



This project is funded by the  
European Union

 Austrian  
Development  
Agency

## Tender procedure

„Improved public infrastructure and public utilities  
performance in selected local communities – Water  
Treatment Plant Edinet”

“Construction of a water treatment plant Edinet”

**CONTRACT AGREEMENT**

This Agreement made on **20<sup>th</sup> October 2023**

BETWEEN

- (I) **THE AUSTRIAN DEVELOPMENT AGENCY**, a company with limited liability, registered in the Companies's Register at the Commercial Court of Vienna under FN 243529 g, having its registered office in Vienna and its business address at Zelinkagasse 2, 1010 Vienna, Austria, legally represented by Mr. Friedrich Stift, as the Managing Director (the "**Agency**"); and
- (II) **THE MUNICIPALITY OF EDINET**, Moldova, represented by the Vice-Mayor, Ms. Rodelia Vasilcov.
- (III) **THE MUNICIPAL ENTERPRISE "APA CANAL Edinet"**, a municipal enterprise registered in the Register of Legal Entities maintained by the Public Services Agency of the Republic of Moldova, IDNO – fiscal code 1002604000720, having its registered office at 30 O. Cerempei Street, MD-4601, town of Edinet, Republic of Moldova, represented by the director, Mr. Vitalie Sorocan (the "**APA CANAL**");  
both the Municipality and Apa Canal herein after referred to as to the "**Employer**", and
- (IV) Joint Venture Darnic-Gaz S.A. – AM Sisteme S.R.L. – ApCan Project S.R.L., whereas Darnic-Gaz S.A, a company duly incorporated and existing under the laws of the Moldova, state registration number 1141191, having its registered office at strada Stefan cel Mare 1/a or. Straseni, and AM Sisteme SRL, a company duly incorporated and existing under the laws of the Moldova, state registration number 114144, having its registered office at strada Stefan cel Mare 1a, or Straseni, and SC "ApCan Project" SRL, a company duly incorporated and existing under the laws of the Moldova, state registration number 114380, having its registered office at strada Ion Creanga 58, mun Chisinau, legally represented by Andrei Mereacre as the managing director of Darnic-Gaz S.A.(the "**Contractor**");

individually referred to as the "**Party**" and collectively as the "**Parties**" in the present Contract.

WHEREAS:

- (A) On 14 December 2021 ADA signed a Multi-Partner Contribution Agreement (**MCPA**) with the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and the European Union, undertaking the Action "EU4Moldova - Local communities" (hereinafter: "**the Action**") and the implementation of its component 2 and component 3/VET.
- (B) One of the projects implemented under component 2 is the construction of a water treatment plant in Edinet (the "**Project**").
- (C) The MPCA foresees inter alia the financial contribution of the EU and Agency for the Project, where the Agency committed to enter into a procurement contract of the works necessary for the Project implementation and to select the eligible tender according to the Agency's rules and procedures;
- (D) On April 5<sup>th</sup>, 2023, the Agency entered into a Cooperation Agreement with the Municipality of Edinet and the Municipal Enterprise Apa Canal Edinet to define their financial contributions, responsibilities and roles for the Project and works procurement contract successful implementation;
- (E) The Agency invited competitive proposals from eligible entities for implementing the Works as defined herein and in response thereto the Agency received proposals from several entities, including the Contractor for implementing the Project;


- (F) After evaluating the competitive proposals, the Agency accepted the proposal submitted by the Contractor and issued the Letter of Acceptance dated October 13<sup>th</sup>, 2023 to the Contractor, a copy whereof is hereto attached hereto;

NOW THEREFORE, the Parties have entered into this Contract on the terms and conditions as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. In consideration of the payment to be made to the Contractor as provided in the Contract, the Contractor hereby covenants with the Employer and the Agency to execute and complete the Works and remedy any defects therein in conformity in all respect with the provisions of the Contract.
3. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
4. The Agency will finance the Contract Price under this Contract for a maximum amount of 5,829,072.40 EUR (excl. VAT).
5. The documents named in Part 1.5 of the Particular Conditions of Contract shall be deemed to form and be read and construed as part of this Agreement.


IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed the day and year first before written in accordance with their respective laws.

