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**COOPERATION AGREEMENT**

between the

**EUROPEAN INVESTMENT BANK**

the

**MINISTRY OF REGIONAL DEVELOPMENT, CONSTRUCTION AND HOUSING,  
AND COMMUNAL SERVICES,**

and the

**SUMY CITY COUNCIL**

**in respect of the consultancy services for implementing the energy efficiency  
rehabilitation of educational buildings in the city of Sumy, the Ukraine**

Kyiv, 26.12.2018

Sumy, 18.12.2018

Luxembourg, 15.01.2019





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THIS COOPERATION AGREEMENT (THE “**AGREEMENT**”) IS ENTERED INTO BETWEEN:

The **EUROPEAN INVESTMENT BANK**, having its seat at 98-100, boulevard Konrad Adenauer, L-2950 Luxembourg (the “**EIB**”),

The **MINISTRY OF REGIONAL DEVELOPMENT, CONSTRUCTION AND HOUSING, AND COMMUNAL SERVICES OF UKRAINE**, having its official address at 9 Velyka Zhytomyrska Street, Kyiv 01601 Ukraine (the “**Beneficiary**”),

and

The **SUMY CITY COUNCIL**, having its seat at 2, Nezalezhnosti Square, Sumy, 40030, Ukraine (the “**Recipient**”)

each a “**Party**” and together the “**Parties**”,

WHEREAS:

- A. On 14 June 2005, Ukraine and the European Investment Bank signed a **Framework Agreement** (*a capitalised term has the meaning ascribed to it in Article 1*), which continues to be in full force and effect.
- B. The **EIB** supports the implementation of the **Programme** through a credit line awarded under the **Finance Contract**.
- C. In consideration of the complexity of the **Programme**, the **EIB** further agreed to support the **Beneficiary**, as coordinator of the **Programme**, through the provision of a comprehensive package of consultancy services, for which the **EIB** also agreed to identify the most appropriate sources of funding. The support to be provided shall cover consultancy services for the preparation and implementation of the projects to be financed in the framework of the **Programme**, as well as capacity building for central government bodies, local state administrations, local self-government bodies, state enterprises or communal enterprises in Ukraine that are involved in the implementation of the **Programme**.
- D. As part of the **Programme**, the **Recipient** is carrying out the **Project**, which the **EIB** has agreed to support through making available the **Services**.
- E. The **Parties** are willing to cooperate in preparing and monitoring the delivery of the **Services** as set out in this **Agreement**.





NOW THEREFORE, the **Parties** have agreed as follows:

**ARTICLE 1**

1.1. Wherever used in this **Agreement**, the following terms shall have the meanings opposite them:

- Agreement** means this executed agreement and its annexes
- Consultant** means the natural or legal person, or an association thereof (whether formal or informal) with which the **EIB** concludes the **Service Contract** for the delivery of the **Services**
- EIB Anti-Fraud Policy** means the document titled "*EIB Anti-Fraud Policy. Policy on preventing and deterring prohibited conduct in European Investment Bank activities*", as available on the **EIB** website from time to time
- Framework Agreement** means the framework agreement governing the **EIB's** activities in Ukraine ratified by the Parliament of Ukraine on 7 February 2006 in the Law of Ukraine 3392 "*On Ratification of the Framework Agreement between Ukraine and the European Investment Bank*", which became effective on 8 April 2006, as superseded or re-entered into from time to time
- Finance Contract** means the finance contract dated 23 July 2015 entered into between Ukraine and the **EIB**, whereby the **EIB** agreed to make available to Ukraine a credit line of up to EUR 400,000,000 to support the financing of municipal infrastructure projects in medium and large municipalities in the framework of a multi-sector investment programme (the **Programme**) undertaken by the Government of Ukraine
- Financing Agreement** means the legal documentation agreed between the **EIB** and the donor of the funds used to cover the cost of the **Services**, governing the terms under which the financial contribution made by such donor is managed and used by the **EIB** for the purposes of the **Services**
- Intellectual Property Rights** means any copyright and related rights, rights in designs, database rights, rights in computer software, domain names, trademarks, service marks, patents, trade names or any applications for any of the foregoing, rights in confidential information (including know-how and trade secrets) or similar rights or obligations, moral rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world
- OLAF** means the European Anti-Fraud Office, established by Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 (OJ L 136, 31.5.1999, p.20)
- Personal Data** means any information related to an identified or identifiable natural person, where an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that natural person
- Programme** has the meaning ascribed to it in the definition of **Finance Contract**
- Prohibited Conduct** has the meaning ascribed to it in the **EIB Anti-Fraud Policy**





