

Water Supply and Sanitation Adriatic Coasts

Phase III – Herceg Novi

German Financial Cooperation with Montenegro

Contract no: 04-1816/12

ADDENDUM NO. 7

to the

CONSTRUCTION CONTRACT

dated on 10 July 2012

Employer: **Društvo za izgradnju vodovodne i kanalizacione infrastrukture u Opštini Herceg Novi d.o.o**, with registered seat at the address: Hercegovačke brigade no. 3, 85340 Herceg Novi, Montenegro, corporate ID number: 50636775, TIN: 02892677, represented by Jelena Đaković, acting executive director; and

Contractor: **Celtikcioglu Cons. Ind. & Trade Ltd. Sti Turkey**, with registered seat at the address: Ugur Mumcu Str. no 92, GOP, Ankara, Turkey, registered in Ankara Chamber of Commerce under corporate ID number: 84981, represented by Mr. Murat Dag, director; and

Founder of the Employer: **Municipality of Herceg Novi**, represented by the Mayor Mr. Stevan Katić.

in Herceg Novi, on [●] 2019

This Addendum no. 7 (hereinafter "**Addendum**") to the Construction Contract (ref. no: 04-1816/12), dated 10 July 2012 ("**Construction Contract**"), for Works on the Project Water Supply and Sanitation Adriatic Coast III - Herceg Novi (hereinafter "**Project**") was entered into in Herceg Novi on [●] 2019 by and between:

1. **Društvo za izgradnju vodovodne i kanalizacione infrastrukture u Opštini Herceg Novi d.o.o**, with registered seat at the address: Hercegovačke brigade no. 3, 85340 Herceg Novi, Montenegro, corporate ID number: 50636775, TIN: 02892677, represented by Jelena Đaković, acting executive director (hereinafter "**Employer**");
2. Employer's founder **Municipality of Herceg Novi**, represented by Mayor Mr. Stevan Katić, (hereinafter "**Municipality**"), from one side;

and

3. **Celtikcioglu Cons. Ind. & Trade Ltd. Sti Turkey**, with registered seat at the address: Ugur Mumcu Str.no 92, GOP, Ankara, Turkey, registered in Ankara Chamber of Commerce under corporate ID number: 84981, represented by Mr. Murat Dag, director, (hereinafter "**Contractor**") from the other side.

(Hereinafter the Employer and the Contractor are individually referred to as "**Party**" and collectively as the "**Parties**")

RECITAL / PREAMBLE

- A. The Contractor submitted the Interim Overall Claim no. 1 on 12 February 2016 (letter ref. no. CEL-1097-359-DCE), followed by Updated Interim Overall Claim no. 1 on 27 July 2016 (letter ref. no. CEL-1181-419-DCE), Final Interim Overall Claim no. 1 on 2 March 2018 (letter ref. no. CEL-1328-518-DCE) and Update of Final Interim Overall Claim no. 1 on 21 March 2018 (letter ref. no. CEL-1330-520-DCE); claiming extension of Time for Completion ("**EoT**") of 1,129 days and payment of EUR 7,601,117.33 ("**Contractor's Claim 1**"); and Interim Claim no 2 on 24 April 2018 (letter ref. no. CEL-1339-592-DCE), followed by Update of Interim Claim no. 2 on 1 June 2018 (letter ref. no. CEL-1352-538-DCE) and Final Claim no. 2 on 22 June 2018 (letter ref. no. CEL-1359-543-DCE); claiming EoT of 92 days and payment of EUR 634,387.23 ("**Contractor's Claim 2**");
- B. The Engineer issued Determination on Contractor's Claim 1 and Contractor's Claim 2 consisting of Section 1 (EoT), Section 2 (Apportionment of Compensability) and Section 3 (Quantum) ("**Determination 1**") granting to the Contractor the amount of EUR 3,196,472.13 and EOT of 1,266 days;
- C. Based on the above Determination the Contractor submitted the required documentation for the issuance of the IPC no. 23, which was consequently issued by the Engineer on 31 July 2018 in the amount of EUR 3,196,472.13 ("**IPC no. 23**");
- D. On 31 August 2018 the Employer submitted Notice of dissatisfaction with Engineer's Determination (letter ref. no. 05-281/18) and expressed its intention to refer the dispute to the Dispute Adjudication Board. The Contractor replied on it on 5 September 2018 (letter ref. no. CEL-1390-62-DIVI_HN) and suspended the works as from 9 October 2018, which suspension is still ongoing ("**Suspension**"). Thereupon, the Employer and the Contractor exchanged various

correspondences and on 9 November 2018 started the negotiation process in order to reach a settlement of claims. During this process the Employer pointed out that the Contractor is in delay with the performance of the Works and that therefore the Employer is entitled to the amount of up to 10% of the accepted Contract Sum for delay damages;

