

## PRE-FINANCING AGREEMENT

### Re: UKRAINE / Kryvyi Rih Trolleybus Project

This Pre-financing Agreement (the “**Agreement**”) is made on 15 March 2017, by and between:

- (1) Kryvyi Rih City Council (the “**City**”), having its offices at 1 Molodizhna Square, Kryvyi Rih, Dnipropetrovska oblast, 50101, Ukraine;
- (2) Communal Enterprise of Kryvyi Rih City Council “Miskyi Troleybus” (the “**Company**”), having its offices at 22 Dniprovske road, Kryvyi Rih, Dnipropetrovska oblast, 50101, Ukraine; and
- (3) European Bank for Reconstruction and Development (the “**Bank**” and “**EBRD**”), having its headquarters at One Exchange Square, London EC2A 2JN, United Kingdom.

(Collectively, the “**Parties**”).

### WHEREAS:

A. The Company is considering a project to invest in improvement of the public transport infrastructure in the municipality of Kryvyi Rih through acquisition of up to 50 new trolleybuses, maintenance and diagnostics equipment and modernisation of related infrastructure (the “**Project**”). The scope of the Project will be confirmed following the due diligence.

B. The Bank is considering participation in the Project through the provision of long-term financing to the Company in the amount of up to EUR 10 million (the “**Loan**”) with a municipal guarantee, to be governed by English law and issued by the City for the benefit of the Bank in accordance with the legislation of Ukraine (the “**Guarantee**”).

C. The Parties wish to set forth in this Agreement the basis on which they will work together in preparing the proposed financing for the Project.

D. The Bank, the City and the Company are planning to seek grant co-financing for the Project from interested bilateral and multilateral donors.

E. It is understood that neither this Agreement nor the contents of this Agreement shall constitute a legal obligation nor represent any commitment on the part of the Bank to provide any financial support to the Company or the City. Any such obligation or commitment on the part of the Bank is subject to the signing of appropriate legal documentation.

**NOW, THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:**

1. The Bank confirms its interest in considering participating in the Project (subject to Section 8 below) through the provision of long-term financing, in the form of the Loan to the Company supported by the Guarantee from the City. The terms and conditions of any financing to be provided by the Bank will be negotiated after appraisal. However, the following indicative terms and conditions for the Loan are anticipated:

- (i) **Currency:** EUR.
- (ii) **Loan Amount:** up to EUR 10 million consisting of (i) tranche 1 of up to EUR 8 million for the Bank's own account (the "**EBRD Tranche**"), and (ii) tranche 2 of up to EUR 2 million for the account of the Clean Technology Fund (the "**CTF Tranche**").
- (iii) **Maturity:** up to 12 years, consisting of up to 2 years grace period and 10 years for principal repayment; for the avoidance of doubt, no grace period will be offered for interest payments.
- (iv) **Interest rate:**
  - for the EBRD Tranche: a margin of 7.0% p.a. above six-month Euribor subject to incremental adjustments (step-downs and step-ups) depending on the City's rating assigned by a recognised international rating agency, should such rating be obtained, provided that the maximum margin shall not be more than 7% and the minimum margin shall not be less than 4%. The initial margin, and the terms of the margin step-up and step-down adjustments, will be negotiated after due diligence, depending on the Bank's assessment of the overall Project risk and subject to prevailing market conditions at the time.
  - For the CTF Tranche: margin of 1.0% fixed.
- (v) **Front-end commission:** 1.2% of the aggregate principal amount of the Loan. The amount of the Appraisal Fee received by the Bank pursuant to Section 4 of this Agreement shall be deducted from the amount of the Front-end commission payable by the Company to the Bank under the loan agreement.
- (vi) **Commitment charge:** 0.6% p.a. of any undisbursed and uncanceled amount of the Loan.
- (vii) The front-end commission becomes due and payable, and the commitment charge starts to accrue, after the effective date of the loan agreement. Conditions to effectiveness (including, inter alia, that the Bank is satisfied that the creditworthiness of the Company and the City has not deteriorated materially since the signing date of the loan agreement) are to be fulfilled within 180 days from the signing date of the loan agreement.
- (viii) **Guarantee:** full financial English law governed guarantee of the City, to be issued in accordance with the legislation of Ukraine.
- (ix) **Main financing agreements and project agreements to include:** a loan agreement between the Bank and the Company, a guarantee, indemnity and project support agreement among the Bank, the Company and the City, a public

service contract between the City and the Company and other agreements if determined necessary during appraisal.

- (x) **Procurement rules:** in accordance with EBRD *Procurement Policies and Rules* as permitted by the current Ukrainian legislation (Agreement between the Government of Ukraine and the European Bank for Reconstruction and Development dated 12.06.2007 (ratified on 04.06.2008) regarding Cooperation and the Activities of the Resident Office of the EBRD in Ukraine”, Article 12, Section 12.02).
- (xi) **Effectiveness:** The loan agreement and the guarantee, indemnity and project support agreement shall come into force and effect and become binding on the Parties upon satisfaction of certain conditions, including (without limitation) the Bank being satisfied, in its sole discretion, with the creditworthiness of the Company and the City.

2. The Bank confirms its willingness to co-operate with the other Parties hereto to advance the preparation of the contemplated financing, including by mobilising staff and external consultants, as long as the Project shall be supported by the Bank’s management.

3. Upon the Company’s and the City’s request, the Bank will seek to mobilise technical cooperation grant funds administered by the Bank (“**TC Funds**”), subject to the approval of the Bank’s management, for the purposes of Project preparation and implementation.

