

OFFICIAL DOCUMENTS

V0360-KE

The World Bank

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

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October 4, 2016

Honorable Henry Kiplagat Rotich
Cabinet Secretary
The National Treasury
P.O. Box 30007
Treasury Building, Harambee Avenue
Nairobi, Kenya

**Re: REPUBLIC OF KENYA: Advance Agreement for
Preparation of Proposed Secondary Cities Services
Improvement Program for Result Program
Preparation Advance No. V0360-KE**

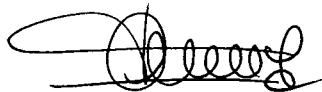
Honorable Minister:

In response to the request for financial assistance made on behalf of The Republic of Kenya ("Recipient"), I am pleased to inform you that the International Development Association ("World Bank") proposes to extend to the Recipient an advance out of the World Bank's Project Preparation Facility in an amount not to exceed three million three hundred eighty-one thousand five hundred Dollars (\$3,381,500) ("Advance") on the terms and conditions set forth or referred to in this letter agreement ("Agreement"), which includes the attached Annex, to assist in financing the activities described in the Annex ("Activities"). The objective of the Activities is to facilitate the preparation of a proposed program designed to support the establishment and strengthening of urban institutions and systems to deliver improved infrastructure and services in participating secondary cities in counties in the Recipient's territory ("Program"), in support of which the Recipient has requested the World Bank's financial assistance.

The Recipient represents, by confirming its agreement below, that: (a) it understands that the provision of the Advance does not constitute or imply any commitment on the part of IBRD or IDA to provide financing in support of the Program; and (b) it is authorized to enter into this Agreement and to carry out the Activities, repay the Advance and perform its other obligations under this Agreement, all in accordance with the provisions of this Agreement.

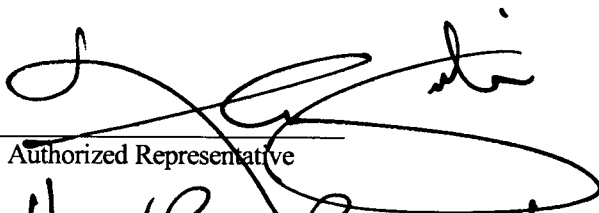
Please confirm the Recipient's agreement to the foregoing by having an authorized official of the Recipient sign and date the enclosed copy of this Agreement, and returning it to the World Bank. Upon receipt by the World Bank of this countersigned copy, this Agreement shall become effective as of the date of the countersignature; provided, however, that the offer of this Agreement shall be deemed withdrawn if the World Bank has not received this countersigned copy within 90 days after the date of signature of this Agreement by the World Bank, unless the World Bank has established a later date for such purpose.

Very truly yours,
INTERNATIONAL DEVELOPMENT ASSOCIATION



By _____
Diarietou Gaye
Country Director
Eritrea, Kenya, Rwanda and Uganda
Africa Region

AGREED:
REPUBLIC OF KENYA


By _____
Authorized Representative

Name: HENRY ROTICH
Title: CABINET SECRETARY NATIONAL TREASURY
Date: 28-10-2016.

Enclosures:

- (1) "Standard Conditions for Advances Made by the World Bank under its Project Preparation Facility", dated July 31, 2010; and
- (2) Disbursement Letter for the Advance of the same date as this Agreement, together with "World Bank Disbursement Guidelines for Projects", dated May 1, 2006.

Article I
Standard Conditions; Definitions

1.01. **Standard Conditions.** The Standard Conditions for Advances Made by the World Bank under its Project Preparation Facility dated July 31, 2010 (“Standard Conditions”), constitute an integral part of this Agreement.

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.

Article II
Execution of the Activities

2.01. **Description of the Activities.** The Activities for which the Advance is provided consist of the following parts:

- (a) Carrying out consultative forums with the current County Authorities such as Council of Governors, Governors, County Executive Committee Members, County Assemblies and other national level stakeholders to promote awareness on the Recipient’s overall urban program and the proposed Program;
- (b) Provision of training to county officials and staff designed to build capacity for achievement of the Program’s minimum conditions and performance measures;
- (c) Carrying out consultative forums with upcoming county officials (executive and county assemblies officials) designed to promote awareness of the Program and gain support for it;
- (d) Preparation of the Program operations manual;
- (e) Assessment of counties’ proposed infrastructure projects;
- (f) Undertaking the first annual performance assessment of counties with respect to urban development and assessment of spatial plans for the counties;
- (g) Assessment of the quality of county urban development strategies, integrated development plans, and institutional capacity (urban planning/engineering and works) and identifying areas of improvement in said areas;
- (h) Upgrading the local area network of the Urban Development Department;
- (i) Technical assistance to progress further with urban planning and urban management systems; and
- (j) Support towards the management and implementation of the Activities, including acquisition of vehicles required for the Activities.

