



REPUBLIC OF KENYA



38 (12)
COUNTY ASSEMBLY
RECEIVED

25 JAN 2024

P.O. BOX 590-20400
BOMET

COUNTY GOVERNMENT OF BOMET

DEPARTMENT OF FINANCE, ICT & ECONOMIC PLANNING

Email: info@bomet.go.ke

Office of the CEC Member
P.O. Box 19-20400
BOMET, KENYA

Ref: CGB/TRE/22/2/2024 (2)

January 25, 2024

The Clerk,
Bomet County Assembly,
P.O Box 590-20400,
BOMET

GC
25/01/24

Dear Sir,

RE: MODEL INTERGOVERNMENTAL CONDITIONAL ALLOCATIONS TRANSFER AGREEMENTS

Above subject matter refers;

Forwarded herewith attached documents for your perusal and action.

Thank you.

Yours faithfully,



Hon. Andrew Sigei
CECM - Finance, ICT & Economic Planning
County Government of Bomet

Tabled on
13/2/2024 at
2:30 PM
Dafur

clax
The model agreement should
be tabled and committed
to the finance, ICT & Economic
Planning Committee for
further scrutiny, public
participation and signing
here to the House for
approval
25/1/24
D.G.C.



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG/6/33 Vol.22 (8)

9th January 2024

Through: Excellency Governors

To: County Executive Committee Members for Finance and Economic Planning

URGENT

MODEL INTERGOVERNMENTAL CONDITIONAL ALLOCATIONS TRANSFER AGREEMENTS

We refer to the above subject matter.

The Council is in receipt of a letter from the National Treasury REF No: IGFR/IATA/A (74) dated 8th January 2024, forwarding the Model Intergovernmental Agreement for the transfer of Conditional Allocations to County governments. The model has incorporated comments by the Attorney General and has been cleared for implementation by the County governments.

The purpose of this letter is to:

1. Forward the Model Intergovernmental Conditional Allocations Transfer Agreement to all the Counties. (Copy attached).
2. Request the County Executive Committee Members responsible for matter of Finance to table the model agreement before the respective County Assembly for approval and then conduct Public Participation at the earliest opportunity in accordance with Section 191A (3) and 191B of the Public Finance Management Act, 2012 respectively.

For any clarifications on the model agreement, the Council Secretariat staff Mr. Eugene Lawi of email: eugene.lawi@cog.go.ke and Phone No: 0727301448 and Mr. Stephen Momanyi of email: stephen.momanyi@cog.go.ke and Phone No: 0706642219 will be available.

Please accept assurance of our highest esteem and consideration.

Mary Mwiti
Chief Executive Officer

INTERGOVERNMENTAL CONDITIONAL ALLOCATIONS TRANSFER AGREEMENT



REPUBLIC OF KENYA

This Intergovernmental Conditional Additional Allocations Transfer Agreement (hereinafter referred to as Agreement) is made pursuant to section 191A of the Public Finance Management Act (PFMA), 2012 on [ACTUAL DATE OF AGREEMENT]

BETWEEN: -

The Government of Kenya represented by The National Treasury, Treasury Building, Harambee Avenue whose address is P.O. Box 30007 - 00100, Nairobi which expression shall unless the context requires include its successor(s) administrator(s) or permitted assignee(s).

AND

The County Government of **Bomet** which expression shall unless the context requires include its successor(s) administrator(s) or permitted assignee(s).

Hereinafter referred to individually as "party" and collectively as "parties"

RECITALS: -

Whereas the Article 6 of the Constitution provides that the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation;

Whereas Article 187 of the Constitution provides that the National and County Governments may cooperate in the performance of functions and exercise of powers;

Whereas Article 190 of the Constitution provides that Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions;

Whereas Article 202 of the Constitution provides that County Governments may be given additional allocations from the National Government's Share of revenue either conditionally or unconditionally

Whereas Article 228 of the Constitution further provides that the Controller of Budget shall not approve any withdrawal from a public fund unless satisfied the withdrawal is authorized by law; and

Whereas section 191A to E of the Public Finance Management Act, 2012 requires that the National Treasury and County Governments shall enter into intergovernmental agreements for purposes of the additional allocations

Now the parties agree as follows:

1. DEFINITIONS

In this Agreement:

"Authorized Persons" has the same meaning assigned in Section 2 of the County Governments Additional Allocation Act, 2022

"Conditional Additional Allocation" means the sum to be transferred to the participating county government in accordance with the Conditional Allocations Framework "Conditional Additional Allocation Framework" refers to the conditions and other information in respect of a conditional allocation as outlined in Annex I.

