

CONFORMED COPY

LOAN NUMBER 4599-UA

Loan Agreement

(Sevastopol Heat Supply Improvement Project)

between

UKRAINE

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

Dated September 23, 2002

LOAN AGREEMENT

AGREEMENT, dated September 23, 2002, between UKRAINE (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the project described in Schedule 2 to this Agreement (the Project), has requested the Bank to assist in the financing of the Project;

(B) the Project will be carried out by Sevastopol City State Administration (Sevastopol CSA) and Sevteploservis with the Borrower's assistance and, as part of such assistance, the Borrower will make the proceeds of the loan provided for in Article II of this Agreement (the Loan) available to Sevastopol CSA for on-lending to Sevteploservis, as set forth in this Agreement; and

WHEREAS the Bank has agreed, on the basis, inter alia, of the foregoing, to extend the Loan to the Borrower upon the terms and conditions set forth in this Agreement and in the agreement of even date herewith between the Bank, Sevastopol CSA and Sevteploservis (the Project Agreement);

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements for Single Currency Loans" of the Bank, dated May 30, 1995 (as amended through October 6, 1999) (the General Conditions) constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Project Agreement" means the agreement between the Bank, Sevastopol CSA and Sevteploservis of even date herewith, as the same may be amended from time to time; and such term includes all schedules and agreements supplemental to the Project Agreement;

(b) "Project Management Report" means each report prepared in accordance with Section 5.02 of the Project Agreement;

(c) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement;

(d) “Subsidiary Loan Agreement” and “Subsidiary Loan” mean, respectively, the agreement to be entered into between the Ministry of Finance, acting as the Representative of the Borrower, and Sevastopol CSA pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and including all schedules to the Subsidiary Loan Agreement, and any loan made pursuant to the Subsidiary Loan Agreement;

(e) “Sub-loan Agreement” and “Sub-loan” mean, respectively, the agreement to be entered into between Sevastopol CSA and Sevteploservis pursuant to Section 2.01 (b) of the Project Agreement, as the same may be amended from time to time, and including all schedules to the Sub-loan Agreement;

(f) “Sevastopol Social Assistance Program” means a program of financial assistance, funded by the Borrower, and administered by Sevastopol CSA, provided to low-income families in support of their payments for rents and utility bills;

(g) “Sevteploservis” means the municipal heating enterprise wholly owned by Sevastopol territorial community, established pursuant to Decree No 1412 of the Sevastopol CSA dated August 5, 1997, and registered with the Sevastopol CSA, on May 29, 1998, and includes any legal successor thereto;

(h) “Sevteploservis Statutes” means the charter of Sevteploservis approved by the Sevastopol CSA by its Decision No. 263 dated September 17, 1997, and registered on May 29, 1998, as amended to the date of this Agreement, provided, however, that this term shall mean the charter or articles of agreement to be adopted by Sevteploservis as part of its reconstitution into a joint stock company in accordance with Sections 2.02 (b) and 4.01 (b) of the Project Agreement, once it is so reconstituted; and

(i) “Sevteploservis Fiscal Year” means the year commencing on January 1 and ending on December 31.

Section 1.03. Each reference in the General Conditions to the Project implementation entity shall be deemed as a reference to Sevteploservis.

ARTICLE II

The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Loan Agreement, an amount equal to twenty eight million one hundred ninety thousand Dollars (\$28,190,000).

Section 2.02. (a) The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Loan and in respect of the fee referred to in Section 2.04 of this Agreement.

(b) The Borrower may, for the purposes of Parts A, B.1 (a), B.2 (a) and B.3 of the Project, open and maintain in Dollars a special deposit account in a commercial bank on terms and conditions satisfactory to the Bank, including appropriate protection against set-off, seizure and attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 4 to this Agreement.

Section 2.03. The Closing Date shall be June 30, 2006, or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a fee in an amount equal to one percent (1%) of the amount of the Loan. On or promptly after the effective Date, the Bank shall on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amount of the said fee.

Section 2.05. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one percent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

Section 2.06. (a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Interest Period equal to LIBOR Base Rate plus LIBOR Total Spread.

