Financing Agreement
(Water and Sanitation Development Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated 21st June, 2017
FINANCING AGREEMENT

AGREEMENT dated 21st June 2017 entered into between REPUBLIC OF KENYA ("Recipient") and INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association").

WHEREAS the Recipient has requested the Association to provide assistance towards the financing of the project described in Schedule 1 to this Agreement ("Project") and, by an agreement of even date herewith between the Recipient and the Association ("IDA Financing Agreement"), the Association has agreed to provide such assistance, on the terms and subject to the conditions provided or referred to therein.

The Recipient and the Association hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.

1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II — CREDIT

2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a credit in the amount of two hundred forty-eight million one hundred thousand Euros (248,100,000EUR) ("Credit") to assist in financing the project described in Schedule 1 to this Agreement ("Project").

2.02. The Recipient may withdraw the proceeds of the Credit in support of the Project in accordance with Section IV of Schedule 2 to this Agreement.

2.03. The Front-end Fee payable by the Recipient shall be equal to one quarter of one percent (¼ of 1%) of the Credit amount.

2.04. The Commitment Charge payable by the Recipient shall be one-quarter of one percent (¼ of 1%) per annum on the Unwithdrawn Credit Balance.

2.05. The Interest Charge payable by the Recipient for each Interest Period shall be at a rate equal to two point eighty-five percent (2.85%) per annum.

2.06. The Payment Dates are February 15 and August 15 in each year.
2.07. The principal amount of the Credit shall be repaid in accordance with the amortization schedule set forth in Schedule 3 to this Agreement.

2.08. The Payment Currency is Euro.

ARTICLE III — PROJECT

3.01. The Recipient declares its commitment to the objectives of the Project. To this end, the Recipient shall: (a) carry out: (i) Part 4 of the Project through its Ministry of Water and Irrigation; and (ii) Part 3 through WASREB; and (b) cause: (i) Parts 1(a) and 2 of the Project to be carried out by the Participating County Governments; and (ii) Part 1(b) of the Project to be carried out by the Project Implementing Entity in accordance with the provisions of Article IV of the General Conditions, the Participation Agreements and the Project Agreement.

3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE IV — REMEDIES OF THE ASSOCIATION

4.01. The Additional Event of Suspension consists of the following, namely that, the Project Implementing Entity’s Legislation has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Project Implementing Entity to perform any of its obligations under the Subsidiary Agreement.

ARTICLE V — EFFECTIVENESS; TERMINATION

5.01. The Additional Conditions of Effectiveness consist of the following:

(a) The Subsidiary Agreement has been executed on behalf of the Recipient and the Project Implementing Entity.

(b) The IDA Financing Agreement has been executed and delivered and all conditions precedent to its effectiveness (other than the effectiveness of this Agreement) have been fulfilled.

5.02. The Additional Legal Matter consists of the following, namely that, the Subsidiary Agreement has been duly authorized or ratified by the Recipient and the Project Implementing Entity, and is legally binding upon the Recipient and the Project Implementing Entity in accordance with its terms.

5.03. The Effectiveness Deadline is the date one hundred twenty (120) days after the date of this Agreement.
5.04. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for payment obligations) shall terminate is twenty (20) years after the date of this Agreement.

ARTICLE VI — REPRESENTATIVE; ADDRESSES

6.01. The Recipient’s Representative is its Cabinet Secretary at the time responsible for Finance.

6.02. The Recipient’s Address is:

The National Treasury
Treasury Building
P.O Box 30007-00100
Nairobi, Kenya

Facsimile:
254 20 330426; 254 20 218475

6.03. International Development Association

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

Telex: 248423 (MCI)
Facsimile: 1-202-477-6391
AGREEED at 

REPUBLIC OF KENYA

By

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative

Name: DIARIETOU GAYE

Title: COUNTRY DIRECTOR
SCHEDULE 1

Project Description

The objective of the Project is to improve water supply and sanitation services in select coastal and northeastern regions in the Recipient’s territory.

