June 23, 2014

His Excellency
Pavlo Sheremeta
Minister
Ministry of Economic Development and Trade
12/2, Hrushevskogo Str.,
Kyiv, Ukraine

Re: Ukraine District Heating Regulatory Reform Support Program
Swedish International Development Cooperation Agency (SIDA) Grant No. TF017571

Excellency:

In response to the request for financial assistance made on behalf of Ukraine ("Recipient"), I am pleased to inform you that the International Bank for Reconstruction and Development ("World Bank"), acting as administrator of grant funds provided by the Swedish International Development Cooperation Agency (SIDA) ("Donor") under the Swedish Trust Fund for Assistance to the National Commission of Ukraine for Regulations of Communal Services (TF072127), proposes to extend to the Recipient a grant for the District Heating Regulatory Reform Support Program Trust Fund in an amount not to exceed Euro one million six hundred thirty eight thousand six hundred Euro (€1,638,600) ("Grant") on the terms and conditions set forth or referred to in this letter agreement ("Agreement"), which includes the attached Annex, to assist in the financing of the project described in the Annex ("Project").

This Grant is funded out of the abovementioned trust fund for which the World Bank receives periodic contributions from the Donor. In accordance with Section 3.02 of the Standard Conditions (as defined in the Annex to this Agreement), the World Bank’s payment obligations in connection with this Agreement are limited to the amount of funds made available to it by the Donor under the abovementioned trust fund, and the Recipient’s right to withdraw the Grant proceeds is subject to the availability of such funds.

The Recipient represents, by confirming its agreement below, that it is authorized to enter into this Agreement and to carry out the Project in accordance with the terms and conditions set forth or referred to in this Agreement.
Please confirm the Recipient's agreement to the foregoing by having an authorized official of the Recipient sign and date the enclosed copy of this Agreement, and returning it to the World Bank. Upon receipt by the World Bank of this countersigned copy, this Agreement shall become effective as of the date specified by the World Bank in accordance with Section V of the Annex to this Agreement.

Very truly yours,

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By  

Qimiao Fan
Country Director
Belarus, Moldova and Ukraine
Europe and Central Asia Region

AGREED:
UKRAINE

By  

Authorized Representative
Name
Title
Date: 18 08, 2014

Enclosures:

(2) Disbursement Letter of the same date as this Agreement, together with World Bank Disbursement Guidelines for Projects, dated May 1, 2006
(3) "Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants", dated October 15, 2006 and revised in January 2011
(5) "Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers", dated January 2011
Article I
Standard Conditions; Definitions


1.02. **Definitions.** Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the Standard Conditions or in this Agreement, and the following additional terms have the following meanings:

(i) “DH” means district heating.

(ii) “PIU” means the Project Implementation Unit to be established within the Utilities Regulator.

(iii) “Subsidiary Agreement” means the agreement between the Recipient, through MOF, and the Utilities Regulator, referred to in Section 2.03 (a) below, pursuant to which the proceeds of the Grant shall be made available to the Utilities Regulator.

(iv) “Utilities Regulator” means the National Commission of the State Public Utilities Regulation, established and operating pursuant to Presidential Decree #1073/2011 of November 23, 2011.

Article II
Project Execution

2.01. **Project Objectives and Description.** The objective of the Project is to assist the Utilities Regulator with transitioning from “cost plus” to “incentive-based” DH regulation. The Project consists of the following parts:

**Part 1: Support for the development of secondary legislation, transitional methodology and its piloting, including through:**

(i) updating the existing heat tariff practices; (ii) development of a transitional (from “cost plus” to “incentive-based”) methodology for calculation of the heat tariffs based on the existing primary and secondary legislation and development of new legislation when necessary; (iii) support in applying recommended transitional methodology; (iv) updating regulatory and accounting reporting forms; (v) introducing new procedures, guidelines and regulations for auditors; (vi) developing standard contracts for heat and hot water supply and water supply; (vii) deploying cost reflective methodology; (viii) provision of training for the staff of the Utilities Regulator in the application of the new methodology and guidelines; and (ix) support with the application of the new district heating tariff methodologies in pilot municipalities/heating utilities.

**Part 2: Support for the introduction of a sector-wide benchmarking exercise, including through:**

(i) technical assistance for the Utilities Regulator in selecting and
developing a benchmarking methodology; (ii) providing guidance on performing a benchmarking analysis; (iii) developing a benchmarking manual; and (iv) provision of training for the staff of the Utilities Regulator on benchmarking.

**Part 3: Capacity building to the Utilities Regulator and selected heating utilities, including through consultants' services to:** (i) provide in-house training for the Utilities Regulator’s staff on Parts 1 and 2 above; (ii) training for licensees on the application, accounting, and reporting under the new methodologies, regulations and procedures; and (iii) conducting seminars and workshops to selected stakeholders.

**Part 4: Support for the development of miscellaneous tools for regulation,** including software and hardware for on-line data collection and processing.

**Part 5: Project implementation support,** including for the PIU, and financing of Operating Costs and annual audit costs.

2.02. **Project Execution Generally.** The Recipient declares its commitment to the objectives of the Project. To this end, the Recipient shall cause the Project to be carried out by the Utilities Regulator in accordance with the provisions of: (a) Article II of the Standard Conditions; (b) the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006 and revised in January 2011 (“Anti-Corruption Guidelines”); (c) this Article II, and (d) the agreement dated on or around the date of this Agreement between the World Bank and the Utilities Regulator, as such agreement may be amended from time to time (“Project Agreement”).

2.03. **Institutional and Other Arrangements.**

(a) **Subsidiary Agreement**

(i) To facilitate the carrying out of the Project, the Recipient shall make the proceeds of the Grant available to the Utilities Regulator under the Subsidiary Agreement between the Recipient and the Utilities Regulator, under terms and conditions approved by the World Bank, which shall include that the Recipient shall cause the Utilities Regulator to: (i) perform in accordance with the provisions of the Subsidiary Agreement all of the obligations of the Utilities Regulator therein set forth; (ii) carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, economic, financial and environmental practices; (iii) to take all action, including the provision of funds, facilities, services and other resources, necessary or appropriate for the carrying out of the Project; (iv) carry out the Project in accordance with the provisions of this Agreement and in accordance with the Anti-Corruption Guidelines and (v) not to take or permit to be taken any action which would prevent or interfere with the carrying out of the Project.

(ii) The Recipient shall exercise its rights under the Subsidiary Agreement in such manner as to protect the interests of the Recipient and the World Bank and to accomplish the purposes of the Grant. Except as the World Bank shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Subsidiary Agreement or any of its provisions.

(b) **Project Implementation Unit**

The Recipient shall cause the Utilities Regulator to maintain the PIU, throughout the duration of the Project, in a form and with functions, staffing, resources, terms of reference and qualifications satisfactory to the World Bank.
(c) Selection of Pilot Municipalities

The Recipient shall cause the Utilities Regulator to select pilot municipalities/ heating utilities for Part 1(ix) of the Project in accordance with criteria acceptable to the World Bank which shall include: (i) capacity of relevant utilities to provide needed data; (ii) the difference between cost recovery tariffs and utility’s costs (if any); (iii) collection rates; (iv) information transparency, existing information-sharing platform and user interface used by a relevant utility; (v) a well-functioning efficient consumer feedback mechanism in the relevant utility; (vi) available municipal-level social protection mechanisms; and (vii) ability of the municipalities and relevant utilities to provide advice to consumers on access to available subsidies.

2.04. Donor Visibility and Visit. (a) The Recipient shall take or cause to be taken all such measures as the World Bank may reasonably request to identify publicly the Donor’s support for the Project.

(b) For the purposes of Section 2.09 of the Standard Conditions, the Recipient shall, upon the World Bank’s request, take all measures required on its part to enable the representatives of the Donor to visit any part of the Recipient’s territory for purposes related to the Project.

2.05. Project Monitoring, Reporting and Evaluation. (a) The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 2.06 of the Standard Conditions and on the basis of indicators acceptable to the World Bank. Each Project Report shall cover the period of one calendar semester, and shall be furnished to the World Bank not later than forty-five (45) days after the end of the period covered by such report.

(b) The Recipient shall prepare the Completion Report in accordance with the provisions of Section 2.06 of the Standard Conditions. The Completion Report shall be furnished to the World Bank not later than six months after the Closing Date.

2.06. Financial Management. (a) The Recipient shall ensure that a financial management system is maintained in accordance with the provisions of Section 2.07 of the Standard Conditions.

(b) The Recipient shall ensure that interim unaudited financial reports for the Project are prepared and furnished to the World Bank not later than forty-five (45) days after the end of each calendar quarter, covering the quarter, in form and substance satisfactory to the World Bank.

(c) The Recipient shall have its Financial Statements audited in accordance with the provisions of Section 2.07 (b) of the Standard Conditions. Each such audit of the Financial Statements shall cover the period of one fiscal year of the Recipient. The audited Financial Statements for each such period shall be furnished to the World Bank not later than six months after the end of such period.

2.07. Procurement. All goods, non-consulting services, and/or consulting services required for the Project and to be financed, fully or partially, out of the proceeds of the Grant shall be procured in accordance with the requirements set forth or referred to in the “Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers”, dated January 2011 (“Procurement Guidelines”), and the “Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers”, dated January 2011 (“Consultant Guidelines”).
2.08. Any contract for Eligible Expenditures to be financed in full or in part out of the proceeds of the Grant shall be included in the procurement plan prepared by the Recipient and approved by the World Bank in accordance with the Procurement Guidelines and the Consultant Guidelines, prior to initiating the procurement process for any such contract. Any contract procured using the National Competitive Bidding method shall be subject to the additional provisions set forth in the Appendix to the Annex to this Agreement.

Article III
Withdrawal of Grant Proceeds

3.01. **Eligible Expenditures.** The Recipient may withdraw the proceeds of the Grant in accordance with the provisions of: (a) Article III of the Standard Conditions; (b) this Section; and (c) such additional instructions as the World Bank may specify by notice to the Recipient (including the “World Bank Disbursement Guidelines for Projects” dated May 2006, as revised from time to time by the World Bank and as made applicable to this Agreement pursuant to such instructions), to finance 100% of Eligible Expenditures consisting of goods, non-consulting services, consultants’ services, Training and Workshops, and Operating Costs inclusive of Taxes.

For the purposes of this paragraph, the term:

(i) “Training and Workshops” means the reasonable costs, as shall have been approved by the World Bank, for training and workshops conducted under the Project, including tuition, travel and subsistence costs for training and workshop participants, costs associated with securing the services of trainers and workshop speakers, rental of training and workshop facilities, preparation and reproduction of training and workshop materials, and other costs directly related to training course and workshop preparation and implementation (but excluding goods and consultants’ services);

(ii) “Operating Costs” means the reasonable costs, as shall have been approved by the World Bank, for the incremental expenses incurred on account of Project implementation, consisting of, communication costs, office supplies and equipment and equipment maintenance, utilities, document duplication/printing, consumables, travel cost and *per diem* for Project staff for travel linked to the implementation of the Project, (but excluding consultants’ services and salaries of officials of the Recipient’s civil service).

3.02. **Withdrawal Conditions.** Notwithstanding the provisions of Section 3.01 of this Agreement, no withdrawal shall be made for payments made prior to the date of countersignature of this Agreement by the Recipient.

3.03. **Withdrawal Period.** The Closing Date referred to in Section 3.06 (c) of the Standard Conditions is May 31, 2016.

