Financing Agreement

(Additional Financing for Lake Victoria Environmental Management Project II)
(Phase I)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated July 7, 2015
CREDIT NUMBER 5634-KE

FINANCING AGREEMENT

AGREEMENT dated __________________, 2015, entered into between REPUBLIC OF KENYA ("Recipient") and INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association") for the purpose of providing additional financing for the Original Project (as defined in the Appendix to this Agreement). 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, in the Appendix to this Agreement, or in the Original Financing Agreement.

ARTICLE II — FINANCING

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 an amount equivalent to seven million three hundred thousand Special Drawing Rights (SDR7,300,000) (variously, "Credit" and "Financing"), to assist in financing the project described in Schedule 1 to this Agreement ("Project").

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

2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.

2.04. The Service Charge payable by the Recipient on the Withdrawn Credit Balance shall be equal to three-fourths of one percent (3/4 of 1%) per annum.

2.05. The Payment Dates are May 15 and November 15 in each year.
2.06. The principal amount of the Credit shall be repaid in accordance with the repayment schedule set forth in Schedule 3 to this Agreement.

2.07. The Payment Currency is Dollar.

ARTICLE III — PROJECT

3.01. The Recipient declares its commitment to the objectives of the Project and the Program. To this end, the Recipient shall carry out the Project in accordance with the provisions of Article IV of the General Conditions.

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 Protocol has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the: (i) EAC to perform any of its obligations under the EAC Financing Agreement, the GEF Grant Agreement, the SIDA Grant Agreement and the CIWA Grant Agreement; and/or (ii) LVB Countries to perform their obligations under their respective Financing Agreements.

ARTICLE V — TERMINATION

5.01. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.

5.02. 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 for finance.

6.02. The Recipient’s Address is:

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

Facsimile:
254 20-30833

6.03. The Association’s Address is:

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

Cable: Telex: Facsimile:
INDEVAS 248423 (MCI) 1-202-477-6391
Washington, D.C.
AGREED at Nairobi, Kenya, as of the day and year first above written.

REPUBLIC OF KENYA

By

Authorized Representative

Name: Henry Rotich

Title: Cabinet Secretary

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative

Name: Diarietou Gaye

Title: Country Director, Kenya
SCHEDULE 1

Project Description

The objectives of the Project are to contribute to: (i) the improvement of the collaborative management of the trans-boundary natural resources of the LVB among the Partner States; and (ii) the improvement of environmental management of targeted pollution hotspots and selected degraded sub-catchments for the benefit of communities who depend on the natural resources of the LVB.

The Project consists of the Original Project.
SCHEDULE 2

Project Execution

Section I. Implementation Arrangements

The Project’s institutional and implementation arrangements shall be identical to those set forth in Section I.A to Section I.E of Schedule 2 to the Original Financing Agreement, except as set forth immediately below in Sections I.A and I.B of this Schedule, in respect of the Anti-Corruption Guidelines referred to in Section I.C and the Safeguards referred to in Section I.E of Schedule 2 to the Original Financing Agreement.

A. Anti-Corruption

The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

B. Environmental and Social Safeguards

1. The Recipient shall carry out the Project in accordance with the Safeguard Instruments, including the guidelines, rules and procedures defined in said Safeguard Instruments.

2. The Recipient shall specifically take the following actions in a manner acceptable to the Association:

(a) If an EMP or similar safeguard document would be required on the basis of the ESMF: (i) such EMP or similar safeguard document shall be prepared in accordance with the requirements of the ESMF, disclosed locally and furnished to the Association as part of the Annual Work Plan; and (ii) the Subproject shall be carried out in accordance with such EMP or similar safeguard document as approved by the Association;

