation of measures decided by common accord or imposed by health or legal authorities.

If new structures or additional facilities are necessary, they shall be executed under conditions defined in Chapter 8 hereinafter.

27.3.3 Legislative and regulatory changes

When the lease-holder finds raw water sources and production facilities serving the leased utility no longer allow for distributed water quality requirements because of substantive changes in applicable legislation or regulations, he shall advise by means of registered letters with acknowledgements of receipt:

- first of all, the local authority, sending it a detailed report analyzing the situation and proposing measures that would allow for compliance with new legislative or regulatory provisions, in the form of a program for improving distributed water quality, accompanied by an implementation schedule;
- secondly, the district level representative of the national government (Prefét)

The lease-holder shall be obliged to provide this information as soon as possible following amendment to applicable legislation or regulations.

The local authority undertakes to examine and implement measures necessary within a time period compatible with the utility's state of affairs.

In the event of proceedings regarding his civil liability by users or third parties, the farmer may implead the local authority if at the same time the conclusions presented in his report were sent to the local authority in due time and are warranted; the local authority has not taken all measures it was obliged to in a reasonable time, taking into account the actions to be carried out.

In any case, the lease-holder shall ensure operation of the existing facilities to the best of their capabilities until the situation returns to normal as a result of implementation of measures decided upon by common accord or imposed by health or legal authorities.

When legislative or regulatory change is, in effect, not realized, but only foreseeable, the lease-holder shall undertake to share information and tests with the local authority, without his liability being put in issue by this initiative.

27.4 Crisis situation

27.4.1 When he discovers a rapid degradation in water quality of that necessitates immediate reaction rendered necessary for the protection of human health or because he is no longer in a position to provide water in quantity or at pressure as defined by the present article, the lease-holder must:

- on his own initiative, immediately take all emergency measures necessary, particularly in order to provide minimum service;
- inform the local authority immediately;
- at the same time, inform the district level representative of the national government, in order that he may also take emergency measures he has to;
- Implement all the technical and human measures available to him to re-establish normal water supply, in liaison with the local authority and health authorities.

27.4.2 Ultimate liability for expenses incurred by the lease-holder to deal with a crisis situation resulting from unforeseeable events for which he is not responsible shall be settled by agreement between the lease-holder and the local authority. This agreement must be sought before work is carried out, except in cases necessitating immediate intervention by the lease-holder.

8

Variant

The lease-holder shall be entitled to reimbursement by the local authority of% of expenses he incurs in dealing with a crisis situation resulting from unforeseeable events for which he is not responsible, when these expenses are not recoverable from third parties responsible for the crisis.

The lease-holder shall present to the local authority details of these unforeseen expenses with all necessary explanations. The local authority shall reimburse directly to the lease-holder r, within three months, the amount corresponding to the warranted expenses.

Suggestion:

In the event of specific, very material risk but of marginal occurrence (resulting, for example, in water reservoir located in a low spot on a heavy traffic road, it is recommended to the local authority, to either waive the farmer's lease-holder with respect to this risk or, at least, determine in the contract the terms of its assumption by the lease-holder, in order to not increase the cost of insurance, which has an effect on the price of water.

Within the context of the above variant, the local authority retains full discretion as the choice of resources enabling it to reimburse the expenses incurred by the lease-holder. It may, for this purpose, either appropriate this sum out of its share of revenues insofar as is permitted, or decide to increase the price of water.

27.4.3 When repairs of the consequences of the crisis render intervention by the local authority essential, particularly to construct or reconstruct facilities, the lease-holder shall present to it, as soon as possible, an action plan to be implemented to re-establish a normal water supply. The operations shall then be carried out under the conditions defined in Chapter 8 hereinafter.

27.4.4 Without prejudice to actions open to the local authority, the lease-holder shall be entitled to exercise all legal recourses against persons or corporate entities that may be at the origin of the crisis, specifically when his civil liability is put in issue by subscribers or third parties. The lease-holder may implead the local authority if it has not, within a reasonable time, taken measures within its jurisdiction in order to end the crisis and its consequences.

27.5 Penalties

In the event of unwarranted interruption in distribution of drinking water, and in the event of unwarranted abnormal pressure, the lease-holder may have penalties **P5** and **P6** enforced against him under conditions set out in Articles 57.2.2 a. and 57.2.2 b ,respectively, of the present contract.

ARTICLE 28: INFORMING SUBSCRIBERS

The lease-holder shall take measures necessary to ensure that subscribers are kept currently informed and to communicate to them administrative documents related to the utility in compliance with legislation and regulations in effect.⁵⁹

This mission of the lease-holder shall not include information related to the general management policy of the utility, which is solely within the jurisdiction of the local authority.

Comment:

Even in the case of a lease, the local authority remains in control of the utility. It is, therefore, very logical that it is its responsibility to inform users on the utility's general administrative policy. The information contained in the lease-holder's annual report referred to in Article 53 and following of the present contract provide it with means to do so. Aside from technical and financial portions, it also includes a section dealing with subscriber relations (Art. 54)

On the other hand ,since the lease-holder is in direct contact with the users with whom he has been forming contractual relationships, it is natural, from both legal and practical points of view, for him to ensure that they receive current information. It is also his job to provide them with the information they need, for example, in case of an incident involving the distribution of water or for understanding their billing and, in a general sense, on any measure that he would take within the context of his commercial management of the utility.

ARTICLE 29: INCORPORATION OF PRIVATE SYSTEMS

The local authority shall consult the lease-holder regarding applications to incorporate into the public system, private drinking water distribution facilities on private property within the context of construction or improvement operations. He shall give an opinion, before any decision by the local authority, on the condition of the facilities and their compliance with standards and regulations applicable to public systems and drinking water service connections.

When it decides to proceed favorably with the application for incorporation, the local authority must, if applicable, specify the work necessary to bring these private facilities into compliance, at the expense of, as applicable, the builder, developer or owner concerned.

The lease-holder shall be entitled to refuse to operate the facilities as long as said work has not been carried out, or when continuity or quality of service cannot be provided in compliance with the present contract, even if the local authority has made a decision to incorporate them into its public property.

In this case, as in the case where the local authority rejects incorporation, the lease-holder shall deliver water from a master meter located at the point of connection of the private facilities and the leased system.

ARTICLE 30: SUBSCRIBERS IN POVERTY/INSECURITY SITUATIONS

The lease-holder shall apply the legislative and regulatory provisions in effect relative to the provision of water to subscribers who have been classified as being in the category of individuals in a situation of poverty or insecurity by competent authorities.⁶⁰

Deliveries by the lease-holder to these subscribers at the expense of his compensation shall, on the books, form part of the administrative charges of the leased utility, and may not give rise to payment on the part of the local authority.

CHAPTER 7: FARMER'S LIABILITY

ARTICLE 31: EXTENT OF LIABILITY

- 31.1** The lease-holder shall be liable, to the local authority, users and third parties for damages caused by operation of the leased utility. However, his liability cannot be incurred when:
- a.** damage results from error committed by the local authority within the context of an operation for which it is providing project ownership ;
 - b.** the lease-holder has drawn up a reasonable escape clause, accepted within the context of implementation of Article 12 of the present contract;
 - c.** **the default is due to non-fulfillment of an obligation made the responsibility of the local authority by the present contract;**
 - d.** **intervention by firefighters has rendered it temporarily impossible to provide water under the pressure conditions set out in Article 27.3 of the present contract;**
 - e.** **damage results from the very existence of a structure owned by the local authority and in whose design and construction the lease-holder did not take part.**
- 31.2** The lease-holder's liability covers, in particular:

- toward the local authority, users and third parties, compensation for bodily injury, property damage and financial loss that is likely to be caused during conduct of its activities as defined by the present contract;
- toward the local authority, compensation for damages caused to facilities of the leased utility whether these damages result from an act of his employees or chance occurrences such as, for example, fire, water damage, explosion, lightning, attack, mishaps caused by third parties, acts of vandalism and natural disasters within the meaning of legislation in effect.

31.3 The lease-holder shall avail himself of all alternatives of recourse against third parties whose liability may be incurred. Otherwise, he shall be subrogated to the rights of the local authority for damages caused to the property for which he assumes construction and financing in compliance with Articles 34-38 of the present contract.

ARTICLE 32: OBLIGATION TO INSURE

In order to cover the above-mentioned liabilities, the lease-holder has the obligation to purchase insurance policies with the following characteristics:

- a. **Public liability insurance:** the purpose of this insurance is to cover the lease-holder against monetary consequences of civil liability, whatever the legal basis thereof, that he is liable to incur towards third parties because of bodily injury, property damage and/or financial loss whose origin may be found in performance of his obligations.
- b. **Property damage insurance:** this insurance shall be purchased by the lease-holder as much on his own account as on that of the local authority. Its purpose is to provide security for the leased property against risks of fire, water damage, explosion, lightning, smoke, storm, falling aircraft, strikes, riots, popular uprisings, acts of terrorism and acts of vandalism.

The lease-holder shall present to the local authority various proofs of insurance when the present contract is entered into and then, periodically, before expiration of coverage stipulated by these proofs.

Proofs of insurance shall indicate the following:

- name of insurance company;
- activities covered;
- risks covered;
- amount of each coverage;
- amounts of deductibles and maximum for each coverage;
- principal exclusions;
- period of validity;

Failure to produce proof of insurance at the request of the local authority and by the deadline set by it may give rise to imposition of penalty P1 set out in Article 57.2.1 a. of the present contract.

Suggestion:

Before determining the obligation imposed on the lease-holder to insure, the local authority would do well, at the same time, to verify the insurability of the risks in question, and the cost that insuring them would represent.

CHAPTER 8: WORK

ARTICLE 33: VARIOUS WORK CATEGORIES

33.1 Work arising from the lease contract

The work categories of arising from the lease contract shall include:

- a. **local authority responsibility:**
 - work of upgrading the utility under Article 12.2;
 - upgrading and major repair work of a corporate nature under Article 35.3.1;
 - reinforcement and expansion work under Article 36.
- b. **Lease-holder 's responsibility:**
 - renewal and major repair work of functional/operational nature programmed by contract under Article 35.3.2;
 - concession work of a corporate nature under Article 37;
 - maintenance, routine repair or other operational work under Articles 34 and 35.2;
 - meter installation work under Article 26.4.1;
 - connection and commissioning work on new facilities under Article 38.
- c. **third party responsibility**
 - reinforcement and expansion work carried out by builders or developers under the conditions set out in Article 36.3
- d. **subscriber responsibility:**

- service connection work and connection to the system under Article 25.3;
- service connection work under Article 25.4.4;
- work on private property under Article 25.5;
- meter installation work under Articles 26.4.2, 26.34.3 and 26.5.

33.2 Work arising from the lease contract and subject to stipulations in the present chapter

Work arising from the subject matter of the lease is subject to stipulations in the present chapter, with the exception of:

- meter work and procedures carried out under conditions set out in Article 26;
- work on private property under Article 25.5;
- work on service connections under Article 25.4.4.

33.3 Work not arising from the lease contract: work on structures used by the municipality and local authority⁶¹

The lease-holder's mission does not include maintenance or upgrading of structures used by the municipality or local authority, beyond service connections supplying these structures.

Work relative to structures used by the municipality and local authority belonging to the local authority shall be carried out on the initiative of the local authority under conditions set out by legislation and regulations in effect⁶².

When this work is assigned to him, the lease-holder must take all measures necessary to ensure the work he carries out in this respect is clearly separated from administration of the leased utility.

ARTICLE 24: MAINTENANCE AND ROUTINE REPAIRS⁶³

34.1 Definition

Maintenance and routine repairs include all operations allowing for providing maintenance of facilities in working order until the time when age or malfunction renders necessary upgrading or major repair work.

They shall also include cleaning operations allowing guarantee of hygiene and cleanliness of facilities and their surroundings.

The purpose of maintenance operations is also to:

- maintain satisfactory external visual appearance of buildings;
- maintain a pleasant environment by suitable maintenance of the surroundings of buildings and other facilities (plantings, green spaces, etc.);
- eliminate all waste material produced by operation of the leased utility;
- avoid risks of hazards for the neighbourhood and any environmental effect that could result from operation of facilities.

34.2 Execution

Maintenance and routine repair work shall be carried out by the lease-holder at his own expense.

It shall be carried out so as to guarantee continuous operation of the leased utility and avoid deterioration or premature aging of structures, facilities and equipment.

The lease-holder shall keep a log of principal maintenance operations and repairs carried out. This document shall be updated regularly by the lease-holder and kept at the disposal of the local authority. It shall be submitted to the authority at the end of the contract.

ARTICLE 35: UPGRADING AND MAJOR REPAIR WORK⁶⁴

35.1 Definition

Upgrading and major repair work shall include operations that do not fall within either maintenance or routine repairs under Article 34 or specific operations of expansion or reinforcement of facilities of the leased utility set out in Article 36.

It is intended to either:

- guarantee the proper functioning of the utility, or;
- ensure the preservation and/or enhancement of the asset base of the local authority that facilities of the leased utility constitute.

In the first case, it shall be operational/ functional in nature, and shall be carried out by the lease-holder at his own expense and on his own initiative, under the conditions set out in Article 35.2.

In the second case, it shall be corporate in nature. As such, it shall be subject to scheduling, and be carried out by either the local authority or the lease-holder , for work that is expressly assigned to him, under conditions in Article 35.3.(concession work)

Comment:

The distinction introduced by the present contract between upgrading and major repair work results from the duality of the logic or goals to which this work may correspond.

Functional/Operational logic is that which consists of entrusting the lease-holder with responsibility for carrying out all work necessary to enable him to satisfy the obligation of proper functioning of the utility for which he has been made responsible.

Corporate logic is that which, for the local authority, consists of planning work intended to preserve the asset base that the utility's facilities constitute, aside from any necessity connected with functioning of the utility.

The distinction between these two types of logic and work arising from each of them is important insofar as;

- on one hand, it allows for clarification respective responsibilities of the local authority and the lease-holder in the matter of upgrading and major repairs;
- on the other hand, it leads to placing emphasis on the obligation of guaranteeing proper functioning that is the onus on the farmer, while leaving him the choice of means of implementing it satisfactorily. Within the context of this guarantee, the lease-holder is, in effect, free to resort to means that he deems most effective in ensuring optimal administration of the utility, and so choose among maintenance work or routine repair work and upgrading or major repair work, it being specified that both are his financial responsibilities.

Warning and suggestion:

The local authority shall be free to decide the corporate/capital policy it intends to follow.

It may also decide to pay for all upgrading and major repair work in the context of the multi-year program referred to in Article 35.3 below.

Conversely, it may wish to take no action intended to preserve its asset base, in which case all upgrading and major repair work that prove necessary to the functioning of the utility shall be the farmer's responsibility under his guarantee of proper functioning.

The local authority may, in the final analysis, directly assume only upgrading and major repair work related to certain structures or facilities to which it dedicates the above-mentioned program.

In all cases, it must be aware that the option it chooses will have a direct effect on the lease-holder's compensation, insofar as cost of the utility is closely linked to the condition of the facilities. As a result, the more extensive the corporate/capital upgrading program is, the lighter the burden assumed by the lease-holder with respect to upgrading and major repairs under his performance guarantee.