2.02. **Execution of the Activities Generally.** The Recipient declares its commitment to the objectives of the Activities. To this end, the Recipient shall carry out the Activities through the State Department of Housing and Urban Development of the Ministry of Transport, Infrastructure, Housing, and Urban Development in accordance with the provisions of: (a) Article II of the Standard Conditions; (b) this Article II; and (c) 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.

2.03. **Safeguards.** The Recipient shall ensure that the terms of reference for any consultancies related to feasibility studies, technical assistance and/or capacity building activities under this Agreement shall be satisfactory to the World Bank following its review thereof and, to that end, such terms of reference shall duly incorporate the requirements of the World Bank's Safeguard Policies then in force, as applied to the advice conveyed through such studies, technical assistance and/or capacity building activities.

2.04. **Monitoring, Reporting and Evaluation of the Activities.** The Recipient shall monitor and evaluate the progress of the Activities in accordance with the provisions of Section 2.08 of the Standard Conditions.

2.05. **Financial Management.** (a) The Recipient shall ensure that a financial management system is maintained in accordance with the provisions of Section 2.09 of the Standard Conditions.

(b) The Recipient shall ensure that interim un-audited financial reports for the Activities 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 Sections 2.09(b) of the Standard Conditions.

(i) If, on or before the Refinancing Date, a Refinancing Agreement has been executed by all of its parties, the Recipient shall have the Financial Statements included in the first audit of financial statements required under the Refinancing Agreement.

(ii) If, by the Refinancing Date, no Refinancing Agreement has been executed by all of its parties, such audit of the Financial Statements shall cover the period of the Advance, commencing with the fiscal year in which the first withdrawal under the Advance was made. The audited Financial Statements for such period shall be furnished to the World Bank not later than six months after the end of the Recipient's fiscal year in which the Refinancing Date occurs.

(iii) Notwithstanding the provisions of paragraphs (i) and (ii) of this Section, the World Bank may request an audit of the Financial Statements prior to the Refinancing Date, covering such period as is indicated in its request. The audited Financial Statements for such period shall be furnished to the World Bank not later than six months after the end of such period.

2.06. **Procurement**

- (a) **General.** All goods, non-consulting services and consultants' services required for the Activities and to be financed out of the proceeds of the Advance shall be procured in accordance with the requirements set forth or referred to in:
- (i) Section I of 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 (revised July 2014) ("Procurement Guidelines"), in the case of goods and non-consulting services;
 - (ii) Sections I and IV of the "Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers" dated January 2011 (revised July 2014) ("Consultant Guidelines") in the case of consultants' services; and
 - (iii) the provisions of this Section, as the same shall be elaborated in the procurement plan prepared and updated from time to time by the Recipient for the Activities in accordance with paragraph 1.18 of the Procurement Guidelines and paragraph 1.25 of the Consultant Guidelines ("Procurement Plan").
- (b) **Definitions.** The capitalized terms used in the following paragraphs of this Section to describe particular procurement methods or methods of review by the World Bank of particular contracts, refer to the corresponding method described in Sections II and III of the Procurement Guidelines, or Sections II, III, IV and V of the Consultant Guidelines, as the case may be.
- (c) **Particular Methods of Procurement of Goods and Non-consulting Services**
- (i) Except as otherwise provided in sub-paragraph (ii) below, goods and non-consulting services shall be procured under contracts awarded on the basis of International Competitive Bidding.
 - (ii) The following methods, other than International Competitive Bidding, may be used for procurement of goods and non-consulting services for those contracts specified in the Procurement Plan: (A) National Competitive Bidding; (B) Shopping; and (C) Direct Contracting.
 - (iii) The following additional provisions shall apply to National Competitive Bidding, to the open tender procedures described in the Recipient's Public Procurement and Assets Disposal Act, 2015:
 - (A) The tender submission date shall be set at least thirty (30) days after the later of (i) the date of advertisement; and (ii) the date of availability of the tender documents.
 - (B) Recipient-owned enterprises shall be allowed to participate in the tendering only if they can establish that they are legally and financially

autonomous, operate under commercial law and are independent agencies of the Recipient's government.

- (C) Bidding documents and tender documents shall contain, *inter alia*, draft contracts and conditions of contracts, including provisions on fraud and corruption, audit and publication of award and shall be in form and substance satisfactory to the Association.
 - (D) Tender evaluation shall be based on quantifiable criteria expressed in monetary terms as defined in the tender documents, and not on a merit points system.
 - (E) No domestic preference shall be used in the evaluation of tenders. Accordingly, contracts shall be awarded to qualified tenderers who have submitted the lowest evaluated substantially responsive tender.
 - (F) Notification of contract award shall constitute formation of the contract.
 - (G) No negotiation shall be carried out prior to contract award.
- (d) Particular Methods of Procurement of Consultants' Services
- (i) Except as otherwise provided in item (ii) below, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.
 - (ii) The following methods other than Quality- and Cost Based Selection may be used for the procurement of consultants' services for those assignments which are specified in the Procurement Plan: (A) Selection based on Consultants' Qualifications; (B) Selection of Individual Consultants; and (C) Single-source procedures for the Selection of Individual Consultants.
- (e) Review by the World Bank of Procurement Decisions. The Procurement Plan shall set forth those contracts which shall be subject to the World Bank's Prior Review. All other contracts shall be subject to Post Review by the World Bank.