Article IV
Additional Remedies

4.01. The Additional Events of Suspension referred to in Section 4.02 (k) of the Standard Conditions consists of the following:

(a) The Recipient has taken or permitted to be taken any action which would prevent or interfere with the performance by the Utilities Regulator of its obligations under the Project Agreement.
(b) The Utilities Regulator has failed to perform any obligation under the Project Agreement.

(c) IBRD or IDA has declared the Utilities Regulator ineligible to receive proceeds of any financing made by IBRD or IDA, or otherwise to participate in the preparation or implementation of any project financed in whole or in part by IBRD or IDA (including as administrator of funds provided by another financier), as a result of: (i) a determination by IBRD or IDA that the Utilities Regulator has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of any financing made by IBRD or IDA; and/or (ii) a declaration by another financier that the Utilities Regulator is ineligible to receive proceeds of financings made by such financier or otherwise to participate in the preparation or implementation of any project financed in whole or in part by such financier as a result of a determination by such financier that the Utilities Regulator has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of a financing made by such financier.

(d) As a result of events which have occurred after the date of this Agreement, an extraordinary situation has arisen which makes it improbable that the Utilities Regulator will be able to perform its obligations under the Project Agreement.

(e) Presidential Decree #1073/2011 of November 23, 2011 pursuant to which the Utilities Regulator has been established and is operating has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Utilities Regulator to perform any of its obligations under the Project Agreement.

(f) The World Bank has determined after the Effective Date referred to in Section 5.03 of this Agreement that prior to such date but after the date of this Agreement, an event has occurred which would have entitled the World Bank to suspend the Recipient's right to make withdrawals from the Grant Account if this Agreement had been effective on the date such event occurred.

Article V
Effectiveness; Termination

5.01. This Agreement shall not become effective until evidence satisfactory to the World Bank has been furnished to the World Bank that the conditions specified below have been satisfied.

(a) The PIU has been established by the Utilities Regulator in a form and with functions, staffing, resources, terms of reference and qualifications satisfactory to the World Bank.

(b) The execution and delivery of this Agreement on behalf of the Recipient, and of the Project Agreement on behalf of the Utilities Regulator have been duly authorized or ratified by all necessary governmental and corporate action.

(c) If the World Bank so requests, the condition of the Utilities Regulator, as represented or warranted to the World Bank at the date of this Agreement, has undergone no material adverse change after such date.

(d) The Subsidiary Agreement referred to in Section 2.03(a) has been executed on behalf of the Recipient and the Utilities Regulator.

5.02. Except as the Recipient and the World Bank shall otherwise agree, this Agreement shall enter into effect on the date upon which the World Bank dispatches to the Recipient notice of its acceptance of the
evidence required pursuant to Section 5.01 ("Effective Date"). If, before the Effective Date, any event has occurred which would have entitled the World Bank to suspend the right of the Recipient to make withdrawals from the Grant Account if this Agreement had been effective, the World Bank may postpone the dispatch of the notice referred to in this Section until such event (or events) has (or have) ceased to exist.

5.03. **Termination for Failure to Become Effective.** This Agreement and all obligations of the parties under it shall terminate if it has not entered into effect by the date [90] days after the date of this Agreement, unless the World Bank, after consideration of the reasons for the delay, establishes a later date for the purpose of this Section. The World Bank shall promptly notify the Recipient of such later date.

**Article VI**

**Recipient's Representative; Addresses**

6.01. **Recipient's Representative.** The Recipient's Representative referred to in Section 7.02 of the Standard Conditions is its Minister of Economic Development and Trade.

