

GRANT AGREEMENT

PROJECT "MYKOLAYIV VODOKANAL"

(DEVELOPMENT OF THE WATER SUPPLY AND WASTEWATER SYSTEM IN
THE CITY OF MYKOLAYIV)

under

E5P PROGRAMME

between

UKRAINE

and

EUROPEAN INVESTMENT BANK

Kyiv, 19 October 2018.

UKRAINE

of the first part,

and

The **EUROPEAN INVESTMENT BANK**
with its Head office at 98-100 Blvd
Konrad Adenauer, L-2950 Luxembourg,
represented by Mr Vazil HUDÁK,
Vice-President (hereinafter referred to as
the "EIB" or the "Bank"),

of the second part,

and jointly referred to as the "Parties",

have agreed as follows:

Article 1 - Purpose

- 1(1) On 2 February 2010, Ukraine and the Bank entered into a Finance Contract (Mykolayiv Vodokanal ("Development of the Water Supply and Wastewater System in the City of Mykolayiv")) (hereinafter referred to as the "**Finance Contract**"), as amended, for an amount equal to EUR 15,540,000.00 (fifteen million five hundred and forty thousand euros) (the "**EIB Loan**") in order to support the rehabilitation and modernisation of the water supply, as well as wastewater collection and treatment facilities, of Mykolayiv Vodokanal, which is the Municipal Utility of the Mykolaiv City Council.
- 1(2) On 11 November 2011, the Assembly of Contributors of the Eastern Europe Energy Efficiency and Environment Partnership Fund (the "**E5P Fund**") approved a grant of EUR 5,110,000 (five million one hundred and ten thousand euros) from the resources of the E5P Fund (the "**Grant**", as defined in more details in clause 3(1) hereof) for the financing of the project "Development of the Water Supply and Wastewater System in the City of Mykolayiv" as described in Annex I (the "**Project**") and assigned its implementation to EIB.

The purpose of this agreement (the "**Agreement**") is to set out the terms and conditions for the Grant in order to support financially and technically the Project.
- 1(3) The Grant is made to Ukraine acting through the Ministry of Regional Development, Construction, Housing and Utilities of Ukraine (the "**Beneficiary**") in conjunction with the Ministry of Finance of Ukraine. Ukraine shall make the Grant available to Mykolayiv Vodokanal (the "**Recipient**") as per the agreement between the Ministry of Finance of Ukraine, the Beneficiary, Mykolaiv city council and the Recipient. Ukraine (acting through the Beneficiary) undertakes to ensure the Grant is used for the financing of the Project in accordance with the terms and conditions set out in this Agreement.
- 1(4) Total investment cost of the Project eligible for co-financing by the Grant is estimated at EUR 31,080,000 (thirty one million eighty thousand euros).
- 1(5) On 14 June 2005 Ukraine and the Bank signed a Framework Agreement governing the Bank's activities in Ukraine which was ratified by the Parliament of Ukraine on 7 February 2006 by the Law of Ukraine No. 3392 "On ratification of the Framework Agreement between Ukraine and European Investment Bank" (hereinafter, and as superseded or re-entered from time to time, referred to as the "**Framework Agreement**"), which entered into force on 8 April 2006 and continues to be in full force and effect throughout the term of this Agreement. Ukraine acknowledges that the Project falls within the scope of the Framework Agreement, which provides, inter alia, that the Bank shall enjoy, in respect of its activities in the territory of Ukraine, the treatment accorded to the international financial institution which is most favoured in respect of such activity.
- 1(6) On the date of this Agreement, Ukraine is a state party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- 1(7) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data.
- 1(8) By entering into this Agreement, each Party acknowledges that the Bank is bound to comply with the Sanction Lists (as defined below) and that the Bank cannot, therefore, make funds available, directly or indirectly, to or for the benefit of a Sanctioned Person (as defined below).
- 1(9) It is to be understood that references herein to Articles, Recitals and Annexes are references respectively to articles of, and recitals and annexes to this Agreement.
- 1(10) In this Agreement:

"**Financing of Terrorism**" means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of the EU Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

"**Implementation Period**" has the meaning given to it in Article 2(1).

"**Money Laundering**" means:

- (a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; or
- (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.

"**Prohibited Conduct**" means any Financing of Terrorism, Money Laundering or Prohibited Practice.

"**Prohibited Practice**" means any:

- (i) **Coercive Practice**, meaning the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party;
- (ii) **Collusive Practice**, meaning an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iii) **Corrupt Practice**, meaning the offering, giving, receiving or soliciting, directly or indirectly, of anything of value by a party to influence improperly the actions of another party;
- (iv) **Fraudulent Practice**, meaning any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation; or
- (v) **Obstructive Practice**, meaning in relation to an investigation into a Coercive, Collusive, Corrupt or Fraudulent Practice in connection with the Grant or the Project, (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (b) acts intending to materially impede the exercise of the contractual rights of audit or access to information.

"Grant Project Account" means any and all Grant Collection Accounts and/or any other account of Ukraine and/or the Recipient used for the implementation of the Project.

"Sanctioned Persons" means any individual or entity listed in one or more Sanction Lists and/or referred to in Sanctions.