The Project consists of the following parts:

Part 1: Rehabilitation and expansion of urban water supply and sanitation services in the coastal region

(a) Support to Coastal Counties

Carrying out a program of activities designed to improve water supply and sanitation services in urban areas, including: (i) construction and rehabilitation of water supply, sanitation and storm water infrastructure investments including construction or rehabilitation of offices for Water Services Providers (“WSPs”); and (ii) capacity building and institutional strengthening activities, including customer identification surveys, improving billing and collection systems, and non-revenue water, to support improved water and sanitation performance of the Participating County Governments (“PCGs”) and their WSPs.

(b) Support to the Coast Bulk Water Services Provider

Carrying out a program of activities designed to improve the interconnected coast water bulk system, including: (i) construction and rehabilitation of water mains and boreholes; (ii) technical assistance to the Coast Water Service Board, including financing a management or service contract for the operation of the coast water bulk system; and (iii) partial financing of on-going construction contracts of water transmission mains from Kakuyuni to Kilifi and from Kakuyuni to Gongoni for the Baricho Well Field.

Part 2: Expansion of Water Supply and Sanitation Services in Underserved Northeastern Counties

Carrying out a program of activities designed to improve water supply and sanitation services in the underserved Northeastern Counties such as Wajir town and Dadaab refugee camp host communities in Garissa County, such program to include: (a) construction and rehabilitation of water supply, sanitation and storm water infrastructure investments including construction or rehabilitation of offices for WSPs; (b) capacity building and institutional strengthening activities the Participating Counties and the WSPs, including, non-revenue water reduction, billing and revenue collection systems, and developing and implementing a utility business plan; and (c) operation and maintenance of the water supply and sanitation services.

(a) Support for Water and Sanitation Infrastructure Investments and Services

Carrying out a program of activities designed to support the preparation and implementation of the National Performance-based Financing for Participating Counties, WSBs, and WSPs, including: (i) construction of new or rehabilitation of existing water and sanitation infrastructure; (ii) support towards the preparation of applications, final designs, bidding documents and construction supervision; and (iii) technical assistance for improving water and sanitation services, and monitoring and evaluation.

(b) Technical Assistance for National Performance-based Financing

Carrying out a program of activities designed to strengthen the capacity of WASREB for management, implementation and coordination, monitoring and evaluation of the National Performance-based Financing, including: (i) evaluation of proposals to identify high-return investments and activities; (ii) establishment and implementation of a comprehensive monitoring and evaluation system; and (iii) provision of training to the PCGs, WSBs and WSPs involved in implementation of Part 3(a) on issues such as implementation of safeguards, procurement and financial management.

Part 4: Project Management

Carrying out a program of activities designed to strengthen the capacity of the Recipient for Project management, implementation and coordination, monitoring and evaluation, including: (i) establishment and implementation of a comprehensive monitoring and evaluation system; (ii) training of the implementing agencies and PCGs on implementation of safeguards, procurement and financial management; and (iii) financing studies identified during implementation and preparation of follow on projects as needed.
SCHEDULE 2

Project Execution

Section I. Implementation Arrangements

A. Institutional Arrangements

National Level Arrangements

1. National Project Steering Committee ("NPSC")

The Recipient shall establish, by not later than six (6) months after the Effective Date, and thereafter maintain throughout the Project implementation period, a national steering committee, which shall be co-chaired by the Cabinet Secretary of the Ministry of Water and Irrigation ("MWI") and the Chair of the committee in charge of water affairs in Council of Governors; with composition satisfactory to the Association, including, *inter alia*, Principal Secretaries from the relevant line ministries and Governors of the Participating Counties, to be responsible for overall oversight and policy guidance to the Project, and approving the Project’s Annual Work Plans Budgets.

