

CONFORMED COPY

CREDIT NUMBER 2811 KE

Development Credit Agreement

(Urban Transport Infrastructure Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated February 13, 1996

CREDIT NUMBER 2811 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated February 13, 1996, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Borrower has submitted to the Association a letter of sectoral policy, dated March 17, 1995, describing a program of municipal reforms and related actions, objectives and policies designed to improve the financial and operational performance of the Borrower's local authorities (hereinafter referred to as "the Program"), and declared its commitment to the execution of the Program;

(B) the Borrower has submitted to the Association a maintenance funding plan for its road sector, dated March 17, 1995, including progressive adjustments of the level of the Road Maintenance Levy Fund (as hereinafter defined) and increased annual budgetary allocations, designed to enable the Borrower to provide full and sustainable road maintenance funding by year 2000 (hereinafter referred to as the Maintenance Funding Plan), and declared its commitment to the execution of the Maintenance Funding Plan; and

(C) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

#### ARTICLE I

##### General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, with the last sentence of Section 3.02 deleted (the General Conditions) constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "first phase" means, in relation to the period of implementation of the Project, the part thereof which precedes the midterm review;

(b) "implementation plan" means the implementation plan, dated April, 1995, submitted by the Borrower, giving details of procurement, disbursement and other organizational arrangements, including implementation performance indicators, agreed upon between the Borrower and the Association for the implementation of the Project; as the same may be amended from time to time, and such term includes any schedules to the implementation plan;

(c) "MLG" means the Borrower's Ministry of Local Government;

(d) "participating project town" means a project town which is party to a subsidiary agreement pursuant to Section 3.04 (a) of this Agreement;

(e) "Project Preparation Advance" means the project preparation advance granted by the Association to the Borrower pursuant to a first letter of agreement, dated June 29, 1990, between the Borrower and the Association, as amended by further supplemental letters of agreement, dated March 26, 1993, and June 9, 1994, respectively, between the Borrower and the Association;

(f) "project towns" means all or any of the following towns: Nairobi, Mombasa, Kajado, Machakos, Makueni, Malindi, Voi, Eldoret, Nakuru, Narok, Kabarnet, Kapsabet, Kericho, Kitale, Kisumu, Bungoma, Busia, Kakamega, Homa Bay, Kisii, Embu, Thika, Garissa, Murang'a, Meru and Nyeri;

(g) "Road Maintenance Levy Fund" or "Fund" means the Road Maintenance Levy Fund established under the Borrower's Road Maintenance Levy Fund Act (Act No. 9 of 1993), as same may be amended from time to time;

(h) "second phase" means, in relation to the period of implementation of the Project, the part thereof which follows the midterm review;

(i) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement;

(j) "subsidiary agreement" means a subsidiary agreement to be entered into pursuant to Section 3.04 (a) of this Agreement, as the same may be amended from time to time, and such term includes any schedules to the subsidiary agreement;

(k) "TMU" means the Transport Management Unit Of MLG; and

(l) "Works Inspectorate" means the Maintenance Management and Works Inspectorate referred to under Part B.2 of the Project.

## ARTICLE II

### The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to seventy seven million one hundred thousand Special Drawing Rights (SDR 77,100,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project described in Schedule 2 to this Agreement and to be financed out of the proceeds of the Credit.

(b) The Borrower may, for the purposes of the Project, open and maintain in dollars a special deposit account in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against setoff, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

(c) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to itself the amount required to repay the principal amount of the Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Project Preparation Advance shall thereupon be cancelled.

Section 2.03. The Closing Date shall be June 30, 2003 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date or at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next payment date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent (3/4

of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on February 1 and August 1 in each year.

