Global Partnership on Output-based Aid
Grant Agreement

(Nairobi Sanitation OBA Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

acting as Administrator of the Global Partnership on Output-based Aid

Dated December 16, 2013
AGREEMENT dated December 19, 2013, entered into between:

REPUBLIC OF KENYA ("Recipient"); and

INTERNATIONAL DEVELOPMENT ASSOCIATION ("World Bank"), acting as administrator of the Global Partnership on Output-based Aid ("GPOBA").

The Recipient and the World Bank hereby agree as follows:

**Article I**  
**Standard Conditions; Definitions**


1.02. 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**  
**The Project**

2.01. The Recipient declares its commitment to the objectives of the project described in Schedule 1 to this Agreement ("Project"). To this end, the Recipient shall cause the Project to be carried out by Nairobi City Water and Sewerage Company ("Project Implementing Entity") in accordance with the provisions of Article II of the Standard Conditions.

2.02. Without limitation upon the provisions of Section 2.01 of this Agreement, and except as the Recipient and the World Bank 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 III
The Grant

3.01. The World Bank agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a grant in an amount equal to four million three hundred thirty thousand United States Dollars ($4,330,000) ("Grant") to assist in financing the Project.

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

3.03. The Grant is funded out of the abovementioned trust fund for which the World Bank receives periodic contributions from the donor to the trust fund. In accordance with Section 3.02 of the Standard Conditions, the World Bank's payment obligations in connection with this Agreement are limited to the amount of funds made available to it by the donor under the abovementioned trust fund, and the Recipient's right to withdraw the Grant proceeds is subject to the availability of such funds.

Article IV
Additional Remedies

4.01 The Additional Events of Suspension referred to in Section 4.02 (k) of the Standard Conditions consist of the following:

(a) The Recipient has taken or permitted to be taken any action which would prevent or interfere with the performance by the Project Implementing Entity of its obligations under the Grant Agreement.

(b) The Project Implementing Entity has failed to perform any obligation under the Grant Agreement.

(c) IBRD or IDA has declared the Project Implementing Entity ineligible to receive proceeds of any financing made by IBRD or IDA, or otherwise to participate in the preparation or implementation of any project financed in whole or in part by IBRD or IDA (including as administrator of funds provided by another financier), as a result of: (i) a determination by IBRD or IDA that the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of any financing made by IBRD or IDA; and/or (ii) a declaration by another financier that the Project Implementing Entity is ineligible to receive proceeds of financings made by such financier or otherwise to participate in the preparation or implementation of any project financed in...
whole or in part by such financier as a result of a determination by such financier that the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of the proceeds of a financing made by such financier.

(d) As a result of events which have occurred after the date of this Agreement, an extraordinary situation has arisen which makes it improbable that the Project Implementing Entity will be able to perform its obligations under the Grant Agreement.

(e) The Recipient’s Water Act pursuant to which the Project Implementing Entity has been established and is operating under 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 Grant Agreement.

(f) The World Bank has determined after the Effective Date referred to in Section 5.03 of this Agreement that prior to such date but after the date of this Agreement, an event has occurred which would have entitled the World Bank to suspend the Recipient’s right to make withdrawals from the Grant Account if this Agreement had been effective on the date such event occurred.

Article V
Effectiveness; Termination

5.01 This Agreement shall not become effective until evidence satisfactory to the World Bank has been furnished to the World Bank that the conditions specified below have been satisfied:

(a) The Operations Manual, satisfactory to the World Bank, has been adopted by the Project Implementing entity.

(b) The Subsidiary Agreement referred to in Section I of Schedule 2 to this Agreement has been executed on behalf of the Recipient and the Project Implementing Entity.

5.02. Except as the Recipient and the World Bank shall otherwise agree, this Agreement shall enter into effect on the date upon which the World Bank dispatches to the Recipient notice of its acceptance of the evidence required pursuant to Section 5.01 ("Effective Date"). If, before the Effective Date, any event has occurred which would have entitled the World Bank to suspend the right of the Recipient to make withdrawals from the Grant Account if this Agreement had been effective, the World Bank may postpone the dispatch of the
notice referred to in this Section until such event (or events) has (or have) ceased to exist.

5.03. This Agreement and all obligations of the parties under it shall terminate if it has not entered into effect by the date ninety (90) days after the date of this Agreement, unless the World Bank, after consideration of the reasons for the delay, establishes a later date for the purpose of this Section. The World Bank shall promptly notify the Recipient of such later date.

**Article VI**

**Recipient’s Representative; Addresses**

6.01. The Recipient’s Representative referred to in Section 7.02 of the Standard Conditions is the Cabinet Secretary of the National Treasury.