"Sanction Lists" or "Sanctions" means:

- (a) any economic, financial and trade restrictive measures and arms embargoes issued by the European Union pursuant to Chapter 2 of Title V of the Treaty on European Union as well as Article 215 of the Treaty on the Functioning of the European Union, including but not limited to those as made available in the official EU websites http://eeas.europa.eu/cfsp/sanctions/consolid/index_en.htm; http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf, and/or <http://eur-lex.europa.eu/oj/direct-access.html> as amended and supplemented from time to time or on any successor page; or,
- (b) any economic, financial and trade restrictive measures and arms embargoes issued by the United Nations Security Council pursuant to the Charter VII, Article 41 of the United Nations Charter including but not limited to those as made available in the official UN website <http://www.un.org/en/sc/documents/resolutions/>, <https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/consolidated.pdf>, as amended and supplemented from time to time or on any successor page.

Article 2 - Implementation Period of this Agreement

- 2(1) The implementation period of this Agreement (hereinafter referred to as the "Implementation Period") will begin on the Date of Effectiveness.
- 2(2) The Implementation Period of this Agreement is up to 36 months from the Date of Effectiveness.

Article 3 - Amount of the Grant

- 3(1) Subject to EIB receiving from the E5P Fund the funds pursuant to the funding agreement between EIB and the European Bank for Reconstruction and Development as fund manager of the E5P Fund dated 1 November 2012 (hereinafter referred to as the "Funding Agreement"), EIB undertakes to provide the grant to Ukraine in an amount of up to 5,110,000 (five million one hundred and ten thousand euros) on the terms and conditions hereof (the "Grant"). Ukraine undertakes to provide the received Grant amount to the Recipient. Utilization of the Grant is not subject to currency control regulation and control rules of Ukraine.
- 3(2) The final amount of the Grant will be established as follows:
 - (a) the Grant amount may not exceed the maximum amount established by Article 3(1) even if the overall actual expenditure exceeds the estimated total cost of the Project as specified in Article 1(4); and
 - (b) if the total investment costs of the Project at its completion are less than the estimated total cost of the Project as specified in Article 1(4), the Grant may be prorated to the actual investment incurred.

Article 4 - Use of the Grant

Ukraine shall use, and shall ensure that the Recipient shall use the Grant solely for the purpose of financing the Project as defined in Annex 1. For the avoidance of doubt the Grant shall not be used for financing of taxes, duties and charges arising out of, or in connection with, the implementation of the Project.

The proceeds of the Grant shall not be used for payment to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations or by the European Union pursuant to Chapter 2 of Title V of the Treaty on European Union as well as Article 215 of the Treaty on the Functioning of the European Union. Persons or entities, or suppliers offering goods and services, covered by such prohibitions shall therefore not be eligible for the award of contracts financed with proceeds of the Grant.

Article 5 - Payment arrangements

5(1) The Grant shall be transferred to the bank account of Ukraine in EUR that will be opened and maintained with Public Joint Stock Company "The State Export-Import Bank of Ukraine" (JSC "Ukreximbank") ("**EUR Grant Collection Account**") and that will be notified to the EIB on or before the date falling 15 (fifteen) Business Days before the scheduled payment date under Article 5(3)(a). The payments shall be made in Euro.

5(2) To implement the Project, Ukraine may open accounts in any currency (together with the EUR Grant Collection Account, the "**Grant Collection Accounts**") as Ukraine shall notify the Bank in writing. Such accounts shall be an account of Ukraine created for the purposes of this Project and separated from any other assets of Ukraine. Funds available under the EUR Grant Collection Account may be transferred to any Grant Collection Account.

5(3) Payments of the Grant are conditional upon the fulfilment of the conditions established under this Article 5(3).

(a) The first payment is conditional upon:

(i) a legal opinion issued by the Ministry of Justice of Ukraine in the English language on the due execution of this Agreement by Ukraine and the validity, enforceability and binding nature thereof. Such opinion shall be in a form and substance acceptable to the Bank and shall be supported by the relevant documents evidencing the authority of Ukraine to enter into this Agreement, a confirmation that ratification of this Agreement by the Parliament of Ukraine is necessary for the Agreement to have effect under the laws of Ukraine as well as evidence of due ratification of this Agreement in accordance with the applicable laws of Ukraine and a confirmation on the legal, valid, binding and enforceable nature of the Framework Agreement under Ukrainian law;

(ii) receipt of a payment request substantially in the form of Annex II by EIB from Ukraine on or before the date falling 15 (fifteen) Business Days before the scheduled payment date specified in such payment request accompanied by evidence of the authority of the person or persons authorised to sign it on behalf of Ukraine and the specimen signature of such person or persons;

(iii) receipt by EIB on or before the date falling at least 15 (fifteen) Business Days before the scheduled payment date under Article 5(3)(a) of the entire Grant amount, to be transferred by the EBRD to EIB pursuant to the Funding Agreement; and

(iv) the Bank having made a first disbursement under the Finance Contract.

- (b) Payments subsequent to the first are conditional upon:
- (i) receipt of a payment request substantially in the form of Annex II by EIB from Ukraine on or before the date falling 15 (fifteen) Business Days before the scheduled payment date specified in such payment request accompanied by evidence of the authority of the person or persons authorised to sign it on behalf of Ukraine and the specimen signature of such person or persons;
 - (ii) receipt by EIB of documents, submitted by Ukraine, evidencing, in a manner satisfactory to EIB, that Ukraine has made available to Beneficiary and the Recipient at least 80% (eighty *per cent*) of the amounts of all previous payments;
 - (iii) receipt of documents, from Ukraine, evidencing, in a manner satisfactory to EIB, that the Recipient has incurred expenses in eligible costs related to the Project according to Article 8 in an amount at least equal to the aggregate of (i) 70% (seventy *per cent*) of the amount of the immediately preceding payment and (ii) 100% (one hundred *per cent*) of the amounts of all previous payments, if any; and
 - (iv) the Bank being satisfied that the EIB Loan has not been cancelled and that Ukraine remains entitled to continue drawing or maintaining loans under the Finance Contract.
- (c) All payments (including the first and subsequent payments) are conditional upon the receipt by the Bank, to its satisfaction of:
- (i) confirmation that no event or circumstance which constitutes or would, with the passage of time or giving of notice under this Agreement, constitute an event of termination under Article 15, has occurred and is continuing unremedied or unwaived; and
 - (ii) validation by an independent expert procured by the Bank of statements of expenditure and expenditure forecasts. A joint overview of Grant Project Accounts and the Project Accounts (as defined in the Finance Contract), past and forecast expenditures and drawdown forecasts shall be submitted, for the whole Project and split by Grant and the EIB Loan element.

