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**LOAN NUMBER 4610-UA**

# **Project Agreement**

**(Lviv Water and Wastewater Project)**

**between**

**INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT**

**and**

**LVIV CITY**

**and**

**LVIV CITY COMMUNAL ENTERPRISE “LVIVVODOKANAL”**

**Dated August 27, 2002**



**LOAN NUMBER 4610-UA**

**PROJECT AGREEMENT**

AGREEMENT, dated August 27, 2002 between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and LVIV CITY (Lviv) and LVIV CITY COMMUNAL ENTERPRISE "LVIVVODOKANAL" (LVK).

WHEREAS (A) by the Loan Agreement of even date herewith between Ukraine (the Borrower) and the Bank, the Bank has agreed to lend to the Borrower an amount of twenty-four million two hundred fifty thousand Dollars (\$24,250,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that Lviv and LVK agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by the Subsidiary loan agreement to be entered into between MOF and LVK, the proceeds of the Loan provided for under the Loan Agreement will be lent to LVK on terms and conditions set forth in the Subsidiary Loan Agreement; and

WHEREAS Lviv and LVK in consideration of the Bank's entering into the Loan Agreement with the Borrower, have agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

**ARTICLE 1**

**Definitions**

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

**ARTICLE 2**

**Execution of the Project**

Section 2.01. Lviv and LVK each declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall ensure the carrying out of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, environmental, and technical practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

Section 2.02. LVK shall: (a) maintain, until the completion of the Project, a Project Implementation Unit (PIU) under terms of reference and with staffing and other resources acceptable to the Bank; and (b) assign to the PIU the responsibility of managing and monitoring Project Implementation.

Section 2.03. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.04. (a) LVK shall, not later than December 31, 2001, establish a separate account (LVK Project Account), and shall replenish the Project Account on a quarterly basis so as to ensure that amounts in deposit therein at each such replenishment shall be sufficient to cover expenditures expected to be incurred under the Project during the following quarter and to be met from LVK's resources.

(b) LVIV shall: (i) establish by December 31, 2001, a separate account (LVIV Project Account) and deposit therein, on a quarterly basis, for every year, until Project completion, the equivalent of all duties and taxes paid by LVK to the city budget; and (ii) use the amount in deposit in the LVIV Project Account solely to meet shortfalls in Project financing.

Section 2.05. LVK shall in conjunction with Lviv:

(a) maintain policies and procedures adequate to enable Lviv and LVK to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Bank, the carrying out of the Project and the achievement of the objectives thereof;

(b) annually prepare, under terms of reference satisfactory to the Bank and furnish to the Bank on or about September 30 of each year during Project implementation, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Bank, by November 30 of each year during Project Implementation, such later date as the Bank shall request, the report referred to in subparagraph (b) of this paragraph and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Bank.

Section 2.06. (a) LVK shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition) in respect of the Project.

(b) For the purposes of Section 9.08 of the General Conditions and without limitation thereto, LVK shall, in conjunction with Lviv:

- (i) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank no later than six (6) months after the Closing Date or such later date as may be agreed for the purpose between the Bank and Lviv and LVK, a plan for the future operation of the Project; and
- (ii) afford the Bank a reasonable opportunity to exchange views with Lviv and LVK on said plan.

Section 2.07. (a) Lviv and LVK shall each, at the request of the Bank, exchange views with the Bank with regard to the progress of the Project, the performance of their obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

(b) Lviv and LVK shall each promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Loan, or the performance by Lviv and LVK and their respective obligations under this Agreement, the Subsidiary Loan Agreement.

Section 2.08. Within six (6) months from the date of signing the contract with the MOIA, referred to in Section 6.01 (e) of the Loan Agreement, LVK shall prepare, in conjunction with Lviv, and furnish to the Bank, for review and concurrence, a plan of action for institutional strengthening of LVK, and shall thereafter carry out said plan, taking into account the Bank's comments thereon.

Section 2.09. Lviv and LVK shall take all necessary measures to implement the Environmental Mitigation Plan.

### **ARTICLE III**

#### **Financial Covenants**

Section 3.01. (a) LVK shall maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with accounting standards acceptable to the Bank, consistently applied, adequate to reflect its

operations and financial condition and to register separately the operations, resources and expenditures related to the Project.

- (b) LVK shall:
  - (i) have its records, accounts, including the Special Account, and financial statements (balance sheets, statements of income and expenses and flow of fund statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
  - (ii) furnish to the Bank, as soon as available but in any case not later than six (6) months after the end of each such year, (A) certified by the Director of LVK copies of its financial statements for such year as so audited, and (B) the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and
  - (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof as the Bank shall from time to time reasonably request.