Section 2.07. (a) Subject to paragraphs (b) and (c) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each February 1 and August 1 commencing February 1, 2006 and ending August 1, 2035. Each installment to and including the installment payable on August 1, 2015 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's gross national product per capita, as determined by the Association, shall have exceeded \$790 in constant 1985 dollars for five consecutive years; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the terms of repayment of installments under paragraph (a) above by requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid. If so requested by the Borrower, the Association may revise such modification to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(c) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

### ARTICLE III

#### Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, shall carry out the Project through MLG with due diligence and efficiency and in conformity with appropriate administrative, financial and technical practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Borrower and the Association shall otherwise agree, the Borrower shall carry out the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement, and the Implementation Plan.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03. Without limitation upon the provisions of

Article IX of the General Conditions, the Borrower shall:

(a) prepare and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan, of such scope and in such detail as the Association shall reasonably request, for the future operation of the Project;

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on said plan; and

(c) thereafter, carry out said plan with due diligence and efficiency and in accordance with appropriate practices, taking into account the Association's comments thereon.

Section 3.04. (a) The Borrower shall conclude a subsidiary agreement with each of the project towns wishing to participate in the implementation of activities financed under the Project (hereinafter referred to as participating project towns), on such terms and conditions as shall be mutually acceptable to the Borrower and the Association, and giving details of all implementation arrangements agreed between the parties, including:

- (i) the respective roles, responsibilities and obligations of each of the parties under the subsidiary agreement;
- (ii) an agreed prioritized list of proposed works;
- (iii) the allocated budget, scope of work, schedule and method of implementation applicable to each type of works;
- (iv) the performance criteria to be used for evaluation at the midterm review;
- (v) financial management, accounting and reporting requirements;
- (vi) financial, legal and contractual obligations of each of the parties;
- (vii) conditions applicable to the utilization of funds under the Credit;
- (viii) an initial rating of the maintenance management capacity of the participating project town;
- (ix) an agreed formula for adjusting budget and works allocations based on actual implementation performance and maintenance performance rating; and
- (x) provisions to ensure that funds provided to project towns by the Borrower to finance routine road maintenance shall not be used for the purchase of major equipment, or payment of salaries or benefits, and that not less than 30 percent of routine maintenance works financed by such funds shall be contracted out on an annual basis.

(b) The Borrower shall exercise its rights under each of the Subsidiary Agreements, in such manner as to protect the interests of the Borrower and the Association, and to accomplish the purposes of the Credit; and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive any of the Subsidiary Agreements, or any provision thereof.

(c) No approval for the award of any contract involving a project town shall be given by the Borrower or the Association unless the project town is party to a Subsidiary Agreement.

#### ARTICLE IV

##### Financial Covenants

Section 4.01. (a) The Borrower shall maintain, or cause to be maintained, records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of the Project of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section including those for the Special Account for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;
- (ii) furnish to the Association, as soon as available, but in any case not later than six (6) months after the end of each such year, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said records, accounts and the audit thereof as the Association shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall:

- (i) maintain, or cause to be maintained, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account or payment out of the Special Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Association's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

#### ARTICLE V

##### Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional events are specified:

(a) a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out; and

(b) a situation has arisen which shall make it improbable that the Maintenance Funding Plan, or a significant part thereof, will be carried out.

#### ARTICLE VI

##### Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) an initial amount of not less than \$1,670,000 equivalent has been released to MLG in accordance with paragraph 5 (a) of Schedule 4 to this Agreement;

(b) all key positions listed in paragraph 1 (b) (i) of Schedule 4 to this Agreement have been filled in accordance with the requirements of paragraph 1 (b) (ii) of the same Schedule; and

(c) the Borrower has concluded subsidiary agreements with not less than six project towns.

Section 6.02. The following is specified as additional matter, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association, namely, that subsidiary agreements concluded pursuant to Section 6.01 (c) of this Agreement have been duly authorized or ratified, as the case may be, by the Borrower and the respective project towns, and are legally binding upon the Borrower and the project towns in accordance with their respective terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

#### ARTICLE VII

##### Representatives of the Borrower; Addresses

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance  
P.O. Box 30007  
Nairobi  
Kenya

Cable address:

FINANCE  
Nairobi

Telex:

22921  
MINFIN-KE

For the Association:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

INDEVAS  
Washington, D.C.