For the purpose of this Agreement "Business Day" means a day (other than a Saturday or Sunday) on which the EIB and the commercial banks are open for general business in Luxembourg.

5(4) Payments of the Grant will be made as follows:

- (a) Subject to the fulfilment of the conditions specified in Article 5(3) (a) and (c), EIB shall transfer to the account specified in Article 5(1) a first payment of EUR 1,300,000 (one million three hundred thousand euros) within 15 (fifteen) days from receipt of the payment request.
- (b) Subject to the fulfilment of the conditions specified in Article 5(3) (b) and (c), payments subsequent to the first payment will be made by EIB within 15 (fifteen) days from receipt of the payment request. Subject to Annex I, each payment subsequent to the first payment, except the last payment, will cover 100% (one hundred *per cent*) of the grant funds forecast to be disbursed for the following 12 (twelve) months from the date of the payment request as indicated in the most recent progress report as defined in Article 9(1).

5(5) Without prejudice to its right to terminate this Agreement pursuant to Article 15, EIB may suspend or cancel a payment where Ukraine fails to ensure that either the Beneficiary or the Recipient perform any role allocated to it under this Agreement or perform any of its obligations under this Agreement or the Finance Contract and such failure has continued for a period of 15 (fifteen) days after written notice thereof shall have been given to Ukraine by EIB.

Article 6 - The Warranties and Undertakings

6(1) Ukraine represents and warrants to the Bank that:

- (a) to the best of its knowledge, no funds invested in the Project by Ukraine are of illicit origin, including products of Money Laundering or linked to the Financing of Terrorism;
- (b) neither Ukraine, nor the Beneficiary, or the Recipient, their officers and directors nor any other person acting on its or their behalf or under its or their control has committed nor will commit
 - (i) any Prohibited Conduct in connection with the Project or any transaction contemplated by the Agreement; or
 - (ii) any illegal activity related to the Financing of Terrorism or Money Laundering;
- (c) the Project (including without limitation, the negotiation, award and performance of contracts financed or to be financed by the Grant) has not involved or given rise to any Prohibited Conduct.

6(2) Ukraine shall ensure that the Recipient:

- (a) has kept and will continue to keep proper books and records of account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Recipient, including expenditures in connection with the Project, in accordance with IFRS as in effect from time to time; and,
- (b) keeps records of contracts financed with the proceeds of the Grant including a copy of the contract itself and material documents relating to the procurement for at least 6 years from of the contract.

6(3) Ukraine shall, or shall ensure the Recipient to inform the Bank immediately of:

- (i) any material alteration to any laws, statutes, by-laws, memoranda and articles of association, as relevant, with bearing on the Project after the date of this Agreement;
- (ii) any fact which obliges it to prepay any financial indebtedness or any EU funding;
- (iii) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of Ukraine under this Agreement; or
- (iv) any fact or event which results in any member of the Recipient's management bodies being a Sanctioned Person;

- (v) to the extent permitted by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief (or to the best knowledge and belief of Recipient that informs Ukraine to that effect), is current, imminent or pending against Ukraine, the Beneficiary or Recipient, or its controlling entities or members of its management or administrative bodies in connection with Prohibited Conduct related to the Grant or the Project;
- (vi) a genuine allegation or complaint with regard to any Prohibited Conduct related to the Project;
- (vii) should it become aware of any fact or information confirming or reasonably suggesting that (a) any Prohibited Conduct has occurred in connection with the Project, or (b) any of the funds invested in the Recipient's share capital or in the Project was derived from an illicit origin;
- (viii) any measure taken by Ukraine, the Beneficiary or the Recipient pursuant to Article 13 (2) of this Agreement (*Integrity Commitment*).

6(4) Ukraine shall and undertakes to ensure that the Recipient shall:

- (a) keep true copies of contracts financed with the proceeds of the Loan and evidence of expenditures relating to disbursements;
- (b) take such action as EIB shall reasonably request to investigate and/or terminate any alleged or suspected act of the nature described in Article 6;
- (c) inform EIB of the measures taken to seek damages from the persons responsible for any loss resulting from any such act; and
- (d) facilitate any investigation that EIB may make concerning any such act.

Ukraine shall ensure that the Recipient shall bear all expenses incurred by EIB in connection with this Article 6(4).