(b) If a RAP would be required on the basis of the RPF: (i) said RAP shall be prepared in accordance with the requirements of the RPF, disclosed locally and furnished to the Association as part of the Annual Work Plan; and (ii) no works under a Subproject shall be commenced until: (A) all measures required to be taken under said RAP prior to the initiation of said works have been taken; (B) the Recipient has prepared and furnished to the Association a report in form and substance satisfactory to the Association, on the status of compliance with the requirements of said RAP; and (C) the Association has confirmed that said works may be commenced; and
(c) If an indigenous peoples plan would be required on the basis of the IPPF:

(i) said indigenous peoples plan shall be prepared in accordance with the requirements of the IPPF, disclosed locally and furnished to the Association as part of the Annual Work Plan; and (ii) no works under a Subproject shall be commenced until: (A) all measures required to be taken under said indigenous peoples plan to address the needs of Indigenous Peoples in the areas under the Project have been taken; (B) the Recipient has prepared and furnished to the Association a report in form and substance satisfactory to the Association, on the status of compliance with the requirements of said indigenous peoples plan; and (C) the Association has confirmed that said work may be commenced.

3. The Recipient shall take all measures required for carrying out the recommendations of the Safeguard Instruments in a timely manner.

4. Without limitation to its other reporting obligations under this Agreement and under Section 4.08 of the General Conditions, the Recipient shall include in the Project Reports referred to in Section II.A of this Schedule adequate information on the implementation of the Safeguard Instruments, giving details of:

(a) measures taken in furtherance of such Safeguard Instruments;

(b) conditions, if any, which interfere or threaten to interfere with the smooth implementation of such Safeguard Instruments;

(c) remedial measures taken or required to be taken to address such conditions and to ensure the continued efficient and effective implementation of such Safeguard Instruments; and

(d) afford the Association a reasonable opportunity to exchange views with the Recipient on such reports. Each such report shall be furnished to the Association not later than forty-five (45) days after the end of the calendar quarter covered by such report, and the first such report shall be furnished to the Association not later than one (1) month after the end of the calendar quarter in which the works under the first Subproject commenced.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

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. Each Project Report shall cover the period of one (1) 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. Without limitation on the provisions of Part A of this Section, the Recipient shall prepare and furnish to the Association, as part of the Project Report, 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 (1) fiscal year of the Recipient, commencing with the fiscal year in which the first withdrawal was made under the Preparation Advance for the Project. 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 and Works. All goods and works 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 the Procurement Guidelines, or Consultant Guidelines, as the case may be.
B. Particular Methods of Procurement of Goods and Works

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

2. **Other Methods of Procurement of Goods and Works.** The following table specifies the methods of procurement, other than International Competitive Bidding, which may be used for goods and works. The Procurement Plan shall specify the circumstances under which such methods may be used:

<table>
<thead>
<tr>
<th>Procurement Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) National Competitive Bidding (subject to the additional procedures set out in paragraph 3 below)</td>
</tr>
<tr>
<td>(b) Community Participation procedures which have been found acceptable to the Association</td>
</tr>
<tr>
<td>(c) Shopping</td>
</tr>
<tr>
<td>(d) Limited International Bidding</td>
</tr>
<tr>
<td>(e) Direct Contracting</td>
</tr>
</tbody>
</table>

3. **Additional Procedures for the use of National Competitive Bidding.** The following additional procedures shall apply to National Competitive Bidding:

   (a) The tender submission date shall be set so as to allow a period of at least thirty (30) days from 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 and operate under commercial law and are independent agencies of the Recipient’s government.

   (c) The Recipient shall use, or cause to be used, bidding documents and tender documents in form and substance satisfactory to the Association and containing, *inter alia*, draft contracts and conditions of contract, including provisions on fraud and corruption, audit and publication of award.

   (d) Extension of tender validity shall be allowed once only, and for not more than thirty (30) days, unless otherwise previously agreed in writing by the Association.
(e) Evaluation of tenders shall be based on quantifiable criteria expressed in monetary terms as defined in the tender documents, and not on a merit points system.

