

EXECUTION VERSION

(Operation Number 43216)

**DEED OF AMENDMENT NO. 1 IN RELATION TO
THE LOAN AGREEMENT
dated 3 August 2012**

between

APASERV SATU MARE S.A.

and

**EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT**

Dated _____

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**DEED OF AMENDMENT NO. 1 IN RELATION TO
THE LOAN AGREEMENT
dated 3 August 2012**

This deed of amendment dated _____ (the **Deed of Amendment**), is made as a deed by and between:

1. **APASERV SATU MARE S.A.**, a joint stock company (in Romanian, *societate pe actiuni*) organised and existing under the laws of Romania with its registered address at 9/A Gara Ferastrau Street, 440210, Satu Mare, Satu Mare County, Romania, registered with the Satu Mare Commercial Registry under number J30/1102/2004, having the sole registration code (C.U.I.) RO 16844952 (the **Borrower**); and
2. **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**, an international organisation formed by treaty (**EBRD**);

(each of the Borrower or EBRD, a **Party**, and collectively, the **Parties**).

WHEREAS:

(A) The Borrower and EBRD entered into a loan agreement dated 3 August 2012 (the **Loan Agreement**), pursuant to which EBRD extended to the Borrower a loan facility with a principal amount of up to RON 33,200,000, on the terms and subject to the conditions set forth in the Loan Agreement.

(B) In accordance with the provisions of Section 8.02 (*Entire Agreement; Amendment and Waiver*) of the Loan Agreement, the Borrower and EBRD have agreed to amend the Loan Agreement as set forth below, subject to the terms and conditions of this Deed of Amendment.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

(a) Terms defined in the Loan Agreement (whether directly or by reference to any other agreement or instrument) shall, unless otherwise defined herein, have the same meaning in this Deed of Amendment.

(b) In this Deed of Amendment, unless the context otherwise requires, words denoting the singular include the plural and *vice versa*.

(c) In this Deed of Amendment, unless the context otherwise requires, a reference to a specified Article or Section shall be construed as a reference to that specified Article or Section of this Deed of Amendment.

(d) In this Deed of Amendment, a reference (i) to an amendment or to an agreement being amended includes a supplement, variation, assignment, extension (whether at maturity or otherwise), novation, restatement, replacement (however fundamental and

whether or not more onerous) or re-enactment, and (ii) to an agreement shall be construed as a reference to such agreement as it may be amended from time to time.

(e) In this Deed of Amendment, the headings and the Table of Contents are inserted for convenience of reference only and shall not affect the interpretation of this Deed of Amendment.

(f) In this Deed of Amendment, any reference to "law" means any law (including, any common or customary law) and any treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgment, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or the compliance with which is in accordance with general practice in such jurisdiction.

(g) In this Deed of Amendment, any reference to a provision of law, is a reference to that provision as from time to time extended, supplemented, restated, amended or re-enacted or replaced and includes any subordinate legislation and any binding judicial or administrative interpretation thereof.

(h) In this Deed of Amendment, a reference to a "person" includes any person, natural or juridical entity, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and references to a "person" include its successors in title, permitted transferees and permitted assigns.

(i) In this Deed of Amendment, "including" and "include" shall be deemed to be followed by "without limitation" where not so followed.

(j) This Deed of Amendment shall constitute a "Financing Agreement" for the purposes of the Loan Agreement.

(k) The term "Agreement" as used in the Loan Agreement and all other references to the Loan Agreement in the instruments and agreements executed in connection therewith including, without limitation, in all Financing Agreements and Project Agreements shall for all purposes refer to the Loan Agreement as amended by this Deed of Amendment.

(l) The Loan Agreement and this Deed of Amendment shall be read and construed as a single document.

(m) Save to the extent that this Deed of Amendment expressly requires otherwise, nothing in this Deed of Amendment shall operate as a waiver, variation or amendment of EBRD's rights under the Loan Agreement.

ARTICLE II AMENDMENT OF THE LOAN AGREEMENT

(a) With effect on and from the date of this Deed of Amendment, the Loan Agreement shall be amended by the amendments set out below:

(1) Section 5.11 (b) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

"(b) **Minimum Collection Ratio:** The Borrower shall ensure that the ratio of Collections from Customers to Total Revenue on an annualised basis shall at all times not be less than 90%.