Article 7 - Procurement of goods, works and services

- 7(1) Ukraine shall and shall ensure that the Recipient undertake to purchase equipment, secure services and order works for the Project by acceptable procurement procedures, complying, to the Bank's satisfaction and confirmation by the consultant, engaged by the Bank, with its policy as described in its Guide to Procurement and the General Outline of Procurement Process for Mykoiayiv Vodokanal Project.
- 7(2) The Bank can prescribe the venue for tender evaluations, the procedure as to whom bids shall be submitted and how they should be stored. The Bank is entitled to prescribe the presence of an independent observer during evaluations.
- 7(3) Ukraine shall and shall ensure that the Recipient adopt reasonable measures to ensure that potential tenderers shall be excluded from the participation in a procurement or award procedure financed by the Grant, if:
 - (a) they are bankrupt or being wound up, are having their affairs administered in accordance with national law, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) they have been found guilty of an offence concerning their conduct in connection with their work or for Prohibited Conduct;

- (c) they are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or fail to supply this information; or
 - (d) they are subject to a conflict of interest, as defined in Article 12(2).
- 7(4) In the event of failure to comply with the above provisions the relevant costs shall not be eligible for funding under this Agreement.

Article 8 - Eligible costs

8(1) To be considered as eligible costs for grant payment under this Agreement, costs must:

- (a) be necessary for carrying out the Project, be provided for in this Agreement and comply with good financial practices, in particular value for money and cost-effectiveness;
- (b) have actually been incurred between the date of signature of the Funding Agreement and the end of the Implementation Period, whatever the time of actual disbursement by EIB; and
- (c) be recorded in the accounts of the Recipient, be identifiable; backed by originals of supporting evidence (as the case may be in electronic form), and verifiable pursuant to the provisions of Article 10.

8(2) The following costs shall not be considered eligible:

- (a) debts and provisions for possible future losses or debts;
- (b) interest owed by the Beneficiary or the Recipient to any third party;
- (c) items already financed from other sources;
- (d) purchases of real estate;
- (e) currency exchange losses; or
- (f) taxes, duties and charges charged to the Beneficiary and/or the Recipient.

Article 9 - Reporting

- 9(1) Ukraine shall ensure through the Beneficiary that the Recipient provides EIB with evidence for receipt of goods and payments of invoices in the form of the "Justification of expenses of Grant" in Annex III: semi-annually each 31 March and 30 September, starting from the Date of Effectiveness.
- 9(2) Ukraine shall and shall ensure that the Recipient informs EIB without delay of any circumstances likely to hamper or delay implementation of the Project and that the Recipient keeps EIB informed, on a regular basis, and at least semi-annually, of the progress on the implementation of the Project as part of the reporting requirements under the Finance Contract.
- 9(3) Ukraine shall ensure that the Recipient submits, semi-annually each 31 March and 30 September, starting from the Date of Effectiveness to the EIB a semi-annual report on the implementation of the Project(s) in the form of the template, provided in Annex IV of this Agreement (the "Implementation Report"). The reporting shall give information on energy intensity of pumping arrangements receiving investment from the Grant as well as an overall water balance, including Non-Revenue Water, and details on overall energy consumption for the Recipient.

- 9(4) Within six (6) months of the completion date (which is 31 December 2020, the "**Completion Date**"), Ukraine shall ensure that the Beneficiary submits to the EIB a final report on the implementation of the Project and the utilisation of the Grant (the "**Final Report**") and a final audited financial statement with respect to the totality of the Grant ("**Final Audited Financial Statement**"). The Final Report and the Final Audited Financial Statement shall be prepared in the form and substance as set out in Annex IV of this Agreement and shall cover the full Implementation Period. The Beneficiary shall appoint any necessary auditors.
- 9(5) Ukraine shall ensure that the Recipient submits to the EIB the audited Grant Project Accounts and auditor's reports of the Recipient annually, no later than 30 days after the financial statements become available.
- 9(6) In addition to the above mentioned reports, the EIB may, at any time, request, in writing, additional information from the Beneficiary related to the Project implementation (such as, but not limited to, information related to progress and situation reports, publications, press releases, etc.).

Article 10 – Visits, Right of Access and Investigation

- 10(1) Ukraine (acting through the Beneficiary) shall ensure the Recipient ensures that persons designated by the Bank, who may be accompanied by representatives of competent EU institutions including the European Court of Auditors, the European Commission and the European Anti-Fraud Office, as well as persons designated by the Contributors to the E5P Fund, may:
- (i) visit the sites, installations and works comprising the Project and to conduct such checks as they may wish for purposes connected with this Agreement and the financing of the Project,
 - (ii) interview representatives of the Beneficiary and/or the Recipient, and not obstruct contacts with any other person involved in or affected by the Project; and
 - (iii) review the Beneficiary and/or the Recipient books and records in relation to the execution of the Project and to be able to take copies of related documents to the extent permitted by the law.
- 10(2) Ukraine shall ensure the Recipient facilitates investigations by the Bank and by other competent European Union institutions or bodies in connection with any alleged or suspected occurrence of a Prohibited Conduct and shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this Article.
- 10(3) Ukraine acknowledges and shall ensure the Recipient to acknowledge, that the Bank may be obliged to communicate information relating to Ukraine, the Beneficiary and the Recipient and the Project to any competent institution or body of the European Union, including the European Court of Auditors, the European Commission and the European Anti-Fraud Office or to the Contributors (as defined in the Rules of the E5P Fund) to the E5P Fund, as are necessary for the performance of their task in accordance with European Union law.

Article 11 - Repayment of the Grant

- 11(1) Where the Project is suspended, not carried out at all, or not carried out properly and without prejudice to its right to terminate this Agreement pursuant to Article 15, EIB may demand repayment of the total amount of the Grant or reduce the Grant pro-rata to the actual implementation of the Project.
- 11(2) If the Project is not completed within the Implementation Period, any funds that remain unexpended will be reimbursed to EIB.