Article III Withdrawal of the Advance

3.01. **Eligible Expenditures.** The Recipient may withdraw the proceeds of the Advance 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 Eligible Expenditures as set forth in the following table. The table specifies each category of Eligible Expenditures that may be financed out of the proceeds of the Advance ("Category"), the amount of the Advance allocated to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

Category	Amount of the Advance Allocated (expressed in Dollars)	Percentage of Expenditures to be Financed (inclusive of Taxes)
(1) Goods, non-consulting services, consultants' services, Training and Incremental Operating Costs under the Activities	3,381,500	100%
TOTAL AMOUNT	3,381,500	

For the purposes of this section, the terms:

- (a) "Training" means the reasonable costs associated with training, study tours and workshop participation under the Activities, consisting of travel and subsistence costs for Training participants, costs (other than consulting services) associated with securing the services of trainers and presenters, rental of training facilities, translation and interpretation services, preparation and reproduction of training materials; and
- (b) "Operating costs" means the incremental operating expenses incurred on account of the implementation of the Activities, management and monitoring including on account of operation and maintenance costs of office and office equipment; operation and maintenance of vehicles, office supplies, utilities, travel and supervision costs, *per diem*, accommodation, but excluding the salaries and indemnities of officials and public servants 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. **Refinancing Date.** The Refinancing Date is January 15, 2018.

**Article IV
Terms of the Advance**

4.01. **Service Charge.** The Recipient shall pay a service charge on the Withdrawn Advance Balance at the rate of three-fourths of one percent (3/4 of 1%) per annum. The service charge shall accrue from the respective dates on which amounts of the Advance are withdrawn and shall be paid in arrears in accordance with the provisions of Section 4.02 of this Agreement. Service charges shall be computed on the basis of a 360-day year of twelve 30-day months.

4.02. **Repayment.** The Withdrawn Advance Balance shall be repaid by the Recipient to the World Bank (together with any service charges accrued thereon) in accordance with the provisions of Article IV of the Standard Conditions and the following provisions:

- (a) **Refinancing under the Refinancing Agreement:** If, on or before the Refinancing Date, a Refinancing Agreement has been executed by all of its parties, then the full amount of the

Withdrawn Advance Balance shall be repaid to the World Bank (together with any service charges accrued on the Advance to the date of repayment) as soon as the Refinancing Agreement becomes effective, by means of a withdrawal by the World Bank of an amount of the Refinancing Proceeds equivalent to the Withdrawn Advance Balance plus such service charges, in accordance with the provisions of the Refinancing Agreement.

- (b) *Repayment in the absence of a Refinancing Agreement:* If, on or before the Refinancing Date, no Refinancing Agreement has been executed by all of its parties, or if, by such date or at any time thereafter, it has been so executed but terminates without becoming effective, then:
- (i) if the amount of the Withdrawn Advance Balance does not exceed \$50,000, it shall be repaid by the Recipient to the World Bank (together with service charges accrued on the Withdrawn Advance Balance to the date of repayment) on such date as the World Bank shall specify in a notice to the Recipient, which shall in no event be earlier than 60 days following the date of dispatch of such notice; and
 - (ii) if the amount of the Withdrawn Advance Balance exceeds \$50,000, it (together with service charges accrued on the Withdrawn Advance Balance to the Notice Date) (the "Aggregate Balance") shall be paid by the Recipient to the World Bank in ten approximately equal semiannual installments, in the amounts and on the dates ("Payment Dates") which the World Bank shall specify in a notice to the Recipient. In no event shall the first Payment Date be set earlier than 60 days following the date ("Notice Date") of dispatch of such notice. The Recipient shall pay a service charge on the Aggregate Balance at the rate of three-fourths of one percent (3/4 of 1%) per annum, payable in arrears on each Payment Date. The service charge shall be computed on the basis of a 360-day year of twelve 30-day months.

Article V Recipient's Representative; Addresses

5.01. *Recipient's Representative.* The Recipient's Representative referred to in Section 9.02 of the Standard Conditions is the Cabinet Secretary.

5.02. *Recipient's Address.* The Recipient's Address referred to in Section 9.01 of the Standard Conditions is:

The National Treasury
P.O. Box 30007
Treasury Building, Harambee Avenue
Nairobi, Kenya

Cable:
2252299

Telex:
22921

Facsimile:
2252299

5.03. *World Bank's Address.* The World Bank's Address referred to in Section 9.01 of the Standard Conditions is:

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

Telex:

Facsimile:

248423 (MCI) or
64145 (MCI)

1-202-477-6391