



REPUBLIC OF GHANA

ADDENDUM TO
ENGINEERING, PROCUREMENT CONSTRUCTION
CONTRACT FOR
Construction/Rehabilitation of Selected Roads and
Interchanges in Ghana - Phase 1 Lot 1 (Accra Inner City
Roads)
SUPPORT UNDER THE MASTER PROJECT SUPPORT
AGREEMENT

Between

Ministry of Roads and Highways

And

Sinohydro Corporation Limited

**ADDENDUM
TO EPC CONTRACT**

This Addendum to EPC Contract in respect of Construction/Rehabilitation of Selected Roads and Interchanges in Ghana - Phase 1 Lot 1 (Accra Inner City Roads) is made on *1st September 2017* by and between:

1. The Government of the Republic of Ghana (the "GoG"), acting through and represented by the **Ministry of Roads and Highways** (hereinafter referred to as "**the Employer**"), with its legal address at P.O. Box M57, Ministries, Accra acting by its Minister, of the one part,

AND

2. Sinohydro Corporation Limited, a corporation duly registered and existing under the laws of the P. R. China, with its registered office at Building 23, No. 17, Xicui Road, HaiDian District, Beijing, Postcode: 100044, China ("**the Contractor**"), duly represented by its General Manager Mr. Song Dongsheng, of the other part.

(each a "**Party**" and collectively the "**Parties**").

PREAMBLE

A. The Contractor and the Employer have entered into a Contract Agreement and Conditions in respect of Construction/Rehabilitation of Selected Roads and Interchanges in Ghana - Phase 1 Lot 1 (Accra Inner City Roads), dated 2018, (as will be amended by this Addendum, herein referred to as the "**EPC Contract**"), whereby the Contractor undertakes to design, execute and complete the works more particularly defined in the EPC Contract and remedy any defects therein, inclusive of any Early Works (as defined in the Deferred Payment Agreement) under the Project carried out prior to Financial Close (as defined in the Deferred Payment Agreement), (collectively the "**Works**") and the Employer undertakes to pay the Revised EPC Contract Price to the Contractor in consideration for the design, execution, commissioning and completion of the Works and the remedying of any defects therein in accordance with the terms and conditions of the EPC Contract.;

- B. The Contractor and the Employer then will enter into a Deferred Payment Agreement relating to EPC Contract Agreement to set out the terms and conditions of the Contractor extending financing to the Project by way of deferral of payments by the Employer under the EPC Contract.
- C. The terms and conditions of the Deferred Payment Agreement has necessitated a revision of some provisions of the EPC Contract;

NOW THEREFORE, in consideration of the respective promises and mutual agreements made by the Parties hereto hereinafter set forth and upon the following terms and conditions, it is hereby agreed as follows:

1. Preamble

This Addendum is supplemental to the EPC Contract which shall remain valid to the extent that it is not amended by this Addendum.

2. Definitions and Interpretation

2.1 Definitions

Each of the capitalised terms used in this Addendum, unless otherwise defined herein, shall bear the same meaning as ascribed to it in the Deferred Payment Agreement and the General Conditions (between which the Deferred Payment Agreement shall prevail).

2.2 Interpretation

In this Addendum, unless otherwise stated, interpretation shall follow the same rules as set out in the EPC Contract.

3. Amendments to EPC Contract Provisions

3.1 Clause 2 of the Contract Agreement shall be amended and restated as follows:

"The documents forming the EPC Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in the following order:

- (a) This Addendum;
- (b) The original EPC Contract

3.2 Clause 4 of Contract Agreement shall be amended and restated as follows:

3.3 Clause 4 of Contract Agreement shall be amended and restated as follows:

"The revised EPC Contract Price is **Ninety-Eight Million, Three Hundred and Nineteen Thousand, Seven Hundred and Ninety-Two United States Dollars, Twelve Cents (US\$98,319,792.12)** (Inclusive of Deferred Payment Charges), (the "**Revised EPC Contract Price**") for completion of Works in accordance with the EPC Contract, which will, subject to the terms and conditions in the Deferred Payment Agreement, be deferred pursuant to the Repayment Schedule annexed to the Deferred Payment Agreement.

3.4 Clause 5 of Contract Agreement shall be amended and restated as follows:

"The Contract shall come into full force and effect on the date when all of the following conditions are fully satisfied:

- (a) Both Parties have signed the Contract;
- (b) Parliamentary Approval of the EPC Contract.
- (c) Approval by Public Procurement Authority for Single Source Sinohydro Corporation Limited for the implementation of the Project and.
- (d) Completion of a Value for Money Audit by the Ministry of Finance.

The Employer shall notify the Contractor in writing when all conditions precedent under Clause 5 have been satisfied."

3.5 Clause 7 of Contract Agreement shall be amended and restated as follows:

"If any of the following conditions subsequent have not be satisfied within 365 days commencing effectiveness of the Contract in accordance with Clause

5 herein, either Party may, by a written notice to the other Party with immediate effect, declare nullification and avoidance of this Contract:

- (a) execution and effectiveness of the ARFA by and between the Contractor and the Financier;
- (b) issuance by Sinasure of its Export Credit Insurance Policy; and effectiveness of Sinasure's insuring obligations thereunder; and

3.6 Changes to Definitions

3.4.1 Definition of "Foreign Currency" shall be amended and restated as follows: "Foreign Currency' means United States Dollar (US \$) under this Contract."

3.4.2 Definition of "Retention Guarantee"

"Retention Guarantee' shall mean the bank guarantee submitted by the Contractor to the Employer on issuing of the Taking-Over Certificate, for an amount equal to 3% of the Total Contract Price and valid up to the expiry of Defects Notification Period, for purpose and as the sole source of claims by the Employer for any default on the part of the Contractor in rectifying defects in the Works during the Defect Notification Period."

3.4.3 Definition of "Time for Completion" shall be amended and restated as follows:

"Time for Completion' means the time for completing the Works under Sub-Clause 8.2 [*Time for Completion*], which, under this Contract, is thirty (30) months as from the Commencement Date, subject to any extension under Sub-Clause 8.4 [*Extension of Time for Completion*]."

3.7 Sub-Clause 2.4 [*Employer's Financial Arrangements*] shall be deleted and substituted with following:

"The Employer shall at its own cost obtain all documents and do all such acts as needed to satisfy all conditions precedent to Financial Close and each subsequent disbursement by the Financier under the ARFA, as notified by the Contractor from time to time, which will include but are not limited to:

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- (a) obtaining the approval by the Parliament of the Republic of Ghana and the Public Procurement Authority for the EPC Contract and all Finance Documents;
- (b) paying the premium for the Export Credit Insurance Policy for the Project;
- (c) procuring the Ministry of Finance of Republic of Ghana, to issue on behalf of the Republic of Ghana, the Letter of Support, with its contents and form satisfactory to the Contractor, the Financier and Sinosure;
- (d) signing the IPCs and the Acknowledgment of Notice of Assignment within the timeframe set out in the Deferred Payment Agreement; and
- (e) adducing evidence per the Contractor's request to substantiate sufficient liquidity of itself, the GoG or other agency of the GoG acceptable to the Contractor, to discharge its repayment obligations hereunder, including the Revised EPC Contract Price, interest in respect of the deferral of payments in accordance with the Repayment Schedule, all the financing costs and Default Interest (if any)."

3.8 Paragraph 4 of Sub-Clause 2.5 [*Employer's Claims*] is amended as follows::

The amount may be included as a deduction in the Payment Certificate or the Contractor shall carry out additional Works to cover such amount of deduction.

3.9 The first and the second paragraph of Sub-Clause 4.2 [*Performance Security*] shall be deleted and replace with the following:

"The Contractor shall obtain (at his cost) a Performance Security from a Chinese bank in a form as annexed to the Particular Conditions for the proper performance of the Works in the amount of 6.5% of the Revised EPC Contract Price and provide the same to the Employer within 28 Days after the Financial Close as defined in the Deferred Payment Agreement."

3.10 The following paragraph shall be added after the end of Sub-Clause 5.1 [*General Design Obligations*]:

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"The Time for Completion shall be thirty (30) Calendar months from the Commencement Date. The Contractor may, upon the Employer's request, commence the Early Works as defined in the Deferred Payment Agreement, including but not limited to engineering of the Project prior to the Commencement Date. The Contractor may require from the Employer information and/or documents that it needs for carrying out the Early Work, and the Employer shall provide the Contractor with all such required information and/or documents in its possession. The Early Works shall form an integral part of the Works and be paid by the Employer with the Advance Payment."

3.11 Sub-Clause 7.7 [*Ownership of Plant and Materials*] shall be amended and restated as follows:

"Each item of Plant and Materials shall, to the extent consistent with the laws of the Country, become the property of the Employer upon the full and definite discharge of the Employer's payment obligations (whether at stated maturity or by prepayment) under the EPC Contract and the Deferred Payment Agreement with respect to the following:

- (a) the Revised EPC Contract Price;
- (b) all financing costs; and
- (c) the interest in respect of the deferred payments, including Default Interest (if any)."