Obviously, this consideration should be taken more into account when the contract is negotiated, and in particular when the lease-holder's compensation is set. This implies that the corporate/capital upgrading program desired by the local authority be settled at the beginning of the contract and be communicated to applicants for delegation, within the context of the competitive bidding process, so that they may draw up their offers accordingly.

35.2 Functional /operational upgrading and major repair programs

35.2.1 Purpose

For the purpose of guaranteeing proper functioning/operation of the utility, the lease-holder shall be empowered to carry out all upgrading and major repair work he deems useful, at the time and place, if applicable, of maintenance and routine repair work that is his responsibility under Article 34 of the present contract.

This work shall not include any operations of upgrading or major repair from the corporate/capital works program set out in Article 35.3 below.

Comment:

As indicated in the warning following Article 35.1 above, it is permissible for the local authority to assign the lease-holder all upgrading and major repairs. Such choice may be warranted, either for the sake of convenience and consistency leading to leaving the lease-holder with maximum responsibility and freedom administering the utility through absence of corporate policy originating from the local authority.

In the opposite situation, the local authority must be aware that the lease-holder is not obligated, in the name of proper functioning of the utility, to any of the upgrading or major repairs provided for in Article 35.3 above pursuant to the policy of preservation of the asset base of the utility, or warranted solely by this policy.

Suggestion:

The local authority may have the option of not wanting to entrust the lease-holder with certain upgrading and major repairs that are not included in the asset base upgrading capital/ corporate program provided for in Article 35.3 below, for the reason, for example, that the work in question has a life expectancy longer than the term of the contract. In this case, it is permissible for the local authority to exclude this work from the lease-holder's obligation of functional /operational upgrading by an express stipulation in the contract.

35.2.2 Execution

Upgrading and major repair work of a functional /operational nature shall be carried out by the lease-holder on his own initiative and under his own responsibility. As such, they shall not be subject to scheduling.

35.2.3 Financing

Upgrading and major repair work of a functional /operational nature shall be carried out by the lease-holder at his own expense. They shall form part of the responsibilities of the leased utility assumed by the lease-holder in the context of compensation set out in Chapter 9 of the present contract. It may not give rise to additional compensation.

35.2.4 Supervision

Upgrading and major repair work of a functional/operational nature shall be subject to stipulations in Article 34.3, subparagraphs 2 and 3.

35.2 Upgrading and major repair work of a corporate nature (*optional article*)

In order to ensure preservation of the asset base consisting of facilities of the leased utility, the local authority shall decide on the performance of the following work.

Warning:

- It will be recalled that this article is not necessary if the local authority decides not to follow corporate/capital policy entrust the lease-holder with upgrading and major repairs.(concession work)
- In this case, it is still possible for the local authority to decide during the contract on implementation of a program of corporate/capital upgrading. Conditions for carrying out this program, as well as its effect on the lease-holder's compensation, shall then be set by contract amendment to the lease contract which, to be legal, must not disrupt the economy of the contract or, more generally, have an adverse effect on the initial conditions of competitive bidding. Regarding the precautions to be observed in this case, see below, Note 80 under Article 37.

Suggestion:

The local authority may decide (i)to carry out on its own, under its own supervision, upgrading and major repair work provided for in the contract, just as it may prefer to(ii) entrust it to the lease-holder or (iii) share it between the two.
These three solutions shall also be admissible when the work in question has constituted one of the elements of competitive bidding for the lease contract.
In order to avoid criticism in this regard, it is important that the local authority take particular care that work that is its responsibility and that possibly entrusted to the lease-holder be defined most precisely by the contract (e.g., upgrading of 17 km of pipes of a certain diameter in a certain area; upgrading of 300 individual service connections in a certain area, excluding meters, etc.). Such a precaution will also allow for avoiding, if applicable, any discussion on division of work between the local authority and the lease-holder.

35.3.1 Work that is the responsibility of the local authority (*optional article*)

Warning:

This article has no purpose unless the local authority decides to carry out certain work on its own. It becomes needless if the local authority opts for the solution of entrusting the lease-holder with carrying out all corporate/capital upgrading and major repair work.

35.3.1.1 *Purpose*

The local authority shall take responsibility for upgrading and major repair work for structures and facilities listed below (*list here categories of structures and possible scheduling of their execution*).

35.3.1.2 *Execution*

The local authority shall carry out work in compliance with legislation⁶⁵ and regulations in effect.⁶⁶ In the procedure of devolution of the tasks of supervision and work, the lease-holder is eligible to submit under the same conditions as other applicants.^{67: 68}

Warning:

The ability of the lease-holder to apply for duties of supervision and work regarding operations ensured by the local authority under its project ownership is contained in both legislation and jurisprudence. The extent to which it is contained is specified in notes. They consist of the fact that, on one hand, the lease-holder may not legally bid unless information that he was able to extract from the administration of the utility does not give him a certain advantage over his competitors (Note 67) and, on the other hand, the fact that he may not combine capacities of supervisor and work contractor on the same operation (Note 68)..

35.3.1.3 *Obligations and responsibilities of the lease-holder*

The lease-holder shall assist the local authority in implementation of work for which the local authority is responsible. In this respect:

- he shall be responsible for monitoring of facilities and verification of their proper functioning; in particular, he shall notify the local authority of any structure, facility or equipment which, although continuing to function, does not appear to exhibit adequate assurance of reliability or safety for staff;
- when failure of a structure or piece of equipment is foreseeable as a result of age, or some abnormality that was not detected, he shall notify the local authority in due time so it may provide upgrading;
- in the case of unforeseen failure, he shall immediately implement all means at his disposal to limit as much as possible consequences on the service provided to users, and he shall also so advise the local authority.

In all cases, he shall facilitate intervention by providers chosen by the local authority to carry out upgrading and major repair work.

35.3.1.4 *Responsibilities*

In the event the lease-holder took all the measures listed in Article 35.3.1.3 of the present article, and the upgrading work is not necessitated by shortcoming or error for which he is responsible, the local authority shall guarantee him against any recourse sought by users because of non-execution of the work program for which it is responsible.

Furthermore, and under the same conditions, the lease-holder is released from obligations under the present contract that he is no longer able to assume because of failure of facilities attributable to the non-execution of the work program that is the responsibility of the local authority.

The lease-holder, however, must continue to apply all other provisions of the contract and shall remain obliged to operate facilities to the best of their capabilities, in the condition in which they are.

In the case where the local authority is in a position to demonstrate that upgrading or major repair work was rendered necessary or the situation aggravated because of a degradation noted in facilities in comparison to status report at the beginning of the contract, as stated in stipulations of Article 11, either through inadequate maintenance and repair, or through failure in facilities monitoring, the lease-holder shall pay an indemnity calculated on the basis of cost of work and seriousness of the error he committed.

35.3.1.5 *Review of the program*

A review of the program at the expense of the local authority may be decided on by common accord on the basis of a file provided to the lease-holder containing all information necessary (nature of work to be done, technical characteristics of structures and equipment to be replaced or repaired, desirable time conditions, terms of execution, etc.).

It shall be the subject of a contract amendment that shall material and financial terms.

Warning:

The parties' attention, however, is expressly drawn to the fact that this possible review of the program is subject to conditions that govern contract amendment, and must therefore remain based within very strict limits, referred to in Note 72.

35.3.2 *Work that is the responsibility of the lease-holder (optional article)*

Warning:

This article has no rationale except insofar as the local authority entrusts the lease-holder with execution of all or part of the corporate/capital upgrading program it has decided to implement.

In application of the policy of control over its asset base as decided by the local authority, the lease-holder is given the responsibility of executing, at his own expense upgrading and major repair operations defined hereinafter.

35.3.2.1 *Work program*

The lease-holder undertakes to carry out the following program forecast program for upgrading and major repair work:

Stage one⁶⁹:

. scope (list here by structure and facility or category of structure or facility, upgrading or major repair work included first stage of program)

. duration⁷⁰:

. estimated amount:

Stage two:

. scope:

. duration⁷⁰:

. estimated amount:

Stage three

.....

35.3.2.2 *Program follow-up*

..... Days before the expiry of each stage, the parties shall meet for the purpose of drawing up an implementation review of the program and to decide on its possible revision.

For this purpose, the lease-holder shall present a file including at least the following elements:

- an actuarial valuation and financial results for execution of the stage in question (if applicable) and change in conditions of facilities whose upgrading or major repairs were carried out by the lease-holder ;
- the nature of essential characteristics of upgrading work provided for during the period corresponding to the new stage of the program (specifying particularly the materials used, types of material, standards applied);
- a detailed estimate of cost of work based on forecast prices resulting from application of provisions of Article 22,1 of the present contract for equipment to be acquired and structures to be built.

The file corresponding to the first stage of the program shall be submitted to the local authority within from the time the present contract is signed. The local authority shall, if applicable, make its observations known to the lease-holder .

35.3.2.3 *Program amendment*

Amendment of the program shall be decided by common accord⁷¹ between the local authority and the lease-holder⁷² on the basis of a file provided by him with the same content as that provided for in Article 35.3.2.2 above. It shall be subject to a contract amendment that determines its material and financial conditions.

Warning:

The parties' attention is expressly drawn to the fact that this possible amendment of the program is subject to conditions that govern contract amendments and must therefore remain framed within very strict limits, referred to in Note 72.

35.3.2.4 *Financing of the work*

The financing forecast for upgrading work entrusted to the lease-holder shall form part of administrative charges for the utility assumed by the lease-holder within the context of compensation provided for in Chapter 9. The lease-holder may spread his financing forecast over the term of the present contract.

35.3.2.5 *Supervision and responsibilities*

The execution of the upgrading work program, its follow-up and supervision shall be handled under conditions identical to those provided for in Articles 37.2.2, 37.2.3, 37.2.4, 37.2.5 and 37.2.6 of the present contract for contract work.

In case of delay in execution of operations referred to in Article 35.32.2.1 above, chargeable to the lease-holder, he may face imposition of penalty P8 under Article 57.2.2 d. of the present contract.

The full or partial non-execution, for any reason whatever, of one or more of the tasks provided for in the program initially set up or the revised program shall result in a refund to the local authority of the price of the work not executed, plus interest at the legal rate in effect at the time of the forecast completion date, calculated between that date and the date of the refund.

ARTICLE 36: REINFORCEMENT AND EXPANSION OF THE UTILITY

36.1 Definition

Reinforcement and expansion of the leased utility shall consist of construction of new structures, facilities or equipment or rebuilding with increased capacities for structures, facilities or existing equipment, rendered necessary by increase in quantitative or qualitative needs of users of the utility.

36.1.1 Reinforcement and expansion carried out by the local authority

36.2.1 Conditions of execution

When the local authority carries out reinforcement and expansion work as defined in Article 36.1, the lease-holder shall be consulted on the draft proposal. He shall provide the local authority with all technical information and data necessary, as well as an assessment on the effect of new structures or equipment on the operation of the leased utility and on corresponding operating expenses. The local authority and the lease-holder shall jointly define, if applicable, technical characteristics of equipment allowing for connection to existing structures.

The local authority shall carry out work in compliance with legislation and regulations in effect⁷³.

In the process of devolution of work, the lease-holder is permitted to bid under the same conditions as other companies for supervision or work.⁷⁴ In the case where supervision is not given to him, the lease-holder shall assist the local authority under conditions set out in the second subparagraph of Article 35.3.1.3. He shall ensure interventions necessary for the connection and activation of new structures, facilities and equipment according to the terms defined by Article 38 of the present contract.

If the local authority itself does not assume the supervision of the work, it shall choose the supervisor following competitive bidding. The contract thus established shall be completely separate from the present lease contract⁷⁴.

In the case where the lease-holder does not assume the function of supervisor, he shall collaborate with the company designated by the local authority, providing it, in particular, with all technical documents and information in his possession that are necessary for execution of its assignment.

Warning:

Regarding limits within which the lease-holder's opportunity to apply for the task of supervisor or work put up for bids by the local authority, see the warning under Article 35.3.1.2, as well as notes to which this warning refers.

36.2.2 Lease-holder's financial contribution⁷⁶

When reinforcement work carried out by the local authority on structures, facilities or equipment whose upgrading is made the responsibility of the lease-holder by Articles 35.2 and 35.3.2 of the present contract, he shall make a financial contribution equal to savings he realizes. As for the work pursuant to Article 35.3.2, these savings shall be calculated from their discounted forecast amounts.

36.3 **Reinforcements and expansion carried out by third parties**

36.3.1 Operations in question

The operations in question relate to the structures intended to be incorporated into the lease utility. In particular, they include:

- the construction on private land of new facilities to service building complexes with drinking water;
- **the construction of new service connections or private service mains, when the distance between the public service mains and the boundary of the property occupied by the requestor exceeds linear metres.**

36.3.2 Conditions for construction

Reinforcement or expansion work carried out within the context of housing developments or building complexes shall done under the conditions specified by the administrative authorizations that concern them and, if applicable, the specific agreements reached between the local authority and the grantee of the said authorizations.

The construction of new service connections or private service mains may take place only after approval of a detailed plan of them by the local authority after consultation with the lease-holder. This work shall be carried out at the expense and under the responsibility of the third party by the lease-holder or by a contractor chosen by the third party (*Variant: contractor chosen by the third party from a list of companies approved by the local authority*). However, the connection of these structures to the public service mains shall be carried out by the lease-holder under the conditions set out in Article 38 of the present contract.

In all cases, during their execution and before their integration into the leased utility, the lease-holder shall take over the execution of this work, and test and accept the work. These operations shall be the responsibility of third parties authorized to carry out the work and shall be invoiced to them at the rate provided for in the schedule attached to the present contract.

36.3.3 Incorporation of the completed facilities into the leased utility

In compliance with the provisions of Article 29, only facilities that comply with regulatory provisions and technical standards applicable to public systems and service connections may be incorporated into the leased service after they have been handed over to the local authority by the third party .

The lease-holder shall provide the technical features, allowing for evaluation of compliance within the context of the competition, which he shall bring to the local authority, to meet the requests for hookup under Article 25.3 of the present contract. The cost of the services that he provides in this regard shall form part of the administration charges for the utility assumed by the lease-holder within the context of the compensation provided for in Chapter 9⁷⁷.

If the local authority decides, for reasons that it alone appreciates, to authorize the connection of non-compliant facilities, the lease-holder, when he is presented with a supply contract application; is only obliged to provide water from a master meter located at the connection with the public system. In this case, the provisions of the present contract do not apply beyond the master meter, as long as the attached facilities have not been brought into compliance.