For the purposes of this Section:

(1) "**Collections from Customers**" means total revenue of the Borrower during the 12 months preceding the date of calculation from all its customers for water supply and wastewater services, minus (i) outstanding customer debt owing at the end of the relevant period from customers to the Borrower for water supply and wastewater services, plus (ii) outstanding customer debt owing at the beginning of the relevant period from customers to the Borrower for water supply and wastewater services, minus (iii) any increases in the bad customer debt provisions and any write-offs of outstanding customer debt, plus (iv) any decreases in the bad debt provisions; and

(2) "**Total Revenue**" means the total revenue of the Borrower during the 12 months preceding the date of calculation from all its customers for water supply and wastewater services."

(2) Section 5.11 (c) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

"(c) **Financial Debt/EBITDA Ratio.** The Borrower shall, at all times, starting from the date of this Agreement, maintain a ratio of (i) Financial Debt, to (ii) EBITDA, of not more than 4.5:1.

For the purposes of this Section "**EBITDA**" means profit or loss of the Borrower, for the 12 months preceding the date of calculation, before (i) any interest, commissions, discounts and other financing fees and costs and any interest earned, (ii) any provision for income tax, (iii) any depreciation of fixed assets and amortisation and any amounts attributable to amortisation of goodwill and other intangible assets, and (iv) that portion of any concession fee that (X) is recorded as an expenditure during the period in which it was paid to the City and the other municipalities as set forth in the Delegation Contract, (Y) was returned to the Borrower within five days into the MRD Account; and (Z) is to be used by the Borrower to make payments of interest or principal which the Borrower is under an obligation to make in accordance with the provisions of this Agreement. "

(b) The provisions of the Loan Agreement shall, save as amended by this Deed of Amendment, continue in full force and effect.

(c) Except as otherwise provided in this Deed of Amendment, the Financing Agreements will remain in full force and effect. Without limiting the generality of the foregoing, neither the entry into this Deed of Amendment nor the making of the amendments set out in Article II are intended to, and shall not adversely affect or prejudice the existence and enforceability of, any rights under any Financing Agreement or Project Agreement existing prior to the date of this Deed of Amendment. Such rights shall continue in full force and effect.

ARTICLE III REPRESENTATIONS AND WARRANTIES

- (a) The Borrower confirms to EBRD that on the date of this Deed of Amendment all representations and warranties set out in Sections 2.01 (Representations Regarding the Project), 2.02 (Representations Regarding the Borrower) and 2.03 (Representations Regarding the Agreements) of the Loan Agreement, other than the representations and warranties specified as provided as of the date of the Loan Agreement:
- (1) are true; and
 - (2) would also be true if references to the Loan Agreement were construed as references to the Loan Agreement as if amended by this Deed of Amendment.
- (b) The Borrower acknowledges that it has made the representations and warranties referred to in paragraph (a) above with the intention of inducing EBRD to enter into this Deed of Amendment and that EBRD has entered into this Deed of Amendment on the basis of, and in full reliance on, each of such representations and warranties. The Borrower warrants that it has no knowledge of any additional facts or matters the omission of which makes any of such representations and warranties misleading or which would or might reasonably be expected to affect the judgment of a prospective lender regarding lending to the Borrower.

ARTICLE IV MISCELLANEOUS

Section 4.01. Incorporation of Terms

The provisions of Sections 8.02. (*Entire Agreement; Amendment and Waiver*), 8.03. (*Notices*), 8.04. (*English Language*), 8.13. (*Disclosure*), and 8.15. (*Counterparts*) of the Loan Agreement shall be deemed to be incorporated in this Deed of Amendment *mutatis mutandis*.

Section 4.02. Rights, Remedies and Waivers

- (a) The rights and remedies of EBRD in relation to any misrepresentations or breach of warranty on the part of the Borrower shall not be prejudiced by any investigation by or on behalf of EBRD into the affairs of the Borrower, by the execution or the performance of this Deed of Amendment or by any other act or thing which may be done by or on behalf of EBRD in connection with this Deed of Amendment and which might, apart from this Section, prejudice such rights or remedies.
- (b) No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to EBRD upon any default under this Deed of Amendment or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein. No single or partial exercise of any such right, power or remedy shall preclude any other or

further exercise thereof or the exercise of any other right, power or remedy. No action of EBRD in respect of any such default or acquiescence by it therein, shall affect or impair any right, power or remedy of EBRD in respect of any other default.

- (c) The rights and remedies provided in this Deed of Amendment and the other Financing Agreements are cumulative and not exclusive of any other rights or remedies, whether provided by applicable law or otherwise.