6.02. The Recipient’s Address referred to in Section 7.01 of the Standard Conditions is:

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

Facsimile: 254-20-315294

6.03. The World Bank’s Address referred to in Section 7.01 of the Standard Conditions is:

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

Cable: Telex: Facsimile:

INDEVAS 248423 (MCI) or 1-202-477-6391
Washington, D.C. 64145 (MCI)

AGREED at ___/___/___, as of the day and year first above written.
REPUBLIC OF KENYA

By

Authorized Representative

Name: HENRY R. TOTICH
Title: CABINET SECRETARY, THE NATIONAL TREASURY

INTERNATIONAL DEVELOPMENT ASSOCIATION administrator of the Global Partnership on Output-based Aid

By

Authorized Representative

Name: DIARIETOU GAYE
Title: COUNTRY DIRECTOR
SCHEDULE 1
Project Description

The objective of the Project is to increase access to sanitation and water services in selected low-income communities in the Target Areas of the Recipient's territory.

The Project consists of the following parts:

Part 1: Provision of Subsidy to support working sewerage and water connections and associated service delivery for about 16,000 Beneficiary Households; and

Part 2: Carrying out the independent monitoring and verification of outputs under the Project.
SCHEDULE 2

Project Execution

Section I. Institutional and Other Arrangements

A. Subsidiary Agreement

1. To facilitate the carrying out of the Project, the Recipient shall make the proceeds of the Grant available to the Project Implementing Entity under a subsidiary agreement ("Subsidiary Agreement") between the Recipient and the Project Implementing Entity, under terms and conditions approved by the World Bank, which shall include the following:

(i) the Recipient’s obligation to provide the proceeds of the Grant to the Project Implementing Entity on terms and conditions satisfactory to the World Bank;

(ii) the Project Implementing Entity’s obligation to carry out the Project with due diligence and efficiency, in conformity with appropriate administrative, technical practices, under the supervision of qualified and experienced management assisted by competent staff in adequate numbers, and in accordance with the provisions of this Agreement and the Operations Manual;

(iii) the Project Implementing Entity’s obligation to carry out the Project in accordance with the Anti-Corruption Guidelines;

(iv) the Project Implementing Entity’s obligation to procure the goods and services required for the Project and to be financed out of the proceeds of the Grant, in accordance with the provisions of Section III of this Schedule, as said provisions may be further elaborated in the Operations Manual;

(v) the Project Implementing Entity’s obligation to furnish all such information as the Recipient or the World Bank shall reasonably request;

(vi) the Project Implementing Entity’s obligation to promptly inform the Recipient and the World Bank of any condition which interferes or threatens to interfere with the progress of the Project and the performance of its obligations under the Subsidiary Agreement; and
the Project Implementing Entity’s obligation to neither take nor concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Agreement.

(b) The Subsidiary Grant Agreement shall include a provision stipulating that in the case of conflict between the Subsidiary Agreement and this Agreement, the latter shall apply.

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

B. Operations Manual

1. The Recipient shall cause the Project Implementing Entity to prepare and furnish to the World Bank for review, an Operations Manual, which shall contain, *inter alia*, a detailed elaboration of:

   (a) the eligibility criteria for the provision of Subsidies under the Project;

   (b) the procurement arrangements for the Project;

   (c) the procedures for the preparation, review and approval of reports pursuant to the Project’s financial management arrangements;

   (d) the procedures to verify and certify the installation of sewerage connections, associated facilities and working water connections’;

   (e) the terms of reference for the Independent Verification Agent;

   (f) the procedures for the preparation, review and approval of withdrawal applications to the World Bank, in conformity with the instructions that the World Bank may give to the Recipient in this respect; and

   (g) the monitoring and evaluation arrangements.

2. The Recipient shall afford the World Bank a reasonable opportunity to exchange views with the Recipient on said operations manual, and thereafter, shall cause the Implementing Entity to adopt such Operations Manual as shall have been approved by the World Bank.
3. The Recipient shall ensure that the Project is carried out in accordance with the Operations Manual; provided, however, that in case of any conflict between the provisions of the Operations Manual and the provisions of this Agreement, the provisions of this Agreement shall prevail.

4. The Recipient may, with the prior written consent of the World Bank, amend or modify the provisions of the Operations Manual.

5. The Recipient shall ensure that Subsidies under the Project are granted in accordance with the provisions of the Operations Manual.