(f) No domestic preference shall be used in the evaluation of tenders. Accordingly, contracts shall be awarded to qualified tenderers having submitted the lowest evaluated substantially responsive tender.

(g) Notification of contract award shall constitute formation of the contract. No negotiation shall be carried out prior to contract award.

(h) The two envelope bid opening procedure shall not apply.
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 table specifies methods of procurement, other than Quality- and Cost-based Selection, which may be used for consultants’ services. The Procurement Plan shall specify the circumstances under which such methods may be used.

<table>
<thead>
<tr>
<th>Procurement Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Quality-Based Selection</td>
</tr>
<tr>
<td>(b) Selection Based on the Consultants’ Qualifications</td>
</tr>
<tr>
<td>(c) Least-Cost Selection</td>
</tr>
<tr>
<td>(d) Single-Source Selection</td>
</tr>
<tr>
<td>(e) Procedures set forth in paragraphs 5.2 and 5.3 of the Consultant Guidelines for the selection of Individual Consultants</td>
</tr>
<tr>
<td>(f) Sole-source procedures for the Selection of Individual Consultants</td>
</tr>
</tbody>
</table>

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.

E. Transitional Provisions in Respect of Procurement

1. Notwithstanding the terms and conditions of the Original Financing Agreement and to the extent that the procurement of any goods, works, or consultants’ services to be financed, at least in part, out of the proceeds of the Original Credit was or will be initiated on or after July 31, 2015, the Recipient acknowledges and agrees that the provisions of this Agreement set forth or referred to in: (a) Section I.A (Anti-Corruption) of this Schedule (including the related provisions under the General Conditions) shall apply to the proceeds of the Original Credit utilized to finance such goods, works, or consultants’ services; and (b) Section III (Procurement) of this Schedule (including the related provisions under the General Conditions) shall apply to the procurement of such goods, works, non-consulting services or consultants’ services.

2. Notwithstanding the provisions of Section I.A (Anti-Corruption) and Section III (Procurement) of this Schedule 2: (i) to the extent that the procurement
of any goods, works, or consultants' services to be financed out of the proceeds of the Original Credit was initiated prior to July 31, 2015; and (ii) there are no proceeds remaining under the Original Credit to finance such goods, works, or consultants' services, and Section III of this Schedule shall not apply to the proceeds of the Financing utilized to finance such goods, works, or consultants' services; provided, however, that the provisions of Section I.C (Anti-Corruption) of Schedule 2 to the Original Financing Agreement, including the modifications thereof set forth in Section II of the Appendix to the Original Financing Agreement, and those of Section III (Procurement) of Schedule 2 to the Original Financing Agreement shall apply, respectively, to the proceeds of the Financing utilized to finance such goods, works, and consultants' services and to the procurement of such goods, works, and consultants' services.

Section IV. Withdrawal of the Proceeds of the Financing

A. General

1. The Recipient may withdraw the proceeds of the Financing 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 Projects” dated May 2006, 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 Financing (“Category”), the allocations of the amounts of the Financing 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 SDR)</th>
<th>Percentage of Expenditures to be Financed (inclusive of Taxes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Subprojects for Part (a) of the Project</td>
<td>530,000</td>
<td>100%</td>
</tr>
<tr>
<td>(2) Goods, works, consultants' services, Operating Costs and Training for the Project</td>
<td>6,770,000</td>
<td>100%</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 December 31, 2017.
**SCHEDULE 3**

Repayment 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 November 15 and May 15, commencing November 15, 2021, to and including May 15, 2053</td>
<td>1.5625%</td>
</tr>
</tbody>
</table>

* The percentages represent the percentage of the principal amount of the Credit to be repaid, except as the Association may otherwise specify pursuant to Section 3.03 (b) of the General Conditions.
APPENDIX

Definitions

The capitalized terms defined in Section I of the Appendix to the Original Financing Agreement shall have the meanings set forth therein, and the following terms shall have the following meaning:

1. “Affected Persons” means persons who, on account of the execution of the Project, had or would have their: (i) standard of living adversely affected; (ii) right, title, interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable asset acquired or possessed, temporarily or permanently; (iii) access to productive assets adversely affected, temporarily or permanently; or (iv) business, occupation, work or place of residence or habitat adversely affected.


