Agreement Amending Development Credit Agreement

(Arid Lands Resource Management Project-Phase II)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated October 25, 2006
CREDIT NUMBER 3795-1-KE

AGREEMENT AMENDING
DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated October 25, 2006, between the REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) The Borrower and the Association have entered into a Development Credit Agreement (Arid Lands Resources Management Project-Phase II), hereinafter referred to as the DCA, dated June 26, 2003, between the Republic of Kenya (the Borrower) and the International Development Association (the Association) for the purpose of assisting in the financing of the project described in Schedule 2 of the Development Credit Agreement (the Project);

(B) on or about December 1, 2005, a severe drought impacted the people’s livelihoods in the various arid and semi-arid districts in Kenya;

(C) in order to mitigate the effects of the drought, the Borrower utilized part of the proceeds of the Credit to finance non-food drought related expenditures including the maintenance and repair of water supplies, providing access to basic services, and reducing livelihood vulnerability;

(D) the Borrower has now requested the Association to provide additional financing towards the financing of the Project, specifically on account of the increased Project costs as a result of expanding and increasing the existing Project activities, the uncompleted Project activities, and the additional drought related activities referred to in paragraph (C) of this Preamble, by increasing the amount made available under the Development Credit Agreement in various currencies equivalent to forty million three hundred and fifty thousand Special Drawing Rights (SDR 40,350,000) (the Additional Financing);

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

NOW THEREFORE the parties hereto hereby agree as follows:
ARTICLE I

Amendments to the Development Credit Agreement

Section 1.01. Section A of the Preamble to the Development Credit Agreement is amended to read as follows:

"WHEREAS (A) the Association has received letters from the Borrower, dated May 12, 2003 and June 26, 2006, the former describing a program of actions, objectives and policies designed to improve the living standards of pastoralists and other people living in the Project Area and the latter outlining the government’s transparency, disclosure and monitoring arrangements (the Program) and declaring the Borrower’s commitment to the execution of the Program."

Section 1.02. Section 1.02 of the Development Credit Agreement is amended by adding the following new paragraphs:

(a) ‘Amending Agreement’ means this Agreement amending the Development Credit Agreement (Arid Lands Resource Management Project-Phase II) entered into between the Borrower and the Association on June 26, 2003.”

(b) ‘Audit Committee’ means the committee set up pursuant to Treasury Circular No. 16 of 2005 and referred to in Section 1.10 of the Amending Agreement

(c) ‘Budget Monitoring Committee’ means the committee referred to in Section 1.10 of the Amending Agreement.

(d) the former paragraphs (a)–(ff) are renumbered as (d)-(ii); and

(e) the new paragraph ‘ee’ is amended by adding the words “Taita-Taveta, Kwale, Kilifi, Malindi, Lamu and Meru North” after the words “West Pokot’.”

Section 1.03. Section 2.01 of the Development Credit Agreement is amended to read as follows:

“The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to eighty three million nine hundred and fifty thousand Special Drawing Rights (SDR 83,950,000 (the Credit) which includes: (a) an original amount in various currencies equivalent to forty three
million six hundred thousand Special Drawing Rights (SDR 43,600,000) (the Initial Financing); and (b) an additional amount in various currencies equivalent to forty million three hundred and fifty thousand Special Drawing Rights (SDR 40,350,000) (the Additional Financing).”

Section 1.04. Section 2.03 of the Development Credit Agreement is amended to read as follows:

“Section 2.03. The Closing Date shall be June 30, 2010 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.”

Section 1.05. The following sentence is added at the end of Section 2.04 (b) (i) of the Development Credit Agreement:

“; provided, however, that any commitment charge in the Additional Financing shall accrue from a date sixty (60) days after the date of the Amending Agreement;”

Section 1.06. Section 2.07 (a) of the Development Credit Agreement is amended to read as follows:

“(a) Subject to paragraphs (b) and (c) below, the Borrower shall:

(A) repay the principal amount of the Initial Financing in semiannual installments payable on each May 15 and November 15, commencing November 15, 2013 and ending May 15, 2043. Each installment to and including the installment payable on May 15, 2023 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount; and

(B) repay the principal amount of the Additional Financing in semiannual installments payable on May 15 and November 15 commencing November 15, 2016 and ending May 15, 2046. Each installment to and including the installment payable on May 15, 2026 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.”
Section 1.07. (a) Section 3.06 (a) is hereby amended by replacing the words “December 31, 2004” with the words “December 31, 2006” or any other date agreed with the Association” and adding the words “including publishing in the Gazette the roles and responsibilities of the KFSM, DM, DSG and DMO” at the end of the words “disaster management.”

(b) Section 3.06 (b) is hereby amended by replacing the words “December 31, 2004” with the words “June 30, 2006” or any other date agreed with the Association”

Section 1.08. (a) The table set forth in paragraph 1 of Schedule 1 to the Development Credit Agreement is deleted and replaced with the table set forth in the Attachment to the Amending Agreement.

(b) A new paragraph 2 (d) is added to Part A of Schedule 1 to read as follows:

“(d) the term ‘goods and equipment’ also includes agricultural inputs, livestock, and nutritional supplements.”

(c) Paragraph 4 of Part A of Schedule 1 is amended to read as follows:

“4. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures: (a) prior to the date of this Agreement; and (b) under Categories 2 (b), 6 (b) (ii), and 9, unless the Borrower has prepared and submitted an audit report in respect of these expenditures satisfactory to the Association.”