|                           |   |
|---------------------------|---|
| <b>Project</b>            | means an envisaged investment in the energy efficiency rehabilitation of educational buildings in the city of Sumy (Ukraine), which has been accepted for financing from the credit line made available by the <b>EIB</b> under the <b>Finance Contract</b>   |
| <b>Services</b>           | means the consultancy services to be made available to the <b>Recipient</b> , as further described in the Annex   |
| <b>Service Contract</b>   | means the binding agreement entered into between the <b>EIB</b> and the <b>Consultant</b> pursuant to a public procurement procedure as described in Article 5, setting out the terms under which the <b>Consultant</b> shall deliver the <b>Services</b>   |
| <b>Tax</b>                | means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same)   |
| <b>Terms of Reference</b> | means the document that defines the objectives and the scope of the <b>Services</b> , outlines the profile and responsibilities of the team assigned by the <b>Consultant</b> to deliver the <b>Services</b> , specifies where relevant the methods and resources to be used and results to be achieved by the <b>Consultant</b> and sets out any other requirements in respect of the provision of <b>Services</b> |

- 1.2. In the event that a different meaning is given to a capitalized term in an Annex, such term will have the meaning given to it in that Annex solely for the purposes of that Annex.
- 1.3. References to a public organisation will include its successors, and if a public organisation ceases to exist or ceases to perform its functions without a successor, references to such public organisation will be deemed to include a reference to any public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.
- 1.4. References containing terms such as “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, will not be deemed limited by the specific enumeration of items but will, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- 1.5. General words introduced or followed by the word “other” or “including” or “such as” or “in particular” will not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 1.6. Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each gender include all other genders.
- 1.7. Whenever a document is required to be “certified”, such requirement will mean that the relevant document is certified as a true and complete copy in full force and effect, and un-amended as of the date of the relevant document.

## ARTICLE 2

- 2.1 The subject of this **Agreement** is to set forth the mutual rights and obligations of the **Parties** in preparing and monitoring the delivery of the **Services** to be provided to the **Recipient** at its location.
- 2.2 The **Parties** hereby agree that the **Beneficiary**, as coordinator of the **Programme**, shall act as the main counterpart to the **EIB** for the purposes of this **Agreement** and that the **EIB** may, unless expressly stated otherwise, assume that any notice, approval or other communication provided by the **Beneficiary** to the **EIB** in relation to this **Agreement**, including in respect of the **Service Contract**, represents the views of the **Beneficiary**, the **Recipient**, and of any other entity in Ukraine relevant for the purposes of the **Services**.





- 2.3 With a view to making the **Services** available to the **Recipient**, the **EIB** shall carry out the procurement process for these **Services**, and award the corresponding **Service Contract** to the **Consultant** in accordance with its own policies, rules, and procedures.
- 2.4 The scope of the **Services** to be procured and delivered is set out in the technical description attached as Annex to this **Agreement**.

### ARTICLE 3

- 3.1 This **Agreement** enters into force on the date of its signature by the last of the **Parties** and, unless it is terminated in accordance with Article 12, shall remain valid until all the tasks and obligations of the **Parties** specified herein are duly performed.
- 3.2 This **Agreement** consists of these executed terms and the Annex, which forms an integral part of this **Agreement**. In case of conflicts or inconsistencies between these executed terms and the Annex, these executed terms shall prevail.

### ARTICLE 4

- 4.1 The total cost of the **Services** is estimated to be up to a maximum of EUR 220,000 net of any taxes, including VAT.
- 4.2 Under the terms of the **Financing Agreement**, a maximum of EUR 220,000 shall be made available from the financial envelope allocated from the budget of the European Union to the *Municipal Project Support Facility* (as further specified in the Annex) for the purposes of covering the actual cost of the **Services**.
- 4.3 The initial cost of the **Services** shall be determined after the award of the **Service Contract** pursuant to Article 5. The final cost of the **Services** shall be determined at the end of the **Service Contract**, on the basis of the final invoice submitted by the **Consultant**, as accepted and paid by the **EIB** in accordance with the relevant provisions of the **Service Contract**.
- 4.4 If the final cost of **Services** determined in accordance with Article 4.3 is lower than the maximum amount specified in Article 4.2, the difference shall be returned by the **EIB** to the European Union. If at any time during the implementation of the **Service Contract** the **Parties** determine that the cost of the **Services** may exceed the maximum amount specified in Article 4.2, the **Parties** shall consult and cooperate with the view to agreeing on next steps and, as appropriate, identifying additional sources of funding.
- 4.5 The **Parties** hereby acknowledge and agree that the resources specified in Article 4.2 shall cover exclusively the cost of the **Services**, net of any **Taxes**. Any such **Taxes**, and any other costs (including any stamp duty and registration fees) that may be incurred by the **Beneficiary** or the **Recipient** in connection with the execution of this **Agreement** shall be borne by the **Beneficiary** or the **Recipient**, as appropriate, without having recourse to the **EIB**.

