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November 30, 2021

Hon. (Amb.) Ukur Yatani  
Cabinet Secretary  
The National Treasury and Planning  
Treasury Building  
Harambee Avenue  
P.O. Box 30007-00100  
Nairobi – Kenya

Dear Hon. (Amb.) Yatani,

**Re: Republic of Kenya - Credit No. 5157-KE and 6121-KE  
Infrastructure Finance and Public Private Partnerships Project and Additional  
Financing for the Infrastructure Finance and Public Private Partnerships Project  
Amendment to the Financing Agreements**

We refer to the Financing Agreement dated December 5, 2012 and to the Financing Agreement dated August 7, 2017 between the Republic of Kenya (the “Recipient”) and the International Development Association (the “Association”) (respectively the “Original Financing Agreement” and the “AF Financing Agreement” and collectively the “Financing Agreements”) for the Infrastructure Finance and Public Private Partnerships Project and Additional Financing for the Infrastructure Finance and Public Private Partnerships Project (the “Project”). We also refer to your letter dated April 15, 2020 requesting the Association to restructure certain aspects of the Project including revision of the disbursement-linked indicators and the results framework, reorganization/merging of the Project Implementation Unit and the Public Private Partnerships Unit to facilitate operationalization of the Public Private Partnerships Project Facilitation Fund (PFF). Further reference is made to the Restructuring Paper on a Proposed Restructuring of Kenya Infrastructure Finance/PPP Project (Report No.RES41163) approved on November 24, 2021 aimed at strengthening the sustainability of Project outcomes and the institutional development actions facilitated by a revised set of Performance Based Conditions, which together strengthens the PPP Project Facilitation Fund and its secretariat, revises Project costs to better reflect the MFD aspects the Project seeks to contribute to, and stronger emphasis on safeguards and fiduciary arrangements and capacity building.

We are pleased to inform you that the Association agrees to the request to restructure the Project. To this end, by countersigning this Letter, the Recipient agrees to the Association hereby amending the Financing Agreements as follows:

1. Article 3.01 of the Financing Agreements is amended by deleting Article 3.01 and replacing it with a new Article 3.01 to read as follows:

“The Recipient declares its commitment to the objectives of the Project. To this end, the Recipient shall carry out the Project through the National Treasury and Planning in accordance with the provisions of Article IV of the General Conditions.”



2. Article 6.01 of the Financing Agreements is amended by deleting Article 6.01 and replacing it with a new Article 6.01 to read as follows:

“The Recipient’s Representative is the Recipient’s Cabinet Secretary responsible for finance.”

3. Schedule 1 of the Original Financing Agreement is amended by replacing it with the Project description as reflected in Schedule 1 to the AF Agreement.
4. Part A.1, Section I of Schedule 2 to the AF Financing Agreement and paragraph 1, part A of Section I, Schedule 2 to the Original Financing Agreement are amended by deleting part A.1 and inserting a new part A.1 to read as follows:

“The National Treasury and Planning shall be responsible for the overall coordination and implementation of the Project.”

5. The Original Financing Agreement is amended by deleting parts A.2 to A.7 of Section I, Schedule 2 and replacing them with the provisions as below, which provisions are also added to part A, Section I of Schedule 2 of the AF Financing Agreement:

**“A. Institutional Arrangements**

2. PPP Committee

- (a) The Recipient shall maintain, throughout Project implementation, the Public Private Partnership Committee (“PPP Committee”) with an institutional framework, composition, functions, facilities and other resources in accordance with the relevant laws of the Recipient and as satisfactory to the Association.
- (b) Without limitation on the foregoing, the functions of the PPP Committee shall be to: (i) facilitate overall coordination of the Project, (ii) provide overall policy direction, strategic guidance and general oversight of the Project, including the review and approval of AWPBs, and (iii) perform such other functions as may be specified in the PFF Governance and Operational Manual.

3. PPP Directorate

- (a) The Recipient shall, throughout Project implementation, maintain the Public Private Partnership Directorate (“PPP Directorate”) with an institutional framework, composition, functions, facilities and other resources in accordance with the relevant laws of the Recipient and as satisfactory to the Association.
- (b) Without limitation on the foregoing, the PPP Directorate shall, (i) provide overall fiduciary, technical and implementation oversight of the Project, and (ii) perform such other functions as may be specified in the PFF Governance and Operational Manual.

4. Officer Administering the Fund and OAF Secretariat

- (a) The Recipient shall designate the Officer Administering the Fund (OAF) with responsibility to manage and administer the Project including, (i) financial



management, (ii) procurement, (iii) environmental and social risks management, (iv) monitoring and evaluation functions and support, and (v) performance of such other functions as may be specified in the PFF Governance and Operational Manual.