C. Independent Verification Agent

For the purpose of carrying out Part 2 of the Project, the Recipient shall cause the Project Implementing Entity to appoint, in accordance with the provisions of Section III of Schedule 2 hereof, and thereafter maintain at all times during the implementation of the Project, an Independent Verification Agent to verify that working water and sewerage connections have been installed and subsequently that sustainable services have been delivered as a basis for disbursement requests, in accordance with the provisions of the Operations Manual.

D. Safeguards

1. The Recipient shall ensure that the Project is carried out in accordance with the Safeguard Instruments, including the guidelines, rules and procedures defined in the Safeguard Instruments.

2. The Recipient shall ensure that all measures required for carrying out the recommendations of the Safeguard Instruments are taken in a timely manner.

3. Without limitation to its other reporting obligations under this agreement and under Section 2.06 of the Standard 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 the Safeguard Instruments; (b) conditions, if any, which interfere or threaten to interfere with the smooth implementation of the Safeguard Instruments; and (c) remedial measures taken or required to be taken to address such conditions and to ensure the continued efficient and effective implementation of the Safeguard Instruments.
E. Anti-Corruption

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

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports; Completion Report

1. The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 2.06 of the Standard Conditions and on the basis of indicators acceptable to the World Bank. Each Project Report shall cover the period of one calendar semester, and shall be furnished to the World Bank not later than forty-five (45) days after the end of the period covered by such report.

2. The Recipient shall prepare the Recipient’s Completion Report not later than six months after the Closing Date.

B. Financial Management; Financial Reports; Audits

1. The Recipient shall ensure that a financial management system is maintained in accordance with the provisions of Section 2.07 of the Standard Conditions.

2. The Recipient shall ensure that interim unaudited financial reports for the Project 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.

3. The Recipient shall, upon the World Bank’s request, have its Financial Statements for the Project audited in accordance with the provisions of Section 2.07 (b) of the Standard Conditions. Such audit of the Financial Statements shall cover the period indicated in the World Bank’s request. The audited Financial Statements for such period shall be furnished to the World Bank not later than six months after the date of the World Bank’s request.

Section III. Procurement

A. General

1. Procurement and Consultant Guidelines. All goods, works non-consulting-services and consultants’ services required for the Project and to be financed out of the proceeds of the Grant shall be procured in accordance with the requirements set forth or referred to in:
(a) 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 (“Procurement Guidelines”), in the case of goods, works and non-consulting services, and 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 (“Consultant Guidelines”) in the case of consultants’ services; and

(b) the provisions of this Section III, as the same shall be elaborated in the procurement plan prepared and updated from time to time by the Recipient for the Project in accordance with paragraph 1.18 of the Procurement Guidelines and paragraph 1.25 of the Consultant Guidelines (“Procurement Plan”).

2. Definitions. The capitalized terms used below in 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.

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

1. 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; (b) Shopping; (c) Direct Contracting; (d) Well-established Private Sector Procurement Methods or Commercial Practices which have been found acceptable to the World Bank; (e) established practices of licensed water and sewerage/sanitation companies which have been found acceptable to the World Bank, for goods and works under Part I of the Project as per paragraph 3.15 of the Procurement Guidelines.

3. The following additional provisions 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: (A) the date of advertisement, and (B) the date of availability of the tender documents;
b) The Recipient shall use, or cause to be used, bidding documents and tender documents containing, inter alia, draft contracts and conditions of contracts, including provisions on fraud and corruption, audit and publication of award in form and substance satisfactory to the World Bank.

c) 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 World Bank.

d) 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.

e) 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.

f) Notification of contract award shall constitute formation of the contract.

g) No negotiation shall be carried out prior to contract award.

h) The two envelope bid opening procedure shall not apply.

i) Shopping procedure shall apply for each low value contract in lieu of Direct Procurement, except as otherwise previously agreed in writing by the World Bank.

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 assignments 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) established practices of the licensed water and sewerage/sanitation companies which have been found acceptable to the World Bank; (g) Selection of Individual Consultants; and (h) Single-source procedures for the Selection of Individual Consultants.
D. 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.