3.12 Sub-clause 8.1 [*Commencement of Works*] of Particular Conditions shall be amended and restated as follows: "Deleted Sub-clause 8.1 and replace with the following:

"Commencement Date of the Works shall be the same date when the following conditions have been satisfied:

- (a) the EPC Contract has come into force and effect under Clause 5 of the Contract Agreement;
- (b) Financial Close as defined in the Deferred Payment Agreement has been achieved, indicated by delivery by the Financier of the Notice of Commencement of Disbursement Period;
- (c) the Contractor has received the Advance Payment from the Employer;

(d) all requisite approvals, permits and/or authorizations in Ghana have been obtained by the Parties for execution of this Contract and performance of their obligations hereunder.

(e) the Employer has granted to the Contractor the right of access to the Site under Sub-clause 2.1.”

3.13 The first paragraph of Sub-clause 8.8 [*Suspension of Work*] shall be amended and restated as follows:

“The Employer may instruct the Contractor to suspend progress of part or all of the Works by at least [14] days’ written notice accompanied by explanation of reasons. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss and damage.”

3.14 Sub-clause 8.11 [*Prolonged Suspension*] shall be amended as follows:

“84 days” is amended to “28 days”

Add the following at the end of the Sub-clause 8.11 “When such notice is given, the Contractor will have the right in this circumstance to declare default of the Employer under the Deferred Payment Agreement and take remedial measures in accordance thereto.”

3.15 Sub-Clause 13.1 [*Right to Vary*] is amended as follows:.

“Variations referred to in this sub-clause shall mean variations within the Contract Price. Any variations above the Contract Price shall be subject to the approval of the Financier”

3.16 Sub-clause 13.5 [*Provisional Sums*] shall be amended and restated as follows:

3.17 The second paragraph of Sub-clause 13.7 [*Adjustments for Changes in Legislation*] shall be deleted in its entirety and replaced with the following:

“If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the effectiveness of this Contract, the Contractor shall give notice to

the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost by the Employer, which amount shall be paid with the Employer's own funds within 56 days of the Contractor's notice to that effect, without entitlement to the deferral of payments contemplated in the Deferred Payment Agreement."

3.18 The entirety of Sub-clause 14.1 [*The Contract Price*] shall be deleted and substituted with the following:

"The Revised EPC Contract Price shall be _____ US Dollars.

3.19 Sub-clause 14.2 [*Advance Payment*] is amended as follows:

"The amount of Advance Payment shall be 15% of the Revised EPC Contract Price". The Employer shall make an advance payment amounting to 15% of the Total EPC Contract Price as the consideration for the Early Work completed or to be completed by the Contractor within 28 days after the effectiveness of this Contract.

For the avoidance of doubt, the Advance Payment shall neither be subject to any deductions from the interim payments nor be returned by the Contractor in case the EPC Contract is terminated, whether under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure], as the case may be. "

3.20 Sub-clause 14.7 [*Timing of Payments*] is amended as follows::

"The Employer shall effect the Advance Payment to the Contractor within 28 days after the effectiveness of this Contract and receipt of the request from the Contractor.

The Employer shall effect all payments under each IPC in accordance with the Deferred Payment Agreement.”

3.21 Sub-clause 14.8 [*Delayed Payment*] shall be deleted in its entirety and substituted with the following:

In case the Employer fails to make repayment to the Financier, the Employer shall pay the Default Interest in accordance with Clause 7.5 of the Deferred Payment Agreement.”

3.22 Sub-clause 14.9 [*Payment of Retention Money*] shall be deleted in its entirety and substituted with the following:

“The Contractor may submit to the Employer a Retention Guarantee upon the issuing of the Taking-Over Certificate in an amount equal to 3% of the Revised EPC Contract Price up to the expiry of Defect Notification Period.”

3.23 The first paragraph of Sub-Clause 14.14 [*Cessation of Employer's Liability*] shall be amended and restated as follows:

“The Employer shall be released from the liability under or in connection with the EPC Contract or execution of the Works only upon the satisfaction of the all of the following conditions:

- (a) the amounts payable for any Work carried out has been paid in full by the Employer;
- (b) the interests accrued under the Deferred Payment Agreement has been paid in full by the Employer;
- (c) the Default Interest accrued (if any) has been paid in full by the Employer;
- (d) the financing costs incurred by the Contractor has been fully indemnified by the Employer; and
- (e) All Contractor's certified Claims have been paid by the Employer.”