### ARTICLE 5

- 5.1 On the basis of the description of the **Services** included in the Annex, the **Parties** shall cooperate in designing the **Terms of Reference** to be used by the **EIB** in the competitive tendering procedure prescribed in Article 5.3 for the selection of the **Consultant**.
- 5.2 In accordance with Article 2.2, the **Beneficiary** shall provide its written (including by means of electronic communication) acceptance of the final form of the **Terms of Reference**. By providing such acceptance, the **Beneficiary** shall acknowledge that said **Terms of Reference** fully reflect and respond to the needs identified, and that the **Beneficiary** and the **Recipient** accept them without reservation. Such acceptance shall not be unreasonably withheld and shall be deemed to have been given if not expressly refused within ten calendar days from receiving a written request in this regard from the **EIB**.





- 5.3 The **EIB** shall launch the tender and select the **Consultant** for the delivery of the **Services** in accordance with its own procurement rules and procedures, and having regard to the pertinent provisions of the **Financing Agreement**.
- 5.4 The **Beneficiary** and the **Recipient** have the right to designate jointly a representative, as observer or voting member, in the evaluation committee established by the **EIB** for the selection of the **Consultant**. The role of such representative shall be decided by the **EIB**, in accordance with its internal rules and procedures, and shall be timely communicated to the **Beneficiary**. Any costs related to the participation of the representative designated by the **Beneficiary** and the **Recipient** to the works of the evaluation committee shall be borne by the **Beneficiary** or the **Recipient**, as applicable.
- 5.5 In relation to Article 5.4, the **Parties** acknowledge and agree that the proceedings of the evaluation committees, from the opening of tenders to the conclusion of the work of the evaluation committee, are confidential. No information about the examination, clarification, or evaluation of tenders, and no decisions about the award of the **Service Contract** may be disclosed by any participant in the evaluation committee before the evaluation report is approved by the **EIB**. Any disclosure of such information after the approval of the evaluation report by the **EIB** shall only be made by the **EIB**, in accordance with its internal rules and procedures, or with the prior written agreement of the **EIB**.
- 5.6 Without prejudice to Articles 5.4 and 5.5, the **Beneficiary** and the **Recipient** acknowledge and agree that the conduct of and the decisions related to the tender procedure for the selection of the **Consultant**, including the decision on the award of the corresponding **Service Contract**, rest entirely with the **EIB**, as procuring entity.
- 5.7 Without prejudice to the above provisions of this Article 5, the **Parties** agree that the signature of the **Service Contract** by the **EIB** with the selected **Consultant** and the delivery of the **Services** are conditional upon the entry into force of this **Agreement**.

## ARTICLE 6

- 6.1 The **Beneficiary** and the **Recipient** undertake to ensure that their employees co-operate at all times with the **EIB** and the **Consultant** in relation to the provision of the **Services**, including when so requested by the **EIB**, through confirming the accuracy of the timesheets recording the time worked by the **Consultant's** experts on site in Ukraine.
- 6.2 The **Consultant** may request the assistance of the **Beneficiary** or of the **Recipient** in obtaining copies of local laws, regulations and information which may affect the **Consultant** in the performance of its obligations under the **Service Contract** in the Ukraine.
- 6.3 The **Beneficiary** and the **Recipient** shall promptly provide the **Consultant** with such information and documents at their disposal which may be relevant and necessary for the provision of the **Services**. If so requested, such documents shall be returned to the **Party** which provided them, on completion of the **Service Contract**.
- 6.4 Subject to the laws and regulations on foreign labour in the Ukraine, the **Beneficiary** or of the **Recipient** shall use its best endeavours to ensure that the **Consultant's** employees and their dependents obtain the required visas and permits, including work and residence permits, it being understood that the responsibility for applying for such visas or permits to the relevant authorities in the Ukraine rests with the **Consultant**.
- 6.5 To the extent foreseen in the Annex, the **Beneficiary** or the **Recipient** shall make available to the **Consultant** suitable office and other facilities, as needed for the proper performance of the **Services** by the **Consultant**, and shall comply with the visibility requirements in respect of this **Agreement** and the **Services**.





## ARTICLE 7

7.1 The **Beneficiary** and the **Recipient** acknowledge that, in fulfilling their role under this **Agreement**, they shall have access to and process (as data controller), **Personal Data** pertaining to third parties, including experts designated by the **Consultant** to deliver the **Services**. In this respect, the **Beneficiary** and the **Recipient** each shall guarantee appropriate protection of such **Personal Data**.