Intergovernmental Participation Agreement: Agreement signed with the respective county and respective Ministry, State Department Agency

"Participating County Government" means a county government that has duly entered into this Agreement.

"Project" means the project or program as described in the Conditional Allocations Framework

"Project Duration" means the period set out in Annex I.

"Project Targets" means the objectives, activities or targets described in the Conditional Allocation framework.

"Respective Ministry, State Department, Agencies" the institution that budgets for the funding or the Implementing Ministry.

"Terms and Conditions" refers to the rights, obligations, rules and limitations of the Conditional Allocation, as set out in this Agreement. For the avoidance of doubt, this includes the Special Conditions set out in Annex I of this Agreement.

2. INTERPRETATION

In this Agreement:

- a) reference to this 'Agreement' includes any agreed and signed variations made from time to time in the Conditional Additional Allocations framework pursuant to these Terms and Conditions; and
- b) reference to any statute or legislation shall include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, regulations for the time being made, issued or given thereunder or deriving validity therefrom, and all other laws of Kenya.

3. CONDITIONAL ADDITIONAL ALLOCATION

3.1 This Agreement is made on the basis of the Conditional Additional Allocations Framework as set out in Annex II.

3.2 The National Treasury shall be responsible for the Conditional Allocation Transfer upon receipt of written instructions from the Accounting Officer of the Ministries, Departments and Agencies authenticating the disbursement of the transfer in

accordance with the Disbursement Schedules prepared pursuant to section 17 (7) of the Public Finance Management Act (PFMA), 2012. The National Treasury shall transfer to the County Government conditional allocation for the purpose of supporting the Project as described in the Conditional Allocation Framework.

3.3 The Conditional Allocation shall not be used for any other purpose apart from what is agreed in the Conditional Allocations Framework. Any other Expenditure shall be considered ineligible.

3.4 The projects funded and supported by this Conditional Allocation must be executed within the Project Duration.

3.5 The Conditional Allocation shall be provided and managed in accordance with the Terms and Conditions of this Intergovernmental Conditional Allocation Agreement, and Intergovernmental Participation Agreement as set out in the Annex.

4. PROGRESS REPORTING

4.1 The county government shall provide regular quarterly and annual reports to the respective Ministries, Departments and Agencies and the respective County Assembly, regarding progress on implementation of the Project as set out in the Conditional Additional Allocations Framework and as set out in section 163 of the PFMA on reporting.

4.2 If the county government is experiencing any financial or administrative difficulties that may hinder or prevent the completion of the Project within a set period, the County Government shall inform the responsible Ministries, Departments and Agencies and the National Treasury not later than seven (7) days.

4.3 In the event the National Treasury is experiencing any financial difficulties that may hinder transfer of funds, under this Agreement, the National Treasury shall inform the Ministry responsible who shall then communicate to the County Government.

5. VARIATIONS TO THE PROJECT

5.1 Any changes to the Project shall be agreed in writing by way of Variation Request (Annex II) with the responsible Ministries, Departments and Agencies and communicated to the National Treasury before implementation.

6. NOTICES & DURATION

6.1. Any Notice or other communication under this Agreement shall only be effective if it is in writing and if it is sent to the address of the relevant party set out below or such other address or email as any party notifies to the other party from time to time.

6.2. Addresses for Notices:

National Treasury
Principal Secretary, National Treasury Treasury Building, Harambee Avenue
P.O BOX 30007-00100
NAIROBI

County Government of Bomet
CECM for Finance, ICT and Economic planning
County Treasury Building
P.O BOX 19-20400
BOMET

6.3 This Agreement shall come into force upon signature of the parties upon expiry of the project duration, this agreement and all the obligations of the parties shall terminate forthwith.