- E. In the meantime, the Contractor submitted Fully Detailed Claim no. 3 on 28 August 2018 (letter ref. no. CEL-1386-560-DCE), claiming EoT of 86 days and additional payment of EUR 588,448.94 ("**Contractor's Claim 3**"). By its determination delivered on 13 November 2018 (letter ref. no. 2395-LO-338/LMc) the Engineer determined that there is no entitlement to neither time nor cost under Contractor's Claim 3 in its entirety ("**Determination 2**") and the Contractor submitted Notice of Dissatisfaction on 26 November 2018 (letter ref. no. CEL-1433-598-DCE);
- F. Further on, the Contractor submitted Interim Claim no. 4, due to Suspension, on 16 November 2018 (letter ref. no. CEL-1426-598-DCE), followed by Update of Interim Claim no. 4 dated 15 January 2019 (letter ref. no. CEL-1441-603-DCE) and Update of Interim Claim no. 4 dated 14 February 2019 (letter ref. no. CEL-1451-612-DCE); claiming EoT and payment of EUR 929,049.00 on interim basis because the Suspension is still ongoing, and this interim request covers the period from 8 October 2018 until 22 February 2019 ("**Contractor's Claim 4**"). The Engineer confirmed on 31 January 2019 (letter ref. no. 2395-LO-405/LMc) that non-payment of the IPC no. 23 is a breach of the Contract by the Employer and that the Contractor is entitled in principle to EoT and Cost plus, reasonable profit;
- G. The Contractor submitted invoices (letter ref. no. CEL-1429-594-DCE dated 22 November 2018, letter ref. no. CEL-1442-604-DCE dated 15 January 2019 and letter ref. no. CEL-1452-613-DCE dated 14 February 2019) claiming for interests due to the late payment of the IPC no. 23 in the amount of EUR 42,298.52 ("**Contractor's Claimed Interests**");
- H. The above-mentioned Contractor's Claim 1, 2, 3, 4 and Contractor's Claimed Interests are hereinafter referred to as "**Contractor's Claims**";
- I. The Employer submitted his Notices of Claim for delay damages on 14 February 2019, claiming the amount of 10% of the accepted Contract Sum for delay damages, i.e. the amount of EUR 1,852,214.03 ("**Employer's Claims**");
- J. The Engineer has initiated consultations with both Parties in respect of the Claims in December 2018, January 2019 and February 2019 ("**Consultation Meetings**");
- K. The Assembly of the Municipality of Herceg Novi has given its consent to the execution of this Addendum on 15 March 2019 within Decision on consent to the conclusion of Annex no. 7 to the Construction Contract (ref. no. 01-3/1-19) ("**Decision of the Municipality**"), and therefore, the Municipality is introduced to this Agreement, jointly with the Employer;
- L. During the Consultation Meetings, the Parties managed to reach an agreement in order to continue with the realization of the Project;
- M. The Employer and the Contractor now desire to settle the disputed Employer's Claims and Contractor's Claims by mutual acceptable compromise;

NOW, THEREFORE, the Parties hereby agree as follows:

Article 1

Subject matter of this Addendum is the settlement of mutual relations between the Parties, and in particular settlement of Employer's Claims and Contractor's Claims, aiming to the completion of the Works and implementation of the Project.

In accordance with acknowledgement stated in the Recital/Preamble, the Parties hereby agree to finally and fully settle their mutual claims without referring them to DAB or Arbitration in accordance with the Construction Contract.

Article 2

The Parties agree to settle Employer's and Contractor's Claims pursuant to the terms and conditions envisaged under this Addendum in a way that Employer shall:

- (I) Pay the in **net amount of EUR 2,300,000.00 (plus VAT, if any)** to the Contractor, as total and full sum for settlement of all Contractor's Claims (defined in para "H" of the Recital/Preamble)
- (II) Accept the deadline for payment is on **10 April 2019** - end of working day;
- (III) Accept that no partial payment of the sum stated in paragraph (I) above is allowed; and
- (IV) Accept to pay all administrative fees and bank costs in relation to the payments under this Article.

Article 3

Upon Employer's fulfillment of all obligations under Article 2 of this Addendum and the Contractor receives the payment, the Contractor accepts to do the following unconditionally and without delay:

- (I) To lift the Suspension within 3 calendar days after receipt of payment of the sum agreed under Article 2 (I);
- (II) Resume with the site activities and finalize the Works within 60 calendar days, calculating from the receipt of payment of the sum agreed under Article 2 (I);
- (III) To submit revised Work Programme to the Employer 7 calendar days prior to the deadline date for the payment clearly presenting logical sequence to reach new deadline for Completion of Works as defined under paragraph (II) of this Article; and
- (IV) Pay Notarization fees.