Section 1.09. Schedule 2 (Description of the Project) to the DCA is amended to read as follows:

(a) The objective of the Project is modified to read as follows:

“The objectives of the Project are to reduce livelihood vulnerability, enhance food security, and improve access to basic services in 28 drought prone arid and semi-arid districts in Kenya.”

(b) Part A (j) is amended by deleting the words “food for work programs”;

(c) A new Part D is added to read as follows:
“Part D: Emergency Recovery

Provision of financing to fund non-food drought related expenditures including the maintenance and repair of water supplies, supply of emergency water tanks, construction of dams, purchase and distribution of agricultural inputs, livestock, animal feed and drugs, implementation of measures to manage human diseases, provision of therapeutic and supplementary feeding, and provision of education grants for students in the drought affected areas.”

(d) The date at the end of Schedule 2 is amended to read as “December 31, 2009.”

Section 1.10. Paragraph 8 (c) is added to Schedule 4 “Implementation Program” to the DCA to read as follows:

“(c) In order to strengthen its fiduciary oversight responsibilities, the Borrower shall maintain a Budget Monitoring Committee with the responsibility for approving budgets and monitoring financial performance and the performance of key financial management staff; and an Audit Committee with the responsible for monitoring and conducting audit reviews, overseeing accounting and internal controls and ensuring compliance with the legal covenants.”

Section 1.11. Sections I, II and III of Schedule 5 “Performance Indicators” are deleted in their entirety and replaced with the following indicators:

1. “Decreasing proportion of people assessed as needing free food aid in each arid and semi-arid district affected by severity of drought.

2. Reducing the time lapse between reported drought stress and response.

3. Improved nutritional status of children below 5 years of age affected by severity of drought over time.

4. Increased number of people with access to basic services (water, human and animal health services and education).

5. Increased people’s participation in the project districts in local and national development as demonstrated by the reflection of arid lands concerns in the economic recovery strategy and other relevant national level policies.”
Article II

Effective Date; Termination

Section 2.01. This Amending Agreement shall not become effective until evidence satisfactory to the Association shall have been furnished to the Association that the execution and delivery of this Amending Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary governmental action.

Section 2.02. As part of the evidence to be furnished pursuant to Section 2.01 of this Amending Agreement, there shall be furnished to the Association an opinion or opinions satisfactory to the Association showing, on behalf of the Borrower, that this Amending Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and is legally binding upon the Borrower in accordance with its terms.

Section 2.03. This Amending Agreement shall come into force and effect on the date upon which the Association shall dispatch to the Borrower notice of its acceptance of the evidence required by Sections 2.01 and 2.02 of this Amending Agreement.

Section 2.04. If this Amending Agreement shall not have come into force and effect by a date ninety (90) days after the date of this Amending Agreement, this Amending Agreement and all obligations of the parties hereunder shall terminate, unless the Association establishes a later date for the purposes of this Section. If this Amending Agreement shall terminate under the provisions of this Section, the Development Credit Agreement shall continue in full force and effect, as if this Amending Agreement had not been executed.
IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Amending Agreement to be signed in their respective names in the City of Nairobi, Kenya as of the day and year first above written.

REPUBLIC OF KENYA

By: /s/ Amos Kimunya
    Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: /s/ Colin Bruce
    Authorized Representative
Attachment

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

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

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount of the Credit (Expressed in SDR Equivalent)</th>
<th>% of Expenditures to be Financed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Initial Credit</td>
<td>Additional Credit</td>
</tr>
<tr>
<td>1. Civil works</td>
<td>2,690,000</td>
<td>3,550,000</td>
</tr>
<tr>
<td>2. Goods and Equipment</td>
<td>6,180,000</td>
<td>3,320,000</td>
</tr>
<tr>
<td></td>
<td>(a) under Parts A, B and C of the Project</td>
<td>8,900,000</td>
</tr>
<tr>
<td></td>
<td>(b) under Part D of the Project</td>
<td></td>
</tr>
<tr>
<td>3. Grants for CDD Micro projects</td>
<td>7,270,000</td>
<td>1,330,000</td>
</tr>
<tr>
<td>4. Drought Contingency Fund</td>
<td>3,120,000</td>
<td>10,080,000</td>
</tr>
<tr>
<td>5. Consultants Services, Training and Audit</td>
<td>12,500,000</td>
<td>3,100,000</td>
</tr>
<tr>
<td>Category</td>
<td>Amount of the Credit (Expressed in SDR Equivalent)</td>
<td>% of Expenditures to be Financed</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>---------------------------------------------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>6. Incremental Operating Costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) vehicle operation and maintenance</td>
<td>2,250,000</td>
<td>2,250,000 80%</td>
</tr>
<tr>
<td>(b) other Operations and Maintenance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) For Parts A, B, and C of the Project</td>
<td>5,080,000</td>
<td>3,220,000 60% of expenditures incurred before June 30, 2005, 50% for expenditures incurred before June 30, 2007 and 40% thereafter.</td>
</tr>
<tr>
<td>(ii) For Part D of the Project</td>
<td></td>
<td>4,000,000 100%</td>
</tr>
<tr>
<td>7. Refunding of Project Preparation Facility</td>
<td>550,000</td>
<td>Amount due pursuant to 2.02 (b) of this Agreement</td>
</tr>
<tr>
<td>8. Unallocated</td>
<td>3,960,000</td>
<td></td>
</tr>
<tr>
<td>9. Education Grant</td>
<td>600,000</td>
<td>100%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>43,600,000</td>
<td>40,350,000</td>
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</tbody>
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