ARTICLE 37: CONCESSION WORK

37.1 Designation

37.1.1 Work provided for when the contract is signed

Aside from corporate/corporate upgrading and major repair work made his responsibility by Article 35.3.2, the lease-holder shall provide financing and execution of the following concession work⁷⁸:

Nature of operations	Estimated amount on the date the contract is signed	Execution deadline
a. Work to bring protection area boundaries into compliance and improve quality of the water resource (Article 18.3)		
b. Work to improve water production structures (Article 18.5)		
c. Metering equipment installation (Article 21.3.1)		
d. Work on the public system or service connections to improve water distribution output (Articles 12.2 and 21.5.1)		
e. Work to bring employee working conditions into compliance with the <i>Code du travail</i> (Articles 17.2 and 17.3)		
f. Other work necessary to eliminate deficiencies noted at the time the contract was signed (Article 12.2)		

37.1.2 Work not anticipated when the contract was concluded

The local authority shall decide on the method of carrying out work not anticipated when the contract was concluded.

In the case where work is assigned to the lease-holder , it shall form part of a contract amendment ⁷⁹ to the present contract in compliance with legislation and regulations in effect⁸⁰. This amendment shall specify, in particular, the method of financing the work and, if applicable, its repercussions on the lease-holder 's compensation.

Comment:

The local authority may be compelled to carry out work not anticipated when the contract was concluded. In this case, it has two options available: either, it shall carry out its own project ownership and shall assign it under conditions set out in regulations in effect (*Code des marches publics*; community regulation of public contracts; the *MOP* law. etc.), that is, particularly after advertising and competitive bidding; or, it shall decide to assign it to the lease-holder for completion. The work shall then be subject to an amendment to the contract concluded, in compliance with legislation and regulations in effect (in this regard, see Notes 79 and 80). This amendment shall specify in particular financing of work and, if applicable, its repercussions on the lease-holder 's compensation. This method of financing may not consist of a price paid by the local authority to the lease-holder , because the amendment would then exhibit characteristics of a public contract subject to rules of competition, but must rather originate from users of the utility. This is why the work in question shall be termed "concession "".

Warning:

Attention should be drawn to the fact that the local authority is not totally free to assign the lease-holder concession work that was not anticipated when the contract was concluded. The conclusion of amendment having this purpose is, on the contrary, subject to very strict basic rules of procedure. These rules are clarified in Notes 79 and 80. Their particular purpose is to avoid having concession work assigned to the lease-holder be disruptive to the economy of the contract and call into question the initial conditions of the competition.

37.2 Execution

37.2.1 Preparation of operations

To prepare for the work, the local authority shall communicate to the lease-holder all useful plans and technical documents available to it. The lease-holder shall underwrite all additional studies necessary for planning and executing structures, facilities and equipment.

During these studies, the lease-holder shall consult the local authority on location of structures, their esthetic characteristics, their integration into sites and environmental impact. The local authority shall make its opinion known to the lease-holder within months from receipt of the file sent by the lease-holder.

The lease-holder shall take into account advice formulated by the local authority, and remain solely responsible for carrying out studies.

The lease-holder and the local authority shall collaborate for the purpose of obtaining necessary administrative authorizations.

If authorizations impose additional constraints in relation to technical, legislative and regulatory constraints, potential extra cost may be the subject of a separate quotation that the lease-holder shall submit to the local authority. If applicable, financing of extra cost shall be researched by common accord between the local authority and the lease-holder , taking into account particularly its effect on price of water.

37.2.2 Execution deadlines

The lease-holder undertakes to comply with set execution deadlines, in either Article 37.1.1 of the present contract or in the contract amendment dealt with in Article 37.1.2.

When, for reasons independent of the lease-holder 's wishes, administrative authorization is issued late, the above-mentioned execution deadlines shall be extended by a period of time equal to the additional administrative delay.

In the event of non-compliance with the above-mentioned execution deadlines, the lease-holder may have imposed on him the penalty provided for in Article 57.2.2 d. of the present contract.

37.2.3 Lease-holder 's responsibility – information to the local authority

The lease-holder is fully responsible, as project owner , for satisfactory performance of the work dealt with in the present article. Representatives from the local authority shall have free access to worksites.

They shall participate in meetings organized by the lease-holder or the work supervisor and may make observations at that time.

The lease-holder shall inform the local authority of conditions under which he employs outside contractors, as well as difficulties encountered on worksites as they occur.

In every annual report, the lease-holder shall inform the local authority on performance of concession work and progress of operations in progress. He shall repeat information referred to in the preceding subparagraph.

37.2.4 Commissioning of structures

After structures have been completed, and before their entry into service, the lease-holder shall organize their commissioning. He shall invite the local authority to participate in the commissioning by registered letter with acknowledgement of receipt,

which must reach the local authority twenty clear days before the date of said commissioning. This letter shall be accompanied by a file containing all useful documents and information.

On the occasion of the commissioning, the local authority shall be entitled to request any useful explanations and make its observations, requesting, if applicable, that they be retained for the record.

37.2.5 Non-compliant structures

When the structures exhibit defects or non-compliance noted at the time of their commissioning, testing preceding or during entry into service, the local authority shall notify the lease-holder of work necessary to remedy the situation. This notification shall be sent to the lease-holder by registered letter with acknowledgement of receipt within one month from the time the defect or non-compliance was noted.

However, no foreclosure may be enforced against the local authority in the event of latent defect or intentional concealment on the part of the lease-holder .

The lease-holder shall carry out necessary repair and retrofit work necessary by a deadline set by common accord with the local authority.

This work shall give rise to commissioning under the conditions set in Article 37.2.4 of the present contract. The local authority reserves the right to call for repair or retrofit of structures after this commissioning if it deems that defects brought to the lease-holder 's attention remain in whole or in part.

Repair and retrofit work on structures shall be carried out by the lease-holder at his own expense. It shall not give rise to any increase in the water tariff set by the present contract and shall not be subject to payment by the local authority.

37.2.6 Incorporation of structures into the leased utility

After commissioning of structures organized under conditions set in Article 37.2.4 of the present contract, and except for provisions drawn up by the local authority, the lease-holder shall put into service facilities as indicated in Article 38 of the present contract. Starting from the time of this start-up ,structures, facilities and equipment realized by the lease-holder shall become the property of the local authority and form part of the leased utility. They shall be operated by the lease-holder in compliance with provisions of the present contract.

The lease-holder shall communicate a copy of the plans, and the structures' operating and maintenance instruction manuals. No later than the end of the financial period, he shall complete the inventory of structures of the leased utility.

37.3 Financing⁸¹

The lease-holder shall provide financing for concession work provided for when the contract was concluded. This financing shall include:

- forecast financing by the farmer:
- anticipated financial grant :
- (Indicate here, if applicable, sources and amounts of grant.)
- TOTAL:

- b. The cost of financing actually contributed by the lease-holder forms part of administrative charges of the leased service assumed by the lease-holder within the context of compensation provided for in Chapter 9 of the present contract.

In this respect, the lease-holder shall include in administration charges of the leased utility:

- first of all, cost effective amortization of capital invested, the total of which, for the term of the present contract, must not exceed actual expenses borne by the lease-holder after financial grant received by him has been deducted;
- secondly, financial expenses.

To render amortization of the financing that he contributes compatible with rates set out in Article 39 of the present contract, the lease-holder may spread it over the term of the present contract in the form of depreciation cost. In this case, he shall provide the local authority with details of his calculation.

37.4 Work not carried out

The total or partial non-execution of one or more items of work referred to in Article 37.1.1, either pursuant to a decision by the local authority, as a result of their renunciation of a common accord between the local authority and the lease-holder , or by the fact of their non-execution by the lease-holder after formal notice from the local authority, shall simultaneously result in:

- revision of water tariff provided for in Article 43 of the present contract;
- repayment to the local authority of the portion of the lease-holder 's compensation collected since the effective date of the contract set in Article 4, which corresponds to financing of investments not realized.

This repayment shall be increased by interest at the legal rate in effect on the planned date of execution, calculated between that date and that of repayment, unless non-execution of the work results from a decision by the local authority.

Further, penalty P8, provided for in Article 37.2.2 and defined in Article 57.2.2 d. shall apply to the lease-holder when non-execution of work is attributable to him, until the above-mentioned repayment date.

ARTICLE 38: CONNECTION AND ACTIVATION OF NEW FACILITIES

38.1 Work in question

The concerns of the stipulations of the present article are the connections to the existing facilities of the leased utility and the operations of commissioning of the new facilities constructed, either by the local authority (Art. 36.2), by third parties (Art. 36.3) or by the lease-holder within the context of leased work (Art. 37).

38.2 Connection of new facilities

38.2.1 Commissioning

The lease-holder shall provide connection of the new facilities to the existing facilities of the leased utility⁸². He may not refuse to carry out a connection requested by the local authority, even if he has issued reservation on the compliance of the new installations to be hooked up. In the event that these reservations are not removed, the lease-holder is cleared of the liability that would be connected with the reported risks. This liability shall be assumed by the local authority.

The connection operation shall include the installation of hydraulic accessories ensuring immediate interface between the existing and new facilities over the shortest possible distance. It does not, however, include earthworks or civil engineering structures. These shall be the responsibility of the project owner for the new facilities.

38.2.2 Execution deadlines

Connections must be completed by the following deadlines:

- a. For facilities provided by the local authority: no later than one month after commissioning of structures, or before the date set by the local authority and reported to the lease-holder at least one month in advance, when it is necessary to carry out testing before structures are commissioned;
- b. For facilities provided by third parties: no later than one month after authorization given by the local authority to proceed with connection;
- c. For facilities provided by the lease-holder : before the deadlines referred to in Article 37.2.2 of the present contract.

38.2.3 Financing

Expenses borne by the lease-holder to establish connections for new facilities provided by the local authority or third parties are the responsibility of the latter.

They shall be billed to them on the basis of the work price schedule attached to the present contract.

The expenses related to connection of new facilities provided by the lease-holder shall be his responsibility.

38.3 New facility commissioning

38.3.1 Conditions

The lease-holder shall put into service new facilities in compliance with advice provided to him by the builders.

Commissioning takes place when connection of the facilities to existing facilities is operational, unless it has been planned to carry out testing first. When construction of facilities consists of several functional stages, the lease-holder shall put into service each stage after partial commissioning, at the request of the local authority.

When testing is necessary before commissioning, it shall be carried out under the responsibility of the project owner of the new facilities and the builders, with qualified representatives of the lease-holder present. He shall proceed with commissioning when testing has been completed.

If, during the testing or commissioning, anomalies appear, the lease-holder must report them to the local authority by registered letter with acknowledgement of receipt, within months from their discovery. Beyond this time, no claim from him shall be eligible. The reservations expressed by the lease-holder must be accompanied by detailed description of the findings and by proposal of proper measures to remedy them. The local authority shall advise the lease-holder within one month of measures it decides to take, if applicable.

38.3.2 Financing

Expenses borne by the lease-holder to put into service new facilities shall form part of administration charges assumed by the lease-holder within the context of compensation provided for in Chapter 9 of the present contract.

38.3.3 Effects

Commissioning of new facilities provided by the local authority or the lease-holder shall result in their incorporation into the leased utility. The lease-holder shall update inventory as indicated in Article 11.5 of the present contract.

Incorporation of the facilities provided by third parties shall take place under conditions set out in Article 36.3.3 of the present contract.

From the time facilities are incorporated into the leased utility, the lease-holder must ensure their operation under conditions set out in the present contract. He shall not be relieved of this obligation by the existence of reservations presented by him at the time of commissioning, testing or commissioning. However, as far as new facilities provided by the local authority or third parties is concerned, and if his reservations are warranted, the lease-holder's responsibility may not be invoked because of defects that he has previously reported within the time allowed by subparagraph 38.3.1 of the present article. In that case, the local authority must also guarantee the lease-holder against any recourse directed against him, on condition that he provides uninterrupted functioning of facilities to the best of their capabilities.

**CHAPTER 9
FINANCIAL PLAN**

ARTICLE 39: COMPENSATION/REMUNERATION FOR SERVICE

39.1 Components of compensation/remuneration for service

Compensation/remuneration for service provided to every subscriber includes two components⁸³:

- subscription payable in advance;
- a price per m³ used, variable portion of billing, payable at the conclusion of the billing period.

Subscription and price per m³ include:

- portion intended for the lease-holder's compensation;
- portion intended for the local authority (repayment of expense charged to the local authority)

The terms of setting the lease-holder's compensation and the local authority's share are defined, respectively, in Articles 39.2 and 45 below.

To compensation for service are added taxes and royalties collected on behalf of competent bodies (Art. 46 and 47) and VAT based on regulations in effect, as well as all taxes and royalties that are instituted for the benefit of third party bodies and must be billed with water service.

39.2 Lease-holder's compensation^{84; 85}

The lease-holder's compensation is intended to cover:

- first of all, development and financing of major repair and upgrading programs of a corporate nature (capital expenditure), as well as contract work made his responsibility by the present contract.
- secondly, all other tasks making up operation of the utility, including upgrading and major repair work of a functional / operational nature.(operating expenses)

The operating account forecast presented by the lease-holder at the time the contract is established, shall reveal the detailed relative weight of each of these components.

The lease-holder's compensation includes:

- subscription (fixed portion of billing);
- price per m³ used (variable portion of billing);
- as well as the equivalent of the water resource preservation tax⁸⁶.

Suggestion:

The distinction established in the first subparagraph of the article between the portion concerning compensation relating to corporate/capital work and that intended to cover all other operational tasks is important because it allows the local authority to have a clear vision of the use that is made by the lease-holder of the price for water.

For this reason, and in order to allow for a satisfactory comparison of proposals presented by applicants for delegation, it is strongly suggested that the local authority require that these applicants indicate in their bids the principle of this distinction and the detailed content of each of its components.

39.2.1 Utility subscription

The terms of utility subscription shall be determined by the administrative regulation of the utility on the basis of characteristics of the service connection.

The amount of the subscription shall be set as follows⁸⁷:

Size of subscriber's meter	Amount of subscription A in Euros before tax/month

The amount of the subscription shall be collected in advance for the billing period (quarterly, six months, etc.). It shall be expressed in Euros per month.

Every month started shall be payable.

The subscription collected for the first month shall be determined on a pro rata time basis.

When a subscription is discontinued, the monthly payments that would have been collected for the period following the discontinuation shall be refunded to the subscriber.

39.2.2 Price per m³ used⁸⁸

39.2.2.1 *Consumption*

The rate, expressed in Euros per m³ to a maximum of 4 decimal points, shall be as follows:

Variant A: uniform tariff

Variant B: varying tariffs (progressive or degressive, according to blocks of consumption)⁸⁹

When billed consumption relates to two tariff periods, the split between these two periods shall be calculated on a pro rata time basis.

39.2.2.2 *Overconsumption due to a leak*

When a subscriber's water consumption shows dramatic increase because of a proven leak in his installation, it shall be billed to him as follows:

- for the portion less than times normal consumption, this portion of consumption at the usual tariff;
- for the portion of consumption between and times normal consumption, this portion of the consumption at tariff equal to % of normal tariff;
- for the portion of consumption more than times normal consumption, this portion of the consumption at tariff equal to % of normal tariff

The consumption in question is that for the period at the end of which the leak was reported, either by the utility or the subscriber, as well as that of days following this report, a period that allows the subscriber to make repairs. Beyond that, all consumption shall be billed at normal tariff .