2. Technical Committee

The Recipient shall establish, by not later than six (6) months after the Effective Date, and thereafter maintain throughout the Project implementation period, a technical committee, which shall be chaired by the Water Secretary from MWI, with composition satisfactory to the Association, including, *inter alia*, the Chief Executive Officer (“CEO”) of CoG, CEO of the Coast Water Services Board, CEO of Northern Water Services Board, the CEO of WASREB, Participating County executive committee members in charge of water affairs; to be responsible for providing technical support to the Project.

3. State Department of Water Services

To ensure proper and effective implementation of the Project, the Recipient shall vest in the State Department of Water Services (SDWS), within the Ministry of Water and Irrigation (MWI), overall responsibility for implementation of the Project, including coordinating all aspects of Project implementation with other central government ministries/agencies and Participating County Governments.

4. WASREB

To ensure proper and efficient implementation of Part 3 of the Project, the Recipient shall vest in WASREB the responsibility for implementation of Part 3 of the Project, including the responsibility for: (a) designing and announcing the
National Performance-based Financing program under Part 3(a) of the Project, inviting and reviewing applications; (b) approving the financial support for the accepted applications; and (c) reviewing progress and monitoring activities carried out under Part 3(a). To this end, WASREB shall ensure that Part 3(a) of the Project shall be implemented in accordance with the detailed implementation arrangements set forth in the PIM.

5. Project Coordination Unit

To ensure proper and effective day to day implementation and management of the Project, the Recipient shall maintain, throughout the Project implementation period, a Project Coordination Unit (PCU) within the SDWS with terms of reference acceptable to the Association, to be responsible for overall management and implementation of the Project, including monitoring and reporting, all in form and substance satisfactory to the Association. To this end, the Recipient shall ensure that the PCU shall have adequate financial resources and shall be staffed with qualified and experienced staff in adequate numbers, such staff to include a Project coordinator.

B. Subsidiary Agreement

1. To facilitate the carrying out of the Project Implementing Entity’s Respective Part of the Project, the Recipient shall make part of the proceeds of the Financing allocated from time to time to Category (2) of the table set forth in Section IV.A.2 of this Schedule available to the Project Implementing Entity under a subsidiary agreement between the Recipient and the Project Implementing Entity, under terms and conditions approved by the Association (“Subsidiary Agreement”).

2. The Recipient shall exercise its rights under the Subsidiary Agreement in such manner as to protect the interests of the Recipient and the Association and to accomplish the purposes of the Financing. Except as the Association shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Subsidiary Agreement or any of its provisions.

County Level Implementation Arrangements

C. Participation Agreements

1. Without limitation on the generality of Part A of this Section I, the Recipient shall enter into a participation agreement with each PCG, pursuant to which the Recipient shall make part of the Financing available to the PCGs for purpose of implementing County level activities under Parts 1(a), 2 and 3(a) of the Project, under terms and conditions acceptable to the Association and further elaborated in the PIM (“Participation Agreement”). The Participation Agreements shall detail the Participating CGs’ responsibilities for the implementation of the Project,
special studies to protect or preserve such species identified; and (b) irreversible damage would be done to some species because of the Project activities, such activities will be excluded from the Project.

4. 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 safeguard policies.

5. 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.

H. **Annual Work Plans and Training**

1. The Recipient shall:

   (a) prepare under terms of reference acceptable to the Association, and furnish to the Association, not later than January 31 of each year during the period of Project implementation, for the Association's review and approval, an Annual Work Plan of activities (including proposed training and workshop programs) proposed for inclusion in the Project during the following calendar year, together with a budget and financing plan for such activities and a timetable for their implementation, including amounts of the Recipient's counterpart funding required for the purpose; and

   (b) thereafter, allocate the necessary counterpart funds and carry out the Project with due diligence during such following year in accordance with such annual work plan as shall have been approved by the Association.