6.02. **Recipient's Address.** The Recipient's Address referred to in Section 7.01 of the Standard Conditions is:

Ministry of Economic Development and Trade
12/2, Hrushevskogo Str.,
Kyiv, Ukraine

6.03. **World Bank's Address.** The World Bank's Address referred to in Section 7.01 of the Standard Conditions is:

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

Facsimile: 1-202-477-6391
APPENDIX

Mandatory Provisions for Procurement under
Bank-Financed Contracts Subject to National Competitive Bidding

The procedure to be followed for National Competitive Bidding ("NCB") shall be the Open Tender Procedure set forth in the Law on Public Procurement No. 2289-XI dated June 1, 2010 and amendments thereto, provided, however, that such procedure shall be subject to the provisions of Section I and Paragraphs 3.3 and 3.4 of the “Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers” (January 2011) (the “Procurement Guidelines”) and the following additional provisions:

(i) Bidding Documents, acceptable to the Bank, shall be used.

(ii) The eligibility of bidders to participate in a procurement process and to be awarded a Bank-financed contract shall be as defined under Section I of the Procurement Guidelines; accordingly, no bidder or potential bidder shall be declared ineligible for contracts financed by the Bank for reasons other than those provided in Section I of the Procurement Guidelines.

(iii) After the public opening of the bids, information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with this process until the publication of the contract award notice.

(iv) Qualification criteria shall be clearly specified in the bidding documents. Qualification shall be assessed on a “pass or fail” basis, and merit points shall not be used. Such assessment shall be based entirely upon the bidder’s or prospective bidder’s capability and resources to effectively perform the contract, taking into account objective and measurable factors, including: (i) relevant general and specific experience, and satisfactory past performance and successful completion of similar contracts over a given period; (ii) financial position; and where relevant (iii) capability of construction and/or manufacturing facilities. The availability of equipment, material and technical basis, including owning production facilities and/or service centers within the territory of Ukraine shall not be required as part of qualification requirements.

(v) Government-owned enterprises are eligible to bid only if they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of Borrower or Sub-Borrower.

(vi) Evaluation of bids shall be made in strict adherence to the evaluation criteria specified in the bidding documents. Evaluation criteria other than price shall be quantified in monetary terms. Merit points shall not be used, and no minimum point or percentage value shall be assigned to the significance of price, in bid evaluation.

(vii) If required, bid security amount shall not exceed two percent (2%) of the estimated cost of the contract.
(viii) No advance payments shall be made to contractors/suppliers without a suitable advance payment security.

(ix) No domestic preference shall be granted in bid evaluation on the basis of bidder nationality, origin of goods or services, and/or preferential programs. Contracts shall be awarded to the qualified bidder whose bid has been determined: (i) to be substantially responsive to the bidding documents, and (ii) to offer the lowest-evaluated cost. A bidder shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.

(x) No bid shall be rejected on the basis of a comparison with the employer's estimate or budget allocation ceiling without the Bank's prior concurrence.

(xi) All bids (including in the case when less than two bids are received) shall not be rejected, the procurement process shall not be cancelled, and new bids shall not be solicited without the Bank's prior concurrence.

(xii) Restrictions to the contract amendments, as contemplated under Article 40 of the PPL will not apply. With respect to contracts subject to the Bank's prior review, the Borrower shall obtain the Bank's no objection before agreeing to: (a) a material extension of the stipulated time for performance of a contract; (b) any substantial modification of the scope of services or other significant changes to the terms and conditions of the contract; (c) any variation order or amendment which, singly or combined with all variation orders or amendments previously issued, increases the original contract amount by more than 15 percent; or (d) the proposed termination of the contract. A copy of all contract amendments shall be provided to the Bank.

(xiii) The bidding document and contract as deemed acceptable by the Bank shall include provisions stating the Bank's policy to sanction firms or individuals, found to have engaged in fraud and corruption as defined in the Procurement Guidelines.

(xiv) In accordance with the Procurement Guidelines, each bidding document and contract financed out of the proceeds of the Bank financing shall provide that bidders, suppliers, contractors and their subcontractors, agents, personnel, consultants, service providers, or suppliers to permit the Bank to inspect all accounts, records and other documents relating to the bid submission and performance of the contract and to have said accounts and records audited by auditors appointed by the Bank. Acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for in the Procurement Guidelines constitute an obstructive practice as defined in the Guidelines.