The discount shall apply to subscribers in cases of leaks in their installations, subject to their ability to produce proof of investigations carried out to detect defects in their installations and repairs carried out.

A subscriber may not claim a benefit under this measure if he has done so within five years.

By normal consumption within the meaning of this article, must be understood:

- average consumption measured for the same period over the three preceding years;
- if this is not available, average consumption measured for the same period during the same period during a shorter time equal to at least one year;
- failing this, average consumption calculated by the lease-holder using available data or subscribers in the same category.

39.2.3 Water resource preservation taxes

The water resource preservation tax due by the lease-holder to the competent agency shall form part of the leased utility's management charges. The lease-holder shall calculate, according to the method indicated in Article 46, an equivalent value indicating the amount of the or water resource preservation tax per m³ consumed.

On the date the present contract is signed, this equivalent value is equal to Euros before tax per m³ consumed.

ARTICLE 40: BILLING⁹⁰

40.1 **Presentation of bills and term of payment**

40.1.1 The lease-holder shall collect from subscribers to the leased utility, in consideration of volumes of water delivered, sums corresponding to the following pricing elements:

- a. Lease-holder's compensation (operator portion), calculated in compliance with provisions of Article 39.2 and 41 of the present contract;
- b. Local authority portion defined in Article of the present contract;
- c. rights and royalties in addition to the price of the water intended for public bodies, in compliance with conditions set in Article 46 of the present contract;
- d. value added tax (VAT);
- e. sanitation tax based terms described in Article 47 of the present contract;
- f. other taxes, royalties or contributions that the lease-holder may be compelled to collect from subscribers as a result of decisions imposed on him.

40.1.2 Invoices sent to subscribers shall comply with regulatory and tax provisions in effect⁹¹.

Payment and claim response terms shall be set by the utility's administrative regulation.

In compliance with regulations in effect, the lease-holder shall be authorized to identify the water resource preservation tax on a specific line of bills sent to subscribers. In this case, the line in question shall appear under a subheading making it known that this item is included in the "operator" portion.

40.2 Billing frequency⁹²

The lease-holder shall ensure billing frequency at least equal to the frequency of meter readings specified in Article 26.3 of the present contract.

The lease-holder shall be authorized issue intermediate billings between two meter readings. In this case, he shall estimate subscribers' water consumption on the basis of history of their previous consumption or, failing this, on the basis of average consumption observed for other subscribers in the same category.

Optional stipulation:

The lease-holder shall offer to all subscribers a monthly bill payment plan through preauthorized debit. He shall implement this service for any subscriber who applies for it.

40.3 Disputed billing claims

The lease-holder shall be given responsibility for implementing recovery of bills he has issued. In case of non-payment by subscribers, he shall comply strictly with provisions set out in the utility's administrative regulation. In particular, no interruption of water supply or legal action may be initiated before subscribers have availed themselves of the time necessary to put their situation in order after formal notice has been served on them by the lease-holder.⁹³

When subscribers find themselves in a situation of poverty or insecurity, the lease-holder shall also comply with specific provisions in Article 30 of the present contract.

In cases of non-payment, if provisions of Article do not apply, and if subscribers do not put their situation in order after formal notice, the lease-holder shall be authorized to implement all legal means to ensure recovery of invoiced amounts.⁹⁴

The local authority and the lease-holder shall each bear the cost of unpaid and final bills. In case of partial payment, they shall each bear the unpaid cost in proportion to the respective share.

40.4 Subscriber accounts

In accounts held by the lease-holder, an account is opened in the name of each subscriber of the leased utility. This account shall include at least the following notations for each annual financial period:

- a. total of amounts billed to subscriber during the financial period;
- b. total of amounts paid by subscriber during the financial period;
- c. carryover of the balance of account for the same subscriber for the previous financial period, if applicable;
- d. balance for the financial period.

The lease-holder shall also keep copies of the bills sent to each subscriber for the statutory period of time.

When a subscription terminates at the request of a subscriber or for any other reason, the lease-holder shall read the meter and close the account of this subscriber. Any monthly subscription payments that should possibly be repaid to the subscriber are then posted to the credit of the account, as indicated in Article 39.2.1 of the present contract. If the balance of the account is negative at the time of closing, the lease-holder shall pay this balance to the subscriber or failing that, to his assigns whom he is obliged to seek out. In case of a positive balance, and neither the subscriber or his assigns can be found, the lease-holder shall pay the balance into the budget of the local authority.

A statement of the accounts of subscribers closed during the financial period shall be kept available to the local authority. This statement shall indicate, for each account, the amount of the balance at the time of the closing, as well as disposition of this balance if it is positive.

40.5 Assumption of expenses associated with billing and recovery

Expenses borne by the lease-holder for billing and recovery shall form part of administrative charges of the leased utility assumed by the lease-holder within the context of compensation provided for in the present chapter.

The lease-holder shall be authorized to have subscribers bear expenses incurred by him in recovering their unpaid bills. The corresponding proceeds shall appear as receipts in the financial report.

ARTICLE 41: REVISION IN LEASE-HOLDER'S COMPENSATION

41.1 Principle of change

Compensation collected by the lease-holder from subscribers at the time of each billing shall be calculated from the base tariff defined in Article 39.2, to which are applied the following principles of revision :

- for the subscription price per m³ consumed, the method indicated in Article 41.2 of the present contract shall be used;
- for the water resource preservation tax, each year the lease-holder shall calculate a new equivalent value by applying the method indicated in Article 46 of the present contract, taking into account the amount of the tax set by the competent agency.

41.2 Variation formulas applicable during the term of the contract⁹⁵

The subscription and per m³ consumption rates under Article 39.2 above shall be revised at the beginning of each period by application of the following formula⁹⁶:

T_n = T_o x K_n

T_n = tariff applicable to billing for period **n**

T_o = base tariff

K_n = coefficient of variation representing the change in charges borne by the lease-holder for the period between periods **o** and **n**

K_n is composed of parameters representative of charges appearing on the operating forecast account, adjusted by the relative weight of these charges

Parameters specific to upgrading and major repair work of a corporate/capital nature under Article 35.3, as well as any concession work under Article 37, shall be used to represent their impact on the tariff escalation . In compliance with the subparagraph above, they shall be modified by the weight corresponding to their respective shares in the operating forecast account:

K_n = a + b P_n/P_o (indicate here the correct composition of coefficient K, where **a represents the fixed portion and the sum of a + b + c, etc. must equal 1)^{97;98}**

P_o = initial value of the parameter in question

P_n = applicable value of the parameter in question in the period **n**

Comment and suggestion:

The local authority must be particularly attentive to the wording of the variation formula. It is without a doubt more important in a period of high inflation than low. But it always has an effect on the price of water that the local authority must endeavour to learn in advance.

For the wording of this escalation clause, it may find it helpful to refer to the recommendations given in

Note 98 and, if applicable, seek the assistance of an advisor at the time of the negotiation of the contract, in order to assess as precisely as possible the consequences of the formula used.

Attention could be drawn to the following points:

- **Amendment of the contract or upgrading and major repair works program of a corporate/capital nature:** if an amendment to the programs initially planned has an influence on the relative weight of the concession work , or upgrading and major repair work on the price of water, the variation formula should be adjusted in consequence in order that it remains representative of the change in the lease-holder 's charges.

- **Productivity gains and fixed term:** the productivity gains that the lease-holder is supposed to obtain during the term of the contract shall, in principle, be anticipated when the initial tariff is set. The fixed term of the variation formula (a) has a part in productivity gains for the benefit of the subscribers.

The local authority may, however, decide not to anticipate these productivity gains when the initial tariff is set. In this case, it may decide to substitute, for the fixed term of the variation formula, a term representing, during the course of the years, a predetermined production gain that the lease-holder is supposed to realize.

The coefficient K_n may then be defined as follows:

$$K_n = (1 - g)^n \times [(b \times P_n/P_o) + (c \times P_n/P_o) + \dots]$$

g representing the productivity gains

and b + c being equal to 1

ARTICLE 42: RATES FOR ADDITIONAL SERVICES

42.1 Nature of additional services

The lease-holder shall be authorized to collect additional compensation or allowance from subscribers for the following services:

(indicate here additional services)

The lease-holder 's activities other than providing water and services listed in the present paragraph shall not form part of tasks carried out in the context of the present contract, even if they are carried out on behalf of the leased utility's subscribers. In consequence, receipts and charges associated with these other activities must in no way appear on the accounts of the leased utility.

Comment:

Services referred to in the above article may be the following:

- a. underwriting of a service contract including all administrative charges and, if applicable, opening of the service connection, as well as, subsequently, end-of-contract process, including, if applicable, closing the service connection;
- b. closing a service connection, when it is in response to a request from the subscriber, or because it is rendered necessary because of an error committed

by this subscriber (in other cases, closing a service connection at the end of a subscription is free of charge);

- c. reopening a service connection, when it is done for a subscriber who previously had a paid closure;
- d. sending a follow-up letter;
- e. sending a formal notice letter;
- f. construction of a new service connection;
- g. change to an existing service connection, carried out at the subscriber's request;
- h. on-site meter calibration charges, including travel expenses;
- i. test-bench meter calibration charges (including travel expenses but not including time spent at the user's location to disconnect and reconnect the meter);
- j. meter replacement requested by subscriber, in cases provided for by Article 26.4.2 and 26.4.3 of the present contract.

It is the responsibility of the local authority to determine if it wishes all or part of these services to give rise to additional payment by the user and to list those it wishes to see financed in this manner. Services not expressly cited shall be considered included in minimum service due to the user and covered by the price of water.

42.2 Base rates for additional services

Suggestion:

List here the various services that give rise to additional payments by the user, in the order used in Article 42.1, indicating the price for each before taxes.

- Concerning the rate applicable to the construction of a new service connection, the best solution is to refer to a price schedule attached to the contract.
- As far as changes to the service connection, it is recommended to plan that they entail a prior estimate given by the lease-holder to the requestor, this estimate having been drawn up on the basis of a schedule attached to the contract and including the possible prices of specific items, calculated on the basis of their real cost.

In the case where it may be subject to claims from subscribers deeming that the amounts of the estimates drawn up by the lease-holder are excessive, the local authority may request re-examination of these estimates if these claims are founded, specifically in the case where the prices quoted are clearly higher than the prices observed for equivalent services provided in the area. If a disagreement should arise over this matter, the opinion of the State department responsible for applying rules of competition shall be sought.

42.2 Rate variation formulas for additional services

Rates applicable at the time of each billing for additional services shall be calculated on the basis of the following formula:

- a. for services a, b, c, d, e, h, i and j referred to in Articles 42.1 and 42.2 of the present contract:

$P_n = P_o \times K_{1n}$
 P_n = price billed
 K_{1n} = coefficient of variation in period n

Coefficient K_{1n} is obtained by application of the following formula:

$K_{1n} = a$ (fixed portion) + b (PSI_n / PSI_o)

PSI_n = most recent value of the *miscellaneous products and services* index published before the first day of the month during which the lease-holder begins delivering services.

PSI_o = initial value of the PSI index.

- b. For services f and g referred to in Articles 42.1 and 42.2 of the present contract:

$P_n = P_o \times K_{2n}$
 P_n = billed price
 P_o = price appearing in the base rate indicated in Article 42.2 of the present contract
 K_{2n} = coefficient of variation for the period n.

The index K_{2n} is obtained by application of the following formula:

$K_{2n} = a$ (fixed portion) + $b \frac{CE_{10} - 4n}{CE_{10} - 4o}$

$CE_{10} - 4n$ = most recent value of the national civil engineering price index (piping, drains, sanitation and waterworks with supplying of castings) published before the first day of the month when the lease-holder begins providing services.

$CE_{10} - 4o$ = initial value of this index.

42.4 Review of rates for additional services

To keep them in harmony with real changes in costs, rates referred to in the present article, as well as corresponding indexing formulas, shall be subject to re-examination at the time of each review of rates implemented in compliance with Articles 43 and 44 of the present contract.

ARTICLE 43: CONDITIONS FOR TARIFF REVISION

In order to take into account changes in operating conditions of the utility, rates defined in Articles 39 and 42 of the present contract, as well as the variation formulas appearing in Article 41, may be subject to review, according to the process defined in Article 44, in the following cases:

- 1) Every five years from the effective date of the present contract.

- 2) In case of variation of more than % in overall annual volume sold, calculated over the average of the last three years, the initial volume of comparison being m³ per year.
- 3) In case of revision of the lease boundaries, specifically in application of Article 3.2 of the present contract.⁹⁹
- 4) If application of coefficient Kn defined in Article 41.2 of the present contract has the effect of increasing or decreasing the rate of the farmer's compensation by more than % in relation to the base rate, or the rate set at the time of the most recent revision .
- 5) In case of substantial change to the structures, production and/or treatment process, or operating conditions.¹⁰⁰
- 6) In case of substantial change in operating conditions subsequent to change in regulations or intervention of an administrative decision.¹⁰¹
- 7) In case of amendment to the administrative regulation of the leased utility.
- 8) If the amount of a tax, duty or royalty that is the responsibility of the lease-holder varies by more than 15% in relation to its initial amount, or if a new tax, duty and/or royalty results in an additional charge.
- 9) In case of recurring variation of more than in annual volume purchased or sold to other local authorities or distributors outside the lease boundaries.
- 10) In case of full or partial non-execution within contractual time limits, of investments, or if it is a case of upgrading work of a corporate/capital nature, or concession work that is the responsibility of the lease-holder , or work that is the responsibility of the local authority.¹⁰²
- 10) case of amendment to the programs of concession work or corporate/capital upgrading.

Revised tariffs shall replace base tariffs and shall be subject to the same provisions as those set out in Article 39 of the present contract. They may again be revised when any one of the conditions indicated in the present article is realized.

Suggestion:

It appears reasonable to set 20% as the target in the above article and 30% as that set in point 4.
 The variations discussed in point 9 of the same article may be expressed either as percentages or absolute values, in the form of m³;
 Point 11 deals with the hypothesis in which the local authority and the lease-holder decide during the contract to amend the work programs planned when it was concluded. On this possibility and the limits within which it may be found, see particularly Comment and Warning under Article 37.1. **Revision consecutive to an amendment to the work programs shall not, however, take place except insofar as it has not already been ensured by the amendment anticipating the said revision**

ARTICLE 44: TARIFF REVISION PROCESS

44.1 Commencement of the process

Revision of tariffs begins at the initiative of the local authority or the lease-holder , by submission of a revision document stating that at least one of the conditions for revision listed in Article 43 of the present contract has been realized.

The party to whom the document is sent shall make known his intent to the other within fifteen clear days. The process is begun, except in cases of refusal signified before expiry of this time period. The reasons for the refusal must be specified, and the more diligent party may, in this case, request the convening of the special review board provided for in Article 44.3 of the present contract.

44.3 Conduct of the process

When the revision process has been started, the parties agree to a time frame to bring it to a conclusion, and a working schedule. The time frame may be no less than three months or more than twelve months.