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

4. “CIWA Grant Agreement” means the agreement to be entered into between EAC and the Association, acting as an administrator of the Cooperation in International Waters in Africa Trust Fund, providing a grant to EAC to assist EAC in the carrying out of the CIWA Project.

5. “CIWA Project” means the project to be carried out by EAC related to the CIWA Project, the GEF Project and the SIDA Project that is designed to further the objectives of this Project and the Protocol, and for which a grant is proposed to be made by the Association, acting as an administrator of the Cooperation in International Waters in Africa Trust Fund.


7. “EAC Financing Agreement” means the agreement to be entered into between the Association and EAC, providing for a grant to EAC to assist EAC in the carrying out of the EAC Project.

8. “EAC Project” means the project to be carried out by EAC related to the CIWA Project, the GEF Project and the SIDA Project that is designed to further the
objectives of this Project and the Protocol, and for which a grant is proposed to be made by the Association.

9. "East African Community" or "EAC" means the inter-governmental organization established and operating pursuant to the EAC Treaty.

10. "Environmental and Social Management Framework" or "ESMF" means the Recipient’s framework of same name dated February 2008 describing the modalities to be followed in assessing the potential adverse environmental and social impact of the Subprojects and the measures to be taken to offset, reduce, or mitigate such adverse impact, as the same may be amended from time to time with the agreement of the Association.

11. "Environmental Management Plan" or "EMP" means an environmental management plan, prepared in accordance with the ESMF and the provisions of Section 1.B of Schedule 2 to this Agreement for the purposes of a Subproject and acceptable to the Association, and giving details of the magnitude of the environmental impacts, as well as the specific actions, measures and policies designed to facilitate the achievement of the objective of the ESMF under the Subproject, including the budget and cost estimates, and sources of funding, along with the institutional and procedural measures needed to implement such actions, measures and policies.

12. "Financing Agreements" means collectively the Original Financing Agreement, this Agreement, the Tanzania Financing Agreement, the Tanzania Additional Financing Agreement, and the Uganda Financing Agreement. "Financing Agreement" means any one of the said Financing Agreements.

13. "GEF Grant Agreement" means the agreement entered into between the EAC and the International Bank for Reconstruction and Development ("World Bank"), acting as implementing agency for the Global Environment Facility, dated May 5, 2009, providing for a grant to EAC to assist EAC in the carrying out of the GEF Project, as amended (GEF Grant No. TF094205).

14. "GEF Project" means the project being carried out by EAC in parallel with the Original Project, and for which the GEF Grant was made.


16. "Indigenous Peoples" means distinct, vulnerable, social and cultural groups that may be identified pursuant to the studies outlined in the IPPF for the purposes of this Project.

17. "Indigenous People’s Planning Framework" or "IPPF" means Recipient’s framework of same name dated February 2008 outlining modalities to be followed
in assessing the potential positive and adverse effects of Subprojects on indigenous peoples, a plan for carrying out the social assessment for such Subprojects, a framework for ensuring free, prior, and informed consultation with the affected indigenous peoples’ communities at each stage of Subproject preparation and implementation, institutional arrangements for screening Subprojects and other Project activities, evaluating their effects on indigenous peoples, preparing indigenous peoples’ plans, and addressing any grievances, monitoring and reporting arrangements, including mechanisms and benchmarks appropriate for the Project and disclosure arrangements for indigenous people’s plans to be prepared under the IPPF, as the same may be amended from time to time with the agreement of the Association.