4. The Company will be obliged to pay, and the City shall procure that the Company pays or the City shall itself pay, to the Bank an appraisal fee (the “**Appraisal Fee**”) in the amount of EUR 40,000 (forty thousand Euros) for the appraisal of the Project. The Appraisal Fee shall be payable within 30 days of the Project receiving final approval from the Bank’s management. The Appraisal Fee shall be deducted from the Front-end commission referred to in Section 1(v) above when the Front-end commission becomes payable under the loan agreement. If the Bank discontinues processing of the Project or the Bank’s management decide not to approve the financing, the Appraisal Fee will be reimbursed by the Bank to the Company.

5. The Company will be obliged to reimburse, and the City shall procure that the Company reimburses or the City shall itself reimburse, the Bank for the out-of-pocket expenses (the “**Expenses**”) incurred by the Bank, including fees and expenses of outside legal counsel retained by the Bank in connection with the preparation of the Bank’s financing and the preparation, drafting, negotiation and review of the financing documentation and any other documents relating to the financing documentation. Any invoice in relation to the Expenses incurred by the Bank and issued by the Bank to the Company shall be payable within 14 days from the date of its receipt by the Company.

6. If the City or the Company at any time and for whatever reason elects not to pursue further processing of the proposed financing with the Bank, the Company will be obliged to pay, and the City shall procure that the Company pays or the City shall itself pay, to the Bank, promptly upon receipt of an invoice from the Bank, any accrued and



unpaid Expenses and Appraisal Fee in accordance with Sections 4 and 5 of this Agreement.

7. The contribution of the City and the Company to the preparation of the Project shall include the following:

- (a) the City shall pay, and procure that the Company shall pay, for their own internal costs relating to the preparation and appraisal of the Project;
- (b) the City shall co-operate, and procure that the Company shall co-operate, with each other and the Bank in the preparation of the loan agreement, the guarantee, indemnity and project support agreement, the public service contract and any other agreement to be executed in connection with the Project;
- (c) the City shall provide, and shall procure that the Company shall provide, without charge, to any consultants engaged to assist in matters relating to the Project or the operations of the Company and the City, all facilities and support necessary for the carrying out of their functions, including office space, photocopying equipment and supplies, secretarial services and transportation to sites relevant to the preparation and implementation of the Project, as well as all documents, materials and other information that may be relevant to their work. For the avoidance of doubt, the City and the Company shall not be expected to cover or reimburse consultants for their fees and expenses.

8. Sections 1, 2, and 3 of this Agreement reflect only the expectations and current intentions of the Parties in relation to the Project and do not impose or constitute any legally binding obligations on the Parties to provide, or to accept, financing, as the case may be. Any financing will be agreed between the Parties. In particular, it will be conditional on the findings of the Project appraisal and shall be subject to negotiation of an overall financing plan and Project arrangements satisfactory to the Bank, approval by the Bank's management, negotiation and execution of appropriate financing documentation and fulfillment of applicable conditions precedent. Except as otherwise provided in this Section 8, this Agreement provides for legally binding obligations of the Parties which will become immediately effective upon signing of this Agreement.

9. Any amendment to, or waiver by the Bank of any terms or conditions of, or consent given by the Bank under, this Agreement (including under this Section 9) shall be in writing, signed by the Bank and, in the case of an amendment, by the City, and the Company.

10. Any notice, application or other communication to be given or made under this Agreement to any Party to this Agreement shall be in writing. Except as otherwise provided in this Agreement, such notice, application or communication shall be deemed to have been duly given or made when it is delivered by hand, airmail or facsimile

transmission to the party to which it is required or permitted to be given or made at such party's address herein firstly mentioned or at such other address as such party designates by notice to the party giving or making such notice, application or other communication.

11. This Agreement shall be governed by the laws of England. Each of the loan agreement to be executed between the Bank and the Company, the guarantee, indemnity and project support agreement to be executed among the Bank, the Company and the City, will be governed by the laws of England. All the financing agreements to which the Bank will be a party will contain an international arbitration clause consistent with the Bank's standards.

12. Nothing in this Agreement shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of the Bank accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law.

13. Each of the City and the Company represents and warrants that this Agreement is a commercial rather than a public or governmental act and that neither the City nor the Company is entitled to claim immunity from legal proceedings with respect to itself or any of its assets on the grounds of sovereignty or otherwise under any law or under any jurisdiction where an action may be brought for the enforcement of any of the obligations arising under or relating to this Agreement.

14. The Bank is sometimes the recipient of communications, including complaints, from civil society on environmental, safety, social, and other aspects of projects, both before approval of the Project and during its implementation. The Bank will share this external communication and its responses with the City and any potential and existing co-financers, insofar as any of this information is not covered by any confidentiality agreement, in order to ensure consistency in approach and messages to the public. The Bank encourages the City and any co-financers to likewise share external communication, including complaints, and their responses with the Bank.

15. This Agreement is prepared in 10 (ten) counterparts, 5 (five) in English and 5 (five) in Ukrainian, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The English version shall be the governing version.


IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names as of the date first above written.

For **KRYVYI RIH CITY COUNCIL**

  
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Name: **Iurii Vilkul**  
Title: **Mayor**



For **COMMUNAL ENTERPRISE OF KRYVYI RIH CITY COUNCIL "MISKYI TROLEYBUS"**

  
\_\_\_\_\_  
Name: **Oleksandr Prykhodko**  
Title: **Director**



For **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

  
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Name: **Sevki Acuner**  
Title: **Director**



Signed and sealed  
Підписано та завірено  
печаткою

6  
pages  
сторінок