If a transfer of **Personal Data** from the **EIB** or the **Consultant** to the **Beneficiary** and/or the **Recipient** is envisaged in connection with the implementation of this **Agreement** and/or the **Service Contract**, such transfer may be subject to the conclusion of a separate agreement between the **EIB** or the **Consultant** (as instructed by the **EIB**) on the one hand, and the **Beneficiary** or the **Recipient** receiving the **Personal Data** on the other hand, setting out *inter alia* the description of the transfer envisaged, the categories of **Personal Data** that may be transferred, the principles for the processing of **Personal Data**, the obligations of each party, and liability provisions between the parties and with respect to the data subjects. The terms of such agreement shall be as prescribed by the applicable European Union legislation.

7.2 The **Beneficiary** and the **Recipient** shall allow persons designated by the **EIB**, as well as persons designated by other institutions or bodies of the European Union, including the European Commission, **OLAF**, or the Court of Auditors of the European Union to verify, by examining the documents, and making copies thereof, or by means of on-the-spot checks of original documents, the implementation of this **Agreement** and the delivery of the **Services**, and shall provide such persons, or ensure that they are provided, with all necessary access and assistance for this purpose.

7.3 The **Beneficiary** and the **Recipient** acknowledge and accept that the **EIB** may be obliged to divulge such information relating to this **Agreement**, including in respect of the **Beneficiary** and the **Recipient**, to any competent institution or body of the European Union, in accordance with the relevant mandatory provisions of European Union law.

## ARTICLE 8

8.1 The **Parties** undertake to cooperate closely in monitoring the delivery of the **Services** by the **Consultant**.

8.2 The **Beneficiary** and the **Recipient** shall review the deliverables and the activity reports (as these shall be listed in the **Terms of Reference**) submitted by the **Consultant** and, in accordance with Article 2.2, the **Beneficiary** shall provide the **EIB** with written comments or acceptance of such deliverables and activity reports, including when necessary the reasons for refusing their acceptance. The acceptance of the relevant deliverable or activity report by the **Beneficiary** shall be deemed to be given if not expressly refused within 15 calendar days from receiving a written request in this regard from the **EIB**.

8.3 The **EIB** shall take due account of the opinion communicated by the **Beneficiary** in accordance with Article 8.2 when it makes its own decision, in accordance with the procedures and deadlines foreseen in the **Service Contract**, on the approval of the deliverables and activity reports produced by the **Consultant**. However, the **Beneficiary** and the **Recipient** acknowledge and accept that the final decision on the approval of the activity reports and deliverables produced by the **Consultant** rests with the **EIB**, in accordance with the procedures and deadlines foreseen in the **Service Contract**.

8.4 Notwithstanding the preceding, the **Consultant** is not, and shall not be regarded as, an agent of the **EIB**, but is an independent contractor. The **EIB** makes no representation, provides no warranties, and bears no liability whatsoever towards either the **Beneficiary**, in particular for the quality, timeliness, or fitness for purpose of the **Services** provided by the **Consultant** and the **Beneficiary** and the **Recipient** are solely responsible for deciding whether to pursue or implement any proposals, recommendations, or solutions made by a **Consultant** as part of the **Services**, as well as for making their own assessment on the appropriateness of the **Services** for the use they intends to make thereof.



- 8.5 In accordance with Article 2.2, during the execution of the **Service Contract** the **Beneficiary**:
- (a) may request amendments to the design or scope of the **Services** and has the right to be consulted on and agree to any material amendments to the design or scope of the **Services** that the **EIB** or the **Consultant** may envisage;
  - (b) has the right to be consulted on and agree to any changes to the team of experts provided by the **Consultant** that the **EIB** or the **Consultant** envisage, and may request - to the extent that it is justified on reasonable grounds - the replacement of one or more of the experts provided by the **Consultant** to deliver the **Services**.

Without prejudice to the preceding, the **Beneficiary** and the **Recipient** acknowledge and accept that the final decision on any changes to the design or scope of the **Services** or to the composition of the team of experts provided by the **Consultant** rests with the **EIB**, in accordance with the terms and conditions of the **Service Contract**.