11(3) In case that the Grant is not used in compliance with (i) the procedures and the terms described herein and (ii) the Project specifications set out under Annex I, EIB will be entitled to recover from Ukraine the proportion of Grant on the value of the funds wrongly paid or incorrectly used in the Project.

11(4) If the Grant is not made available to the Recipient pursuant to the terms and conditions of this Agreement within 6 (six) months from the date of the first payment made by EIB to the Beneficiary under this Agreement, the EIB may demand repayment of the total amount of the Grant disbursed so far. In such case Articles 15(6) and 15(7) shall apply.

11(5) Any unused, recovered or returned Grant amounts shall be returned by Ukraine to EIB within 30 days of the Beneficiary and/or the Ministry of Finance of Ukraine obtaining knowledge of such unused, recovered or returned amounts, but at the latest within 30 days of the end of the Implementation Period.

Article 12 – Conflict of interests

12(1) The Parties undertake to take all necessary precautions to avoid conflict of interests and shall inform the other Parties without delay of any situation constituting or likely to lead to any such conflict.

12(2) There is a conflict of interest where the impartial and objective exercise of the functions of any person in connection with the Project is compromised for any reason whatsoever.

Article 13 - Visibility and Transparency. Integrity Commitment.

13(1) Ukraine shall ensure that the Beneficiary incorporates and undertakes to ensure that the Recipient incorporates in all their promotional material related to the activities falling within the scope of the Project a reference to the fact that they are supported by EIB with, if appropriate, EIB's logo and by the E5P Fund making express reference to the individual Contributors to the E5P Fund. Specific reports on the implementation of the Project prepared by consultants or promoters of the Project financed with the proceeds of the Grant must carry the following warning: "This document has been produced with the financial assistance of the E5P Fund. The views expressed herein are those of (name of author) and can therefore in no way be taken to reflect the official opinion of the Contributors to the E5P Fund or the EBRD."

13(2) Integrity Commitment

(a) Prohibited Conduct:

(i) Ukraine shall not (and shall ensure that neither the Beneficiary nor the Recipient will) engage in (or authorise or permit any affiliate or any other person acting on its behalf to engage in) any Prohibited Conduct in connection with the Project, any tendering procedure for the Project, or any transaction contemplated by the Agreement or the Project documents.

(ii) Ukraine undertakes (and shall ensure that the Beneficiary and the Recipient will undertake) to take such action as the Bank shall reasonably request to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Project.

(iii) Ukraine shall ensure (and shall procure that the Beneficiary and the Recipient will undertake to ensure) that contracts entered into by it and financed with the proceeds of the Grant include the necessary provisions to enable Ukraine, the Beneficiary and the Recipient to investigate or terminate any alleged or suspected occurrence of any Prohibited Conduct in connection with the Project.

(b) Sanctions:

Ukraine shall not (and shall ensure that neither the Beneficiary nor the Recipient will):

- (i) enter into a business relationship with any Sanctioned Person; or
- (ii) make any funds available to or for the benefit of, directly or indirectly, any Sanctioned Person.

(c) Management:

Ukraine undertakes (and shall ensure that the Beneficiary and the Recipient undertakes) to take within a reasonable timeframe appropriate measures in respect of any of the respective duly authorised agents and representatives of Ukraine, the Beneficiary and the Recipient (as applicable) who:

- (i) becomes a Sanctioned Person; or
- (ii) is the subject of a final and irrevocable court ruling in connection with the Prohibited Conduct perpetrated in the course of the exercise of their professional duties,

in order to ensure that such person is suspended, dismissed or in any case excluded from any he Beneficiary's and/or the Recipient's (as applicable) in relation to the Project.

(d) FATF:

Ukraine shall ensure that the Recipient will institute, maintain and comply with internal procedures and controls in compliance with the Financial Action Task Force recommendations and standards, as amended and supplemented from time to time.

Article 14 - Suspension of this Agreement

14(1) EIB may suspend all or part of this Agreement if in its reasonable opinion circumstances preclude the efficient and safe implementation of the Project. It shall inform the Beneficiary thereof without delay. Any such suspension shall continue until EIB ends the suspension or terminates the Agreement. If this Agreement is not terminated, EIB shall endeavour to minimise the duration of the suspension and may resume implementation of the Project once the conditions allow, and shall inform the Beneficiary accordingly.

14(2) The Implementation Period is automatically extended by an amount of time equivalent to the duration of the suspension. This is without prejudice to any amendments to this Agreement which may be necessary to adapt the Project to the new implementing conditions.

14(3) No indemnity will be payable upon suspension or termination by EIB pursuant this Article.

Article 15 - Termination of this Agreement

15(1) This Agreement shall be automatically terminated if it has not been ratified by Verkhovna Rada of Ukraine within 12 (twelve) months from the date of its signature /or other longer period as may be notified by the Bank.

15(2) If, at any time, any Party believes that the purposes of this Agreement can no longer be effectively or appropriately carried out, it shall consult the other Party. Failing agreement on a solution, any Party may terminate this Agreement by serving 2 (two) months' written notice. In this event, Ukraine shall be entitled to payment of the Grant by the EIB only for the part of the Project carried out.

15(3) Without prejudice to the rights and obligations set forth elsewhere in this Agreement, any Party may terminate this Agreement if one Party fails to perform any of its obligations under the terms of this Agreement, including their annexes and such failure to perform shall have continued for a period of 30 (thirty) days after written notice thereof shall have been given to the non-performing party by the notifying party.

15(4) If any part of the Grant becomes repayable in accordance with the terms of this Agreement, Ukraine shall repay all or part of the Grant forthwith within 30 (thirty) days or any other date agreed by the Parties upon written demand being made by EIB in accordance with the following provisions.