3.24 Sub-Clause 15.4 [*Payment after Termination*] shall be deleted in its entirety and substituted with the following:

"After a notice of termination under Sub-clause 15.2 [*Termination by Employer*] has taken effect, including the satisfaction of all conditions stated in the second paragraph of Sub-clause 15.2, the Employer may claim from the Contractor for indemnification for losses and damages incurred as the result of the Contractor's breach of the Contract. For the avoidance of doubt, the Employer shall not be entitled to reduce, set off or otherwise assert a counter claim against the Contractor, from the amount of its payment obligations under the Contract and the Deferred Payment Agreement, on account of any indemnity due by the Contractor."

3.25 Sub-clause 15.5 [*Employer's Entitlement to Termination*] shall be deleted in its entirety.

The fourth paragraph of Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*] shall be deleted in its entirety and substituted with the following:

"If the Contractor suffers delay and/or incurs Cost as a result of suspending the Works (or reduce the rate of thereof) in accordance with this Sub-clause, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-clause 20.1 [*Contractor's Claim*] to:

- (a) an extension of time for such delay, if completion is or will be delayed, under Sub-clause 8.4 [*Extension of Time for Completion*].
- (b) payment of any such Cost plus reasonable profit on top of the Revised EPC Contract Price."

3.26 The following shall be added after the last paragraph of Sub-Clause 16.4 [*Payment on Termination*]:

"(d) pay to the Contractor all financing costs incurred as of the date of Termination."

3.27 The second paragraph of Sub-Clause 17.6 [*Limitation of Liability*] shall be deleted in its entirety and substituted with the following:

"The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.9 [*Electricity, Water and Gas*], Sub-clause 4.20 [*Employer's Equipment and Free-Issue Material*], Sub-Clause 17.1

[Indemnities] and Sub-Clause 17.5 *[Intellectual and Industrial Property Rights]*, shall not exceed the amount of 10% of the Revised EPC Contract Price.”

3.28 The following shall be added after the last paragraph of Sub-Clause 19.6 *[Optional Termination, Payment and Release]*:

“(f) all financing costs, interest, and Default Interest (if any) under the Deferred Payment Agreement that has been due but unpaid.”

3.29 The seventh paragraph of Sub-Clause 20.1 *[Contractor's Claims]* shall be deleted and substituted with the following:

“Any payment payable by the Employer under this Sub-clause shall be paid by the Employer with its own funds without entitlement to the deferral of payment of the Amount in the Deferred Payment Agreement.”

3.30 Section (c) of Sub-Clause 20.6 *[Arbitration]* shall be deleted and replaced with the following:

“Arbitration shall be resolved under the Arbitration Rules of the London Court of International Arbitration.

The tribunal shall consist of three (3) arbitrators, two (2) of whom shall be nominated by the respective Parties. The Chairman of the tribunal shall be nominated by agreement between the two Party-nominated arbitrators within fourteen (14) days of the confirmation of the appointment of the second such arbitrator. Failing such agreement, the Chairman shall be appointed by the LCIA Arbitration Centre in London.

None of the arbitrators shall be an employee or agent or former employee or former agent of either Party.

Any arbitral award may be enforced against the Parties to an arbitration and their respective assets. The award of an arbitrator in relation to a dispute shall be final and binding on the Parties. The cost of the Arbitrators and the Arbitration shall be borne equally by the Parties and each shall bear separately the cost of its respective attorneys, witnesses and experts in connection with the Arbitration.”

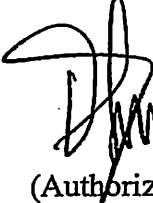
4. Governing Law and Dispute Resolution

4.1 This Addendum and all non-contractual obligations arising from or in connection with it shall be governed by and construed in accordance with the Laws of Republic of Ghana.

4.2 Any dispute or claim that arises out of, or in connection with this Addendum or its subject matter or formation shall be referred to, and finally resolved by arbitration according to the afore-stated amended and restated Sub-Clause 20.6 of the Conditions of EPC Contract, which shall by reference be incorporated hereinto.

IN WITNESS WHEREOF, the Employer and the Contractor have executed this Addendum by their authorized signatories the day and year first above written

Signed by the Republic of Ghana acting through the Ministry of Roads and Highways


.....
MINISTER
MINISTRY OF ROADS & HIGHWAYS
(Authorized Signature)

HON. KWASI AMOAKO-ATTA
Minister

On behalf of
Ministry of Roads and Highways
Republic of Ghana

Signed by
POWER CHINA/SINOHYDRO

(Authorized Signature)

Mr. LI YANMING
E.V.P. 

On behalf of
POWER CHINA/SINOHYDRO