SIGNED by

  
Ambassador Friedrich Stift  
Managing Director

for and on behalf of the **Agency**  
in the presence of


SIGNED by

  
Rodelia Vasilcov  
Vice-Mayor of Edinet  
municipality  
for and on behalf of the  
**Employer** (Municipality of  
Edinet) in the presence of

SIGNED by

  
Andrei Mereacre  
for and on behalf of the  
**Contractor** in the presence of


Witness:

  
Name: BIRGIT BICHLER  
Address: Zelinkap 2, 1060 Wien  
Date: 30.10.2023

Witness:

  
Name: ANA PASCARI  
Address: STEFAN EDINET, PRIMAR 72/1  
Date: 20.10.2023

Witness:

  
Name: Artur Profiro  
Address: Stefan cel Mare 23/1  
Date: 20.10.2023




SIGNED by

  
Vitalie SOROCAN



for and on behalf of the  
**Employer** (Apa Canal Edinet) in  
the presence of



Witness:

Name:



Address:



Date:



## Appendix 1 - Terms and Procedures of Payment

In accordance with the provisions of:

- GCC Sub-Clause 14.3 [Application for Interim Payment Certificates], 14.4 [Schedule of Payments], the Contractor shall apply for payment;
- GCC Sub-Clause 14.6 [Issue of Interim Payment Certificates], the Engineer shall certify for payment; and
- GCC Sub-Clause 14.7 [Payment]; and
- The Employer shall pay the Contractor as per the following instalments, based on the Contract Price breakdown given, and the currencies stated, in the Price Schedules.

The instalments provided below for Schedules No.1 to No.4 serve the purpose of providing values according to sub-paragraph (a) of GCC Sub-Clause 14.3.

For the avoidance of doubt, other items of GCC Sub-Clause 14.3 shall also apply and be used by the Contractor when preparing his Statements, and by the Engineer when preparing his Payment Certificates.

For example, Retention Money under sub-paragraph (c) shall accordingly apply to these instalments.

### (A) PAYMENT INSTALMENTS

#### Price Schedule No. 1 - Design Services

In respect of design services, the following payments shall be made:

- Ninety percent (90%) of the total or pro rata design services amount upon consent and/or approval of design by the Engineer in accordance with the provisions of Sub-Clause 5.2 [Contractor's Documents];

- Ten percent (10%) of the total or pro rata design services amount upon issue of the Taking-Over Certificate.

**Price Schedule No. 2 – Works, Materials and Mandatory Spare Parts supplied from abroad**

In respect of Works and mandatory spare parts supplied from abroad, the following payments shall be made:

- Fifty percent (50%) of the total or pro rata DDP amount upon delivery to the Site;
- Forty percent (40%) of the total or pro rata DDP amount upon issue of the Mechanical Completion Certificate;
- Ten percent (10%) of the total or pro rata DDP amount upon issue of the Taking-Over Certificate.

**Price Schedule No. 3 – Works, Materials and Mandatory Spare Parts supplied from within the Employer's country**

In respect of Works and mandatory spare parts supplied from within the Employer's country, the following payments shall be made:

- Fifty percent (50%) of the total or pro rata DAP amount upon delivery to the Site;
- Forty percent (40%) of the total or pro rata DAP amount upon issue of the Mechanical Completion Certificate;
- Ten percent (10%) of the total or pro rata DAP amount upon issue of the Taking-Over Certificate.

**Price Schedule No. 4 – Construction Works and Installation Services**

In respect of civil works, installation and other services, the following payments shall be made:

- Ninety percent (90%) of the measured value of work performed by the Contractor as certified by the Engineer in accordance with the provisions of GCC Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] during the execution of the Works;
- Ten percent (10%) of the measured value of work performed by the Contractor as certified by the Engineer in accordance with the provisions of GCC Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] upon issue of the Taking-Over Certificate.

**(B) PAYMENT PROCEDURES**

For the interim valuation of instalments following procedures shall be applied:

**Price Schedule No. 1 - Design Services**

The amounts of instalments shall be based on the Contractor's program of all drawings and documents (document submittal list) to be submitted for approval within 14 days after Commencement Date (ref. to Project Execution Specification). The Contractor is requested to allocate a value to each of the document submittals mentioned therein.

The document submittal list shall include the anticipated final set of documents which shall have been priced using all-in rates such that the total amount equals the estimated final price provided in Price Schedule No. 1.

The document submittal list including the value allocation shall be subject to the approval of the Engineer. The included cost breakdown may at any time be withdrawn, and shall be without prejudice to the final amount due under the Contract. The document submittal list shall be revised and reissued if it appears at any time before Taking-Over that it will not fully represent the design services when complete.