15(5) EIB may terminate this Agreement on 30 (thirty) days' prior written notice and may request full or partial repayment of the Grant where:

(a) Ukraine (acting through the Beneficiary) and/or Recipient has not informed EIB of any situation giving rise to conflict of interest with negative implications for the Project and their expected results;

(b) Ukraine (acting through the Beneficiary) and/or Recipient has transferred or assigned this Agreement or grant funds attached to it to a third party in any manner whatsoever without prior written consent of EIB;

(c) if any information or document given to EIB by or on behalf of Ukraine, the Beneficiary and/or Recipient or any representation or statement made or deemed to be made by Ukraine, the Beneficiary and/or Recipient in this Agreement or in connection with the negotiation of this Agreement is or proves to have been incorrect or misleading in any material respect;

(d) Ukraine (acting through the Beneficiary) and/or Recipient provides reports that do not reflect the reality in order to obtain the Grant provided for in this Agreement, including the false reports or false or incomplete statements;

(e) transfer of the Grant to Ukraine was caused or affected by substantial errors, financial irregularities or fraud, or breach of obligations under this Agreement by Ukraine (acting through the Beneficiary or otherwise) and/or Recipient;

(f) the Beneficiary and/or the Recipient undergo legal, financial, technical or organisational change that may negatively affect this Agreement substantially;

(g) Ukraine (acting through the Beneficiary) and/or Recipient default in the performance of any obligation in respect of any loan or financial instrument granted by/to EIB or by/to the European Union (including any agreement entered into by the Beneficiary or the Recipient in connection with the EIB loan);

(h) if Ukraine fails to comply with any obligation under this Agreement.

15(6) If Ukraine fails to repay all or part of the Grant by the due date (as indicated in Article 11 hereof), the sum due shall bear interest at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union on the first day of the month in which payment was due, increased by three and a half percentage points. The interest shall be payable for the period elapsing from the day following expiry of the time limit for payment up to the day of payment. Any partial payment shall first cover the interest.

15(7) Bank charges incurred by the repayment of amounts due to EIB shall be borne entirely by Ukraine.

15(8) Unless this Agreement is terminated earlier, the payment obligations of EIB hereunder shall cease at the "Final Availability Date", which shall occur 18 (eighteen) months after the end of the Implementation Period. EIB shall notify Ukraine of any postponement of the Final Availability Date. EIB shall postpone the Final Availability Date, so as to be able to fulfill its payment obligations, in all cases where Ukraine has filed the payment request in accordance with this Agreement or, in case of dispute, until completion of the dispute settlement procedure provided for in Article 17.

Article 16 - Amendment

16(1) This Agreement may be amended by written agreement between the Parties. Such amendments shall become effective on the terms set out in the relevant amendment instrument without the need for Ukraine to execute any internal procedures (being ratification and approval), if the abovementioned amendments:

- (a) do not require any increase in the financial obligations of Ukraine or the imposition of additional obligations on Ukraine under this Agreement;
- (b) do not necessitate the changing of Laws of Ukraine or the approval of new Laws of Ukraine; and
- (c) do not incorporate any other rules other than stipulated in the decrees of the President or the Cabinet of Ministers of Ukraine.

Article 17 - Settlement of Disputes and Jurisdiction

This Agreement and its formation, construction and validity shall be governed by public international law.

Any dispute, disagreement, controversy or action (collectively a "Dispute") arising in connection with the existence, validity, interpretation, implementation or termination of this Agreement shall, to the extent possible, be settled amicably by agreement between the Parties through consultations and negotiations. If a Dispute cannot be amicably settled by the Parties within 60 (sixty) days of the notification of the Dispute by either Party, the Dispute shall be settled by final and binding arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) UNCITRAL Arbitration Rules in effect at the date of this Agreement, which rules are deemed to be incorporated by reference into this Article.

The number of arbitrators shall be three. The language of the arbitral procedure shall be English. The arbitration proceedings shall take place in The Hague, the Netherlands.

Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the constitution of the arbitral tribunal. The tribunal shall render its decision within 60 (sixty) days following the delivery of the final submissions.

Any final award of the tribunal shall be binding from the day it is made, and the Parties hereby waive any right of appeal on the law and/or the merits to any court. Notwithstanding the UNCITRAL Arbitration Rules, the tribunal shall not take or provide and the Ukraine shall not seek from any judicial authority, any interim measures or pre-award relief against the Bank.

Ukraine shall abide by and carry out any such award in its territory without delay.

In case of failure by Ukraine to comply with its obligation in the preceding paragraph within 3 months from the date of the award, then, to the extent that Ukraine may in any jurisdiction claim for itself or its assets immunity from suit, enforcement, attachment or other legal process, Ukraine hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of the Bank accorded under the Framework Agreement, or any other applicable international convention or law.

Article 18 - Communications

18(1) Notices and other communications given under this Agreement addressed to any Party to this Agreement shall be made to the address or facsimile number as set out below, or to such other address or facsimile number as a party previously notifies to the others in writing:

For EIB

European Investment Bank
Attention: Neighbouring Countries Department
Public Sector East Division
98-100 boulevard Konrad Adenauer
L-2950 Luxembourg
Facsimile no.: +352 4379 56331

For Ukraine and for the
Beneficiary

Ministry of Regional Development, Construction, Housing
and Utilities of Ukraine
Attention: Deputy Minister of Regional Development,
Construction, Housing and Utilities of Ukraine in charge of
International Relations
9, Velyka Zhytomyrska str.
01601 Kyiv
Ukraine
Facsimile: +38 044 278 83 90

For the Recipient

Mykolayiv Vodokanal
Attention: Director
161, Pogranychna St.
54055 Mykolayiv
Ukraine
Facsimile: +38 (0512) 24 41 56

18(2) Any notice or other communication given under this Agreement must be in writing.