(b) For the purposes of this Section:

- (i) "Interest Period" means the initial period from and including the date of this Agreement to, but excluding, the first Interest Payment Date occurring thereafter, and after the initial period, each period from and including an Interest Payment Date to, but excluding the next following Interest Payment Date.
- (ii) "Interest Payment Date" means any date specified in Section 2.07 of this Agreement.
- (iii) "LIBOR Base Rate" means, for each Interest Period, the London interbank offered rate for six-month deposits in Dollars for value the first day of such Interest Period (or, in the case of the initial Interest Period, for value the Interest Payment Date occurring on or next preceding the first day of such Interest Period), as reasonably determined by the Bank and expressed as a percentage per annum.
- (iv) "LIBOR Total Spread" means, for each Interest Period: (A) three fourths of one percent ($\frac{3}{4}$ of 1%); (B) minus (or plus) the weighted average margin, for such Interest Period, below (or above) the London interbank offered rates, or other reference rates, for six-month deposits, in respect of the Bank's outstanding borrowings or portions thereof allocated by the Bank to fund single currency loans or portions thereof

made by it that include the Loan; as reasonably determined by the Bank and expressed as a percentage per annum.

(c) The Bank shall notify the Borrower of LIBOR Base Rate and LIBOR Total Spread for each Interest Period, promptly upon the determination thereof.

(d) Whenever, in light of changes in market practice affecting the determination of the interest rates referred to in this Section 2.06, the Bank determines that it is in the interest of its borrowers as a whole and of the Bank to apply a basis for determining the interest rates applicable to the Loan other than as provided in said Section, the Bank may modify the basis for determining the interest rates applicable to the Loan upon not less than six (6) months' notice to the Borrower of the new basis. The new basis shall become effective on the expiry of the notice period unless the Borrower notifies the Bank during said period of its objection thereto, in which case said modification shall not apply to the Loan.

Section 2.07. Interest and other charges shall be payable semiannually in arrears on May 15 and November 15 in each year.

Section 2.08. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 3 to this Agreement.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project, and, to this end, without any limitation or restriction upon any of its other obligations under the Loan Agreement, shall cause Sevastopol CSA and Sevteploservis to perform in accordance with the provisions of the Project Agreement all the obligations of Sevastopol CSA and Sevteploservis therein set forth, shall take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable Sevastopol CSA and Sevteploservis to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall relend the proceeds of the Loan to Sevastopol CSA for on-lending to Sevteploservis under a subsidiary loan agreement to be entered into between the Ministry of Finance, acting as the Representative of the Borrower, and Sevastopol CSA, under terms and conditions which shall have been agreed by the Bank. Except as the Bank shall otherwise agree, such terms and conditions shall include the following:

- (i) the principal amount of the Subsidiary Loan shall be denominated in Dollars and shall be repaid by Sevastopol CSA to the Borrower in semi-

annual installments over twenty (20) years, including a grace period of five (5) years;

- (ii) a fee in an amount equal to one percent (1%) of the amount of the Subsidiary Loan shall be charged and shall be payable upon the date of effectiveness of the Subsidiary Loan;
- (iii) interest shall be charged on the principal amount of the Subsidiary Loan withdrawn and outstanding from time to time at a rate equal to the rate payable by the Borrower from time to time pursuant to Section 2.06 (a) of this Agreement plus a margin of up to one percent (1%); and
- (iv) a commitment fee shall be charged on the undisbursed amount of the Subsidiary Loan at a rate equal to the rate payable by the Borrower from time to time pursuant to Section 2.05 of this Agreement.

(c) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Loan, and, except as the Bank shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

Section 3.02. Except as the Bank shall otherwise agree, procurement of the goods and services required for Parts A, B.1 (a), B.2 (a) and B.3 of the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of the Schedule to the Project Agreement.

Section 3.03. For the purposes of Section 9.08 of the General Conditions and without limitation thereto, the Borrower shall:

(a) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) months after the Closing Date, or such later date as may be agreed for this purpose between the Borrower and the Bank, a plan for the future operation of the Project; and

(b) afford the Bank a reasonable opportunity to exchange views with the Borrower on said plan.

