

DRUŠTVO SA OGRANIČENOM ODGOVORNOŠĆU
"VODOVOD I KANALIZACIJA"

Broj

2487/1

Podgorica, 29.09.2017 god.

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MINISTARSTVO ODRŽIVOG RAZVOJA I TURIZMA

broj

10A-437/11

Podgorica,

22.09

2017 god.

Financing and Project Agreement

dated 22.9.2017

between

KfW, Frankfurt am Main

("KfW")

and

Montenegro

represented by the Ministry of Sustainable Development and Tourism

("Recipient")

and

Vodovod i kanalizacija d.o.o. (ViK) Podgorica

("Project-Executing Agency")

for

EUR 8,800,905.45

- Construction of Wastewater Treatment Plant in Podgorica -

KfW Project ID: 39569

The project will be co-financed by loans to be granted by KfW under two loan agreements ("Loan Agreements") in connection with a separate agreement ("Separate Agreement"), which are subject to the approval by the German Government and KfW.

On the basis of the General Conditions of the European Western Balkans Joint Fund ("EWBJF"), dated 7 November 2006, as amended from time to time, the approval of the Grant Application Form WB-IG02-MNE-ENV-01 by the Steering Committee of the Western Balkans Investment Framework ("WBIF") on 15 June 2017 and the WBIF Grant Award Notification dated 28 July 2017 (together referred to as the "WBIF Documentation"), the Recipient, the Project-Executing Agency and KfW hereby enter into the following Financing and Project Agreement:

Article 1

Amount and Purpose of the Financial Contribution

1.1 KfW shall extend to the Recipient a financial contribution not exceeding

EUR 8,800,905.45

plus any interest effectively accrued on the grant account kept by KfW, the total of which constitutes the "Financial Contribution".

This Financial Contribution shall not be repayable unless otherwise stipulated in Article 4.2.

1.2 The Recipient shall channel the Financial Contribution in full to the Project-Executing Agency in accordance with the conditions set forth in Article 2. The Project-Executing Agency shall use the Financial Contribution exclusively for the project "Construction of Wastewater Treatment Plant in Podgorica" ("Project"). The Project-Executing Agency and KfW shall determine the details and the scope of the Project to be financed from the Financial Contribution by a separate agreement.

1.3 Taxes and other public charges to be borne by the Recipient or the Project-Executing Agency and import duties shall not be financed from the Financial Contribution.

Article 2

Channelling of the Financial Contribution to the Project-Executing Agency

2.1 The Recipient shall channel the Financial Contribution to the Project-Executing Agency as a non-repayable grant under a separate financing agreement.

2.2 Prior to the first disbursement from the Financial Contribution, the Recipient shall furnish to KfW a certified translation of the agreement referred to in Article 2.1.

- 2.3 The channelling of the Financial Contribution shall not constitute any liability of the Project-Executing Agency to KfW for payment obligations under this Agreement.

Article 3

Disbursement

- 3.1 KfW shall disburse the Financial Contribution in accordance with the progress of the Project and upon request of the Project-Executing Agency. By a separate agreement, the Project-Executing Agency and KfW shall determine the disbursement procedure, in particular the evidence proving that the disbursed funds are used for the stipulated purpose.
- 3.2 Subject to Article 4, KfW shall only be obliged to make disbursements under this Agreement if and to the extent that (i) KfW has received the corresponding funds under the WBIF Documentation, (ii) KfW and the Project-Executing Agency have concluded the separate agreement, and (iii) the condition set out under Article 2.2 has been fulfilled.
- 3.3 KfW shall have the right to refuse to make disbursements after 30 December 2023.

Article 4

Suspension of Disbursements and Repayment

- 4.1 KfW may not suspend disbursements unless
- a) the Recipient fails to perform its obligations to KfW to make payments when due,
 - b) obligations under this Agreement or under separate agreements pertinent to this Agreement have been violated,
 - c) obligations under the Loan Agreements or under the Separate Agreement pertinent to the Loan Agreements have been violated,
 - d) the Project-Executing Agency is unable to prove that the Financial Contribution has been used for the stipulated purpose,
 - e) the fulfilment of KfW's obligations under this Agreement violates applicable law,
 - f) disbursements are fully or partly suspended based on the WBIF Documentation,
 - g) KfW is required to request the repayment of the Financial Contribution

- h) the WBIF Documentation ceases to be valid, effective, enforceable or is terminated, or
- i) extraordinary circumstances arise that preclude or seriously jeopardize the implementation, the operation, or the purpose of the Project.