**Price Schedule No. 2, 3 and 4**

The amounts of instalments shall be based on the Contractor's bill of principle quantities of Permanent Works (the BPQPW) to be submitted within 14 days after the Commencement Date (ref. to Project Execution Specification). The BPQPW shall include the anticipated final quantities of the principle items of Permanent Works, which shall have been priced using all-in rates such that the total amount equals the

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in selected local communities – Water Treatment Plant Edinet**

estimated final Contract Price of the Price Schedules No. 2, 3 and 4. The BPQPW shall not contain priced items for Temporary Works or items covered by other Price Schedules (e.g. design services as per Price Schedule no. 1). The value of each element of this work, and of any other work elements not described in the BPQPW and not covered by the other Price Schedules (e.g. design services as per Price Schedule no. 1 and ESHS measures as per Price Schedule No. 5), shall each be included in the rates for Permanent Works which are to be constructed after the element is carried out.

The BPQPW shall be subject to the approval of the Engineer, which may at any time be withdrawn, and shall be without prejudice to the final amount due under the Contract. The BPQPW shall be revised and reissued if it appears at any time before Taking-Over that it will not fully represent the Permanent Works when complete.

During the Time for Completion, the contract value for the purpose of sub-paragraph (a) of Sub-Clause 14.3 GCC shall not exceed the amount calculated from the current BPQPW, based on the quantities of Permanent Works which have been constructed in accordance with the Contract. Each Statement shall:

- (a) Be in the same form as that of the current BPQPW;
- (b) Include a signed statement that the current BPQPW (including anticipated final quantities) and the as-constructed quantities are all correct, and
- (c) Be accompanied by a certificate signed by the Contractor's Representative, certifying that the part of the Works constructed to date complies with the Contract.

**(C) COST INDEXATION**

*Not applicable*

**Appendix 2 - Schedule of Functional Guarantees**

***[Insert Schedule of Functional Guarantees as completed by the Bidder as amended within the letter of award (Part C6 – Functional Guarantee Forms)]***

1) Introduction and scope of application of performance damages

The performance damages are meant to cover the likely losses of the Employer, over the life span of the facility.

Accordingly, if the Tests after Completion reveal that, for example, the consumption of energy or of chemicals is still higher than the Contractor's Functional Guarantees in the Schedule of Functional Guarantees, this means that the Employer will suffer from the consequences of such breach of Contract once the Employer takes over the facility from the Contractor and until the end of the life span of the facility.

The performance damages shall be set to remedy such breach, by providing adequate compensation to the Employer.

Performance damages shall apply and shall be calculated as set out in Part C, Employers Requirements (ref. to Subsection Part C6 - Functional Guarantee Specification).

**Demand Guarantee**

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** \_\_\_\_\_ *[insert name and address of Employer]*

**Date:** \_\_\_\_\_ *[insert date of issue]*

**PERFORMANCE GUARANTEE No.:** \_\_\_\_\_ *[insert guarantee reference number]*

**Guarantor:** \_\_\_\_\_

*[insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "**the Applicant**") has entered into Contract No. \_\_\_\_\_ *[insert reference number of the Contract]* dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ *[insert name of contract and brief description of Works]* (hereinafter called "**the Contract**").

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ *[insert the amount in figures and letters]*<sup>1</sup> for the Component A of the Contract, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the \_\_\_\_\_ day of \_\_\_\_\_ 2\_\_\_\_<sup>2</sup>, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_  
*[Signature(s)]*

***[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]***

<sup>1</sup> The Guarantor shall insert an amount representing the percentage stated in the Contract Data of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup> Insert the date twenty-eight days after the expected date of issue of the Performance Certificate as described in GCC Sub-Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Contractor would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."



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**Advance Payment Security**

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**Demand Guarantee**

[Guarantor letterhead or SWIFT identifier code]

**Beneficiary:** \_\_\_\_\_ [insert name and address of Employer]

**Date:** \_\_\_\_\_ [insert date of issue]

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_ [insert guarantee reference number]

**Guarantor:** \_\_\_\_\_

[insert name and address of place of issue, unless indicated in the letterhead]

We have been informed that \_\_\_\_\_ [insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture] (hereinafter called "**the Applicant**") has entered into Contract No. \_\_\_\_\_ [insert reference number of the Contract] dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ [insert name of contract and brief description of Works] (hereinafter called "**the Contract**").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ [indicate the amount in figures and letters] is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ [insert the amount in figures and letters]<sup>3</sup>, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant:

- a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
- b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number \_\_\_\_\_ at \_\_\_\_\_ [insert name and address of Applicant's bank].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or Payment Certificates which shall be presented to us.

This guarantee shall expire, at the latest, upon our receipt of a copy of the Interim Payment Certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the \_\_\_\_\_ day of \_\_\_\_\_ 2\_\_\_\_<sup>4</sup>, whichever is earlier.

<sup>3</sup> The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

<sup>4</sup> Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the Time for Completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of

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Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

\_\_\_\_\_  
[signature(s)]

***[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]***

\_\_\_\_\_  
this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."