Article 4

With the execution of this Addendum, subject to fulfillment of obligations set forth herein, the Employer waives all standing claims, requests, demands or proceedings towards the Contractor arising out of or in connection with the Construction Contract and/or other grounds, and in particular Employer's Claims, which existed (notified or not) **up to the date of execution of this Addendum.**

Article 5

With the execution of this Addendum, subject to fulfillment of obligations set forth herein, the Contractor waives all standing claims, requests, demands or proceedings towards the Employer arising

out of or in connection with the Construction Contract and/or other grounds, and in particular all Contractor's Claims, which existed (notified or not) **up to the date of execution of this Addendum.**

Article 6

The Contractor shall, indemnify and hold the Employer harmless in case of any claims, lawsuits or complaints filed or initiated against the Employer by any subcontractor engaged by the Contractor (for executed Works, part thereof or otherwise related to the Project) that have been paid/settled by the Employer to the Contractor on the basis of this Addendum to the Construction Contract.

Article 7

This Addendum shall enter into force only when the following conditions have been fulfilled:

- a) it has been signed by all tree signatories as stated in the Preamble; and
- b) Addendum is being authenticated and certified by the Notary Public.

The Municipality unconditionally accepts to fully join in the obligation alongside the Employer to pay the debt specified in Article 2 and to pay this debt fully when debt becomes due, as well as accepts that Contractor might, in case of non-payment of debt or becomes overdue, initiate court proceeding in order to effect the payment of this Contractor's monetary claim before the competent court in Montenegro.

Article 8

In case that the Employer does not fulfill its obligations under Article 2 in full, the Contractor is free and has right to proceed further with Contractor's Claims, suspension, DAB, court or arbitration and Contractor is also entitled to terminate this Addendum with immediate effect by sending a written notice.

In order to avoid any doubts, in the event that the Employer does not fulfill, timely and fully, obligations stated in Article 2 thereof, this Addendum or its termination, does not affect and prejudice any Contractor's or Employer's rights and entitlements existed prior to entering into this Addendum, as set forth under the Construction Contract.

Article 9

In the event that the Contractor does not fulfill, timely and fully, obligations stated in Article 3 thereof the Employer is free to exercise its rights existing under the Construction Contract. This Addendum shall not affect and prejudice any Employer's rights and entitlements existed prior to entering into this Addendum, as set forth under the Construction Contract, except for the Employers Claim defined under "I" in Recitals and paying-back the amount stated in Article 2 (I) in this Addendum.

Article 10

This Addendum shall be deemed to form, read and construe an integral part of the Construction Contract.

The Parties agree that the terms and conditions set out in this Addendum shall supplement and be read in conjunction with the provisions of the Construction Contract. Should there be any conflict and/or

discrepancy between this Addendum and any other documents forming part of the Construction Contract, including previous Addendums, then this Addendum shall prevail.

Article 11

This Addendum will be governed by the Laws of Montenegro and Notarized duly.

Parties to the Addendum agree to settle all disputes, arising out of this Addendum and/or relating to the violation of mutual rights and obligations, termination or nullity, amicably through their authorized representatives.

In case that the dispute cannot be settled amicably, the dispute shall be finally settled in accordance with the dispute resolution provisions set forth in the Construction Contract.

Article 12

The content of this Addendum shall be considered as separate terms and conditions in relation to the Construction Contract.

All previous negotiations, discussions and outcomes between the Parties relating to the subject matter hereof not included in this Addendum are hereby cancelled and declared to be of no effect.

Any amendment to or modification of this Agreement shall only be valid if made in form of a written addendum signed by the authorized representatives of both Parties.

All other provisions of the Construction Contract, not falling within the scope of, or amended by this Addendum, shall remain unchanged and in full force and effect.

In this Addendum all words, expressions, and Defined terms shall have the same meanings as respectively assigned to them in the Construction Contract referred to.

Article 13

This Addendum is made in Montenegrin and English language.

In the event of any inconsistency between the English and the Montenegrin version, the English version shall prevail.

This Addendum is made in 3 (tree) identical copies, 1 (one) of which for each Signatories.

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for **Društvo za izgradnju vodovodne i kanalizacione infrastrukture u Opštini Herceg Novi d.o.o:**

Jelena Đaković

Acting Executive Director

for **Celtikcioglu Cons. Ind. & Trade Ltd. Sti. Turkey:**

Murat Dag

Director

Municipality Herceg Novi agrees, in capacity of Employer's founder, with above content of the Addendum:

Stevan Katić

Mayor of the Municipality Herceg Novi