Telex:

248423 (RCA)  
82987 (FTCC)  
64145 (WUI) or  
197688 (TRT)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

REPUBLIC OF KENYA

By /s/ Benjamin Kipkorir

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Edward V.K. Jaycox

Regional Vice President  
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(1) Civil works	45,150,000	100% of foreign expenditures and 60% of local expenditures
(2) Consultancy services		
(a) under Part B.2 of the Project	940,000	80% for expenditures incurred prior to June 30, 1999,



			and 20% thereafter
	(b) other	16,750,000	100%
(3)	Goods	1,410,000	100% of foreign expenditures, and 100% of local expenditures (ex-factory cost) and 80% of local expenditures for other items procured locally
(4)	Training	1,480,000	100%
(5)	Operating costs	2,880,000	100%
(6)	Refunding of Project Preparation Advance	1,340,000	Amounts due pursuant to Section 2.02 (c) of this Agreement
(7)	Unallocated	7,150,000	
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	TOTAL	77,100,000	=====

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower;

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower; and

(c) the term "operating costs" means the incremental operating costs incurred by MLG, TMU and participating project towns under the Project on account of: (i) travel cost and allowances, (ii) maintenance of vehicles, fuel and equipment, and (iii) office rent, supplies and utilities.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures for goods, works and consultant services (firms) under contracts not exceeding \$100,000 equivalent, and consultant services (individuals) under contracts not exceeding \$50,000 equivalent, under such terms and conditions as the Association shall specify by notice to the Borrower.

## SCHEDULE 2

### Description of the Project

The objectives of the Project are to: (a) increase economic efficiency of the urban road network in project towns, (b) build sustainable road maintenance capacity - institutional, financial and engineering - of project towns and MLG through a program of municipal reforms, and (c) target investments to benefit the urban poor.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A: Road Transport Infrastructure Investment Program

1. Annual routine road maintenance of about 2000 km of urban streets in project towns in accordance with programs and standards agreed between the Borrower and the Association.
2. Periodic maintenance of about 400 km of priority paved streets in project towns, including bituminous surface patching and resealing; painting pavement markings; repair of drains, culverts, footpaths, bicycle paths and street lighting.
3. Rehabilitation of about 400 km of priority paved streets in project towns, including major repairs of paved road surface and road base; bituminous pavement sealing; pavement marking; repair or reconstruction, as the case may be, of curbs, sidewalks, drainage structures and facilities, footpaths and bicycle paths; and maintenance of street lighting and traffic signals, or provision thereof.
4. Improvement of about 75 km of priority streets in primary towns only, including construction of strategic missing street sections and paving of unpaved road surfaces; selected pavement and road widening; pavement strengthening through reconstruction or bituminous overlays; related pavement marking; drainage repairs and street lighting works; and, in the case of Nairobi City only, traffic capacity and safety improvements at selected street junctions, including construction of additional traffic lanes and islands, related pavement markings, and lighting and traffic signal improvements.
5. Pilot works and investments specifically targeted to serve non-motorized transport needs of the urban poor through an integrated network approach, in addition to similar improvements included as a part of periodic maintenance and road rehabilitation works referred to in this Part.

Part B: Institutional Capacity Building Program

1. Strengthening of implementation capacity and maintenance planning, budgeting and execution capacity of TMU and project towns.
2. Establishment of Maintenance Management and Works Inspectorate within TMU for the purpose of verifying adequacy of routine and periodic maintenance works for, or on behalf of, local authorities.
3. Establishment of a comprehensive maintenance management, and budgeting and data base system of TMU, including technical reviews of design standards and safety aspects, and rigorous contract management systems.
4. Provision of technical assistance to TMU and project towns in traffic management and coordination, including traffic engineering and transport planning.
5. Training and staff development in maintenance planning and management, and contract management, including seminars, workshops and overseas training, for the benefit of the staff of MLG/TMU and project towns.
6. Developing a roads inventory and condition data base for local authority roads.

Part C: Program and Policy Studies

1. Commissioning of a long-term traffic management study for Nairobi to consider land use and environmental measures, and transport infrastructure needs -- operational, institutional and legislative.

2. Commissioning of an investment program study for Mombasa to formulate a long-term sector investment strategy and needs, including priority needs before year 2002, having regard to its unique drainage problems.