Section 4.03. Fees, Costs, Expenses and Taxes

- (a) The Borrower shall pay to EBRD or as EBRD may direct, on demand, all fees, costs and expenses (including, legal fees and expenses) incurred by EBRD:
 - (1) in connection with the assessment, preparation, review, negotiation, execution and, where appropriate, registration and notarisation of this Deed of Amendment or any other document related hereto;
 - (2) in connection with the giving of any legal opinions hereunder; and
 - (3) in respect of the preservation or enforcement of any of its rights under this Deed of Amendment and the collection of any amount owing to EBRD.
- (b) The Borrower shall pay all Taxes payable on, or in connection with, the execution, issue, delivery, registration or notarisation of this Deed of Amendment or any other document related hereto. Upon notice from EBRD, the Borrower shall pay to EBRD, or reimburse EBRD for, an amount equal to any such Taxes levied on or paid by EBRD.

Section 4.04. Indemnification

- (a) The Borrower assumes full liability for, and agrees to and shall indemnify and hold harmless EBRD and its officers, directors, employees, agents and servants against and from, any and all liabilities, obligations, losses, damages (compensatory, punitive or otherwise), penalties, claims, actions, taxes, suits, costs and expenses (including reasonable legal counsel's fees and expenses and costs of investigation) of whatsoever kind and nature, including, without prejudice to the generality of the foregoing, those arising in contract or tort (including negligence) or by strict liability or otherwise, which are imposed on, incurred by or asserted against EBRD or any of its officers, directors, employees, agents or servants (whether or not also indemnified by any other person under any other document) and which in any way relate to or arise out of, whether directly or indirectly:
 - (1) any of the transactions contemplated by this Deed of Amendment or its execution, delivery or performance;
 - (2) the operation or maintenance of the Borrower's facilities or the ownership, control or possession thereof by the Borrower; or

- (3) the exercise by EBRD of any of its rights and remedies under this Deed of Amendment;

provided that EBRD shall not have any right to be indemnified hereunder for its own gross negligence or wilful misconduct.

- (b) The Borrower acknowledges that EBRD is entering into this Deed of Amendment, and has acted, solely as a lender, and not as an advisor, to the Borrower. The Borrower represents and warrants that, in entering into this Deed of Amendment, it has engaged, and relied upon advice given to it by, its own legal, financial and other professional advisors and it has not relied on and will not hereafter rely on any advice given to it by EBRD.

Section 4.05. Governing Law and Dispute Resolution

(a) This Deed of Amendment shall be governed by and construed in accordance with English law. Any non-contractual obligations arising out of or in connection with this Deed of Amendment shall be governed by and construed in accordance with English law.

(b) Any dispute, controversy or claim arising out of or relating to (1) this Deed of Amendment, (2) the breach, termination or invalidity hereof or (3) any non-contractual obligations arising out of or in connection with this Deed of Amendment shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. There shall be one arbitrator and the appointing authority shall be LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The Parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England. The arbitral tribunal shall not be authorised to grant, and the Borrower agrees that it shall not seek from any judicial authority, any interim measures or pre-award relief against EBRD, any provisions of the UNCITRAL Arbitration Rules notwithstanding. The arbitral tribunal shall have authority to consider and include in any proceeding, decision or award any further dispute properly brought before it by EBRD (but no other party) insofar as such dispute arises out of this Deed of Amendment or any other Financing Agreement, but, subject to the foregoing, no other parties or other disputes shall be included in, or consolidated with, the arbitral proceedings. In any arbitral proceeding, the certificate of EBRD as to any amount due to EBRD under this Deed of Amendment or any other Financing Agreement shall be *prima facie* evidence of such amount.

(c) Notwithstanding Section 4.05(b), this Deed of Amendment and the other Financing Agreements, and any rights of EBRD arising out of or relating to this Deed of Amendment or any other Financing Agreement, may, at the option of EBRD, be enforced by EBRD in the courts of England, Romania or in any other courts having jurisdiction. For the benefit of EBRD, the Borrower hereby irrevocably submits to the non-exclusive jurisdiction of the courts of England with respect to any dispute, controversy or claim arising out of or relating to this Deed of Amendment or any other Financing Agreement, or the breach, termination or invalidity hereof or thereof. Failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned. The Borrower hereby irrevocably consents to the service of

process or any other legal summons out of such courts by mailing copies thereof by registered airmail postage prepaid to its address specified herein. The Borrower covenants and agrees that, so long as it has any obligations under this Deed of Amendment, it shall maintain a duly appointed agent to receive service of process and any other legal summons in England for purposes of any legal action or proceeding brought by EBRD in respect of this Deed of Amendment or any other Financing Agreement and shall keep EBRD advised of the identity and location of such agent. Nothing herein shall affect the right of EBRD to commence legal actions or proceedings against the Borrower in any manner authorised by the laws of any relevant jurisdiction. The commencement by EBRD of legal actions or proceedings in one or more jurisdictions shall not preclude EBRD from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not. The Borrower irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal action or proceeding and any claim it may now or hereafter have that any such legal action or proceeding has been brought in an inconvenient forum.