2. The Recipient shall ensure that, in preparing any training or workshops proposed for inclusion in the Project under an agreed Annual Work Plan, it shall identify in the work plan: (a) the objective and content of the training or workshop envisaged; (b) the selection method of institutions or individuals conducting such training or workshop; (c) the expected duration and an estimate of the cost of said training or workshops; and (d) the description of people selected to attend the training or the workshop.

3. The Recipient shall not make or allow to be made any change to the Annual Work Plan without prior no-objection in writing by the Association.
Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports
1. The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of indicators acceptable to the Association and set forth in the PIM. Each Project Report shall cover the period of one calendar quarter, and shall be furnished to the Association not later than forty-five (45) days after the end of the period covered by such report.

B. Financial Management, Financial Reports and Audits
1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.
2. The Recipient shall prepare and furnish to the Association not later than forty-five (45) days after the end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.
3. The Recipient shall have its Financial Statements audited in accordance with the provisions of Section 4.09(b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one fiscal year of the Recipient. The audited Financial Statements for each such period shall be furnished to the Association not later than six (6) months after the end of such period.

Section III. Procurement

A. General
1. Goods, Works and Non-consulting Services. All goods, works and non-consulting services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.
2. Consultants' Services. All consultants’ services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.
3. Definitions. The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association 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.

B. Particular Methods of Procurement of Goods, Works and Non-consulting Services

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods, works and non-consulting services shall be procured under contracts awarded on the basis of International Competitive Bidding.

2. **Other Methods of Procurement of Goods, Works and Non-consulting Services.** The following methods, other than International Competitive Bidding, may be used for procurement of goods, works and non-consulting services for those contracts specified in the Procurement Plan:

   (a) National Competitive Bidding, subject to the provisions set forth in paragraph 3 of this Part B;

   (b) Shopping; and

   (c) Direct Contracting.

3. 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) 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.

   (e) Notification of contract award shall constitute formation of the contract. No negotiation shall be carried out prior to contract award.
C. Particular Methods of Procurement of Consultants’ Services

1. Quality- and Cost-based Selection. Except as otherwise provided in paragraph 2 below, consultants’ services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.

2. Other Methods of Procurement of Consultants’ Services. The following methods, other than Quality- and Cost-based Selection, may be used for procurement of consultants’ services for those contracts which are specified in the Procurement Plan:

   (a) Quality-based Selection;
   (b) Selection under a Fixed Budget;
   (c) Least Cost Selection;
   (d) Selection based on Consultants’ Qualifications;
   (e) Single-source Selection of consulting firms;
   (f) Procedures set forth in paragraphs 5.2 and 5.3 of the Consultant Guidelines for the Selection of Individual Consultants; and
   (g) Single-source procedures for the Selection of Individual Consultants.

D. Review by the Association of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Association’s Prior Review. All other contracts shall be subject to Post Review by the Association.

Section IV. Withdrawal of the Proceeds of the Financing

A. General

1. The Recipient may withdraw the proceeds of the Credit in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the “World Bank Disbursement Guidelines for Investment Project Financing” dated February 2017, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.

2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Credit (“Category”), the allocations of the
amounts of the Credit to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount of the Credit Allocated (expressed in EUR)</th>
<th>Percentage of Expenditures to be Financed (inclusive of Taxes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Goods, works, non-consulting services, consultants’ services,</td>
<td>112,800,000</td>
<td>100%</td>
</tr>
<tr>
<td>Training and Operating Costs for Part 1(a) of the Project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) Goods, works, non-consulting services, consultants’ services,</td>
<td>37,800,000</td>
<td>100%</td>
</tr>
<tr>
<td>Operating Costs and Training for Part 1(b) of the Project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) Goods, works, non-consulting services, consultants’ services,</td>
<td>59,204,000</td>
<td>100%</td>
</tr>
<tr>
<td>Training, Operating Costs and Recurrent Costs for Part 2 of the Project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4) Goods, works, non-consulting services, consultants’ services,</td>
<td>32,975,000</td>
<td>100%</td>
</tr>
<tr>
<td>Operating Costs and Training for Part 3(a) of the Project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(5) Goods, non-consulting services, consultants’ services, Training</td>
<td>4,700,000</td>
<td>100%</td>
</tr>
<tr>
<td>and Operating Costs for Parts 3(b) and 4 of the Project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6) Front-end Fee</td>
<td>621,000</td>
<td>Amount payable pursuant to Section 2.03 of this Agreement in accordance with Section 3.01 (a) of the General Conditions</td>
</tr>
<tr>
<td>TOTAL AMOUNT</td>
<td>248,100,000</td>
<td></td>
</tr>
</tbody>
</table>
B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made for payments made prior to the date of this Agreement.