The lease-holder shall make available to the local authority, to enable it to assess the changes to consider in the revision, the necessary information in his possession and, in particular, an operating account statement, illustrating for each facility the details of the charges as well as all items helpful to the discussion (including financial costs and income). The information thus provided may be of technical , financial nature, relative to customers or work assigned to the lease-holder by the present contract.

In the context of the application of its general supervisory authority over execution of the contract, the local authority may implement, during the revision process, all the means defined in Article 51.2 of the present contract. Each party may seek assistance of one or more experts of its choice.

Final agreement of the parties shall give rise to the drafting of an endorsement.

44.3 Special review board

Failing agreement, either at the beginning of the process or at the end of the time frame that has been agreed upon, a special review board shall be constituted. This board shall consist of one person named by the local authority, one named by the lease-holder and a competent and independent expert named by common accord or, failing this, by the President of administrative tribunal appertaining to the local authority within whose jurisdiction the local authority falls. Costs of intervention shall be shared equally between the local authority and the lease-holder.

The mission of this board shall consist of reconciling the points of view of the local authority and the lease-holder in such a way as to reach agreement, compliant with the contractual commitments of the parties, particularly the stipulations of Article 43 above. The lease-holder and the local authority shall be obliged to provide the members of the special board with all the documents and useful items of information that are requested of them. The special board shall make use of a period of months to develop a draft agreement that it shall submit to both parties.

If either one of the parties does not accept the conclusions of the board, it shall report its disagreement to the other party within one month and specify its reasons for disagreement.

The more diligent party may then submit the contract to the judge for a ruling.¹⁰³

ARTICLE 45: LOCAL AUTHORITY SHARE

45.1 Definition of local authority share

The lease-holder shall be obliged to assess, on behalf of the local authority, a local authority share, to be added to the components of the base tariff provided for in Article 39.2 of the present contract.

The local authority share shall include:

- subscription, payable in advance by the subscribers of the leased utility;
- price per m³ consumed, payable at the end of the period of consumption.

Suggestion:

The terms of calculation of the subscription and local authority share must be consistent with those applicable to calculation of the lease-holder's compensation.

45.2 Terms of calculation of the local authority share

The rate applicable to the calculation of the amount of the local authority share shall be set by a decision of the deliberative assembly of the local authority, which shall specify the effective date of the new rate. Failing notification to the lease-holder, or if the decision reported does not specify the effective date of the new rate, the lease-holder shall extend the previous rate. When several rates are successively applicable for the calculation of the amount of the local authority share over the same period of consumption, the pro rata amount of the local utility share billed to the subscribers shall result from a prorated time calculation.

45.3 Conditions for paying the community (or intercommunity) share

Every year, payment to the local authority of sums of the local authority share collected shall be made on the basis of the following schedule:

- a. no later than, the lease-holder shall pay the total of sums he collected between October 1 and December 31 of the preceding year;
- b. no later than, the lease-holder shall pay the total of the sums he collected between January 1 and March 31;
- c. no later than, the lease-holder shall pay the total of the sums he collected between April 1 and June 30;
- d. no later than, the lease-holder shall pay the total of the sums he collected between July 1 and September 30.

When the contract terminates for any reason whatsoever, the lease-holder shall pay the local authority the balance of the local authority share corresponding to most recent bills that he collected no later than months after the contract ceases to be in effect.

The local authority shall be entitled to verify proceeds of the local authority share and deadlines for remittance conditions set in Article 51 of the present contract.

All sums not paid on the date set by the present article shall bear interest at the legal rate, plus from said deadline.

45.4 Cases of non-payment by subscribers

The lease-holder alone shall implement the means necessary to recover the lease-holder share. In cases of partial or total non-payment by subscribers, for any reason whatsoever, he shall enforce the provisions of Article 40.3 of the present contract.

When he has established that certain amounts of the local authority share have become unrecoverable, particularly as a result of insolvency or disappearance of debtors, the local authority shall rule admission of corresponding sums as bad debts.

45.4 Cases of overconsumption due to leakage

The measures set out in Article 39.2.2.2 shall be applied.

ARTICLE 46: SUMS DEDUCTED ON BEHALF OF PUBLIC BODIES

The lease-holder shall be obliged to collect, on behalf of public bodies concerned, the additional duties and taxes on the price of the water as follows:

- a. the competent agency anti-pollution tax;
- b. the tax for the national water system development fund
- c. the tax due to navigable waterways of France, which amount the local authority shall decide to apply to the user in compliance with the regulations in effect;¹⁰⁵ balance for the financial period.
- d. water resources preservation tax .

Conditions for collecting these duties and taxes from subscribers, as well as those for their payment by the lease-holder to public bodies shall be set, on one hand, by the regulations in effect and, on the other hand, by the agreements that the lease-holder is obliged to conclude with each of these bodies.¹⁰⁵

However, the tax due to “*navigable waterways of France*” is paid to the local authority under the same conditions as the local authority share referred to in Article 45 of the present contract.

On the bills sent to the subscribers, each duty or tax in addition to the price of the water shall be identified on a particular line that appears under a heading “[public bodies]”, in compliance with regulations in effect.

The tax due to “*navigable waterways of France*” and the water resource preservation tax shall each give rise to the calculation of a consideration based on the number of m³ of water sold the preceding year. The considerations shall be rounded to the nearest one-hundredth of a Euro. They shall be adjusted taking into account underpayments and overpayments from the preceding year.

ARTICLE 47: SANITATION TAX

Variant A: (the lease-holder shall collect the sanitation tax on behalf of the administrator of this utility)).

The lease-holder shall collect the sanitation tax, as well as the corresponding VAT¹⁰⁷, from the subscribers to the water service that are subject to it. For billing and recovery operations, he is obliged to comply with regulations in force, and with the administrative regulation of the wastewater facility. The lease-holder shall pay the full amounts of sanitation taxes that he has collected, as well as the corresponding VAT, to the operator of the wastewater facility. The payments shall be made into the account indicated by the operator, within the time limits set in Article 45 of the present contract for the payment of the local authority share¹⁰⁸. Any delay shall result in the imposition of interest calculated at the legal rate.

The operations of collection and recovery of the sanitation tax shall give rise to the opening of a specific account and bookkeeping reserved for this account¹⁰⁹. The lease-holder shall keep this book always available to the operator of the sanitation service, who may ask to consult at the lease-holder’s office at any time during business hours. Further, the lease-holder shall, within one month from the closing of every annual financial period, draw up a summary statement of all the accounting operations carried out in the context of recovery of the sanitation tax and another copy shall be attached to the annual report the lease-holder shall send to the local authority.

All the service provided by the lease-holder by way of billing, recovery and payment of the sanitation tax and the corresponding VAT shall give entitlement to specific compensation to be added to the compensation collected by the lease-holder from the subscribers of the leased utility. The amount of this additional compensation shall be set at Euros per subscriber to the wastewater utility for each annual financial period.

The lease-holder shall not be authorized to deduct the above additional compensation in question from the amounts of the sanitation tax, under the conditions set out in an agreement that he reaches with the wastewater service’s operator.

The rate applicable to the calculation of the amount of the sanitation tax shall be the most recent rate given to the lease-holder by the operator of the wastewater service from the effective date. The notification must reach the lease-holder at least one month before this effective date. Failing notification to the lease-holder, or if the notification does not include the effective date of the rate, the lease-holder shall extend the previous rate. When several rates are successively applicable for calculation of the amount of the sanitation tax during the same billing period for consumption of drinking water, the amount of the sanitation tax billed to the subscribers shall result in a time prorated calculation.

The lease-holder’s tasks shall not include verification of the correctness of the rate that is given to him by the operator of the wastewater service. However, in case of an error in the rate, the lease-holder must lend his cooperation to the operator in order to rectify the account of each of the subscribers to the leased utility. The charges corresponding to this correction shall be made the responsibility of the operator of the wastewater service.

The lease-holder is strictly prohibited, even if the operator of the wastewater service asks him to do so, from billing the subscribers to the drinking water service that the public health code makes the responsibility of owners, particularly the sums set out in Article L 1331-8 of the code. When the local authority or the operator of the wastewater service so requests, the lease-holder shall provide him at no charge, and within a maximum of two weeks, all the data relative to the consumption of water by the subscribers that are necessary for the calculation of the sum made the responsibility of the owners in question.

In case of a change in the administrative procedures of the wastewater service, an amendment to the present contract shall, if necessary, adapt the billing conditions, recovery and payment of the sanitation tax.

Variant B: (the lease-holder is also the operator of the wastewater service)

The lease-holder shall collect sanitation tax from the subscribers to the drinking water service under the conditions set by the regulations in effect and by the administrative regulation of the wastewater service.

The billing and recovery of the sanitation tax shall not give rise to any additional compensation. The lease-holder is strictly prohibited from billing the subscribers of the drinking water service y for the sums for which the public health code shall give the responsibility to owners, particularly the sums under Article L 1331-8 of the code. When the local authority so requests, the lease-holder shall provide it, free of charge, and within a maximum of two weeks, all data relative to water consumption by the subscribers that are necessary to the calculation of the sums that are the responsibility of the owners in question.

If the wastewater service is entrusted to a new operator an amendment to the present contract shall set the terms of recovery and billing of the sanitation tax.

Variant C: (the lease-holder does not collect the sanitation tax.)

The sanitation tax shall be collected directly by the operator of the wastewater service r, who shall draw up bills separate from those sent to the lease-holder to subscribers of the leased utility.

The lease-holder shall send the operator of the wastewater service y the file of subscribers to the leased utility with its periodic updates, as well as all the readings taken from the meters, to permit calculation of consumption by the subscribers, and which are necessary to determine the amounts of the sanitation tax.

The conditions on transferring this information shall be set out in an agreement reached between the lease-holder and the operator of the wastewater service

All corresponding operations shall be included in the tariff determined in application of the present contract. The lease-holder r may not claim any additional compensation for these operations or from the local authority or the operator of the wastewater service

The conditions for collecting the sanitation tax may be amended during the term of the present contract. In this case, an contract amendment t shall be drawn up, if necessary, to adapt the services assigned to the lease-holder.

ARTICLE 48: OTHER FEES AND CONTRIBUTIONS DUE TO THE LOCAL AUTHORITY^{110; 111}

The fees provided for in the present article shall form a part of the administrative charges of the utility provided by the lease-holder within the context of compensation provided by Chapter 9 of the present contract.

Warning:

Attention should be drawn to the fact that the fees potentially claimed by the local authority shall henceforth be governed by strict rules that specifically prohibit payment by the lease-holder of entry fees or his incurring of expenses outside the utility. For details on the rules governing these fees, see below, Notes 29 and 31 under Article 48.

48.1 Charges for occupying public property¹¹²

No charge shall be collected for use of roads belonging (to the local authority or communities belonging to the local authority).

Variant:

As consideration for the use of roads belonging to the local authority (or the communities belonging to the local authority) the lease-holder shall pay annual fees calculated on the basis of a rate initially set at Euros/linear metre of piping.

For the first year of application of the present contract, the lease-holder shall pay the amounts of the public property occupancy charges indicated below¹¹³:

Beneficiary local authorities	Length of piping	Amounts of fee
.....	.....linear metres	.....Euros
.....	.....linear metres	.....Euros
.....	.....linear metres	.....Euros
.....	.....linear metres	.....Euros

For subsequent years until the end of the contract, the amounts of the public property occupancy charges shall evolve on the basis of:

- modifications to the piping installed on the territory (of the local authority or each of the communities);
- the rate applied, which shall be determined from the initial rate previously referred to and the indexing formula set in Article 42.3 of the present contract for additional services provided by the lease-holder

Payment of the public property occupancy charge to the beneficiary local authorities shall take place every year before
In case of delay, interest calculated at the legal rate shall be added from that date, at the expense of the lease-holder.

48.2 Amortization charges on debt service (annuities) (*optional article*)

To finance the payment of debt service s related to the utility, the lease-holder shall pay to the local authority an annual fee based on the following terms:

(indicate the annual amounts and the payment schedule)

Suggestion and warning:

Articles 48.2 and 48.3 shall be optional.

- Even they call for certain reservations. The lease-holder 's role is, in effect, is a technical one and not financial. It is not up to him to play banker for the local authority, as this role is liable to create a bond of dependency between him and his delegatee and, by the same token, limit the freedom that the local authority must have in the supervision and control of the utility.
- If, however, it appears useful to have the articles appear in the present book of specifications, it is because they respond to the practical reality in an appreciable number of cases.

Local authorities that plan to use them must, however, assess their full implication. They must be particularly aware of what effect financial contributions from the lease-holder have on the price of water and, for this reason, shall be the subject of a adjustment based on the variation formulas provided for in the contract. It is, therefore, very strongly suggested that local officials determine in advance to ensure that they are truly relevant financially.

48.3 Contribution to the execution of works (*optional article*)

By way of financial contribution to the cost of executing the following works:

(give a list of the operations in question)

the lease-holder shall make a contribution based on the following terms:

(indicate the amounts and the payment schedule)

CHAPTER 10: TAX STRUCTURE

ARTICLE 49: TAXES¹¹⁴

All taxes and duties established by the State, region department commune or other local authority, including taxes associated with the real property of the utility, shall be the responsibility of the lease-holder with the exception of the land tax associated with the leases property that belongs to the local authority.¹¹⁵

The base rates set out in Article 39 of the present contract shall be deemed to have been established on the basis of the taxes and duties in effect at the beginning of the lease, or when new tariffs are adopted on completion of revision process.

ARTICLE 10: TRANSFER OF THE VAT¹¹⁶

50.1 VAT adjustment at the beginning of the contract

The lease-holder shall pay to the previous operator of the leased utility the sum that this operator himself had to pay to the [treasury], as an adjustment of previously recovered VAT.

Payment shall be made on the face of the certification corresponding the adjustment, no later than one month after deduction or refund obtained by the lease-holder from the Public *Treasury*

In the case where interest or sanctions have to be paid by the local authority because of non-compliance by the lease-holder of the time limit referred to in the preceding subparagraph, the lease-holder shall reimburse in full to the local authority the amount of the interest and financial penalties.

Payment of the VAT owing to the previous operator shall not constitute an administrative charge for the leased utility. The lease-holder shall be entitled to obtain a deduction or refund from the Public *Treasury* of the amount of the VAT appearing on the certification that is submitted to him. He himself shall take care of the necessary formalities

50.2 Transfer mechanism

The local authority shall transfer to the lease-holder the right to deduction for the value added tax that had encumbered the investments that it financed during the term of the present contract and which consist of the real property of the leased utility. The conditions of this transfer shall be those set by the fiscal provisions in effect.¹¹⁸

The local authority, as owner of the real property giving entitlement to deduction and, as such, under its responsibility, shall deliver to the lease-holder a certificate specifying, on one hand, the tax base of the property or the proportion of the property used by the lease-holder and, on the other hand, the amount of the corresponding tax.

The local authority shall inform the tax department of the delivery of each certificate by sending a copy of the document.