Section 3.02. (a) Without limitation upon the provisions of Section 3.01 of this Agreement, LVK shall carry out a time-bound action plan acceptable to the Bank for the strengthening of its financial management system for the Project in order to enable LVK, not later than July 31, 2002, or such later date as the Bank shall agree, to prepare quarterly Project management reports, acceptable to the Bank, each of which:

- (i) (A) sets forth actual sources and applications of funds for the Project, both cumulatively and for the period covered by said report, and projected sources and applications of funds for the Project for the six-month period following the period covered by said report, and (B) shows separately expenditures financed out of the proceeds of the Loan during the period covered by said report and expenditures proposed to be financed out of the proceeds of the Loan during the six-month period following the period covered by said report;
- (ii) (A) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and (B) explains variances between the actual and previously forecast implementation targets; and

- (iii) sets forth the status of procurement under the Project and expenditures under contracts financed out of the proceeds of the Loan, as at the end of the period covered by said report.

(b) Upon the completion of the action plan referred to in paragraph (a) of this Section, LVK shall prepare, in accordance with guidelines acceptable to the Bank, and furnish to the Bank not later than 45 days after the end of each calendar quarter a Project Management Report for such period.

Section 3.03. (a) Except as the Bank shall otherwise agree, LVK shall take all appropriate action to ensure that, for each of LVK's fiscal years, following LVK's fiscal year ending on December 31, 2001, LVK's projected operating revenues are sufficient to meet the LVK's projected expenses for that fiscal year.

(b) By or before October 31 of each year during Project implementation, LVK shall on the basis of forecasts prepared by LVK and satisfactory to the Bank, review whether LVK would be able to meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year, and shall furnish to the Bank a copy of such review upon its completion.

(c) If any such review shows that LVK would not meet the requirements set forth in paragraph (a) for LVK's fiscal years covered by such review, LVK and Lviv shall promptly take all necessary measures (including, without limitation, adjustments of the structure or level of tariff rates) in order to meet such requirements.

(d) For the purposes of this Section:

- (i) The term "projected operating revenues" means the sum of revenues from all sources related to operations, consumer deposits and consumer contributions in aid of construction less allowance for uncollectable revenues.
- (ii) The term "projected expenses" means all expenses related to operations, including administration, energy, wages, adequate provision for maintenance and taxes and payments in lieu of taxes, interest payable on all debt related to LVK's operations, debt services requirements in excess of provision for depreciation, all cash dividends and other cash distributions of surplus, increase in working capital other than cash, and other cash outflows other than capital expenditures.
- (iii) The term "working capital other than cash" means the difference between current assets, excluding cash, and current liabilities.

- (iv) The term “current assets excluding cash” means all assets other than cash which could in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and pre-paid expenses properly chargeable to operating expenses within the next fiscal year.
- (v) The term “current liabilities” means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve months, including accounts payable, customer advances, debt service requirement taxes and payments in lieu of taxes, and dividends.
- (vi) The term “capital expenditures” means all expenditures incurred on account of fixed assets, including interest charged to construction, related to operations.
- (vii) The term “operating ratio” means the ratio of operating expenses to operating revenues.
- (viii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 3.04. (a) LVK shall take all necessary measures to ensure timely collection of water and wastewater charges, including the application of accordant sanctions according to current legislation against delinquent customers.

(b) Lviv shall take appropriate and possible measures to ensure that water and wastewater charges payable by central and local government bodies and their units shall be paid, when overdue by more than thirty (30) days.

(c) LVK shall take all necessary measures to ensure that, starting with the year 2002, its operating ratio and the collection rate of water and wastewater charges for each succeeding year shall not be less than the levels for the respective years agreed under the Performance Agreement.

For the purposes of this Section, the term “operating ratio” means the ratio of operating expenses to operating revenues as defined in Section 3.03 (vii) of this Agreement.



Section 3.05. (a) Except as the Bank shall otherwise agree, Lviv shall subserve and LVK shall accommodate that it does not incur any debt unless a reasonable forecast of LVK's revenues and expenditures shows that the estimated net cash revenues of LVK for each fiscal year during the term of the debt to be incurred shall be at least 1.3 times the estimated debt service requirements of LVK in such year on all debt of LVK including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of LVK maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (iii) The term "net revenues" means the difference between:
  - (A) the sum of revenues from all sources related to operations and net non-operating income; and
  - (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, provision for depreciation, other non-cash operating charges and interest and other charges on debt.
- (iv) The term "net non-operating income" means the difference between:
  - (A) revenues from all sources other than those related to operations; and
  - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payment if any) of, and interest and other charges on, debt.