2. The Closing Date is October 31, 2022.
## SCHEDULE 3

**Amortization Schedule**

<table>
<thead>
<tr>
<th>Date Payment Due</th>
<th>Principal Amount of the Credit repayable (expressed as a percentage)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>On each February 15 and August 15 commencing on August 15, 2026, to and including August 15, 2040 and on February 15, 2041, to and ending on February 15, 2047</td>
<td>2.35%</td>
</tr>
<tr>
<td></td>
<td>2.45%</td>
</tr>
</tbody>
</table>

* The percentages represent the percentage of the principal amount of the Credit to be repaid.
APPENDIX

Section I. Definitions

1. “Affected Person” means a person who as a result of: (i) the involuntary taking of land under the Project is affected in any of the following ways: (A) relocation or loss of shelter; (B) loss of assets or access to assets; or (C) loss of income sources or means of livelihood, whether or not the affected person must move to another location; or (ii) the involuntary restriction of access to legally designated parks and protected areas suffers adverse impacts on his or her livelihood.

2. “Annual Work Plan” means the work plan prepared for each year of implementation of the Project, in accordance with Section I.H of Schedule 2 to this Agreement.


4. “Baricho Well Fields” means the groundwater resource (Sabaki aquifer) consisting of production boreholes drilled in the south bank of Sabaki River which supply water to Mombasa and Kilifi counties in the Coast region and is currently financed by an IDA Credit (No. 5103) under Water and Sanitation Services Improvement Project.

5. “Category” means a category set forth in the table in Section IV.A of Schedule 2 to this Agreement.


7. “Coast Water Services Board” means the state corporation established and operating pursuant to the Water Act, 2002, as amended to date.


10. “Environmental and Social Impact Assessment” or “ESIA” means: (a) any assessment to be prepared in accordance with the environmental and social screening guidelines, procedures and forms included in the ESMF, each such assessment in form and substance satisfactory to the Association, defining details of potential environmental and social risks and adverse impacts associated with the
implementation of Project activities; (b) the Kipevu Wastewater Treatment Plant rehabilitation and sewer networks ESIA; and (c) the Mombasa Stormwater Outfalls ESIA; and the term “ESIAs” means more than one such ESIA.

11. “Environmental and Social Management Framework” or “ESMF” means the instruments satisfactory to the Association, prepared and adopted by the Recipient, dated February 2017, outlining the process for management of the environmental and social aspects of the Project, including potential negative impacts to the natural habitats, as the same may be amended from time to time with the Association’s prior written concurrence.

12. “Environmental and Social Management Plan” or “ESMP” means any plan to be prepared by the Recipient, consistent with the ESMF, providing details about the management of the environmental and social aspects of the activities to be carried out under the Project, as the same may be amended from time to time with the Association’s prior written concurrence.

13. “EURIBOR” means for any Interest Period, the Euro interbank offered rate for deposits in Euro for six months, expressed as a percentage per annum, that appears on the Relevant Rate Page as of 11:00 a.m., Brussels time, on the Reference Rate Reset Date for the Interest Period.