For every certificate that the local authority submits to him, the lease-holder shall comply with the following rules:

- a. he shall post the corresponding amount of entitlement to VAT deduction on the first or second monthly sales figure statement that he issues after receipt of the certificate or split it between the two statements;

- b. he shall inform the local authority of the amount of entitlement or fraction thereof that he was able to apply to the net VAT owing for his own activities, within one month, from the date of either the submission of the first statement referred to above, if it includes the full VAT deduction entitlement on the certificate, or the submission of the second statement in other cases;
- c. if applicable, he shall also inform the local authority of the amount of the entitlement or fraction thereof that he may not apply to the old statements, and for which he is requesting a refund from the Public Treasury

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The lease-holder shall undertake to take care of all the formalities necessary to obtain each refund within the shortest time provided for by the tax provisions in effect.

The payment to the local authority of the VAT, which it has transferred to the lease-holder shall be made before the expiration of the following time periods;

- two months from the date the sales figure statement is submitted for the fraction applied by the lease-holder to the VAT that he has collected;
- two months from the date of payment of the sums into the lease-holder's account for the fraction refunded by the Public Treasury.

During the whole process, the VAT amounts transferred and deducted by the lease-holder shall be the property of the local authority, which shall apply them to the water service budget..

50.3 Tax adjustments

If the VAT actually paid to the local authority is subsequently the subject of an adjustment by the tax department, the corresponding amount shall be paid by the local authority to the lease-holder within two months from the date of receipt of a notification including a copy of the decision by the administration, as well as a document certifying the payment of the adjustment by the lease-holder.

In the case where late interest or penalties are added to the VAT adjustment, they shall be refunded to the lease-holder by the local authority under the same conditions as the adjustment, unless the interest or penalties result from an error or omission attributable to the lease-holder

509.4 Late payments

Any sum not paid by the local authority or the lease-holder within the time limit set in the present article shall bear interest at the legal rate from the date of the expiration of this time limit.

CHAPTER 11: SUPERVISION AND ANNUAL REPORTS

ARTICLE 51: SUPERVISION EXERCISED BY THE LOCAL AUTHORITY

51.1 Subject of the supervision

The local authority shall enjoy a permanent right of supervision over the technical and financial execution of the present contract by the lease-holder, as well as over the quality of the service rendered to the subscribers. This supervision shall include specifically:

- a. a right to be informed on the management of the leased utility;
- b. the power to take any measures anticipated by this contract when the lease-holder does not comply with the obligations stipulated as his responsibility.

The local authority must not interfere in the management of the utility, except in the case provided for in Article 58 of the present contract.

51.2 Exercise of SUPERVISION

The local authority shall be free to organize, at its own expense, the supervision provided for in Article 51.1 of the present contract.

It may entrust its execution to either its own employees or to bodies that it chooses. It may, at any time, modify its organization.

The employees designated by the local authority shall enjoy the most extensive powers of supervision..

The local authority shall exercise its supervision in compliance with the regulations relative to confidentiality (the lease-holder's private life, intellectual and industrial property rights justly due to him). It must ensure the qualifications and ethics of the persons in charge of the SUPERVISION, and make sure that they do not disrupt the proper functioning and security of the utility.

The local authority shall be responsible vis-à-vis the lease-holder for the actions of the persons that it authorizes to exercise supervision

Comment:

The supervision activities implemented by the local authority shall be finance by it by means of its share from the water tariff.

51.3 Obligations of the lease-holder

The lease-holder shall facilitate the exercise of supervision. To this effect, he must, in particular:

- a. at any time, authorize access to the facilities of the utility to persons authorized by the local authority;
- b. provide the local authority with the annual report and respond to any request for information from it further to a claim from a subscriber or a third party;
- c. substantiate to the local authority any information that he has provided to it, specifically within the context of the annual report, by producing any useful technical or accounting document relating to the contract;
- d. designate one or more competent representatives to respond to the questions asked by the local authority;
- e. maintain, during the full term of the contract, and for five years after its expiration, the documents necessary supervision and of significant interest for the management of the leased utility.

The representative designated by the lease-holder may not invoke professional secrecy against the requests for information relating to the contract that are presented by persons authorized by the local authority.

Suggestion:

The above article, and specifically c., require the lease-holder to produce any document useful to the exercise of SUPERVISION by the local authority over technical and financial execution of the contract, as well as over the quality of the service provided. In this regard, it implies that the lease-holder put the local authority in a position to verify the components of each of the elements of his compensation, specifically the portion consisting of the operating costs of the utility. It may not, however, be based on a general right to investigate the lease-holder business activities, the group of corporations to which it belongs or even the other contracts that it administers.

51.4 Penalties

Without prejudice to the other sanctions provided for in the present contract, the farmer's disregard of his obligations with respect to supervision may give rise to the imposition of the following penalties:

- a. In case of failure or delay in remitting his contribution to the production of the annual report under Article 52 above, the lease-holder shall pay penalty **P10** provided for in Article 57.2.2 of the present contract.
- b. In case of failure or delay in submitting the annual report under Articles 53 to 55 below, the lease-holder shall pay penalty **P10** provided for in Article 57.2.2 of the present contract.
- c. In case of submission of an annual report under Articles 53 to 55 below, which is clearly and substantially incomplete or clearly and substantially non-compliant with the stipulations of Articles 53 to 55, the lease-holder shall pay penalty **P11** provided for by Article 57.2.2 g. of the present contract.

ARTICLE 52: ANNUAL REPORT BY THE MAYOR¹²¹

The lease-holder shall submit to the local authority, every year before, all the items of information within his jurisdiction, of such a nature as to enable the mayor to prepare the report on the price and quality of the service provided for in Article L 2224-5 of the *CGCT*.

This obligation is in addition to the presentation by the lease-holder of the annual report described in Articles 53, 54 and 55 of the present contract. It shall deal with the technical and financial elements, a list of which is set by the regulations in effect. The local authority may also request that the lease-holder provide it with any other items of useful information no provided for by the regulations, insofar as, and in the form in which, these items are available.

Suggestion:

As far as the items of information not provided for by the regulations in effect is concerned, it is important that the local authority both allow the lease-holder a sufficient period of time to assemble them and that he responds within a time period compatible with the mayor's obligation to draw up his report no later than June of the year in question. Taking into account these various constraints, the request for additional information should be made before April, or no later than the beginning of the month.

Warning:

It shall be recalled that, in communes of 35,000 or more inhabitants, the annual report must be made available to the public on site in the town hall within two weeks following its presentation to the municipal council or its adoption by the council (Art. L 1411-13 of the *CGCT* and Art. 5 of the decree of May 5, 1995 previously cited). The obligation shall not pose an obstacle to the application of the provisions of law No. 78-753 of July 17, 1978 respecting access to administrative documents.

ARTICLE 53: ANNUAL REPORT BY THE LEASE-HOLDER ; TECHNICAL PORTION^{122; 123}**53.1 Information relative to production of water and structures**

Every annual report provided by the lease-holder shall contain at least the following information relating to the financial period from January 1 to December 31 (or the effective date set in Article 4 of the present contract as at December 31 for the first financial period):

- quantities of water abstracted at each intake; consolidation of the information gathered on quality of the resource observed at each point; report on the monitoring of the boundaries of the protected area for which the lease-holder is responsible in application of Articles 18.3.2 of the present contract;
- quantities of water produced by each production facility that supplies the system; proposed observations respecting each facility and the quality of the water produced;
- quantities of water purchased outside the leased utility, specifying the type of water (raw water or drinking water) as well as a consolidation of the information gathered on the quality of this water;
- quantities of bulk water sold to other local authorities, with a consolidation of the main observations relative to these deliveries;
- main indicators of the condition of the system and service connections; unit consumption, losses, information on the water balance under Article 21.4 of the present contract, calculation of penalty P3 provided for in Article 57.2.1 c. of the present contract, if applicable;
- general comment on the condition of the other structures of the leased utility, and consolidation of the information concerning changes in this condition since the previous financial period;
- possible inadequacies in the structures to meet the needs of the subscribers, or to apply the regulations in effect, and a reminder of the proposals by the lease-holder to remedy these inadequacies;
- retired structures and facilities.

53.2 Information relative to operations

The following information, accompanied by observations by the lease-holder, shall be added to that provided for by Article 53.1 of the present contract:

- a. principal maintenance operations of routine maintenance performed on the storage structures (cleaning of reservoirs, repairs to interior coatings, etc.);
- b. record of interventions by the lease-holder to repair leaks in the system and service connections provided for in Article 21.6 of the present contract;
- c. characteristics of the self-monitoring program for quality of water distributed implemented by the lease-holder, consolidation of the main conclusions of this self-monitoring and, if applicable, measures taken by the lease-holder to improve the quality of the water distributed and/or additional measures proposed;
- d. number and nature of instances of corrective maintenance carried out on an emergency basis during the financial period (corrective maintenance subsequent to major incidents other than the leaks referred to above);
- e. and, more generally, any indicators, determined by common accord, that would allow for improving quality of service.

53.3 Record of work

Every annual report provided by the lease-holder shall include at least the following information:

- a detailed list of the new structures activated during the financial period (expansion or strengthening of the system, additional intake, treatment or storage facilities, etc.), separating the new structures completed by the local authority and those by the lease-holder
- a detailed list of the renovation and major repair work performed during the financial period, separating that done by the local authority and that by the lease-holder, indicating precisely the progress in the work program of renovation and major repair work carried out in application of Article 35.3.2 of the present contract.

As for structures and work that he has completed, the lease-holder shall specify the significant operations that he assigned to subcontracting firms.

53.4 Staffing situation

In every annual report that he provides, the lease-holder shall indicate a list of employees and job positions used made use of by the utility, as well as the number and the qualifications of the employees who took part during the financial period, making a distinction between:

- a. staff belonging exclusively to the leased utility, and;
- b. employees assigned directly to the utility on a part-time basis.

The lease-holder shall also inform the local authority regarding:

- a. any major change affecting the situation of staff involved in the leased utility, particularly in case of amendment to the applicable collective agreement;
- b. significant labor accidents occurring during the financial period;
- c. observations made by labor inspectors, specifically concerning safety of structures, facilities and equipment constituting the lease utility.

ARTICLE 54: ANNUAL REPORT BY THE LEASE-HOLDER ; SUBSCRIBER-RELATED PORTION

In every annual report, the lease-holder shall provide the following information on the conditions of performance of the service provided to the subscribers:

- change in the number of service connections during the financial period (new service connections constructed and services disconnected, as well as those closed and not reopened, separating the various categories of service connections);
- number of new subscriptions and subscriptions that were terminated, separating the various categories of subscriptions;
- conditions surrounding the major interruptions to water services, with indications of their severity (number of subscribers and duration), their causes and locations;
- number and nature of incidents resulting in non-compliance regarding the quality of water distributed,
- number of complaints from subscribers addressed to the lease-holder regarding quality of water distributed, specifying the nature of the most frequently asked questions, the geographical area(s) in question, as well as the measures taken or proposed by the farmer as a result of these complaints;
- number of requests to check meters presented by subscribers, as well as the results of these checks;
- number and overall amount of bad debts noted over the year, and a representative indicator of the situation regarding recovery of debts, as well as measures taken by the lease-holder to limit the number and overall amount of unpaid bills;
- report on the actions of the lease-holder to ensure that subscribers are informed and welcomed under the conditions set by Article 28 of the present contract.

ARTICLE 55: ANNUAL REPORT BY THE LEASE-HOLDER : FINANCIAL PORTION¹²⁴

The lease-holder 's annual report shall include financial portion whose purpose is to inform the local authority annually on economic changes in the contract. This portion of the report shall be developed from items of the lease-holder 's general and analytical accounting, as well as calculated economic items representative of responsibilities (specifically financial) that must be spread over the term of the contract.

All basic accounting documents shall be maintained by the lease-holder during a term equal to five accounting periods, not including the current period.

The accounting methods applied by the lease-holder must allow for evaluation of the work in progress, as well as stocks of products and material used for administration of the leased utility.

55.2 Third party accounts

The financial portion of the annual report drawn up by the lease-holder shall indicate receipts and expenses recorded during the financial period, as well as the balance of account at the close of the period, for each of the following accounts:

- a. account for the local authority portion collected by the lease-holder and paid to the local authority;
- b. account for VAT recovered by the lease-holder as investments made by the local authority and paid to it;
- c. accounts corresponding to collection of receipts for third party bodies:
 - sanitation utility taxes;
 - "pollution" taxes for the water agency;
 - "navigable waterways of France" tax
 - "national water system development fund "e" tax;
 - other taxes.
- d. other accounts corresponding to any taxes, duties or contributions that the lease-holder is compelled to collect from subscribers as a result of a decision that is imposed on him.

55.3 Lease-holder accounts

Comment:

In Articles 55.3 and 55.4, reference is made to shared administrative income and charges, not actual, but in terms of a key to objective apportionment.

These provisions can be explained by the fact that certain income and charges relate to several contracts administered by the same company, and it is impossible to determine, other than by the method indicated, those relating to each contract.

In order to avoid this situation, the only solution consists of each lease contract's being administered by a specialized company. But, aside from the fact that such a formula scarcely reflects economic change in businesses activities, it has the disadvantage of depriving the local authority and its delegatee of the benefits that pooling of several contracts is liable to provide.

At most, it may be suggested that the local authority, at negotiation time, make use of an accounting technique that allows for determination of what would be the income and charges for the utility if the contract were administered on an individual basis, in order to avail itself of the clearest vision of the economics of delegation. But it should be known that the results so obtained will not result in an exact account of reality, insofar as, by definition, individual administration of the contract cannot produce the same results as pooled administration.

The financial portion of the annual report provided by the lease-holder shall present all the income from administration of the leased utility directly collected during the financial period, making distinctions among at least the following categories of income:

- a. compensation collected by the lease-holder for providing water to the subscribers to the utility, specifying the share of this compensation that come from the consideration for the water resource preservation tax;
- b. receipts incidental to operations, making a distinction, if applicable, among:
 - the sums paid to the lease-holder by subscribers to the leased utility for services provided for by the present contract other than the supplying of water;
 - compensation collected by the lease-holder for sale of bulk water to another water distribution utility or services provided by the lease-holder for the passage of water through the facilities of the leased utility;
 - compensation collected by the lease-holder for supplying water to subscribers other than those of the leased utility, but nonetheless served by facilities supplied by those of this utility;
 - compensation collected by the lease-holder from the operator of the wastewater service through billing;
- c. the identified financial income, whether it is specific to the contract or related to taxes collected on behalf of third parties that are covered in c. of Article 55.2;
- d. discounts, rebates or refunds identified and not deducted from the amounts of purchases made on behalf of the utility, and paid to the lease-holder

Unidentified financial income, discounts, rebates and refunds on purchased shall not be individualized, but used to reduce charges, in compliance with the provision of Article 55.4 of the present contract.

Comment:

Compensation cited in the last section of b. is that provided for by Article 47, Variant A.

55.4 Leased utility administrative charges

The financial portion of the annual report provided by the lease-holder shall present administrative charges of the leased utility noted during the financial period, making distinctions among at least the following categories of charges:

- a. operating costs, detailing the principal positions, specifically the following:
 - salaries, wages and fringe benefits;
 - products of treatment and reagents;
 - water purchasing;
 - electrical energy;
 - laboratory and testing;
 - subcontracting;
 - materials and supplies
 - transportation and travel;
 - data processing;
 - mail and telecommunications;
 - premises and insurance;
 - other operating expenses (specify);
 - financial costs identified as specific to the contract;
 - other operating charges (specify, including committed costs);
 - taxes and duties.