- (vi) The term “reasonable forecast” means a forecast prepared by Lviv not earlier than twelve months prior to the incurrence of the debt in question, which both the Bank and LVK accept as reasonable and as to which the Bank has notified LVK of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of LVK.
- (vii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 3.06. Without limitation to any of its other obligations under this Agreement, Lviv shall take all actions required on its part to ensure compliance of LVK with its financial obligations under Article III of this Agreement.

#### **ARTICLE IV**

##### **Effective Date; Termination; Cancellation and Suspension**

Section 4.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 4.02. (a) This Agreement and all obligations of the Bank, Lviv and LVK thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Loan Agreement shall terminate; or
- (ii) a date twenty (20) years after the date of this Agreement;

(b) If the Loan Agreement terminates as specified in (a) (i) of this Section, the Bank shall promptly notify Lviv and LVK of this event.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

## ARTICLE V

### Miscellaneous Provisions

Section 5.01. Any notice or request required or permitted to be given or made under the Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other addresses as such party shall have designated by notice to the party giving such notice or making such request. The addresses specified are:

For the Bank:

International Bank for Reconstruction  
and Development  
1818 H Street, N.W. Washington, D.C. 20433  
United States of America

Cable address:	Telex:	Facsimile:
INTBAFRAD Washington, D.C.	248423 (MCI) or 64145 (MCI)	(1-202) 477-6391

For Lviv:

1 Rynok Sq  
LVIV 79008  
Ukraine

For LVK:

64 Zelena Str.  
LVIV 79017  
Ukraine

Section 5.02. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement on behalf of Lviv, may be taken or executed by the Mayor, or by such other person or persons as the Mayor shall designate in writing, and Lviv shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. Any action required or permitted to be taken, and any document required permitted to be executed on behalf of LVK under this Agreement, or by LVK on

behalf of the Borrower under the Loan Agreement, may be taken or executed by the Director or such other person or persons as the Director shall designate in writing, and LVK shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.04. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

By /s/ Annette Dixon

Authorized Representative

LVIV CITY

By /s/ Kostyantyn Gryshchenko

Authorized Representative

LVIV CITY COMMUNAL  
ENTERPRISE "LVIVODOKANAL"

By /s/ Kostyantyn Gryshchenko

Authorized Representative

## **SCHEDULE 1**

### **Procurement and Consultants' Services**

#### Section 1: Procurement of Goods and Works

##### Part A: General

Goods and works shall be procured in accordance with the provisions of Section I of "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in January 1996 and August 1996, September 1997 and January 1999 (the Guidelines) and following provisions of this Section, as applicable.

##### Part B: International Competitive Bidding

Except as otherwise provided in Part C of this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 Appendix 1 thereto.

##### Part C: Other Procurement Procedures

###### 1. National Competitive Bidding

Works estimated to cost less than \$500,000 equivalent per contract, up to an aggregate amount not to exceed \$2,500,000 equivalent, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

###### 2. International Shopping

Goods estimated to cost less than \$100,000 equivalent per contract, up to an aggregate amount not to exceed \$800,000 equivalent, may be procured under contracts awarded on the basis of international shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of Guidelines.

###### 3. National Shopping

Goods estimated to cost less than \$50,000 equivalent per contract, up to an aggregate amount not to exceed \$200,000 equivalent may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of Guidelines.

###### 4. Procurement of Small Works

Works estimated to cost less than \$100,000 equivalent per contract, up to an aggregate amount not to exceed \$500,000 equivalent, may be procured under lump-sum

fixed-price contracts awarded on the basis of quotations obtained from three (3) qualified domestic contractors in response to a written invitation. The invitation shall include a detailed description of the works, including basic specifications, the required completion date, a basic form of agreement acceptable to the Bank, and relevant drawings, where applicable. The award shall be made to the contractor who offers the lowest price quotation for the required work, and who has the experience and resources to complete the contract successfully.

Part D: Review by the Bank of Procurement Decisions

1. Prior Review

(a) With respect to each contract to be procured in accordance with the procedures referred to in Parts B and Part C. 1 of this Schedule, the procedures set forth in paragraphs 2 and 3 of Appendix I to the Guidelines shall apply.