14. “Euro Area” means the economic and monetary union of member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union.

15. “Financial Center” means the principal financial center of the relevant member state in the Euro Area.

16. “Fixed Spread” means the Association’s fixed spread for the Credit Currency in effect at 12:01 a.m. Washington, D.C. time, one calendar day prior to the date of this Agreement and expressed as a percentage per annum.

17. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 31, 2010, with the modifications set forth in Section II of this Appendix.

18. “IDA Financing Agreement” means the agreement of even date entered into between the Recipient and the Association for purposes of providing financing (Credit No. 6029-KE) to the Project and referred to in the preamble of this Agreement, as such agreement may be amended from time to time.

19. “Interest Period” means the initial period from and including the date of this Agreement to but excluding the first Payment Date occurring thereafter, and after
the initial period, each period from and including a Payment Date to but excluding the next following Payment Date.

20. “Mwache Dam” means the dam under construction and financed by the Association under the Kenya Coastal Region Water Security and Climate Resilient Project (Credit No. 5543-KE).

21. “MWI” means the Recipient’s Ministry responsible for water and irrigation, or any successor thereto.

22. “National Performance-based Financing” means the Recipient’s national instrument under which WSPs, Counties and WSBs are provided financing, on a competitive basis, to finance proposals: (a) for cost efficient investments in water supply and sanitation infrastructure that reflect the maximum output that can be achieved per dollar invested; (b) for activities to improve performance of WSPs; and (c) for which additional incentives are provided for proposals that actually achieve the promised targets.

23. “Operating Costs” means the reasonable expenses incurred on account of Project implementation, based on an Annual Work Plan, including: expenditures for maintenance of equipment, facilities and vehicles used for Project implementation, fuel, routine repair and maintenance of equipment, vehicles and office premises, communication costs, use of internet costs, stationery and other office supplies, utilities used for Project implementation, consumables, travel per diems, accommodation expenses, motor vehicle insurance expenses, internal and external audits, workshop venues and materials, and costs of translation, printing, photocopying and advertising, but excluding salaries, top-ups, honoraria, or allowances of the Recipient’s civil servants.

24. “Participation Agreement” means the agreement referred to in Section L.C of Schedule 2 to this Agreement.

25. “Participating County” means Garissa County, Wajir County, Mombasa County, Kwale County, Taita Taveta County and Kilifi County, all of which counties are executing agencies responsible for implementation of Parts 1(a) and 2 of the Project within their respective geographical jurisdiction; and any other Counties that may be selected to participate in Part 3(a) of the Project in accordance with the eligibility criteria set forth in PIM.

26. “Participating County Government” or “Participating CG” or “PCG” means a government of a Participating County.

28. "Procurement Plan" means the Recipient’s procurement plan for the Project, dated March 23, 2017 and referred to in paragraph 1.18 of the Procurement Guidelines and paragraph 1.25 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.

29. “Project Coordinating Unit” or “PCU” means the existing PCU within MWI referred to in Section I.A.5 of Schedule 2 to this Agreement.

30. “Project Implementation Manual” or “PIM” mean the manual referred to in Section I.E of Schedule 2 to this Agreement containing detailed arrangements and procedures for the Project, including, *inter alia*: (a) policies, administrative, and procurement procedures as well as guidelines to be followed in the implementation and monitoring of the Project; (b) the modalities for screening and approval of proposals for National Performance-based Financing under Part 3(a) of the Project; (c) implementation arrangements for WSP Activities and terms and conditions for the Participation Agreements and WSP Agreements; (d) indicators for Project performance; (e) the schedule and amounts of the Recipient’s counterpart funding; and (f) the format and content of quarterly progress reports; as the same may be amended and/or supplemented from time to time; and such term includes any schedule to the PIM.

31. “Project Implementing Entity” means the Coast Water Services Board, established and operating pursuant to the Project Implementing Entity’s Legislation.