These charges include all the charges that the lease-holder can justify by a direct charge on the financial account, by word of an independent expert or by the breakdown according to an objective key for charges pooled among several contracts.
- b. calculated economic charges, corresponding to:
 - first of all, cost effective amortization of the performance guarantee. The farmer shall provide a detailed list of the renovation and major repair work performed during the financial period under the performance guarantee of the utility. On request from the local authority, he will inform them of the amount of these operations;
 - secondly, cost effective amortization of the programs of renovation and major repairs carried out by the farmer under Article 35.3.2 of the present contract;
 - thirdly, to the concession work undertaken by the farmer. These charges shall be calculated as indicated in Article 37.3 of the present contract.¹²⁶
- c. fees paid to the local authority eventually amortized ;
- d. water resource preservation tax paid to the *competent Agency*
- e. net accruals, corresponding particularly to headquarter 's costs. These costs shall be reduced by financial revenue, discounts, rebates and refunds obtained by the lease-holder and not applicable directly to the leased utility.

The lease-holder shall justify the administrative charges of the leased utility by means of cost accounting or by an assessment of contributions from a pool of expenses spread among several local authorities. He shall provide the local authority with full explanations in this respect. He shall indicate in particular the method used to reconcile the general accounting and analytical accounting, as well as to determine the keys for apportionment applied to calculating the share assigned to the local authority. These explanations shall involve a drawing of a detailed note that the lease-holder shall attach to every annual report. The justifications

presented in the note must be founded on verifiable information, specifically with reference to the lease-holder's general accounting. The lease-holder shall provide all the information necessary on the method used to determine the economic charges calculated.

Comment:

Amortization of the cost of work performed by the farmer under his performance guarantee b. in Article 55.4 calls for a few explanations. In order to establish his quotation, the lease-holder must, within the context of the process of assignment of the contract, plan the work that he will be called upon to perform under his guarantee, and estimate its cost over the full term of the lease. This work shall, however, by definition, be random. It may arise at any time and vary noticeably from one year to the next: it is possible, for example, that it may be scarce at the beginning of the contract and, in contrast, very plentiful at the end of it. But the opposite is also conceivable. If account is taken every year of the expenses actually incurred by the lease-holder by reason of this work, and if it has an effect on the price of water, it would be in danger of undergoing multiple surges of excessive magnitude. It is precisely in order to avoid this problem that the contract sets out the method of amortization. This, in effect, allows for balanced apportionment over the full term of the contract of the expenditure represented by the work performed under the performance guarantee, as well as its repercussions on the price of water. It follows that the charges discounted for this work may not correspond to the expenses actually incurred during the year in question: they may be either higher or lower. The local authority, however, has a certain stake in being able to reconcile, year after year the economic charges indicated by the farmer with the actual expenses performed under the utility's performance incurred by him under the performance guarantee, particularly to extract information and negotiate the contract better, depending if the difference noted is, in the end, markedly in his disfavour. It is this concern that is answered by the opportunity provided to the local authority by b. of the above article to ask the lease-holder to inform them of the amount of the operations that he actually provided.

55.5 Economic results of the administration of the leased utility

In the financial portion of every annual report, the lease-holder shall indicate the result of the administration of the leased utility for the financial period, which is equal to the difference between the total amount of administrative income and the total amount of the administrative charges.

55.6 Changes to the methods of preparation and presentation of the annual report

In case of significant change in the method of preparation and presentation of the financial portion of his annual report, the lease-holder must:

- a. draw up two complete versions of the document for the financial period following the change:
 - one version consistent with the previous presentation;
 - one version corresponding with the new presentation.
- c. Attach a note setting out the reasons for the change and explaining to the local authority the resulting differences.

CHAPTER 12

GUARANTEES, SANCTIONS, CONTESTATIONS¹²⁷

ARTICLE 56: CONTRACTUAL GUARANTEES

Within one month from the notification of the present contract, and to guarantee its due performance, the lease-holder shall provide a guarantee in the amount of Euros.

This guarantee shall consist of, at the discretion of the lease-holder, of cash, government annuities, secured government bonds, or treasury bills. It shall be deposited with¹²⁸.

The purpose of the guarantee shall be to guarantee:

- a. **payment of the expenses incurred by the local authority in the event that it is constrained to take the measures set out in Article 58 of the present contract;**
- b. **payment of the penalties owing by the lease-holder in the case where he has not paid them under the conditions set out in Article 57 below;**
- c. **payment of all the sums remaining due by the lease-holder on expiration of the present contract.**

The local authority shall be authorized to deduct from the guarantee every time that one of the above-mentioned conditions arises.

Suggestion:

The amount of the guarantee may vary significantly. It may range from 2-3% of the forecast amount of receipts of the leased utility to 20 or 30% of this same amount. The local authority must set the level of its requirements, keeping in mind that a large guarantee may facilitate the resumption of service in case of default by the delegatee, but runs the risk of having an effect on the price of water. It can only be recommended, then, to make a determination on the basis of the greater or lesser notoriety or financial soundness of its lease-holder and, in any case, to be very strict regarding compliance with the obligation of replenishment of the guarantee. More generally speaking, the local authority cannot be too strongly advised to follow the situation of the lease-holder business activities regularly and, in particular, if it is the victim of repeated defaults, to determine if it is appropriate to cancel the contract.

56.1 Personal and joint surety or first demand guarantee (*optional article*)

At the request of the lease-holder, the local authority may authorize him to replace the guarantee cited in subsection 1 of the present article with a personal and joint surety or a first demand guarantee.

The institution standing surety for him must be chosen by third parties approved by the minister responsible for economy and finance, or the credit institution committee referred to in Article 29 of law No. 84-46 of January 24, 1984 respecting to the activity and supervision of public credit institutions.

Any deduction of any sum from the guarantee shall give rise to its reimbursement by the lease-holder within two weeks from the date the deduction is made.

The surety or first demand guarantee shall have the same purpose and is subject to the same rules as the guarantee referred to in subsection 1 of the present article.

In case enforcement, the lease-holder must supplement the personal and joint surety or the first demand guarantee by an amount equal to that paid by the guarantor to the local authority.

The amount of the sums guaranteed by the surety or the first demand guarantor shall be increased under the conditions and in the proportions indicated in the last subparagraph of subsection 1 of the present article.

ARTICLE 57: MONETARY SANCTIONS AND PENALTIES¹²⁹

57.1 Terms of enforcement of penalties¹³⁰

Without prejudice to the other sanctions provided for by the present contract, the local authority may impose on the lease-holder penalties as sanctions for breaches of his obligations in the cases, and according to the terms of, calculation provided for by the present article, as well as by Article 57.2 below.

In the cases referred to in Article 57.2.1 below, the penalties shall accrue from the expiration of the time limit allowed to the lease-holder¹³¹ to respond to the requests that the local authority addresses to him.

In the cases referred to in Article 57.2.2 below, non-compliance by the lease-holder with his obligations shall result in the imposition ipso facto of a lump sum penalty P_0 , equal to

In case of unheeded formal notice, from the expiration of the time set by this formal notice, the lease-holder shall incur an additional penalty calculated under the conditions set in Article 57.2.2 below.

The various penalties referred to in the present article, as well as in Article 57.2 below may possibly be cumulative.

57.2 Case of imposition and calculation of penalties

Comment: the majority of the representative formulas for penalties shall include a coefficient **G** bearing the number corresponding to the penalty in question.

The purpose of this coefficient is to allow the local authority to vary the severity of the penalties on the basis of the importance that it accords to the obligation that it is sanctioning, as well as the absolute and relative values that they represent. A single formula may, in effect, result in a modicum of a penalty or, on the contrary, a penalty of a considerable amount, according to the size of the contract, particularly because it is based on the total amount of the lease-holder's compensation. As an example, this amount would be 80 million francs for a commune of 80,000 inhabitants paying a price for water of approximately 10 Fr per m³, while it would be 4 million francs for a commune of 4,000 inhabitants at an equivalent price.

This is why it is proposed to set the coefficient G within a range that may be:

from 0.1 to 1 for G1, G2 G3 and G7;

and from 0.5 to 1 for G4.

57.2.1 Penalties applicable in case of non-compliance with deadlines set in requests from the local authority

a. In case of absence of response to the request of the local authority, and within the time limits set by it:

- either certificates of insurance provided for in Article 32 of the present contract;
- or the inventory update statement provided for in Article 11.5 of the present contract,

the farmer shall pay penalty **P1**, calculated as follows:

$$P1 = G1 \times D \times MT/100$$

G1 is a coefficient with a value of (see the comment above)

D is the number of full months of delay, limited to a maximum of 10

MT is the full amount of the compensation collected by the lease-holder for supplying water for the last known annual financial period, including the fraction corresponding to the water resource preservation tax.

Several P1 penalties may accumulate during a single financial period, if several of the defaults listed above are committed by the lease-holder.

- b. In case of non-submission, at the request of the local authority and within the time period set by it, of the metrology documents relating to its pool of meters, drawn up in compliance with the regulations in effect, the lease-holder shall pay a P2 penalty calculated as follows:

$$P2 = G2 \times V \times N/10$$

G2 is a coefficient of a value of (see comment above)

V is the value of a new and calibrated 15 mm class C volumetric meter (value set on the basis of the economic data available at the time the penalty is calculated).

N is the number of meters in the pool in which the noted fault was found

- c. In case of non-submission, on expiration of the present contract, at the request of the local authority and within the time limit set by it, of the measurements of volumes consumed by each subscriber during the last five years, the lease-holder shall pay a P3 penalty calculated as follows:

$$P3 = G3 \times V \times N/10$$

G3 is a coefficient of a value of (see comment above)

V same definition as in b. above

N number of subscribers in question

Penalties **P2** and **P3** may, if applicable, be combined for the same meter.

They are payable under the same conditions if the information sent by the lease-holder is incomplete, erroneous or not up to date.

- d. In case of non-submission, on expiration of the present contract, at the request of the local authority and within the time limit set by it, of either the plans for the structures and other technical documents relating to the leased utility that he holds; or the customer file included the account of each subscriber, as well as all items allowing for continuity of service, the lease-holder shall pay a P4 penalty calculated as follows:

$$P4 = G4 \times MT/10$$

G4 is a coefficient of a value of (see comment above)

MT same definition as in a. above

57.2.2 Penalties applicable after unheeded formal notice from the local authority

In addition to lump-sum penalty P0 provided for in Article 57.1 above, the lease-holder may have imposed on him, after an unheeded formal notice from the local authority, the following penalties:

- a. In case of unwarranted interruption in the distribution of drinking water, full or partial, exceeding hours, the lease-holder shall pay penalty P5, calculated as follows:

$$P5 = 2m^3\text{day/subscriber}^{132} \times NA \times Vo \times K \times H/24$$

Vo value of m³ consumed appearing in the base tariff schedule set in Article 39.2.2 or in the revised tariff schedule

K variation index defined in Article 41.2

NA number of subscribers in affected by the interruption of the water supply

H length of the interruption (expressed in hours beyond the time set in the first subparagraph above)

- b. In case of unwarranted abnormal pressure involving significant variations as compared with the pressure limits indicated in Article 27.2.1, the lease-holder shall pay penalty P6, calculated as follows:

$$P6 = P5/10$$

P6 is determined by applying the formula appearing in a. above, and giving a value to **NA** of number of subscribers affected by the abnormal pressure and to **H** the duration of the abnormal pressure noted.

- c. In case of inadequate water balance of the system and service connections attributable to the lease-holder, he shall pay penalty P7, calculated as follows:

$$P7 = G7 \times \frac{DF}{F} \times \frac{MT}{50}$$

G7 is a coefficient of a value of (see comment under Article 57.2)

DF/F is the difference between the target set in Article 21.2 and the balance actually noted, divided by the target (the different values being expressed in decimal points)¹³³

MT is the total amount of the compensation collected by the lease-holder for supplying water for the last known financial period, including the fraction corresponding to the water resource preservation tax.

Penalty **P7** shall be imposed only after the lease-holder has previously been asked to present all the explanations that he deems useful.

- d. In case of delay attributable to the lease-holder in executing on or more of the operations that have been assigned to him by Articles 35.3.2 and 37.2.2, the lease-holder shall pay a P8 penalty, calculated as follows:

$$P8 = D \times NE/100$$

- D** is the number of full months of delay as compared with the deadline for execution indicated in Article 353.3.2 and Article 37.2.2 or, if applicable, as compared with the deferred date of execution when a postponement provided for by Article 37.2.2 is applicable.
- NE** is the estimated amount of the operation(s) appearing in Article 35.3.2 and Article 37.1 (amount **HT**).

- e. If, on expiration of the present contract, the lease-holder has not complied with all his obligations relative to routine maintenance, cleaning of premises and disposal of unserviceable items referred to in Article 64.1, he shall pay a **P9** penalty equal to the expenses that the local authority incurs to carry out the operations expected of the lease-holder, plus 20% for supervisory and general expenses.

The amount of penalty **P9** shall be calculated on the basis of the evidence produced by the local authority.

- f. **In case of non-submission of either**
- **the contribution for the preparation of the report on the price and quality of the water distribution service provided for in Article 52 of the present contract;**
 - **the annual report defined in Articles 53-55 of the present contract,**
- the lease-holder shall pay penalty **P10**, calculated as follows:
- **1% of MT** for the first month late;
 - **1/500 of MT** for each of the following nine months
- MT** is the full amount of the compensation collected by the lease-holder for supplying water for the last known financial period, including the fraction corresponding to the water resource preservation tax.

Several **P10** penalties may accumulate during the same financial period, if several of the defaults listed here are committed by the lease-holder

- g. In case of submission to the local authority of an annual report that is clearly and substantially incomplete or clearly and substantially non-compliant with the provisions of Articles 53-55 of the present contract, the lease-holder shall pay a **P11** penalty, defined as follows:

$$P11 = P10/2$$

The **P11** penalty may be imposed only once during the same annual financial period.

57.3 Payment of penalties

Penalties shall be paid by the lease-holder within two weeks from receiving the corresponding receipts. In case of late payment, their amount shall be increased by interest at the legal rate plus 2%.

Past the two weeks, the local authority may elect to invoke the enforcement of the contractual guarantee provide for in Article 56 of the present contract.