- 8.6 The **EIB** shall make the payments to the **Consultant** in accordance with the terms and conditions of the **Service Contract**. Except when otherwise agreed between the **Parties** pursuant to Articles 4.4 or 4.5, neither the **Beneficiary** nor the **Recipient** has any obligation to make any payments to the **Consultant**.
- 8.7 Subject to any pre-existing **Intellectual Property Rights** of any individual or legal entity including any of the **Parties**, which shall remain with their original owner, the **Intellectual Property Rights** in new materials compiled or prepared by a **Consultant** in the performance of the **Service Contract**, including all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material, shall become the property of the **EIB**.
- 8.8 The **EIB** hereby grants to the **Beneficiary** and to the **Recipient** a non-exclusive, royalty-free, licence for an indefinite duration, to use any **Intellectual Property Rights** the **EIB** obtains in accordance with Article 8.7. The license may be terminated by the **EIB** at any time, subject to a notice period of three (3) months. However, such license is not granted in respect of any new **Intellectual Property Rights** in any deliverables or other reports produced by the **Consultant** which the **Beneficiary**, subject to Article 2.2, expressly refuses to accept pursuant to this Article 8.

## ARTICLE 9

- 9.1 Without prejudice to any other rights of the **EIB** under this **Agreement** or under any applicable law, the **Beneficiary** and the **Recipient**, jointly and severally, shall hold the **EIB** and the European Union harmless from and against all damages, losses, costs and expenses suffered or incurred by the **EIB** or the European Union as a result of any act or omission committed by the **Beneficiary** or the **Recipient**, or from the failure of the **Beneficiary** or the **Recipient** to comply with any of its obligations set out in this **Agreement**.
- 9.2 The **EIB** and the European Union cannot under any circumstances or for any reason whatsoever be held liable towards the **Beneficiary**, the **Recipient** or any third parties for any damage, loss or injury sustained by the staff or property of the **Beneficiary**, the **Recipient** or a third party while the **Service Contract** is being carried out, or as a consequence of the **Service Contract**, including when such damage, loss or injury is the result of any act or omission of the **Consultant**, or of the failure of the **Consultant** to provide the **Services** in accordance with the **Service Contract**.

## ARTICLE 10

- 10.1 The **Beneficiary** and the **Recipient** each warrants and undertakes that it has not engaged, and no person to its present knowledge has engaged, in any **Prohibited Conduct** and that it shall not engage, and no person, with its consent or prior knowledge, shall engage in any **Prohibited Conduct** in connection with any transaction contemplated by this **Agreement**.





- 10.2 The **Beneficiary** and the **Recipient** each undertakes to inform the **EIB** and take such action as the **EIB** shall reasonably request to investigate or terminate any alleged or suspected occurrence of any **Prohibited Conduct** in connection with any transaction contemplated by this **Agreement** and adopt the necessary redress measures, and shall facilitate any investigation that the **EIB** may make concerning such act or behaviour.

## ARTICLE 11

- 11.1 Any notice or other communication to be served under this **Agreement** must be in writing and shall state the identification code and the title of this **Agreement**. Notices and other communications are deemed to have been made when they are received by the receiving **Party**.
- 11.2 Except for notices from one **Party** to any other relating to litigation whether pending or threatened, which shall be sent as required under the dispute settlement procedure specified in Article 13, all notices and correspondence in relation to this **Agreement** and the **Services** shall be sent by post, facsimile or, to the extent agreed by the **Parties** in writing, by e-mail or other means of electronic communication, to the following addresses:

For the EIB:

European Investment Bank  
98-100, boulevard Konrad Adenauer  
L-2950 Luxembourg

Fax: +352 4379 62650

e-mail: [tau@eib.org](mailto:tau@eib.org)

Attention: Head of Consultant Procurement and Contract Management, Advisory Services Department

For the Beneficiary:

Ministry of Regional Development, Construction and Housing, and Communal Services

9 Velyka Zhytomyrska Street, Kyiv 01601, Ukraine

Fax: +380 63 487 0114

e-mail: [office@umip-pmsu.org](mailto:office@umip-pmsu.org)

Attention: Deputy Minister of Regional Development, Construction and Housing, and Communal Services, UMIP Coordinator

For the Recipient:

Sumy City Council

2 Nezalezhnosti Square, Sumy, 40030, Ukraine

Fax: +380 542 700 560

e-mail: [golova@smr.gov.ua](mailto:golova@smr.gov.ua)

Attention: Head of the Division on Investment and External Partnership of the Department of Finance, Economics and Investment, Sumy City Council

## ARTICLE 12

- 12.1 Any amendments to this **Agreement**, including its Annex, must be set out in an instrument in writing signed by all **Parties**.
- 12.2 Changes of address or of contact details may simply be notified to the other **Parties** in writing, in accordance with Article 11.
- 12.3 A **Party** may not assign or transfer to a third party, or otherwise dispose of, any of its rights or obligations under this **Agreement** without the prior written consent of the other **Parties**.