Section IV. Withdrawal of Grant Proceeds

A. General

1. The Recipient may withdraw the proceeds of the Grant 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 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 Grant (“Category”), the allocations of the amounts of the Grant 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 Grant Allocated (expressed in USD)</th>
<th>Percentage of Expenditures to be Financed (inclusive of Taxes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) First Phase Subsidy under Part 1 of the Project</td>
<td>2,040,000</td>
<td>100%</td>
</tr>
<tr>
<td>(2) Second Phase Subsidy under Part 1 of the Project</td>
<td>2,040,000</td>
<td>100%</td>
</tr>
<tr>
<td>(3) Consultants’ services under Part 2 of the Project</td>
<td>250,000</td>
<td>100%</td>
</tr>
<tr>
<td>TOTAL AMOUNT</td>
<td>4,330,000</td>
<td></td>
</tr>
</tbody>
</table>
For the purposes of this Section, the term:

(a) "First Phase Subsidy" means subsidies covered by this Agreement which account for 50% of expenditures incurred by the Recipient to finance a total of up to 70% of sewerage connection costs and up to 40% of water connection costs of a Beneficiary Household, payable upon the World Bank’s written notification to the Recipient that it has accepted as satisfactory an Output Verification Report confirming that such water and sewerage connection is working and is accounted for; which First Phase Subsidy is hereby deemed an Eligible Expenditure for purposes of Section 3.06 of the Standard Conditions.

(b) "Second Phase Subsidy" means subsidies covered by this Agreement which account for 50% of expenditures incurred by the Recipient to finance a total of up to 70% of sewerage connection costs and up to 40% of water connection costs of a Beneficiary Household, payable upon the World Bank’s written notification to the Recipient that it has accepted as satisfactory an Output Verification Report confirming use of sustained service for at least six months according to billing records, which Second Phase Subsidy is hereby deemed an Eligible Expenditure for purposes of Section 3.06 of the Standard Conditions.

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 referred to in Section 3.06 (c) of the Standard Conditions is June 30, 2017.
APPENDIX

Definitions

1. “Affected Person” means any person who, on account of the execution of the Project, has experienced or would experience direct economic and social impacts caused by: (a) the involuntary taking of land, resulting in: (i) relocation or loss of shelter; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not such person must move to another location; or (b) the involuntary restriction of access to legally designated parks and protected areas, resulting in adverse impacts on the livelihood of such person.


3. “Beneficiary Household” means any individual household or group of households from a Target Area selected by the Recipient to receive a subsidized water and sanitation connection under the Project in accordance with the eligibility criteria and procedures set forth in the Operations Manual (as this term is hereinafter defined).


5. “EMP” or “Environmental Management Plan” means a report, acceptable to the World Bank and consistent with the ESMF, giving details of a program of actions, measures and policies designed to facilitate the achievement of the objectives of the ESMF, along with the procedural and institutional measures needed to implement such actions, measures and policies.

6. “ESMF” means the Recipient’s Environmental and Social Management Framework document dated November 21, 2012 and disclosed on December 14, 2011 setting forth, inter alia, guidelines, procedures, timetable and other specifications designed to offset adverse environmental and social impacts related to the Project’s activities, or to reduce them to acceptable levels, or to enhance positive impacts.

7. “Independent Verification Agent” means the agent referred to in Section I. C. of Schedule 2 to this Agreement.
8. "Nairobi City Water and Sewerage Company" or "NCWSC" means the agency created pursuant to the enactment of the Recipient’s Water Act 2002, responsible for water and sewerage services as well as billing and credit control in the Recipient’s territory.

9. "Operations Manual" means the manual, in form and substance satisfactory to the World Bank, referred to in Section I. B. of Schedule 2 to this Agreement, and such term includes any schedule or addendum to said Operations Manual.

10. "Output Verification Report" means a report prepared and submitted semi-annually by an Independent Verification Agent pursuant to Section IV. A. of Schedule 2 to this Agreement in accordance with the stipulations of the Operations Manual.


12. "RAP" or "Resettlement Action Plan" means a site-specific resettlement action plan, acceptable to the World Bank and consistent with the RPF (as hereafter defined), adopted for the purposes of the Project, and giving details of the specific actions, measures and policies designed to facilitate the achievement of the objectives of the Project along with the procedural and institutional measures needed to implement such actions, measures and policies.

13. "Resettlement" means: (i) the involuntary (i.e., an action that may be taken without a person’s informed consent or power of choice) taking of land, including anything growing on or permanently affixed to such land, such as buildings and crops, resulting in: (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 Persons must move to another location; or (ii) the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the affected persons, and encompassing restrictions on the use of resources imposed on people living outside a park or protected area, or on those who continue living inside the park or protected area during and after Project implementation.


15. “Safeguard Instruments” means the ESMF, the RPF, the EMP and the RAP.

17. "Subsidy" means the First Phase Subsidy and the Second Phase Subsidy, respectively, and "Subsidies" means, collectively, all such Subsidies.

18. "Target Area" means one of the Recipient's regions of Matopeni/Spring Valley, Kayole Soweto, Maili-Saba, Kahawa-Soweto, Huruma and Embakasi-River Bank (or such other region as may be mutually agreed between the World Bank and the Recipient; and "Target Areas" means, collectively, all said regions.)