Notices and other communications for which fixed periods are laid down in this Agreement or which themselves fix periods binding on the addressee may be made by hand delivery, registered letter or facsimile. The date of delivery, registration or, as the case may be, the stated date of receipt of transmission shall be conclusive for the determination of a period.

Other notices and communications may be made by hand delivery, registered letter or facsimile or, to the extent agreed by the parties by written agreement, by email or other electronic communication.

Without affecting the validity of any notice delivered by facsimile according to the paragraphs above, a copy of each notice delivered by facsimile shall also be sent by letter to the relevant party on the next following Business Day at the latest.

Notices issued by the Beneficiary pursuant to any provision of this Agreement shall, where required by EIB, be delivered to EIB together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the Beneficiary.

Article 19 - Entry into force

The Parties agree that this Agreement shall become effective from the date of its ratification (without qualification, condition or reservation) by the Verkhovna Rada of Ukraine, provided that such ratification occurs within 12 months of the date of this Agreement or other longer period as may be notified by the Bank (the "**Date of Effectiveness**").

Article 20 - Language

Documents, evidence, notices and communications provided or made by Ukraine pursuant to this Agreement shall be provided in the English language unless the original language of the document is not English, in which case the document shall be provided to the Bank in its original language together with a certified English translation thereof.

Article 21 - Entire agreement

- (a) This Agreement represents the entire understanding and constitutes the entire agreement between the Parties in relation to its subject matter.
- (b) Each Party hereby acknowledges that it has not relied upon any statement or representation made by any Party other than those contained in this Agreement.

Article 22 - Counterparts

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement. Each counterpart is deemed an original and all counterparts together shall constitute one and the same agreement.

Article 23 - Annexes

The following documents are annexed to this Agreement and form an integral part of it:

- Annex I: Project specifications
- Annex II: Request for payment
- Annex III: Justification of expenses of Grant
- Annex IV: Reporting template

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed in 3 (three) originals in the English language 2 (two) for EIB and 1 (one) for Ukraine and have caused representatives of each Party to initial each page of this Agreement on their behalf.


At Kyiv, this 19 October 2018

Signed for and
on behalf of

~~UKRAINE~~

Signed for and
on behalf of

EUROPEAN INVESTMENT BANK


Gennadiy Zubko
Deputy Prime Minister

Vazil Hudák
Vice-President

Project specifications

Development of the Water Supply and Wastewater System in the City of Mykolayiv

Technical Description for the Project Segment

The proposed E5P Grant is to finance equipment only that is part of investments under the Project and has the aim of improving operation and efficiency of pumping stations and water and wastewater networks. The objective of the Project is to achieve 10% gains in energy intensity of pumping within 1 year of completion of works on the pumping stations.

The breakdown of the Project and the estimated financing plan is shown below. The indicated grant under each item is a maximum grant contribution for that item, which may nevertheless vary at the level of the stated sub-totals by 25%, as long as it can be substantiated that the above-mentioned energy intensity objective is being pursued.

Planning and design assistance to define more closely the interventions under the items for "Network sectorisation and point rehabilitation interventions" as well as "Rehabilitation of wastewater pumping stations and preparations for future plans regarding wastewater" will be provided through the grant for Technical Assistance under the Eastern Partnership Technical Assistance Trust Fund, EPTATF. The final proposed scope for these items shall be submitted to the Bank for approval prior to disbursement against these items.

Description

Purpose, Location

The Project concerns the City of Mykolaiv with a population of approx. 510.000, located in southern Ukraine, 65 kilometers from the Black Sea along the estuary of the Southern Bug river. The immediate objective of the Project is to take a significant step towards restoring the viability of the utility, halt the deterioration of critical infrastructure and prepare for more comprehensive needs in the future. The Project includes emergency and efficiency-generating measures both for water supply and wastewater collection and treatment.

Description

Drinking Water

2nd stage (stations 2 & 3) pumping stations and reservoirs

- Installation of new pumps, frequency converters and associated electromechanical works
- Replacement of valves and fittings
- Rehabilitation of controls and switch boards
- Flow-meters/loggers on reservoirs and pumping arrangements

Rehabilitation of level 1 raw water pumping station by the Dniepr

- Installation of new frequency converters, switch boards and motors for 2 pumps, including associated electro-mechanical works

Rehabilitation and upgrade of the existing drinking water treatment plant

- Rehabilitation of the coagulation tank for process train III
- Installation of a new chlorination unit, including storage and dosage facilities and an emergency neutralisation unit as well as related paperwork
- Valves replacement

Water distribution network

- Sectorisation of the water distribution network into 13 district zones incl. chambers, installation of bulk and replacement of valves, fittings and accessories
- Installation of block water meters for buildings
- Rehabilitation of critical water distribution network sections, including replacement of valves and fittings. The total length of the critical sections is estimated at 1 km, but may be subject to adjustment in accordance with actual priorities.