33. “Project Implementing Entity’s Respective Part of the Project” means Part 1(b) of the Project.

34. “Recurrent Costs” means the diesel and energy costs for Wajir and Garissa Counties to operate their water supply and sanitation systems.

35. “Resettlement Action Plan” or “RAP” means: (a) 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; (b) the Mombasa storm-water outfalls.
the Mombasa water supply network rehabilitation Lot 2 RAP dated February 2017; and (c) the Kipevu waste water treatment plant rehabilitation RAP and sewer networks dated February 2017; and “Resettlement Actions Plans” or “RAPs” mean more than one such RAP.

36. “Resettlement Policy Framework” or “RPF” means the framework for the Project prepared by the Recipient, dated February 2017, setting out measures and actions to be taken during the implementation of the Project for the provision of compensation, rehabilitation and resettlement assistance to any Affected Persons; as said framework may be modified from time to time with the prior written no-objection of the Association, and such term includes any schedules or annexes to such framework.

37. “Safeguard Frameworks” means, collectively, the ESMF and RPF; and “Safeguard Framework” means any one of the Safeguard Frameworks.

38. “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; and (c) for which the RPF requires a RAP, said RAP; all as shall have been prepared in accordance with the provisions of Section I.G of Schedule 2 to this Agreement; and includes the already prepared: (i) Social Assessments for Wajir and Garisa, (ii) the RAPs for the Mombasa storm-water outfalls, the Mombasa water supply network rehabilitation Lot 2 and the Kipevu waste water treatment plant rehabilitation and sewer networks, and (iii) the ESIA for Kipevu Wastewater Treatment Plant rehabilitation and sewer networks and the Mombasa Stormwater Outfalls.

39. “State Department of Water Services” or “SDWS” means the department within MWI responsible for water services.

40. “Social Assessments” means the social assessment dated February 2017, undertaken by the Recipient to evaluate the Project’s potential positive and adverse effects on the Vulnerable and Marginalized Groups in Wajir and Garissa Counties, and to examine project alternatives where adverse effects may be significant, and recommendations of this assessment have been incorporated in the design of the Project.

41. “Subsidiary Agreement” means the agreements referred to in Section 1.B of Schedule 2 to this Agreement pursuant to which the Recipient shall make part of the proceeds of the Financing available to the Project Implementing Entity.

42. “Training” means the reasonable costs for the following expenditures incurred in providing training or workshops: travel by participants and presenters to the training or workshop site, per diem allowances of such persons during the training
or workshop, honoraria for the presenters, rental of facilities, materials, supplies and translation and interpretation services.

43. “Vulnerable and Marginalized groups” or “VMGs” means, for the purposes of this Project, distinct, vulnerable, social and cultural groups that have been identified in Wajir and Garissa Counties, pursuant to the Social Assessment.

44. “WASREB” means Water Services Regulatory Board, established and operating pursuant to the Water Act of 2002, as amended in 2012.

45. “WSBs” means the water services boards established and operating pursuant to the Water Act of 2002, as amended in 2012.

46. “WSP” or “Water Service Provider” means a legal entity established pursuant to the Water Act of 2002, as amended in 2016, to be contracted by County Governments for purposes implementing WSP Activities.

47. “WSP Activities” means the activities under Part 1(a), 2 and 3(a) of the Project to be carried out by the WSPs.

48. “WSP Agreements” means the agreements referred to in Section 1.D of Schedule 2 to this Agreement to be entered into between the Participating CGs and the WSPs for purposes of financing and implementation of WSP Activities.

Section II. Modifications to the General Conditions

The General Conditions are hereby modified as follows:

1. In the Table of Contents, the references to Sections, Section names and Section numbers are modified, as necessary, to reflect the modifications set forth in the paragraphs below.