Section 3.04. The Bank and the Borrower hereby agree that 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, respectively) in respect of Parts A, B.1 (a), B.2 (a) and B.3 of the Project shall be carried out by Sevteploservis pursuant to Section 3.03 of the Project Agreement.

ARTICLE IV

Financial Covenants

Section 4.01. (a) For all expenditures with respect to which withdrawals from the Loan Account were made on the basis of Project Management Reports or statements of expenditure, the Borrower shall:

- (i) maintain or cause to be maintained in accordance with sound accounting practices, records and separate accounts reflecting such expenditures;
- (ii) ensure that all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures are retained until at least one (1) year after the Bank has received the audit report for the fiscal year in which the last withdrawal from the Loan Account was made; and
- (iii) enable the Bank's representatives to examine such records.

(b) The Borrower shall:

- (i) have the records and accounts referred to in paragraph (a) (i) of this Section and those for the Special Account 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, the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested, including a separate opinion by said auditors as to whether the Project Management Reports or the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals; and
- (iii) furnish to the Bank such other information concerning said records and accounts and the audit thereof as the Bank shall from time to time reasonably request.

ARTICLE V

Remedies of the Bank

Section 5.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional events are specified:

(a) Sevastopol CSA or Sevteploservis shall have failed to perform any of its respective obligations under the Project Agreement.

(b) As a result of events which have occurred after the date of the Loan Agreement, an extraordinary situation shall have arisen which shall make it improbable that Sevastopol CSA or Sevteploservis will be able to perform its respective obligations under the Project Agreement.

Section 5.02. Pursuant to Section 7.01 (k) of the General Conditions, the following additional event is specified, namely that the events specified in paragraph (a) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Bank to the Borrower.

ARTICLE VI

Effectiveness; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Loan Agreement within the meaning of Section 12.01 (c) of the General Conditions:

(a) the Subsidiary Loan Agreement, satisfactory to the Bank, has been executed between the Ministry of Finance, acting as the Representative of the Borrower, and Sevastopol CSA; and

(b) the Sub-loan Agreement, satisfactory to the Bank, has been executed between Sevastopol CSA and Sevteploservis.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02 (c) of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank:

(a) that the Project Agreement has been duly authorized or ratified by Sevastopol CSA and Sevteploservis, and is legally binding upon Sevastopol CSA and Sevteploservis, respectively in accordance with its terms;

(b) that the Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and Sevastopol CSA and is legally binding upon the Borrower and Sevastopol CSA in accordance with its terms; and

(c) that the Sub-loan agreement has been duly authorized or ratified by Sevastopol CSA and Sevteploservis and is legally binding upon Sevastopol CSA and Sevteploservis in accordance with its terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
12/2 Hrushevsky Street
Kiev, 252008
Ukraine

Telex:

131450

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

248423 (MCI) or

(1-202) 477-6391

Washington, D.C. 64145 (MCI)

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.

UKRAINE

By /s/ Kostyantyn Gryshchenko
Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Luca Barbone
Director
Ukraine, Belarus and Moldova
Europe and Central Asia

SCHEDULE 1

Withdrawal of the Proceeds of the Loan

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Loan, the allocation of the amounts of the Loan to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	Amount of the Loan Allocated (Expressed in <u>Dollars</u>)	% of Expenditures <u>to be Financed</u>
(1) Goods	27,458,100	100% of foreign expenditures, 100 % of local expenditures (ex-factory cost), and 80% of local expenditures for other items procured locally
(2) Consultant Services, including audit	450,000	100%
(3) Fee	281,900	Amount due under Section 2.04 of this Agreement.
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TOTAL	<u>28,190,000</u>	

2. For the purposes of this Schedule:

(a) the term “foreign expenditures” means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower; and

(b) the term “local expenditures” means expenditures in the currency of the Borrower or for goods supplied from the territory of the Borrower.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