Part D: Project Implementation Support

1. Preparation of detailed engineering designs for construction works, and management and quality control of such works.

2. Establishment of an up-to-date information technology system commensurate with project planning and management requirements.

3. Implementation of maintenance management, planning and monitoring activities in all urban centers, through expanded use of maintenance management and works inspectorate functions.

4. Establishment of non-motorized transport planning and implementation units in TMU and selected project towns.

Part E: Project Preparation

Preparation of a municipal infrastructure investment program and pilot demonstration projects.

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The Project is expected to be completed by December 31, 2002.

SCHEDULE 3

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: International Competitive Bidding

Goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the Guidelines), and in accordance with the following additional procedures:

(a) When contract award is delayed beyond the original bid validity period, such period may be extended once, subject to and in accordance with the provisions of paragraph 2.59 of the Guidelines, by the minimum amount of time required to complete the evaluation, obtain necessary approvals and clearances and award the contract. The bid validity period may be extended a second time only if the bidding documents or the request for extension shall provide for appropriate adjustment of the bid price to reflect changes in the cost of inputs for the contract over the period of extension. Such an increase in the bid price shall not be taken into account in the bid evaluation. With respect to each contract made subject to the Association's prior review in accordance with the provisions of Part D.1 (a) of this Section, the Association's prior approval will be required for: (i) a first extension of the bid validity period if the period of extension exceeds sixty (60) days, and (ii) any subsequent extension of the bid validity period.

(b) In the procurement of goods and works in accordance with this Part A, the Borrower shall use the relevant standard bidding documents issued by the Bank, with such modifications thereto as the Association shall have agreed to be necessary for the purposes of the Project. Where no relevant standard bidding documents have been issued by the Bank, the Borrower shall use bidding documents based on other internationally recognized standard forms agreed with the Association.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A hereof, goods manufactured in Kenya may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A hereof, the Borrower may grant a margin of preference to domestic contractors in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraph 5 of Appendix 2 thereto.

Part D: Review by the Association of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract for works estimated to cost the equivalent of \$300,000 or more, and each contract for goods estimated to cost the equivalent of \$200,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Association pursuant to said paragraph 2 (d) shall be furnished to the Association prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Association pursuant to said paragraph 3 shall be furnished to the Association as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 5 to this Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals from the Credit Account are to be made on the basis of statements of expenditure.

2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

1. In order to assist the Borrower in carrying out the Project, the Borrower shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Association on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981 (the Consultant Guidelines). For complex, time-based assignments, the Borrower shall employ such consultants under contracts using the standard form of contract for consultants' services issued by the Bank, with such modifications as shall have been agreed by the Association. Where no relevant standard contract documents have been issued by the Bank, the Borrower shall use other standard forms agreed with the Association.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Association review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts shall not apply to: (a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each, or (b) contracts for the employment of individuals estimated to cost less than \$50,000 equivalent each. However, this exception to prior Association review shall not apply to: (a) the terms of reference for such contracts, (b) single-source selection of consulting firms, (c) assignments of a critical nature, as reasonably determined by the Association, (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above, or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

#### SCHEDULE 4

##### Implementation Program

1. (a) TMU shall, under the overall supervision of the Permanent Secretary, MLG, be responsible for the day-to-day management and implementation of the Project and, as such, shall be responsible, inter alia, for: (i) supervision of maintenance planning, budgeting, management and works inspection, (ii) design review, (iii) procurement management and contract administration, including procurement of civil works and equipment contracts, and recruitment of consultants, (iv) project accounting, financial management and control, (v) information technology and management information systems, and (vi) general administration and facilities management.

(b) Subject to such modalities as shall have been agreed between the Borrower and the Association, the Borrower shall:

- (i) implement a staffing plan, acceptable to the Association, which shall include provisions for the following key positions: one Deputy Project Manager (Finance and Administration), one Project Accountant, one Administrative Officer, one Account Assistant, one Assistant Administration Officer, three Account Clerks and one Computer Operator; and
- (ii) ensure thereafter that all key positions listed in paragraph (i) of this sub-paragraph shall be kept filled at all times, along with the requisite number of support staff positions, by suitably qualified and experienced professionals.