4.2 If any of the situations specified in Article 4.1 b), c), d), e) or g) has occurred and has not been eliminated within a period determined by KfW, which shall, however, be at least 30 days, KfW may,

- a) in the case specified in Article 4.1 b), c) or e), demand the immediate repayment of all disbursed amounts;
- b) in the case specified in Article 4.1 d) or g), demand the immediate repayment of such amounts as the Project- Executing Agency is unable to prove to have been used for the stipulated purpose.

Article 5

Costs and Public Charges

The Recipient shall bear all taxes and other public charges accruing outside the Federal Republic of Germany in connection with the conclusion and execution of this Agreement, as well as all transfer and conversion costs accruing in connection with the disbursement of the Financial Contribution.

Article 6

Contractual Statements and Power of representation

6.1 The Minister of Sustainable Development and Tourism and such persons as designated by him or her to KfW and authorised by specimen signatures authenticated by him or her shall represent the Recipient in the execution of this Agreement. The Director of Vodovod i kanalizacija d.o.o. (ViK) Podgorica and such persons as designated by him or her to KfW and authorised by specimen signatures authenticated by him or her shall represent the Project-Executing Agency in the execution of this Agreement. The powers of representation shall not expire until their express revocation by the representative authorised at the time has been received by KfW.

6.2 Amendments or addenda to this Agreement and any notices and statements delivered by the contracting parties under this Agreement shall be in writing. Any such notice or statement shall have been received once it has arrived at the following address of the corresponding contracting party or at such other address of the corresponding contracting party as notified to the other contracting party:

For KfW: KfW
Postfach 11 11 41
60046 Frankfurt am Main
Federal Republic of Germany
Fax: +49 69 7431-2944

For the Recipient: Ministry of Sustainable Development and
Tourism
Proleterske Brigade br.19
81000 Podgorica
Montenegro

For the Project-
Executing Agency: Vodovod I kanalizacija d.o.o. (ViK) Podgorica
Ulica Zetskih vladara bb
81000 Podgorica
Montenegro

- 6.3 Amendments of this Agreement that affect only the legal relations between KfW and the Recipient shall not require the consent of the Project-Executing Agency.

Article 7

The Project

7.1 The Project-Executing Agency

- a) shall prepare, implement, operate and maintain the Project in accordance with sound financial and engineering practices, in compliance with environmental and social standards and substantially in accordance with the conception agreed upon between the Recipient, the Project-Executing Agency and KfW for the Project;
- b) shall assign the preparation and supervision of construction of the Project to independent, qualified consulting engineers and the implementation of the Project to qualified firms;
- c) shall award the contracts for the goods and services to be financed from the Financial Contribution upon prior international competitive bidding or a different tendering procedure according to KfW Procurement Guidelines (Annex to the Separate Agreement);
- d) shall maintain, or cause to be maintained, books and records unequivocally showing all costs of goods and services required for the Project and clearly identifying the goods and services financed from the

- e) shall enable the representatives of KfW at any time to inspect said books and records and any and all other documentation relevant to the implementation of the Project, and to visit the Project and all installations related thereto and;
- f) shall furnish to KfW any and all such information and records on the Project and its further progress as KfW may request.

7.2 The Project-Executing Agency and KfW shall determine the details pertinent to Article 7.1 by a separate agreement.

7.3 The Recipient and the Project-Executing Agency

- a) shall ensure the full financing of the Project and, upon request, furnish to KfW evidence proving that the costs not paid from this Financial Contribution are covered;
- b) shall of their own accord promptly inform KfW of any and all circumstances precluding, delaying or seriously jeopardizing the implementation, the operation, or the purpose of the Project;
- c) shall take effective and proportionate measures to mitigate the risk of occurrence of Prohibited Practices or any other illegal activity in connection with the utilisation of the Financial Contribution and/or implementation of the Project. All cases of Prohibited Practices related to the Financial Contribution and/or implementation of the Project as well as measures related thereto taken by the Recipient and/or Project-Executing Agency must be promptly reported to KfW. The Recipient and/or Project-Executing Agency shall take actions to terminate contracts with contractors, with respect to which it has been determined that such contractors have been involved in such Prohibited Practices in connection with the implementation of the Project and take appropriate measures to recover the Financial Contribution or the portion thereof which has been misused.