(b) With respect to the first three contracts to be procured in accordance with the procedures referred to in Parts C. 2, C. 3, and C. 4 of this Schedule, the following procedures shall apply:

- (i) prior to the selection of any supplier or execution of any contract under shopping procedures, LVK shall provide to the Bank a report on the comparison and evaluation of quotations received;
- (ii) prior to the execution of any contract procured under shopping procedures, LVK shall provide to the Bank a copy of the specifications and the draft contract; and
- (iii) the procedures set forth in paragraphs 2 (f), 2 (g) and 3 of Appendix 1 to the Guidelines shall apply.

2. Post Review

With respect to each contract not governed by paragraph 1 of this Part, the procedures set forth in paragraph 4 of Appendix I to the Guidelines shall apply.

Section II: Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of the Introduction and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997, and revised in September 1997 and January 1999 (the Consultant Guidelines), and the following provisions of Section II of this Schedule.

Part B: Quality-and Cost-Based Selection

The contract for the Management and Operations Improvement Advisor and for the engineering and supervision consultants, referred to in Part D and Part E of the Project, shall be procured under a contract awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix I thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality-and cost-based selection of consultants.

Part C: Other Procedures for the Selection of Consultants

1. Selection Based on Consultants' Qualifications

Services for training of Vodokanal staff and the local government staff, under Part C of the Project estimated to cost less than \$100,000 equivalent per contract, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1 and 3.7 of the Consultant Guidelines.

2. Individual Consultants

Services under Part E of the Project may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.1 through 5.3 of the Consultant Guidelines.

Part D: Review by the Bank of the Selection of Consultants

1. Selection Planning

Prior to the issuance to consultants of any requests for proposals, the proposed plan for the selection of consultants under the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix I to the Consultant Guidelines. Selection of all consultants' services shall be undertaken in accordance with such selection plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

2. Prior Review

(a) With respect to each contract for the employment of consulting services estimated to cost \$200,000 equivalent or more, the procedures set forth in paragraphs 1, 2 and (other than the third subparagraph of paragraph 2 (a)) and 5 of Appendix I to the Consultant Guidelines shall apply.

(b) With respect to each contract for the employment of consulting firms for technical assistance, engineering design and training estimated to cost the equivalent of

\$100,000 more, but less than the equivalent of \$200,000, the procedures set forth in paragraphs 1, (other than the second subparagraph of paragraph 2(a)) and 5 of Appendix I to the Consultant Guidelines shall apply.

(c) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, the qualifications, experience, terms of reference and terms of employment of the consultants shall be furnished to the Bank for its prior review and approval. The contract shall be awarded only after the said approval shall have been given.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Consultant Guidelines shall apply.



## **SCHEDULE 2**

### **Procedures and Selection Criteria Applicable to Additional Investments**

1. Unless the Bank agrees otherwise, no Additional Investment or Expenditure shall be eligible for financing out of the proceeds of this Loan, unless the Additional Investment or Expenditure satisfies the criteria and procedures specified below:

(a) The proposed Additional Investment or Expenditure shall have been prepared and agreed to by LVK and the MOIA, and submitted to Lviv for review and approval in form, substance and detail satisfactory to Lviv and the Bank, including: (i) a description of the proposed Additional Investment or Expenditure; (ii) estimate of projected costs and expenses; (iii) economic and financial analysis of the proposed Additional Investment or justification for the proposed Expenditure; (iv) environmental impact assessment of proposed Additional Investment; (v) implementation plan; (vi) procurement schedule; and (vii) an analysis of the priority of the proposed Additional Investment or Expenditure in terms of its cost-effectiveness and social impact.

(b) The review for the proposed Additional Investment or Expenditure shall have confirmed that such Additional Investment or Expenditure: (i) does not risk to have any potential negative impact on other riparian countries; (ii) does not affect any private land, unless procedures for compensation and replacement have been reviewed and found satisfactory by the Bank; (iii) does not drain or reclaim any significant area of natural wetland which has or is likely to have a significant impact on an important area of wildlife habitat or major fishery; (iv) addresses the risk of encountering unknown archaeological or historical sites by adopting and following appropriate procedures, satisfactory to the Bank, addressing such a risk; and (v) is in conformity with all local and national environmental standards and requirements, and its design and implementation shall provide for adequate mitigation measures to ensure full compliance with local and national health, environmental and safety standards and requirements.

(c) After review and approval by Lviv, the proposal for such Additional Investment or Expenditure shall have been reviewed and approved by the Borrower and the Bank.

2. Upon approval by the Bank, as specified in 1 (c) above, the Additional Investment or Expenditure shall be deemed to be eligible for financing under Part C of the Project.