2. The Borrower shall appoint six consultants to be deployed on a regional basis to assist TMU in the supervision of construction works under both the first phase and the second phase of the Project; provided, however, that, during the second phase, the Borrower may, where appropriate, delegate increasing responsibility for implementation to individual project towns, having regard to their demonstrated capacity and commitment to provide maintenance of their respective road networks.

3. The Borrower shall ensure that all periodic maintenance, and road rehabilitation and improvement works under the Project shall be contracted out.

4. (a) The Works Inspectorate shall perform physical audits of monthly maintenance reports of all project towns and other local authorities in Kenya receiving maintenance funding from the Borrower and, on the basis thereof, produce, in respect of each project town and other local authority, a maintenance

performance rating.

(b) No project town shall be eligible to participate in the first phase of the Project, unless it has demonstrated adequate routine maintenance performance, as determined by an independent physical audit process acceptable to the Association.

(c) Allocations for periodic maintenance, rehabilitation and road improvements during the second phase of the project, in respect of each project town, shall be adjusted, prior to the beginning of the second phase, in accordance with the maintenance performance rating achieved by such project town under sub-paragraph (a) of this paragraph, and other implementation performance indicators as indicated in the Implementation Plan.

5. The Borrower shall:

(a) make appropriate arrangements to make available to MLG, in equal quarterly instalments in advance, its counterpart contribution to the cost of the Project as follows:

- (i) for fiscal year 1995/96, \$4,000,000 equivalent; and
- (ii) for fiscal years 1996/97 and 1997/98, \$7,000,000 equivalent per annum; for fiscal year 1998/99, \$8,000,000 equivalent; for fiscal years 1999/00 and 2000/01, \$7,000,000 equivalent per annum; and

(b) cause MLG to allocate such funds on a quarterly basis and in accordance with population and other relevant factors, to finance routine road maintenance in project towns.

6. (a) The Borrower and the Association shall, not later than March 31, 1999, undertake a joint midterm review of the Project, during which they shall exchange views generally on all matters relating to the progress of the Project, the performance by the Borrower and project towns of their respective obligations under this Agreement, or pursuant thereto; including, in particular, the routine maintenance performance of project towns during the first phase of the Project, having regard to: (i) quantitative and qualitative use of routine maintenance funds received by project towns, (ii) actual physical outputs as compared to targets, (iii) efficiency in the award and management of routine maintenance contracts, (iv) planning and prioritization of maintenance tasks, and (v) initiatives for local revenue generation.

(b) Not later than one month prior to such midterm review, the Borrower shall furnish to the Association, for its comments, a report, in such detail as the Association shall reasonably request, on the progress and status of the Project, and, in particular, on the various matters listed under sub-paragraph (a) of this paragraph.

(c) Following such midterm review, the Borrower shall act promptly and diligently, in order to take any corrective action deemed necessary to remedy any shortcoming noted in the implementation of the Project, or to implement such other measures as may have been agreed upon between the parties in furtherance of the objectives of the Project.

7. Without prejudice to the generality of Section 9.06 of the General Conditions and the preceding paragraph, the Borrower shall cause TMU to prepare and submit to the Association:

- (a) on a quarterly basis,
  - (i) a report on the progress of the Project in such form and detail as the Association shall

reasonably require, and

- (ii) an analytical statement showing amounts released to MLG pursuant to paragraph 5 (a) of this Schedule, amounts allocated to project towns for routine maintenance expenditures and amounts applied for other project related activities; and

(b) an annual report on routine maintenance performance of project towns, including any proposed remedial action or other measures required to improve routine maintenance performance by project towns, together with an implementation schedule, where appropriate.

#### SCHEDULE 5

##### Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1) through (5) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means an amount equivalent to \$1,500,000 to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$750,000 until the aggregate amount of withdrawals from the Credit Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of SDR 20,000,000.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.

(ii) Prior to, or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which

replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures.

All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, less the amount of any outstanding special commitment entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until



the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