"Prohibited Practices": means one or more of the following:

- (i) a coercive practice which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (ii) a collusive practice which means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iii) a corrupt practice which means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (iv) a fraudulent practice which means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or

attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; and

- (v) a theft which means the misappropriation of property belonging to another party.

- d) shall enable the European Commission and the European Court of Auditors, or any authorised representatives to conduct desk reviews and on-the-spot checks on the use made of the Financial Contribution (including procedures for the award of contracts financed from the Financial Contribution) on the basis of supporting accounting documents and any other documents related to the financing of the Project;

- e) shall enable the European Anti-Fraud Office (hereinafter "OLAF") to carry out investigations, including on-the-spot checks, in accordance with the provisions laid down by EU law for the protection of the financial interests of the EU against fraud, corruption and any other illegal activity and, where applicable, any administrative cooperation arrangements concluded between OLAF and the KfW's anti-fraud bodies;

- f) each undertake to provide officials of the European Commission, OLAF and the European Court of Auditors and their authorised agents, upon request, information and access to any documents and computerised data concerning the technical and financial management of operations financed under this Agreement, as well as grant them access to sites and premises at which such operations are carried out. The documents and computerised data may include information which the Recipient or the Project-Executing Agency considers confidential in accordance with its own established rules and regulations or as governed by contractual agreement. Such information once provided to the European Commission, OLAF, the European Court of Auditors, or any other authorised representatives, shall be treated in accordance with EU confidentiality rules and legislation. Documents must be accessible and filed in a manner permitting checks, the Recipient and the Project-Executing Agency being bound to inform the European Commission, OLAF or the European Court of Auditors of the exact location at which they are kept. Where appropriate, the parties may agree to send copies of such documents for a desk review;

- g) shall ensure that all publications or other promotional information related to the Project includes a reference to the fact that the Project was funded/supported by the European Western Balkans Joint Fund.

7.4 The Recipient shall assist the Project-Executing Agency in conformity with sound engineering and financial practices in the implementation of the Project and in the performance of the Project-Executing Agency's obligations under this Agreement and, in particular, grant the Project-Executing Agency all permissions necessary for the implementation of the Project.

Article 8

Publication and transfer of project-related information

8.1 To comply with internationally accepted principles of utmost transparency and efficiency in the development cooperation, KfW publishes selected information (including evaluation reports) about the Project and how it is financed during pre-contractual negotiations, while the Project-related agreement(s) is (are) being implemented and in the post-contractual stage (hereinafter referred to as the "**Entire Period**").

The information is published regularly on KfW's website for its business area "KfW Development Bank" (<http://transparenz.kfw-entwicklungsbank.de/>).

The publication of information (either by KfW or third parties in accordance with Article 8.3 below) about the Project and how it is financed does not include any contractual documentation or any sensitive financial or business-related detailed information about the parties involved in the Project or its financing, such as

- a) information about internal financial data;
- b) business strategies;
- c) internal corporate guidelines and reports;
- d) personal data of natural persons;
- e) KfW's internal rating of the parties' financial position.

8.2 KfW shares selected information about the Project and how it is financed during the Entire Period with the entities mentioned below, particularly to ensure transparency and efficiency:

- a) subsidiaries of KfW;
- b) the Federal Republic of Germany and its competent bodies, authorities, institutions, agencies or entities;
- c) other implementing organisations involved in German bilateral development cooperation, particularly the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH;

- d) international organisations involved in collecting statistical data and their members, especially the Organisation for Economic Cooperation and Development (OECD) and its members;
- e) the parties to the General Conditions of the European Western Balkans Joint Fund;
- f) the institutions administering the EWBGF;
- g) the European Union and its institutions.

3.3 Furthermore, the Federal Republic of Germany has requested KfW to share selected information about the Project and how it is financed throughout the Entire Period with the following entities, which publish the sections relevant to the purpose:

- a) Federal Republic of Germany for the purposes of the International Aid Transparency Initiative
(http://www.bmz.de/de/was_wir_machen/wege/transparenz-fuer-mehr-Wirksamkeit/index.html);
- b) Germany Trade & Invest (GTAI) for the purposes of market information
(<http://www.gtai.de/GTAI/Navigation/DE/trade.FOO>);
- c) OECD for the purpose of reporting financial flows in the framework of development cooperation (<http://stats.oecd.org/>);
- d) German Institute for Development Evaluation (DEval) for the purposes of evaluating the overall German development cooperation to ensure transparency and efficiency (<http://www.deval.org/de/>).
- e) the parties to the General Conditions of the European Western Balkans Joint Fund;
- f) the institutions administering the EWBGF;
- g) the European Union and its institutions.