SCHEDULE 2

Description of the Project

The objectives of the Project are: (a) improving the efficiency, reliability and service levels in the heat supply system in Sevastopol and enhancing energy conservation through introduction of decentralized mini-boilers at targeted locations; and (b) promoting sound cost recovery policies and practices for the heat supply system in Sevastopol and the development of a new heating enterprise, Sevteploservis, that would operate on a commercial basis.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Bank may agree upon from time to time to achieve such objectives:

Part A: Heat Supply Improvement

1. Supply, installation and connection to the existing Sevastopol gas network of approximately 1,000 decentralized gas-fired boiler plants with auxiliaries (including the required design and work site management).
2. Supply of mobile maintenance units and tools needed to maintain the boiler plants supplied and installed under Part A.1.

Part B: Institutional Support

1.
 - (a) Improving financial management systems of Sevteploservis.
 - (b) Developing project management capacity, including provision of training and acquisition of equipment and software.
2.
 - (a) Carrying out by Sevastopol CSA of a heat tariff study.
 - (b) Designing and implementing measures required to improve the functioning of the Sevastopol Social Assistance Program.
3. Carrying out of audits of Sevteploservis required under the Project.

* * *

The Project is expected to be completed by December 31, 2005.

SCHEDULE 3

Amortization Schedule

<u>Date Payment Due</u>	<u>Payment of Principal</u> <u>(Expressed in</u> <u>Dollars)*</u>
November 15, 2006	550,000
May 15, 2007	570,000
November 15, 2007	590,000
May 15, 2008	610,000
November 15, 2008	630,000
May 15, 2009	650,000
November 15, 2009	675,000
May 15, 2010	695,000
November 15, 2010	720,000
May 15, 2011	745,000
November 15, 2011	770,000
May 15, 2012	800,000
November 15, 2012	825,000
May 15, 2013	855,000
November 15, 2013	885,000
May 15, 2014	915,000
November 15, 2014	945,000
May 15, 2015	980,000
November 15, 2015	1,015,000
May 15, 2016	1,050,000
November 15, 2016	1,085,000
May 15, 2017	1,125,000
November 15, 2017	1,160,000
May 15, 2018	1,200,000
November 15, 2018	1,245,000
May 15, 2019	1,285,000
November 15, 2019	1,330,000
May 15, 2020	1,380,000
November 15, 2020	1,425,000
May 15, 2021	1,480,000

* The figures in this column represent the amount in Dollars to be repaid, except as provided in Section 4.04 (d) of the General Conditions.

SCHEDULE 4

Special Account

1. For the purposes of this Schedule:

(a) the term “eligible Category” means Categories (1) and (2) set forth in the table in paragraph 1 of Schedule 1 to this Agreement.

(b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods and services required for Parts A, B.1 (a), B.2 (a), and B.3 of the Project to be financed out of the proceeds of the Loan allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term “Authorized Allocation” means an amount equivalent to \$500,000 to be withdrawn from the Loan Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule, provided, however, that unless the Bank shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$250,000 until the aggregate amount of withdrawals from the Loan Account plus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of \$5,000,000.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Bank has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Bank a request or requests for deposit into the Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Bank requests for deposits into the Special Account at such intervals as the Bank shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Bank the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by

said documents and other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Bank from the Loan Account under the respective eligible Category, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Bank shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Bank shall have determined that all further withdrawals should be made by the Borrower directly from the Loan Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the Bank, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Bank pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Bank shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Loan allocated to the eligible Category, minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions with respect to Parts A, B.1 (a), B.2 (a), and B.3 of the Project, shall equal the equivalent of twice the amount of the Authorized Allocation. Thereafter, withdrawal from the Loan Account of the remaining unwithdrawn amount of the Loan allocated to the eligible Category shall follow such procedures as the Bank shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Bank shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Bank, the Borrower shall, promptly upon notice from the Bank: (A) provide such additional evidence as the Bank may request; or (B) deposit into the Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Bank shall otherwise agree, no further deposit by the Bank

into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) The Borrower may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Bank made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Loan Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

Soh Hoon Selden
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