- (b) The OAF shall be supported by the OAF Secretariat, and as such, the Recipient shall, throughout Project implementation, maintain the OAF Secretariat with an institutional framework, composition, functions, facilities and other resources satisfactory to the Association.
- (c) Without limitation on the foregoing and subject to the PFF Governance and Operational Manual, the OAF Secretariat shall, (i) be responsible for day-to-day administration of the PFF, (ii) provide technical and administrative support to the OAF in the discharge of the OAF's functions.”
6. Part D, Section I, Schedule 2 to the AF Financing Agreement is amended by deleting part D and replacing it with a new part D to read as follows:

**“D.PBC Monitoring and Reporting**

Without limitation on its other reporting obligations under this Agreement, the Recipient shall not later than September 30 of each year during the Project implementation period, furnish reports to the Association on the status of achievement of the relevant PBCs.

7. Part D and Part E, Section I, Schedule 2 to the Original Financing Agreement and the AF Financing Agreement respectively are amended by deleting part D and E entirely and replacing them with the provisions below:

**“Environmental and Social Safeguards**

1. The Recipient shall ensure that the Project is carried out in accordance with the Environmental and Social Management System (“ESMS”), the Environmental and Social Action Plan (“ESAP”) and the Applicable Environmental and Social Requirements.
2. Without prejudice to the provisions of paragraph (1) above or Schedule 4 below, the Recipient shall within one hundred twenty (120) days from the effectiveness of the amendment to the Financing Agreements, adopt and publish an ESMS acceptable to the Association, based on World Bank Performance Standards.
3. The Recipient shall not amend, abrogate or waive, or permit to be amended, abrogated or waived, the ESMS or the ESAP as it applies to Sub-projects, unless the Association has provided its prior no-objection thereof in writing.
4. Without limitation upon its other reporting obligations under this Agreement, the Recipient shall cause the entities implementing Sub-projects to regularly collect and compile, and submit to the Association, as part of the Project Reports during the duration of the Project, information on the status of compliance with environmental and social risk management requirements set forth in this Agreement, providing details on measures taken, conditions, if any, which interfere or threaten to interfere with the implementation of the ESMS and ESAP; and remedial measures taken or required to



be taken to address such conditions. This requirement will, for the avoidance of doubt, remain in force up to the Closing Date.

5. For purposes of managing the environmental and social risks and impacts associated with the implementation of the Project, the Recipient shall ensure that:
  - (a) Financing proceeds are not utilized for financing Sub-projects that support Excluded Activities as set out in the ESMS;
  - (b) all Sub-projects meet the Applicable Environmental and Social Requirements through adequate implementation of the ESMS;
  - (c) all Sub-projects and the Recipient manage the working conditions of their workforce in accordance with relevant aspects of the World Bank Performance Standard 2 on Labor and Working Conditions;
  - (d) an environmental and social policy (“E&S Policy”) is developed as part of the ESMS, such E&S Policy to be based on the World Bank Performance Standards and that this policy is reviewed periodically as may be agreed between the Recipient and the Association by third-party consultants acceptable to the Association.
6. The Recipient shall, and shall cause each of the entities implementing a Sub-project, in accordance with the ESMS, to establish, publicize, maintain and operate an accessible grievance mechanism (“GRM”), to receive and facilitate resolution of concerns and grievances of Project-affected people, and take all measures necessary and appropriate to resolve, or facilitate the resolution of, such concerns and grievances, in a manner acceptable to the Association. The GRM established by the Recipient through the PFF Secretariat shall serve to receive and facilitate resolution of concerns and grievances that have not been resolved by the Sub-project level GRM or such other grievances as may be referred from the Sub-project level to the PFF Secretariat-established GRM.
7. *Environmental and Social Action Plan (“ESAP”)*
  - (a) Without limitation upon the generality of paragraph 6 above, the Recipient shall carry out the ESAP, in accordance with the schedule set out in the said ESAP in a manner satisfactory to the Association, and shall not amend, abrogate or suspend, or permit to be amended, abrogated or suspended any provision of the ESAP without the prior written agreement of the Association.
  - (b) Notwithstanding the foregoing, if any provision of said ESAP is inconsistent with the provisions of this Agreement, the provisions of this Agreement shall prevail.”
8. Section II of Schedule 2 to the Financing Agreements is amended by inserting a new part C to read as follows:

**“C. ESMS Monitoring**

  1. Without prejudice to Article 5.03 of this Agreement, the Recipient shall ensure that, in relation to Sub-projects supported from the proceeds of the Financing, the ESMS and the Applicable Environmental and Social Requirements shall be applied and implemented throughout the life of the Project.





9. The table in Section IV, part A.2 of Schedule 2 of the Financing Agreements is deleted and replaced with the following table:

<b>Category</b>	<b>Amount of the Financing Allocated (expressed in EUR)</b>	<b>Percentage of Expenditures to be Financed (inclusive of Taxes)</b>
(1) Operating Costs under Part 1, 2 and 3 of the Project	4,000,000	100%
(2) Eligible Expenditures for PBCs under Parts 1, 2 and 3 of the Project (excluding Operating Costs)	42,900,000	100% of each PBC Amount set out in Schedule 4
<b>TOTAL AMOUNT</b>	<b>46,900,000</b>	

10. Section IV, part B(1)(b) and B(2) of Schedule 2 of the AF Financing Agreement are amended by deleting parts B(1)(b) and (B)(2) and replacing them with new parts B(1)(b) and (B)(2) to read as follows:

**“B. Withdrawal Conditions; Withdrawal Period**

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made:  
(b) under Category (2) unless and until:

(i) the Recipient has furnished evidence satisfactory to the Association, that:  
(A) payments have been made in accordance, and in compliance, with the procedures set forth in the Verification Protocol and in the Recipient’s applicable laws and regulations; and (B) the PBCs set forth in Schedule 4 for which payment is requested have been met and verified in accordance with the Verification Protocol;

(ii) the Recipient has furnished to the Association the applicable interim unaudited financial reports documenting the incurrence of eligible expenditures under Category (2) during the respective fiscal year up to the date against which withdrawal is requested.

2. Notwithstanding the provisions of paragraph 1 of this Part B, if the Association shall determine based on the evidence provided by the Recipient under paragraph 1(b) of this Part B, that any PBCs have not been achieved or have been partially achieved, the Association may in its sole discretion, by notice in writing to the Recipient:  
(a) withhold in whole or in part the amount of the Credit allocated to such PBCs;  
(b) disburse in whole or in part the amount of the Credit allocated to such PBCs at any later time when such PBCs are met; and/or  
(c) reallocate in whole or in part any amount of the Credit allocated to such PBCs to other Categories under this Agreement.”

11. The table in Schedule 4 to the AF Financing Agreement is deleted and replaced with the table below:

**“SCHEDULE 4**

**Performance Based Conditions for Category (2) of the Withdrawal Table**



<b>Performance Based Condition</b>	<b>Action to be Completed</b>	<b>PBC Amount Allocated (expressed in Euro)</b>	<b>Total Amount of the Financing Allocated (expressed in Euro)</b>
(1) <b>PBC #1</b> Operationalize the Public Private Partnerships Project Facilitation Fund (PFF) fiduciary systems	Approval by the PPP Committee of a revised PFF Governance and Operational Manual including Financial Management and Audit manuals; and opening of designated PFF account(s) and deposit of seed money by the Recipient.	11,000,000	11,000,000
(2) <b>PBC #2</b> Enhance PFF fiduciary institutional capacity	Hiring of key fiduciary staff (fund accountant, internal auditor and procurement officer); preparation, and approval by the PPP Committee, of a capacity building plan for PFF's fiduciary systems of internal control and oversight; and conduct and completion of at least four fiduciary capacity building activities by PFF staff	4,400,000	4,400,000
(3) <b>PBC #3</b> PFF Financial Sustainability	Sustain PFF funding through identifying and mobilizing other sources of funding and activating and maintaining a budget line for annual Recipient funding to support the operating costs of the PFF. Success fees from at least one financially closed project deposited in the PFF account.	4,400,000	4,400,000
(4) <b>PBC #4</b> Establish a PFF Environmental and Social Management System (ESMS)	Preparation and approval by the PPP Committee of an environmental and social management system and capacity building plan; hiring of environmental and social risks management staff	8,800,000	8,800,000



<b>Performance Based Condition</b>	<b>Action to be Completed</b>	<b>PBC Amount Allocated (expressed in Euro)</b>	<b>Total Amount of the Financing Allocated (expressed in Euro)</b>
	(one environmental specialist and one social safeguards specialist); conduct and completion of at least three environmental and social risks management capacity building activities by PFF staff; and execution of five Funding Commitment Agreements.		
(5) <b>PBC #5</b> Strengthen PFF operational efficiency	Reduction in processing time of procurement activities pre and post-PFF operationalization; and financial close of at least three PPP projects. Revision in PFF's Operational and Governance Manual to assign at least 3% of PFF's overall costs to strengthen capacity through training and other associated activities	14,300,000	15,400,000
<b>TOTAL</b>	<b>EUR 42,900,000</b>		

12. Section I of the Appendix to the AF Financing Agreement is amended as follows:

(b) Definitions "6, 8, 9, 10 and 11" are deleted.

(c) Definition "12", is amended and replaced to read as follows;

"Eligible Expenditures for PBCs" means eligible expenditures for goods, works, consulting services, non-consulting services and Training incurred by the Recipient under Parts 1, 2 and 3 of the Project (but excluding Operating Costs) including the allocation of funds to the PFF in an account(s) opened and maintained by the PFF for purposes of fully operationalizing it and ensuring institutional stability, and for which respective PBCs have been met.

(d) Definition "20", is amended and replaced to read as follows;

"OAF Secretariat" means the secretariat referred to under part A.4 of Section I, Schedule 2 of this Agreement, and established pursuant to Reg. 23 of the Public Private Partnerships (Project Facilitation Fund) Regulations, 2017, as from time to time amended.



- (e) Definition “21”, is amended and replaced to read as follows;
- “Officer Administering the Fund” or “OAF” means the office referred to under part A.4 of Section I, Schedule 2 of this Agreement, and established pursuant to Reg. 20 of the Public Private Partnerships (Project Facilitation Fund) Regulations, 2017, as from time to time amended.
- (f) Definition “22” is amended to read as follows:
- “Operating Costs” means the reasonable incremental expenses incurred by the Recipient and approved by the Association through activity level no-objections, such expenses being attributable to a Sub-project on account of implementation, management and monitoring consisting of the following costs: communication, office consumables and maintenance, utility costs, motor vehicle maintenance, travel, accommodation, per-diems for Project staff, bank charges, allowances and salaries of contractual staff (but excluding salaries of the Recipient’s civil servants).
- (g) A new definition 25A is added immediately after paragraph 24 to read as follows;
- “Performance Based Condition” or “PBC” means with respect of Category (2), each of the conditions related to said Category as set forth in the table in Schedule 4 to this Agreement, and “Performance-Based Conditions” or “PBCs” means, collectively, more than one such Performance Based Condition or PBC.
- (h) A new definition 25B is added immediately after 25A to read as follows;
- “PFF Governance and Operational Manual” means the governance and operational manual of the PFF including financial management and audit manuals, and as such manual may be revised and approved by the PPP Committee.
- (i) A new definition 28A is added immediately after paragraph 28 to read as follows;
- “Funding Commitment Agreements” means the agreements to be entered into between the PFF and a contracting authority following PPP Committee approval of the contracting authority’s PFF application or one entered into between the PPP Directorate and the PFF following PPP Committee approval of the PPP Directorate’s PFF application, setting out the commitment of the PFF to fund a Sub-project and serves as a basis for committing PFF budgets for the approved Sub-project; and “Funding Commitment Agreement” means each of such agreement.
- (j) Definition “30”, is amended and replaced to read as follows;
- “Public Private Partnership Committee” or “PPP Committee” means the committee referred to under part A.2 of Section I, Schedule 2 of this Agreement, and established pursuant to Section 4(1) of the Public Private Partnerships Act, 2013, as from time to time amended.
- (k) A new definition 30A is added immediately after paragraph 30 to read as follows;
- “Public Private Partnerships Directorate” or “PPP Directorate” means the directorate referred to under part A.3 of Section I, Schedule 2 of this Agreement, and established pursuant to Section 11 of the Public Private Partnerships Act, 2013, as from time to time amended.
- (l) A new definition 35A is added immediately after paragraph 35 to read as follows;
- “Sub-project” means a PPP project under the PFF supported by the proceeds of the Financing.
- (m) A new definition 37A is added immediately after paragraph 36 to read as follows;





“Verification Protocol” means Recipient’s protocol detailing the means by which the fulfilment of the PBCs will be verified under the Project, and which is included in the Project Implementation Manual.

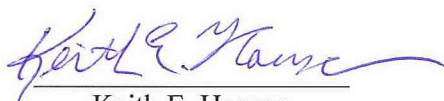
All the terms and conditions of the Financing Agreement that have not been amended hereby shall remain unchanged and in full force and effect. In the event of a conflict between the Financing Agreements and this Amendment Letter, on any matter addressed in this Amendment Letter, the provisions of this Amendment Letter shall prevail.

In addition, please be notified that the Results Framework under the Project has also been revised and the revised Results Framework is set out in the Restructuring Paper. A copy of the Restructuring Paper for disclosure is enclosed herein for your attention.

Please indicate your agreement with the foregoing amendments on behalf of the Recipient by countersigning and dating two (2) original copies of this Amendment Letter and returning one countersigned original to us. Upon receipt by the Association of the countersigned copy, the amendments shall become effective as of the date of your countersignature to this Amendment letter.

Sincerely,

INTERNATIONAL DEVELOPMENT ASSOCIATION



Keith E. Hansen

Country Director Kenya, Rwanda, Somalia and Uganda  
Eastern and Southern Africa Region

**AGREED:**

THE REPUBLIC OF KENYA

By: 

Authorized Representative

Name: HON. (AMB.) UKUR YATANI

Title: CABINET SECRETARY/NATIONAL TREASURY AND PLANNING

Date: 11/12/2021

Encl. Disclosable Restructuring Paper