4 KfW further reserves the right to transfer (including for the purposes of publication) information about the Project and how it is financed during the Entire Period to other third parties so as to safeguard legitimate interests.

The information is not transferred by KfW to other third parties if the legitimate interests of the Recipient and/or the Project Executing Agency in the information not being transferred outweigh KfW's interests in it being transferred. The legitimate interests of the Recipient and/or the Project-Executing Agency particularly include the confidentiality of the sensitive information mentioned in Article 8.1, which is excluded from publication.

Furthermore, KfW is entitled to transfer information to third parties if this is necessary due to statutory or regulatory requirements or to assert or defend claims or other legal rights in court or administrative proceedings.

Article 9

Miscellaneous Provisions

9.1 The Recipient and the Project-Executing Agency shall ensure that the persons charged with the preparation and implementation of the Project, the award of any contract for the supplies and services to be financed and with requesting disbursements of Financial Contribution amounts do not demand, assume, render, grant, promise or obtain a promise of unlawful payments or other advantages in connection with these tasks.

9.2 The Project-Executing Agency shall promptly make available to KfW on demand all information and documents which KfW requires to fulfil its obligations to prevent money laundering and terrorism financing as well as for the continuous monitoring of the business relationship with the Project-Executing Agency, which is necessary for this purpose.

In entering into and implementing this Agreement the Project-Executing Agency acts in its own name and for its own account. With regard to German law or the law of the country of incorporation of the Project-Executing Agency

- a) the Project-Executing Agency's own resources or the amounts invested in the financing of the Project will not be of illicit origins and, in particular, this list being non-exhaustive, will not be linked to drug trafficking, corruption, organised criminal activity or terrorism;
- b) the shareholder capital of the Project-Executing Agency will not at any time be of illicit origins and, in particular, this list being non-exhaustive, will not at any time be related to drug trafficking, corruption, organised crime or terrorism;
- c) the Project-Executing Agency will not be engaged in the acquisition, possession or use of property that is of illicit origins and, in particular, this list being non-exhaustive, will not at any time be related to drug trafficking, corruption, organised crime or terrorism; and
- d) the Project-Executing Agency will not be engaged in financing terrorism.

9.3 The Project-Executing Agency represents that it does not maintain any business relationship or has not engaged in any other activity

- a) with or in favour of persons, organizations or entities which are listed on a sanctions list issued by the United Nations Security Council, the European Union or the Federal Republic of Germany ("Sanctions Lists"), or
- b) which would constitute a breach of embargoes regulating foreign trade or of so-called financial sanctions issued by the aforementioned institutions (together "Sanctions").

The Project-Executing Agency will not enter into or continue any business relationship with persons, organizations or entities listed on a Sanctions List and will not engage in any other activity that would constitute a breach of Sanctions.

The Project-Executing Agency will inform KfW, promptly and of its own accord, of the occurrence of any event which results in any of the Project-Executing Agency, any member of its management bodies or other governing bodies or any of its shareholders, being listed on a Sanctions List.

- 4 The Recipient shall not enter into any transactions or engage in any other activities in relation to the Project that would constitute a breach of Sanctions.
- 5 If any of the provisions of this Agreement is invalid, all other provisions shall remain unaffected thereby. Any gap resulting therefrom shall be filled by a provision consistent with the purpose of this Agreement.
- 6 The Recipient and the Project-Executing Agency may not assign or transfer, pledge or mortgage any claims from this Agreement.
- 7 This Agreement shall be governed by the law of the Federal Republic of Germany. The place of performance shall be Frankfurt am Main.
- 8 The legal relations established by this Agreement between KfW, the Recipient and the Project-Executing Agency shall terminate six years after the final disbursement.
- 9 This Agreement shall not enter into force and effect until the Loan Agreements and the Separate Agreements have entered into force and effect.

Done in three originals in the English language.

Frankfurt am Main,
this 22 day of September, 2017

Podgorica,
this 22 day of September, 2017

SW

[Handwritten signatures and Cyrillic text]
DR KIRIL MILIČEVIĆ
D. V. S. I. A. O. H. S. P.

Republic of Montenegro,
represented by the Ministry of
Sustainable Development and Tourism



Vodovod i kanalizacija d.o.o. (ViK)
Podgorica

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