Section 4.06. Privileges and Immunities of EBRD

Nothing in this Deed of Amendment shall be construed as a waiver, renunciation or other modification by EBRD of any immunities, privileges or exemptions accorded under the Agreement Establishing EBRD, international convention or any applicable law. Notwithstanding the foregoing, EBRD has made an express submission to arbitration under Section 4.05(b) and accordingly, and without prejudice to its other privileges and immunities (including, without limitation, the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5(2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Section 4.05(b).

Section 4.07. Waiver of Sovereign Immunity

The Borrower represents and warrants that this Deed of Amendment is commercial rather than public or governmental act and that the Borrower is not entitled to claim immunity from legal proceedings with respect to itself or any of its assets (except for the assets that are part of the public domain as defined in accordance with the Romanian legislation) on the grounds of sovereignty or otherwise under any law or in any jurisdiction where an action may be brought for the enforcement of any of the obligations arising under or relating to this Deed of Amendment. To the extent that the Borrower or any of its assets (except for the assets that are part of the public domain as defined in accordance with the Romanian legislation) has or hereafter may acquire any right to immunity from set-off, legal proceedings, attachment prior to judgment, other attachment or execution of judgment on the grounds of sovereignty or otherwise, the Borrower hereby irrevocably waives such rights to immunity in respect of its obligations arising under or relating to this Deed of Amendment.

Section 4.08. Successors and Assigns; Third Party Rights

- (a) This Deed of Amendment shall bind and inure to the benefit of the respective successors and assigns of the Parties hereto, except that the Borrower may not assign or otherwise transfer all or any part of its rights or obligations under this Deed of Amendment without the prior written consent of EBRD.
- (b) EBRD may sell, transfer, assign, novate or otherwise dispose of all or part of its rights or obligations under this Deed of Amendment and the other Financing Agreements, (including, by granting of Participations or otherwise).
- (c) Except as provided in Section 4.08(a) or 4.08(b), none of the terms of this Deed of Amendment are intended to be enforceable by any third party.

Section 4.09. Effect as a Deed

This Deed of Amendment shall have effect as a deed notwithstanding the fact that any Party may execute this Deed of Amendment under hand.

Section 4.10. Further Assurances

The Borrower shall, at the request of EBRD and at its own expense, do all such acts and things necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Deed of Amendment.

Section 4.11. Severability

If at any time any one or more of the provisions in this Deed of Amendment is or becomes invalid, illegal or unenforceable in any respect under any law or regulation, the validity, legality and enforceability of the remaining provisions of this Deed of Amendment shall not be in any way affected or impaired thereby.

Section 4.12. Governing Language

This Deed of Amendment shall be executed in six (6) original versions three (3) of which original versions shall be in the English language, two (2) originals for EBRD and one (1) for the Borrower, and three (3) of which original versions shall be in the Romanian language, two (2) originals for EBRD and one (1) for the Borrower. In the event of any discrepancy or inconsistency between the English and Romanian language versions of this Deed of Amendment, the terms of the English language versions shall prevail and be governing between the Parties.

By signing this Deed of Amendment and for the purpose of Article 1203 of the Romanian Civil Code, the Borrower, also declares that it expressly agrees with the clauses of this Deed of Amendment, including with all the provisions in this Deed of

Amendment on limitation of liability, unilateral termination, suspension of the performance of obligations, loss of right or term, limitation of right to challenge, limitation of contractual freedom, silent renewal, governing law and choice of jurisdiction, including, but not limited to, clauses of Article II, Section 4.01., Section 4.02., Section 4.04., Section 4.05., Section 4.06., Section 4.07., Section 4.08., and Section 4.10. of this Deed of Amendment.

IN WITNESS WHEREOF, the Parties hereto, acting through their duly authorised representatives, have caused this Deed of Amendment to be executed and delivered on the date first above written.

EXECUTED as a DEED on behalf of
APASERV SATU MARE S.A. incorporated in Romania

By: _____

Name: Stegorean Dănuțiu

Title: General Manager

in the presence of:

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT

By: _____

Name:

Title: