

OFFICIAL DOCUMENTS

The World Bank

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

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23 November 2017

Hon. Henry Rotich
Cabinet Secretary
The National Treasury
Treasury Building, Harambee Avenue
P.O Box 30007-00100
Nairobi, Kenya

Hon. Rotich,

**Republic of Kenya: Infrastructure Finance and Public Private Partnerships Project
(Credit No. 5157-KE)**

Amendment to Financing Agreement

We refer to the Financing Agreement (the Agreement), dated December 5, 2012, between the Republic of Kenya (the Recipient) and the International Development Association (the Association) for the above-referenced project (the Project).

In view of the Additional Financing (Credit No. 6121-KE) that the Association has provided to the Recipient to assist with financing the Project, we propose to amend the Agreement in respect of the following provisions:

The Financing Agreement is amended as follows:

1. The objective of the Project specified in the first paragraph of Schedule 1 to the Financing Agreement is amended to read as follows:

“The objective of the Project is to increase private investment in the Recipient’s infrastructure market across sectors and to sustain this participation over an extended period of time.”

2. Section I.D (Safeguards) of Schedule 2 to the Financing Agreement is deleted in its entirety and replaced with the following Section I.D:

“D. Safeguards”

1. The Recipient shall ensure that the Project is implemented in accordance with the Safeguard Frameworks and the Safeguard Instruments. To that end, if any Project activities would, pursuant to the relevant Safeguard Framework, require the preparation of a Safeguard Instrument, the Recipient shall ensure that said activities shall not be implemented unless and until said Safeguard Instrument has been: (a) prepared, in accordance with the relevant Safeguard Framework and furnished to the

Association for approval; and (b) disclosed following approval of the Association; and (c) all measures required to be taken thereunder prior to the commencement of said Project activities have been taken. Except as the Association shall otherwise agree in writing, and subject to compliance with the same consultation and information disclosure requirements as applied to the adoption of the aforesaid Safeguard Instruments in the first instance, the Recipient shall not amend or waive any provision of the Safeguard Instruments.

2. The Recipient shall, in its Project Reports, report on progress made on compliance with the Safeguards Instruments under the Project, giving details of measures taken in furtherance of the Safeguard Instruments and any conditions which interfere or threaten to interfere with the timely implementation of the Safeguards Instruments, and remedial measures taken or required to be taken to address such conditions.
3. The Recipient shall ensure that all advisory, analytical, planning, institutional capacity building, strategizing and such other services carried out under the Project shall be carried out according to terms of reference, satisfactory to the Association, requiring such services to deliver products which take into account, and are consistent with, the Association's Social and Environmental Safeguards Policies.
4. The Recipient shall establish, prior to carrying out the feasibility studies for any dams in the PPP pipeline within the Project area, an independent Dam Safety Advisory Panel comprising at least three (3) experts acceptable to the Association, under terms of reference acceptable to the Association, which shall be responsible, *inter alia*, to provide advice relating to dam safety and other critical aspects of such dams, including by providing support for the formulation of dam safety management plans. The Recipient shall convene meetings with said Dam Safety Advisory Panel periodically throughout the Project implementation period, as further detailed in the Project Implementation Manual."

3. Section IV.B.2 of Schedule 2 to the Financing Agreement is modified to read as follows:

"The Closing Date is October 31, 2022."

4. The following additional definitions are added to the Definition Section in the Appendix to the Financing Agreement:

32. "Dam Safety Advisory Panel" means the panel to be appointed by the Recipient pursuant to Section I.E.4 of Schedule 2 to this Agreement, consisting of three experts for the purposes of, *inter alia*, reviewing the safety and operational aspects of the dams referred to in Section D.4 of Schedule 2 to this Agreement.

33. "Resettlement Action Plan" or "RAP" means the plan, satisfactory to the Association, to be prepared by the Recipient on the basis of the ESMF and RPF, as the said document may be amended and/or supplemented from time to time with the prior written concurrence of the Association and subject to the initial consultation and disclosure requirements carried out on the RAP, including, *inter alia*, a program of actions, measures and policies for the compensation, resettlement and rehabilitation of persons affected by the implementation of the Project, as the case may be, including as a result of the acquisition of land and other assets, and loss of access to land, other assets or income, whether permanent or temporary, together with adequate institutional, monitoring, reporting and grievance redress arrangements capable of ensuring proper implementation of, and

regular compliance with, its terms, as such Plan may be updated from time to time with the prior approval of the Association.

34. "Resettlement Policy Framework" or "RPF" means the framework prepared and adopted by the Recipient, entitled 'Ministry of Finance: Resettlement Policy Framework (RPF) for Public Private Partnership (PPP) Projects, Draft Final Report' and dated April 2012, and updated on February 14, 2017 and disclosed locally on February 15, 2017 and at the Infoshop on February 21, 2017.

35. "Safeguard Frameworks" means, collectively, the ESMFs, RPF and VMGF; and "Safeguard Framework" means any one of the Safeguard Frameworks.

36. "Safeguard Instrument" means, in respect of a given Project activity: (a) for which the ESMF requires an ESIA, said ESIA; (b) for which the ESIA requires an ESMP, said ESMP; (c) for which the RPF requires a RAP, said RAP; and (d) for which a VMGF requires a VMGP, said VMGP; all as shall have been prepared in accordance with the provisions of Section I.E of Schedule 2 to this Agreement.

37. "Social and Environmental Safeguard Policies" means the Association social and environmental safeguard policies which for purposes of this operation include Operational Policy (OP) 4.01 on Environmental Assessment, OP 4.04 on Natural Habitats, OP 4.09 on Pest Management; OP 4.11 on Physical and Cultural Resources, OP 4.10 on Indigenous Peoples, OP 4.12 on Involuntary Resettlement, and OP 4.37 on Dam Safety.

38. "Vulnerable and Marginalized groups" or "VMGs" means distinct, vulnerable, social and cultural groups that may be identified pursuant to the criteria outlined in the VMGF for the purposes of this Project.

39. "Vulnerable and Marginalized Groups Framework" or "VMGF" means an instrument prepared by the Recipient, satisfactory to the Association, dated February 14, 2017, and disclosed locally on February 15, 2017 and at the Infoshop on February 21, 2017, outlining the basis for identifying vulnerable peoples and their rights, the appropriate consultative process as well as guidelines to avert, minimize, mitigate, or provide culturally appropriate compensation for any potentially adverse effects as the same may be amended from time to time with the Association's prior written concurrence.

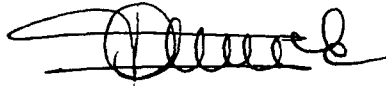
40. "Vulnerable and Marginalized Groups Plan" or "VMGP" means each of the plans to be prepared by the Recipient, satisfactory to the Association, which sets out the measures to be carried out by the Recipient to ensure that: (a) VMGs affected by the project receive culturally appropriate social and economic benefits; and (b) when potential adverse effects on VMGs are identified, those adverse effects are compensated for, avoided, minimized, or mitigated."

All other provisions of the Agreement, except as amended herein, shall remain in full force and effect.

Please confirm your agreement to the foregoing by countersigning, dating, and returning to us the enclosed copy of this letter. Upon receipt by the Association of the copy of this letter countersigned by you, this amendment will become effective as of the date of the countersignature.

Sincerely,

INTERNATIONAL DEVELOPMENT ASSOCIATION



Diarietou Gaye
Country Director for Kenya, Rwanda and Uganda
Africa Region

AGREED:

REPUBLIC OF KENYA

By:



Authorized Representative

Name:

Henry Rotich

Title:

CABINET SECRETARY, NATIONAL TREASURY

Date:

23-11-2017