Wastewater

Rehabilitation of the wastewater network

- Rehabilitation of priority sewers, including the Varvarivka district. The total length of sewers is estimated at approx. 13 km, but may be adjusted in accordance with actual priorities.
- Installation of ventilation systems on sewers

Waste water pumping stations

- Rehabilitation of pumping stations, including pump sumps, technical exhausts, screens
- Replacement of valves and fittings and rehabilitation of controls and switch boards
- Installation of 15 frequency converters and associated electromechanical works
- Instrumentation and SCADA at all 26 waste water pumping stations

Rehabilitation of the existing wastewater treatment plant within the existing design capacity

- Rehabilitation of the inlet chamber, screens and grit chambers, including building repairs
- Rehabilitation of the existing biological stage
- Rehabilitation of the underwater discharge and construction of sludge thickeners. This may be adjusted in accordance with actual priorities.

Equipment and software

- 1 Sewer cleaning Vehicle
- Field Repair Tools
- Leak detection equipment
- Laboratory equipment for the drinking water and wastewater treatment plants
- 1 A1 colour plotter
- CAD, GIS, network modelling and management information software and hardware.

Technical Assistance and Engineering

- Designs and procurement documentation
- PIU support for procurement and implementation, including works supervision
- Further development of a Geographical Information System (GIS)
- Improvement of the billing and accounting system and development of a management information system
- Training for leakage detection, network modelling, GIS, CAD and use procured equipment
- Support for formulation of metering strategy and reduction of Non-Revenue Water
- English Courses for PIU Members

The scope of the Project may be modified after the conceptual and detailed designs are completed; the changes are subject to the Bank's agreement.

Calendar

01.01.2006 – 31.12.2020



Request for payment

Ukraine – Mykolayiv Vodokanal - E5P Grant

Date:

Please proceed with the following payment, to be used for the financing of the Project:

Grant Name:

Mykolayiv Vodokanal –E5P Grant

Signature Date:

Agreement FI number
(if relevant):

EUR amount requested	
EUR	Amount

Proposed disbursement date:

<i>Reserved for the EIB</i>	EUR
Total Grant Amount:	<input type="text"/>
Paid to date:	<input type="text"/>
Balance for payment:	<input type="text"/>
Current payment:	<input type="text"/>
Balance <u>after</u> payment:	<input type="text"/>

Account to be credited:

Acc. N°:

(please, provide IBAN format)

BIC Code N°.....

Bank name and address:

Please transmit information relevant to:

Name(s) and signature(s) of the person authorised to act on behalf of Ukraine

Justification of expenses of Grant

Justification of expenses of Grant: List of paid invoices per contract (dd.mm.yy)

Justification of expenses: List of paid invoices per contracts

Project:

Municipality: name

Contract 1: name			
Invoices no./ Date	Amount (FX) excluding VAT	Amount (EUR) excluding VAT	Bank statement ref./date of payment
Total paid until (date 1)			
Total paid until (date 2)			

Contract 2: name			
Invoices no./ Date	Amount (FX) exclud. VAT	Amount EUR exclud. VAT	Bank statement reference/date
Total paid until (date 1)			
Total paid until (date 2)			

Reporting Template

This document constitutes the Reporting Template. Whilst the proposed Reporting Template cannot govern all projects in all aspects and details, it should be used in the form and substance as detailed below and it should ultimately reflect all the aspects of the initial project proposal application submitted to the Fund and approved by the Assembly of Contributors.

Basic Information on Project

- Project Description, general
- The Overall Objective – how the Overall Objective has been reached or will be reached
- Project description, investment plan

No	Investment	Cost (EUR)	Annual net income & savings (EUR/a)	Implementation period
1				
2				
3				
4				
5				
n				
	Total			

- Project description, financing plan
- Project description, institutional plan
- Project description, demand side measures
- Project description, project benefits

Procurement

- Status and plan for procurement
- Problems, if any and ways to solve the problems
- Information on procured equipment or services, including identity and nationality of the supplier

Project Activities

- Overall progress during the project phases and in particular the reporting period
- Planned/expected progress for the following reporting periods
- Problems, if any and ways to solve the problems

Grant Rationale

Direct investment related

- Describe the energy and/or electricity consumption and other consumption of chemicals etc. that will be affected by the project. The consumption shall be described as present consumption in terms of energy supply and quantity consumed
- Describe and indicate the savings reached or planned as a result of the project and the grant, in particular the decrease of CO₂, other GHG, other commodities as raw water, chemical etc.
- For calculation purposes the savings shall be based on a lifecycle of 15 years and use a discount rate of 10%.
- The saving shall also be described in monetary terms
- Any carbon credit potential shall be specific mentioned

	Measure	Present Consumption p/a	Planned Savings p/a	Planned Savings project lifetime
Gas	M3/a			
Electricity	MWh			
Other GHG (to be specified as Nox etc)				
Use of raw water				
Coal				
n.				
Decreased CO ₂	tonnes			

Regulatory issues

- Describe the status of the regulatory issues/investments presented and how the issues have been developed and added to the project or are planned to add to the project.
- Try to describe the savings as a result of the regulatory investments
- Describe the grant additionality to the project sustainability and how the grant has been used to target the underlying problem without being indiscriminate to the market.

Financial, Disbursements

- Description of use of the grant for the reporting period as well as cumulative

	The Reporting period EUR	Cumulative EUR
Transfers received from the Fund		
Grant disbursements made from the Funds 1		
Grant disbursements made from the Funds 2		
Grant disbursements made from the Funds 3		
Grant disbursements made from the Funds n		
Balance as at the end of the period		

- Please, include also an overall disbursement schedule including bank funding, own funding etc

Timetable

- Update the presented initial timetable and include reasons for delays or ahead of schedule

Other

- Any factor which may have a material adverse effect on the project or the financing plan.