- 12.4 The **EIB** may suspend the implementation of all or part of the **Services**, and the **Beneficiary**, in accordance with Article 2.2, may request the **EIB** to do so, if circumstances (including *force majeure*, as such concept is defined under the applicable law) make it too difficult or dangerous to continue. If the **Beneficiary** requests the **EIB** to suspend implementation of the **Services**, it must provide the **EIB** without delay with all the necessary details and reasons for the request.
- 12.5 The **EIB** may also suspend the provision of all or part of the **Services** by the **Consultant** (i) when it is necessary to verify if the implementation of the **Services** has been affected by substantial errors, irregularities or fraud; or (ii) if the **Beneficiary** and/or the **Recipient** fails to comply with any material obligation incumbent on it under this **Agreement** or the applicable law, despite having received a 30 calendar days written notice from the **EIB** requesting the **Beneficiary** and/or the **Recipient** to comply.

The **Beneficiary** and/or the **Recipient**, as applicable must provide any information, clarification or document requested by the **EIB** in the context of the verifications referred to in the preceding paragraph, within 30 calendar days of receipt of such written request. If such verifications result in credible information that the implementation of the **Services** has been affected by substantial errors, irregularities, fraud, or breach of material obligations imputable to the **Beneficiary** and/or the **Recipient**, the **EIB** reserves the right (i) to instruct the **Consultant** to cease the provision of the **Services**, and (ii) to terminate this **Agreement** with immediate effect, without any liability for the **EIB**.

- 12.6 If, for any reason whatsoever,
- (a) the **Financing Agreement** or the **Finance Contract** is terminated or otherwise ceases to be valid and in full force and effect; or
  - (b) the **Service Contract** is terminated or ceases to be valid and in full force and effect and, pursuant to a decision of the **EIB** in this regard, no new service contract is awarded for the **Services** following such early termination of the initial **Service Contract**; or
  - (c) the **Project** is no longer carried out under the **Programme** and financed under the **Finance Contract**; or
  - (d) the **Beneficiary** and/or the **Recipient**, or any person with powers of representation, decision-making or control in relation to the **Beneficiary** and/or the **Recipient**, commits (in the reasoned opinion of the **EIB**) or is found guilty of gross professional misconduct, or is subject to proceedings alleging any offence concerning its professional conduct, or has engaged in any **Prohibited Conduct**, or is subject to an allegation (other than allegations which are, in the reasoned opinion of the **EIB**, frivolous or vexatious) of having engaged in any **Prohibited Conduct**; or
  - (e) it becomes unlawful in any applicable jurisdiction for the **EIB** to perform any of its obligations as contemplated in this **Agreement** or to fund or maintain the financing of the **Services**;

the **EIB** reserves the right to instruct the **Consultant** to cease the provision of the **Services** and to terminate this **Agreement** by giving a seven days' written notice to the **Beneficiary** and the **Recipient**. Such termination shall be without any liability for the **EIB**.

## ARTICLE 13

- 13.1 This **Agreement**, its formation, construction and validity, and any non-contractual obligations arising out of or in connection with it, shall be interpreted in accordance with the principles of European contract law. The laws of Ukraine relating to the existence or interpretation of contracts shall not apply to this **Agreement**.





- 13.2 The **Parties** shall endeavour to settle amicably any dispute arising between them out of or in connection with this **Agreement** or its subject matter or formation (including non-contractual disputes or claims). If no amicable agreement is reached within 60 calendar days from the notification of such dispute or complaint, any dispute concerning this **Agreement** shall be settled by final and binding arbitration in accordance with the *United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules* in effect at the date of this **Agreement**, which rules are deemed to be incorporated by reference into this Article 13.

The number of arbitrators shall be one. 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 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 **Beneficiary** or the **Recipient** shall not seek from any judicial authority, any interim measures or pre-award relief against the **EIB**.

The **Beneficiary** or the **Recipient**, as applicable shall abide by and carry out any such award in its territory without delay.

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

Nothing in this Article 13 shall interfere with, override or otherwise erode the **EIB's** privileges and immunities as set out in the EU treaties including, without limitation, the inviolability of its archives and the **EIB** expressly reserves its rights in this regard.

#### ARTICLE 14

- 14.1. No failure or delay by a **Party** in exercising any of its rights under this **Agreement** may be construed as a waiver of such right.
- 14.2. Nothing in this **Agreement** shall be deemed to be a waiver, renunciation, or modification, whether express or implied, of the privileges, immunities, and exemptions enjoyed by the **EIB**, its Governors, Directors, Alternates, officers, employees, or experts performing missions for the **EIB** pursuant to its constituent documents, international convention, or any applicable law, all of which are expressly reserved.
- 14.3. If any provision of this **Agreement** is held illegal or unenforceable in a judicial proceeding, such provision will be severed and will be inoperative, and, provided that the fundamental terms and conditions of this **Agreement** remain legal and enforceable, the remainder of this **Agreement** shall remain operative and binding on the **Parties**.