2. Section 2.07 (Refinancing Preparation Advance) is retitled as “Refinancing Preparation Advance; Capitalizing Front-end Fee”, amended by adding a new paragraph (b), and modified to read as follows:

   “Section 2.07. Refinancing Preparation Advance; Capitalizing Front-end Fee

   (a) If the Financing Agreement provides for the repayment out of the proceeds of the Financing of an advance made by the Bank or the Association (“Preparation Advance”), the Association shall, on behalf of the Recipient, withdraw from the Financing Account on or after the Effective Date the amount required to repay the withdrawn and outstanding balance of the advance as at the date of such withdrawal from the Financing Account and to pay all accrued and unpaid charges, if any, on the advance as at such date. The Association shall pay the amount so
withdrawn to itself or the Bank, as the case may be, and shall cancel the remaining unwithdrawn amount of the advance.

(b) Except as otherwise provided in the Financing Agreement, the Association shall, on behalf of the Recipient, withdraw from the Financing Account on or after the Effective Date and pay to itself the amount of the Front-end Fee payable pursuant to Section 3.01 (a)."

3. Section 3.01 (Commitment Charge) is retitled as "Front-end Fee; Commitment Charge", amended by adding a new paragraph (a), and modified to read as follows:

"Section 3.01. Front-end Fee; Commitment Charge

(a) The Recipient shall pay the Association a front-end fee on the Credit amount at the rate specified in the Financing Agreement (the "Front-end Fee").

(b) The Recipient shall pay the Association a commitment charge on the Unwithdrawn Credit Balance at the rate specified in the Financing Agreement (the "Commitment Charge"). The Commitment Charge shall accrue from a date sixty days after the date of the Financing Agreement to the respective dates on which amounts are withdrawn by the Recipient from the Credit Account or cancelled. The Commitment Charge shall be payable semi-annually in arrears on each Payment Date."

4. Section 3.02 (Service Charge) is retitled as "Interest Charge" and modified to read as follows:

"Section 3.02. Interest Charge

The Recipient shall pay the Association interest on the Withdrawn Credit Balance at the rate specified in the Financing Agreement. Interest shall accrue from the respective dates on which amounts of the Credit are withdrawn and shall be payable semi-annually in arrears on each Payment Date. Interest Charges shall be computed on the basis of a 360-day year of twelve 30-day months."

5. Section 3.03 (Repayment of the Credit) is modified by deleting paragraph (b) in its entirety and amending the remaining paragraph (a) to read as follows:

"Section 3.03. Repayment of the Credit

The Recipient shall repay the Withdrawn Credit Balance to the Association in installments as provided in the Financing Agreement."
6. In the Appendix, **Definitions**, all relevant references to Sections, numbers and paragraphs are modified, as necessary, to reflect the modifications set forth in paragraphs 1 through 5 above.

7. Paragraph 28 of the Appendix ("Financing Payment") is modified to read as follows:

   "28. "Financing Payment" means any amount payable by the Recipient to the Association pursuant to the Financing Agreement or these General Conditions, including (but not limited to) any amount of the Withdrawn Credit Balance, interest, the Front-end Fee and the Commitment Charge."

8. A new paragraph 30 is inserted in the Appendix with the following definition of "Front-end Fee", and the subsequent paragraphs are renumbered accordingly:

   "30. "Front-end Fee" means the fee specified in the Financing Agreement for the purpose of Section 3.01 (a)."

9. A new paragraph 33 is inserted in the renumbered Appendix with the following definition of "Interest Charge", and the subsequent paragraphs are renumbered accordingly:

   "33. "Interest Charge" means the interest charge specified in the Financing Agreement for the purpose of Section 3.02."

10. Renumbered paragraph 38 (originally paragraph 36) of the Appendix ("Payment Date") is modified by deleting the words "Service Charges" and inserting the words "Interest Charges".

11. Renumbered paragraph 51 (originally paragraph 49) of the Appendix ("Service Charge") is deleted in its entirety, and the subsequent paragraphs are renumbered accordingly.