The payment of penalties does not exempt the lease-holder from his possible civil or criminal liability vis-à-vis the subscribers and third parties.¹³⁴

ARTICLE 58: CONFISCATION¹³⁵

In case of serious fault on the part of the lease-holder, specifically if the water quality, hygiene or public safety is compromised, or if the service is performed only partially, the local authority may take the necessary measures, at the lease-holder's expense and risk and, in particular, decide to confiscate the service.¹³⁶

This provisional placement under control shall be preceded by a formal notice, except in the case of extreme emergency.¹³⁷

ARTICLE 59: Termination

In case of an extremely serious fault on the part of the lease-holder, the local authority may, after producing evidence of the fault, declare cancellation of the present contract¹³⁸, particularly in the following cases:

- a. the lease-holder does not take charge of the facilities of the leased utility on the effective date set in Article 4;
- b. the distribution of drinking water is totally interrupted during a prolonged period;
- c. the lease-holder does not produce the guarantee provided for in Article 56, or does not reconstitute this guarantee after one or more legal withdrawals by the local authority;
- d. the lease-holder assigns the present contract to a third party without the authorization referred to in Article 5.

Disqualification shall be preceded by a formal notice sent to the lease-holder, unheeded after the time limit allowed by the local authority.¹⁴⁰

ARTICLE 60: ELECTION OF DOMICILE

The lease-holder elects domicile at

In the event that he has not done so, any notification sent to him shall be valid when it is done at the secretary's office of the town hall.

ARTICLE 61: SETTLEMENT OF DISPUTES

Any disputes arising between the lease-holder and the local authority regarding the present contract shall be subject to the administrative tribunal under whose jurisdiction the local authority falls.

However, when an investigational procedure within the context of a special board is planned, recourse to the tribunal is not permitted until after the said board has submitted its opinion, unless one of the parties interferes with normal progress of the procedure.¹⁴²

CHAPTER 13: END OF CONTRACT
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ARTICLE 62: PROCEDURE FOR TERMINATING THE CONTRACT¹⁴³

The contract shall terminate in one of the following ways:

- On expiration of the term set in Article 4 of the present contract;
- Disqualification of the lease-holder under the conditions set out in Article 59 of the present contract;
- Cancellation by reason of public interest cited in Article 63 of the present contract.

ARTICLE 63: CANCELLATION BY REASON OF PUBLIC INTEREST¹⁴⁴**63.1 General conditions**

The local authority may unilaterally cancel the contract by reason of public interest^{145; 146}.

It shall make its intention known to the lease-holder at least six months before the effective date of cancellation.¹⁴⁷

The lease-holder shall be fully compensated for the prejudice he suffers by the fact of the cancellation.¹⁴⁸

Warning:

Attention should be drawn to the fact that, taking into consideration the financial consequences attached to it (see Note 148), cancellation of the contract by reason of public interest runs the risk of being so much more onerous for the local authority if it is decided at the start of the contract.

63.2 Conditions for cancelling the contract in the specific case of an intercommunal project**Warning:**

The present article relates to the case, that it specifically refers to, of cancellation of the contract by reason of public interest resulting from a reorganization of the utility, and within the context of an intercommunal project.

It should be recalled that, under Article L 5211-5 of the *CGCT*, the transfer of jurisdiction to an *EPCI* does not lead to cancellation of the contract but, on the contrary, its resumption ipso facto by the *EPCI*, until its end, and under the previous conditions, without the cocontractant's being able to avail himself of any right of cancellation or any compensation. It is no different than in a case of disagreement between the parties (see Note 2 under Article 1).

So, it is only in this case – with no marginal doubt – where, in the absence of an agreement, the local authority would wish, nonetheless to change cocontractants or amend the initial conditions of the contract at the time of an intercommunal project that it may be compelled to cancel the contract by reason of public interest and would expose itself to compensation, to the assessment of which this article is devoted.

63.2.1 In case of cancellation of the contract by reason of public interest resulting from a reorganization of the utility within the context of an intercommunal project, the parties shall agree that the compensation owed to the lease-holder shall be calculated according to the following method.

These situations presented in terms of cash flow shall be appreciated according to a situation of reference described by the most recent know [reports from the delegatee], which shall be used to represent a current year.

Forecast changes in all the cash flows (income and charges) over the years after the cancellation shall be treated as follows:

- income: no more shall arise for the periods following the cancellation;
- structural costs: they shall cease on the cancellation date;
- corporate/capital investments on existing asset : flow of expenses shall cease on the cancellation date;
- concession investments: flow of expenses shall cease on the cancellation date;
- operational/functional investment flow of expenses shall cease on the cancellation date;
- calculated economic charges: flow of expenses shall cease on the cancellation date;
- charges generated by the cancellation itself: on presentation of vouchers.

- Forecast changes in all cash flows (income and charges) over the years, in the absence of cancellation, shall be processed using all items known on the evaluation date.

Annual amounts representing the difference between the situation “with cancellation” and “without cancellation” shall be discounted in monetary terms for the year of the payment of the compensation, using the rate

The lease-holder shall also waive any compensation for commercial loss outside the contract and for loss of image.

- 63.2.1 In case of agreement on the assessment presented by the lease-holder by application of the above method, the local authority undertakes to pay him the compensation corresponding to this assessment within 6 months following the effective date of the cancellation.
- 63.2.2 In case of disagreement on the assessment of the compensation for cancellation presented by the lease-holder on the basis of the method defined in Article 63.2.1 above, the parties may agree to submit the dispute to an independent expert designate by common accord or, failing this, by the chair of the competent administrative tribunal. The expert shall rule on the basis of the method defined in Article 63.2.1 above.
- 63.2.3 Failing recourse to the expert opinion referred to in Article 63.2.2 above, or in case of disagreement on the results of this expert report, the administrative tribunal, approached with the dispute, shall rule on the basis of the rules of jurisprudence in force.
- 63.2.4 The stipulations of Articles 63.2.1 to 63.2.4 shall in no way interfere with the local authority’s proceeding with the planned cancellation. If it so rules, it shall give him a later effective date of at least 6 months after its decision.

Comment:

- In case of cancellation by reason of public interest, the lease-holder shall be entitled to be compensated for the full prejudice that he has suffered by reason of this measure. It is on this principle that is founded the method defined in Article 63.2.2 above, under the reserve that it does not include commercial prejudice or any adverse effect on his reputation that the farmer may possibly suffer.

This method avoids the problems of the formula that consists of setting, at the time the contract is concluded, a lump sum compensation that the farmer shall undertake to accept in compensation for his displacement.

Such a formula does not guarantee, in effect that the compensation agreed to contractually will correspond to the actual prejudice suffered by the lease-holder, this prejudice depending on the contingencies of operating the utility. The formula used, on the contrary, allows for evaluation of the compensation owing to the lease-holder on the basis of the prejudice actually suffered by him.

- The method used also presents the advantage of basing the assessment of the prejudice resulting from cancellation on the reports from the delegatee, that is, on the documents that:
 - are drawn up to satisfy a legal obligation;
 - are exhaustive insofar as they recount all the operations of the utility;
 - are known to both contractants;
 - and may be the subject of supervision on the part of the local authority (Art. 51 of the present contract) as well as the regional account branch.
- This concern with taking into account the reality of the prejudice suffered by the lease-holder may be found in the rules on discharge of income and charges relating to the contract. If the majority of income and charges are discharged immediately on cancellation, other items may remain after cancellation for a time that is specific to them: this is the case for certain committed costs, amortization of past investments, etc. This is the reason why the method defined in Article 63.2.1 must include rules for discharging these items, set on the basis of the concrete realities specific to each utility.

Warning:

In order that the local authority may not be bound by the assessment originating with the lease-holder, Article 63.2.3 above provides for the opportunity for the parties to submit this assessment for appraisal, the expert then being obliged to verify the correctness with respect to the method defined in Article 63.2.1.

It is, however, a case of a simple election that does not exclude the possibility either the local authority’s cancelling the contract, even in the event of disagreement on the assessment proposed by the lease-holder, or the lease-holder’s to refer to a competent judge who will then rule on the basis of the rules of the jurisprudence in force.

ARTICLE 64: TRANSFER OF RETURN PROPERTY

64.1 General provisions

As the structures and equipment of the leased utility have the characteristics of return property within the meaning of Article 11.2 of the present contract, including there accessories which the lease-holder has been required to install, shall be returned to the local authority at the end of the contract under the following conditions¹⁵²:

- a. The return property must be returned in good operating condition. For this purpose, the local authority and the lease-holder shall draw up, one year before the end of the present contract, a statement regarding the property in question and, if applicable, a list of maintenance operations that the lease-holder is to have performed no later than one month before the end of this contract. Failing this, he may have imposed on him penalty P9 provided for in Article 57.2.2 e. of the present contract, without prejudice to the local authority’s right to perform at its expense the necessary maintenance operations¹⁵³.

On the date of his departure, the lease-holder shall provide for the cleaning of the structures, equipment and facilities of the leased utility, as well the removal of all unserviceable items¹⁵⁴. Failing this, the local authority shall proceed with these operations at the lease-holder’s expense, without prejudice to the imposition of penalty P8, provided for in Article 57.3.2 d. of the present contract.

- b. Except in the event of early termination of the contract¹⁵⁵, the return property shall be returned free of charge to the local authority.
- c. In the event that the lease-holder has not carried out all or part of the work program for which he is responsible under Articles 35 and 37 of the present contract, he shall pay to the local authority a sum corresponding to the amount of the work not carried out, plus interest calculated at the legal rate in force on the date scheduled for their execution and running from this date until the date of payment, without prejudice to possible imposition of the penalties provided for in Article 57.2.2 d. when the non-execution is attributable to a fault of the lease-holder.

64.2 Return of the data base

The plans and documents referred to in Article 14.1 above shall form part of the return property of the leased utility. When they have been the subject of the assembly of a digital data base, the return shall be made to the local authority at its discretion in either the digital form normally usable by means of software available on the market, or in the form of a hard copy.

Failing this, the lease-holder may have imposed against him penalty **P4**, provided for in Article 57.2.1 d. of the present contract.

64.3 Return of meters

The return of the meters to the local authority shall also involve the return of the metrology documents required by the regulations¹⁵⁶, duly updated on the date of the termination of the contract, and those regarding the measures taken at the time of each reading during the five previous years. It shall be accompanied by the return of the measurements of the volumes consumed by each subscriber during last five years.

Failing this, the lease-holder may have imposed against him penalties **P2** and **P3** provided for in Articles 57.2.1 b. and c. of the present contract.

ARTICLE 65: RETURN OF RESUMPTION PROPERTY

On expiration of the present contract, the local authority or the new operator shall have the authority to purchase furniture, supplies, spare parts and miscellaneous material, including vehicles and, more generally, all the property used in the administration of the leased service and belonging to the lease-holder, without any objection from him.

The purchase value shall be set amicably or according to an expert¹⁵⁷, and paid within three weeks from the operation of the assignment. In case of delay, the lease-holder may claim payment of interest calculated at the legal rate plus%.

ARTICLE 66: ADMINISTRATION OF THE SUBSCRIBERS AT THE END OF THE CONTRACT

66.1 Subscriber file and subscription contracts

On expiration of the present contract, the lease-holder shall return to the local authority, free of charge:

- the updated subscriber file. The local authority shall choose the procedure for the return in either hard copy, or in electronic form usable with software available on the market;
- the subscribers' account under Article 40.4 of the present contract;
- the subscription contracts in his possession;
- any other documents allowing for continuity of service.

Failing this, the local authority may impose against the lease-holder penalty **P4**, provided for in Article 57.2.1 d. above.

66.2 Sums owing to the new operator

On expiration of the contract, the lease-holder shall pay to the new operator:

- the fraction of the subscriptions corresponding to the period following the end of the contract;
- the full amount of the guarantee deposits recorded in the subscribers' accounts.

66.3 Sums unpaid by subscribers

The lease-holder shall remain solely responsible for recovery of the bills that he issued even after the end of the present contract. He shall remain subject to the provisions of Articles 40.3-40 and 45.3-45.4 above until the complete fulfillment of his contractual obligations.

The lease-holder shall also remain solely responsible vis-à-vis the public bodies and the sanitation utility that collects the duties and taxes appearing on the water bills.

The local authority shall undertake to not interfere with the recovery by the lease-holder of the amounts in question.

66.4 Claims from subscribers

Beyond the cases cited above, the lease-holder shall undertake to provide the new operator with all the items helpful in enabling him to respond to claims from subscribers concerning the period during which he provided the administration of the leased utility.

In case of error on his part in billing, he shall be obliged to refund any overpayment.

ARTICLE 67: LEASE-HOLDER 'S STAFF

67.1 One year before the expiration date of the present contract, the lease-holder shall provide to the local authority, at their request, the list of job positions, as well as the following non-personal information concerning the staff assigned to the leased utility:

- age;
- level of occupational qualification;
- duties assigned;
- collective agreement or applicable statute;
- full amount of the compensation for the preceding calendar year (benefits included);
- possible existence in the contract or statute of a clause or provision that may prevent the transfer of the person concerned to another operator.

The information concerning staff may be communicated by the local authority to the applicants for delegation of the utility only in a general manner, and without personal information.

67.2 The local authority shall not be obliged to pay the lease-holder any compensation in the following cases:

- when the lease-holder is compelled to terminate the labor contracts of certain employees or amend these contracts because they are not being assumed by the new operator;
- when the lease-holder is compelled to apply legislative or regulatory provisions whose effect is the full or partial transfer of his staff to the new operator,

ARTICLE 68: VAT ADJUSTMENTS

If, on expiration of the contract, the farmer is compelled to pay to the *Public Treasury* a portion of the VAT recovered by the local authority for fixed assets forming part of the leased utility, the local authority shall pay the lease-holder the corresponding sums within three months from receipt of a certificate indicating in particular the date of the realization of each of the fixed assets in question, the amount of the VAT recovered by the local authority and the date of the payment of this VAT.

In case of late payment, the sums owing shall bear interest at the legal rate plus%.

ARTICLE 69: DISCHARGE OF THE GUARANTEE

The guarantee provided for in Article 56 of the present contract shall only be discharged when the local authority notes the full execution by the lease-holder of his contractual obligations.

However, if the discharge of the guarantee does not take place within six months following the expiration of the contract, the lease-holder may give the local authority formal notice to release the guarantee or indicate the reasons for not doing so. Failing a response from the local authority within one month from receipt of this formal notice, the lease-holder is entitled to discharge from the guarantee.

ARTICLE 70: INFORMING THE APPLICANTS FOR DELEGATION OF THE LEASED UTILITY

At the time of competitive bidding for operation of the lease utility, the local authority may organize one or more tours of the facilities in order to enable all the applicants to acquire knowledge of them sufficient to guarantee equality of treatment. In this case, the lease-holder is obliged to allow access to all the structures and facilities of the leased utility on the dates set by the local authority.¹⁵⁸

The local authority shall make an effort to reduce to a minimum any inconvenience that may result for the lease-holder

ARTICLE 71: TRANSFER OF THE UTILITY TO A NEW OPERATOR

The local authority shall gather the lease-holder's representatives, as well as, if applicable, those of the new operator, in order to organize the transfer of the operation of the leased utility and, in particular, to enable the lease-holder to explain the main instructions and the operational methods to be followed for operating the structures, equipment and facilities of the leased utility.

The local authority or the new operator shall be subrogated to the rights and obligations of the lease-holder on the expiration date of the present contract¹⁵⁹, except for the bills issued by the farmer and the claims of subscribers dealing with his administration, in compliance with Articles 66.3 and 66.4 above