IN WITNESS WHEREOF the Parties hereto have caused this **Agreement** to be executed on their behalf in four originals in the English language (each page of which has been initialled on behalf of each of the **Parties**), of which two for the **EIB**, one for the **Beneficiary**, and one for the **Recipient**.

**For and on behalf of the  
EUROPEAN INVESTMENT BANK**

Mr Martin Vatter  
Managerial Adviser  
Legal Department – Corporate

Date: 14/01/2019

Ms Simona Bovha  
Head of Division  
Advisory Services Department - Consultant  
Procurement and Contract Management

Date: 15/1/2019

**For and on behalf of the  
MINISTRY OF REGIONAL DEVELOPMENT, CONSTRUCTION AND HOUSING, AND COMMUNAL  
SERVICES OF UKRAINE**

Mr Eduard Borysovych Krugliak  
Deputy Minister

Date: 26.12.2018

**For and on behalf of the  
SUMY CITY COUNCIL**



Mr Lysenko Oleksandr Mykolayovych  
Mayor

Date: 18.12.2018



## ANNEX: Description of the Services

### A. The Programme

The Ukraine Municipal Infrastructure Programme (the "**Programme**") is a multi-sector investment programme of the Government of Ukraine, that supports public infrastructure projects in medium- and large municipalities that aim at protecting, rehabilitating and avoiding deterioration of municipal infrastructure. It targets investment projects in the following sectors:

- ✓ district heating;
- ✓ energy efficiency in public buildings;
- ✓ municipal lighting;
- ✓ water supply, wastewater;
- ✓ solid waste management.

Under the **Programme**, the Ministry of Finance of Ukraine (MOF) will extend loans to central, regional or local government agencies, state and communal enterprises and municipalities, including organizations with larger share of state or municipal capital, for the purpose of implementing the municipal infrastructure projects in one of the above sectors.

The implementation of the **Programme** shall be carried out under the coordination of the Ministry of Regional Development, Construction and Housing, and Communal Services of Ukraine (MRD). The MRD is responsible, as **Programme** coordinator, for the overall supervision, including preparation, supervision, monitoring and evaluation of investment projects, as well as for the evaluation of the results of these projects.

For this purpose, the MRD has set up within its structures a *Programme Management Support Unit* (PMSU), for overall management and monitoring of the **Programme**, in line with the requirements of the **Finance Contract**.

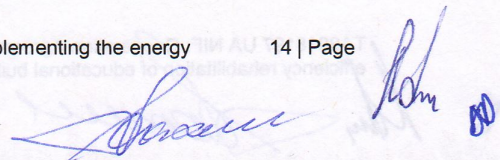
### B. The Services

1. **EIB identification code:** TA 2018197 UA NIF
2. **Source of funds and Financing Agreement**

In 2007, the European Commission set up the *Neighbourhood Investment Facility* (NIF) as a financing mechanism aimed at supporting the partner countries in the European Union's eastern and southern neighbourhoods through the provision of non-reimbursable financing from the general budget of the European Union to accompany reimbursable financing from European public finance institutions, including the **EIB**, in order to generate a substantial leverage effect.

In the framework of the NIF, in 2014 the European Commission approved a contribution from the general budget of the European Union for the *Municipal Project Support Facility* (MPSF) and entrusted to the **EIB** the management of these financial resources, through a delegation agreement dated 31 March 2015, as subsequently amended (such delegation agreement representing the **Financing Agreement** for the purpose of this **Agreement**). The facility aims to help municipalities provide sustainable municipal services whilst protecting and preserving the urban environment. The main objective is to finance the preparation of energy efficiency investment projects in the urban sectors that are covered by the *Covenant of Mayors* (including district heating, urban transport, street lighting and energy efficiency in buildings) as well as of projects related to the water supply and sanitation and solid waste management.

In accordance with the procedures agreed in the **Financing Agreement**, in July 2018 the governing structures of the MPSF have approved the use of the financial resources available under MPSF to cover the cost of the **Services**, up to the maximum amount specified in Article 4.2 of the **Agreement**.





### 3. Management structure

As specified in Article 5 of the **Agreement**, the **EIB** acts as procuring entity for the **Services**. At the **EIB**, the *Projects Directorate* (PJ) is responsible for the management and technical follow up of the **Service Contract** with the participation from the Operations Directorate (Ops). The *Consultant Procurement and Contract Management Division* (CPCM) is responsible for the contractual and administrative management of the **Service Contract**.