18. “Integrated Pest Management” or “IPM” means the Recipient’s plan of same name dated February 2008 which describes the measures to be taken for development and implementation of integrated pest management and safe handling of pesticides in the course of Project implementation, as the same may be amended from time to time with the agreement of the Association.

19. “Ministry of Environment, Water and Natural Resources” or “MEWNR” means the Recipient’s ministry responsible for environment, and any successor thereto.

20. “Operating Costs” means the incremental expenses incurred by the Recipient on account of Project implementation, management, and monitoring, including office space rental, utilities, and supplies, bank charges, communications, advertising, vehicle operation, maintenance, and insurance, building and equipment maintenance costs, travel and supervision costs, and salaries of supporting staff, but excluding salaries of officials of the Recipient’s civil service.

21. “Original Credit” means the credit provided under the Original Financing Agreement.


23. “Original Project” means the Project described in Schedule 1 to the Original Financing Agreement.


25. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated April 9, 2015 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.

26. “RAP” means in respect of any Subproject involving resettlement, a resettlement
plan for such Subproject prepared and implemented in accordance with the RPF and
the provisions of Section IB of Schedule 2 to this Agreement and approved by the
Association, such resettlement plan to include a program of actions, measures and
policies for compensation and resettlement of the Affected Persons, and setting
forth the magnitude of displacement, proposed compensation and resettlement
arrangements, budget and cost estimates, and sources of funding, together with
adequate institutional, monitoring and reporting arrangements designed to ensure
proper implementation of, and regular feedback on compliance with such plan.

27. “Resettlement Policy Framework” or “RPF” means the Recipient’s framework of
same name dated February 2008, describing the procedures to be followed in the
event that land is acquired in the course of Project implementation which causes
involuntary resettlement and/or loss of livelihoods of the displaced persons, and to
offset, reduce, or mitigate any adverse impact of such resettlement and/or loss, as
the same may be amended from time to time with the agreement of the Association.

28. “Safeguard Instruments” means the ESMF, the RPF, the IPM and the IPPF, related
EMPs, RAPs, and indigenous peoples plans for the Project.

29. “SIDA Grant Agreement” means the agreement entered into between the EAC and
the Bank, as administrator for certain funds made available by the Swedish
International Development Agency (“SIDA”), dated October 19, 2009, providing
for a grant to EAC to assist EAC in the carrying out of the SIDA Project, as
amended (Grant No. TF095196).

30. “SIDA Project” means the project being carried out by EAC in parallel with the
Original Project, and for which the SIDA Grant was made.

31. “Tanzania Additional Financing Agreement” means the agreement to be entered
into between the United Republic of Tanzania and the Association, providing for
an additional credit to the United Republic of Tanzania to assist it in the carrying out
of the Tanzania Project.

32. “Tanzania Financing Agreement” means the agreement entered into between the
United Republic of Tanzania and the Association dated May 22, 2009, providing
for a credit to the United Republic of Tanzania to assist it in the carrying out of the
Tanzania Project, as amended (Credit No. 4530-TZ).

33. “Tanzania Project” means the project being carried out by the United Republic of
Tanzania in parallel with the Original Project, and for which a credit was provided
by the Association.
34. "Training" means the training of persons under the Project carried out in accordance with the work plans and budgets referred to in Section I.B.4 of Schedule 2 to the Original Financing Agreement and approved by the Association, such term to include travel and subsistence of participants of seminars, workshops, and study tours, rental of training facilities, services of trainers and presenters, preparation and reproduction of training materials, and other costs directly related to preparation and implementation of training programs.

35. "Uganda Financing Agreement" means the agreement entered into between the Republic of Uganda and the Association dated October 29, 2009, providing for a credit to the Republic of Uganda to assist it in the carrying out of the Uganda Project, as amended (Credit No. 4531-UG).

36. "Uganda Project" means the project being carried out by Uganda in parallel with the Original Project, and for which a credit was provided by the Association.