As coordinator of the **Programme**, the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine (MRD), through its *Programme Management and Support Unit* (PMSU), shall provide oversight and support in preparation and implementation of the projects included in the **Programme**. The PMSU has, inter alia, the following roles: project identification, screening and preparation, overall programme management, monitoring of the implementation and procurement processes, managing payments, advisory role to recipients and other stakeholders.

The City Council of Sumy is the entity responsible for the implementation of the **Project** and shall act as the **Recipient** for the purpose of the **Services**. In order to carry out this role, a *Project Implementation Unit* (PIU) has been set up within the structures of the **Recipient**, responsible for preparation and implementation activities at **Project** level. The **Recipient** will assign the Head of PIU as a Project Manager who will work alongside the **Consultant** and will be responsible for:

- assisting the **Consultant** with data collection;
- coordinating with other institutions and local authorities;
- reviewing and commenting on all formal reports;
- overall **Project** management on behalf of the **Recipient**.

### 4. The Services

The **Consultant** will carry out the activities described below:

#### Support to the PIU

The **Consultant** will assist the **Recipient** to update and review the Project Implementation Plan for the **Project** acceptable for **EIB**. The Project Implementation Plan will cover all aspects of project implementation, and will include, *inter alia*:

- Project work programme, including permitting requirements
- Project budget
- Procurement plan

The **Consultant** will support the daily operation of the PIU including local support to the implementation. All **Services** should be provided in close cooperation with the **Recipient** and **Beneficiary**.

#### Preparation of technical documentation and tender documents

The **Consultant** shall update the **Project** costs and its scope (components), review and assist in the finalisation of the basic design, technical specifications and bill of quantities for the components of the **Project** (as per the recommendations in the Feasibility Study) in sufficient detail and in a form acceptable for open tendering.

In parallel, the **Recipient** shall conduct detailed audits of the structural stability of all public buildings proposed for inclusion in the project to ensure that proposed energy efficiency measures can be implemented without compromising their structural stability.

All designs and specifications shall meet the requirements of the Ukrainian Law and, where appropriate, international standards.

Designs, technical specifications and bill of quantities shall reflect the requirements of **EIB**. Technical specifications shall be realistic and affordable given the cost estimates (including projected O&M costs).



In addition, the **Consultant** will support the PIU to prepare the tender documents for all **Project** components.

In its work, the **Consultant** will be responsible only for advising the **Recipient** on **EIB** requirements for procurement documents. However, the **Consultant** shall take into consideration the requirements of the Ukrainian legislation regarding construction and investment processes, based on the advice of the **Recipient** and the **Beneficiary**.

#### *Advice on procurement strategy*

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The **Consultant** will provide advice with respect to all aspects of the procurement strategy which shall be duly reflected in the Project Implementation Plan. All Design and Build contracts shall be procured through international tendering. Any amendments to the procurement strategy shall be subject to the **EIB's** no objection.

#### *Procurement support*

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The **Consultant** will also support the **Recipient** (and in particular its PIU) in organising and managing the tendering, evaluation process and during contract finalisation.

The **Consultant** will oversee the procurement to be carried out for the **Project** and ensure that it is carried out in accordance with the **EIB Guide to Procurement** (currently available at: <http://www.eib.org/about/procurement/index.htm>) and the provisions on procurement set out in the *Programme Procedures Manual for UMIP* (currently available at: [http://umip.org.ua/wp-content/uploads/2017/09/opg\\_eng.pdf](http://umip.org.ua/wp-content/uploads/2017/09/opg_eng.pdf)).

The provision of support during tendering, evaluation process and finalisation of contracts is expected to be delivered on an interruptible basis between months 6-18 of performance of the **Services**.

In addition to the deliverables listed above, the **Consultant** shall prepare and submit an inception report, as well as progress reports at regular intervals, and a completion report at the end of the **Services**.

#### **5. Facilities to be provided by the Recipient**

It is expected that the **Consultant** shall deliver the largest portion of the **Services** on site in Sumy, Ukraine. In this respect, the **Recipient** shall ensure that the staff of the **Consultant** is provided, at the cost of the **Recipient**, with office accommodation of a reasonable standard and equipped with phone and Internet connection for each expert working on the delivery of **Services** in Sumy.

#### **6. Visibility elements**

The **Beneficiary** and the **Recipient** shall take all appropriate measures to publicize the fact that the **Services** are financed through financial support from the general budget of the Union under the MPSF. Information given to the press or to any third parties, all related publicity material, official notices, reports and publications, shall acknowledge that the **Services** are delivered "with funding by the European Union".

The **Parties** shall extend an invitation to the Commission and to the Delegation of the European Union in the Ukraine to participate in any and all events any of them may organize in relation to the **Services**.