7. EVENTS OF DEFAULT ON AGREEMENT

7.1 If the County government fails to comply with any of the Terms and Conditions of Additional Allocations Framework, the National Treasury with written instructions from the relevant Ministries, Departments and Agencies may reduce, suspend, or stop transfers of Conditional Additional Allocation, or require any part or all of the

Conditional Additional Allocation to be repaid by the County government, upon verification.

7.2 The National Treasury shall upon receipt of written instructions under 6.1 above, notify the county government within fourteen (14) days.

7.3 The County government shall act within twenty-one (21) days to address the National Treasury's concern or rectify the breach, and may consult or agree on an action plan to resolve the problem with the National Treasury.

7.4 Where any part or all of the conditional additional allocation is required to be repaid in accordance with clause 7.1 above, the County government must repay this amount within ninety (90) days of receiving the demand for repayment.

8. FINANCING ARRANGEMENTS

8.1 The Ministries, Departments and Agencies responsible for the functions being financed through the additional allocations shall include in its budget estimates a transfer to the County Government.

8.2 The County Government shall in its annual budget estimates provide for the programs to be financed by this additional allocation.

8.3 The National Treasury shall transfer the additional allocations to the County Revenue Fund, the amounts indicated in the County Governments' Additional Allocation Act in line with the provision of clause 3.2

8.4 The County Executive Committee Member for the time being responsible for finance shall requisition for the additional allocations from the County Revenue Fund through the Controller of Budget.

8.5 All requisitions shall be accompanied with a description of the amounts and purpose for which the amounts are being requisitioned as contained in the approved budget estimates and the County Governments Additional Allocations Act for the respective financial year.

8.6 If satisfied that the requisition is legally supported, the controller of Budget shall approve the requisition or otherwise give reasons for the failure to approve.

8.7 The additional allocations not spent in the financial year for which they were disbursed shall be re-voted in the subsequent financial year upon request and based on budget process.

9. DISPUTES

9.1 All disputes and complaints that may arise out of the implementation and interpretation of this agreement will be settled through mutual consultations between the parties.

9.2 Where no such settlement is reached within twenty-one (21) days of the commencement of such consultation, the parties will refer the disputes to Alternative Dispute Resolutions Mechanisms as provided for in Section 32 of the Intergovernmental Relations Act, 2012.

10. FORCE MAJEURE

10.1 Notwithstanding any provision contained in this agreement, neither party shall be liable to the other to the extent, fulfillment or performance, if any terms or provisions of this Agreement is delayed or prevented by revolution or other civil disorders wars, acts of enemies, strikes, labour disputes, fires, floods, acts of God, or without limiting the foregoing, any other causes not within its control, and which by the exercise of reasonable diligence it is unable to prevent, whether of the class of causes herein before enumerated or not.

10.2 A party affected by an event of Force Majeure shall notify in writing to the other party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible. Failure of a party to fulfill any of its obligations hereunder shall not be considered to be a breach/default under this agreement insofar as such inability arises from an event of force majeure, provided that the party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms of this agreement.

10.3 A party affected by an event of Force Majeure shall take all reasonable measures to remove such party's liability to fulfill its obligations hereunder with minimum delay.

11. AMENDMENT

11.1. This Agreement shall not be amended or waived to any extent except by written agreement by all parties.

12. SEVERABILITY

12.1 Each provision of this Agreement is severable the one from the other and, if any time any provision is or becomes or is found to be illegal, invalid, ineffective or unenforceable for any reason by any competent court, the remaining provisions shall be in full force and effect and shall continue to be in full force and effect.

13. GOVERNING LAW

This Agreement including any obligation, construction, validity and performance shall be governed in all respects by the laws of Kenya.

14. AUTHORISED PERSONS

In witness whereof parties hereto have caused this Agreement to be executed in accordance with their respective authorized representations on this day (INSERT DATE) and year (INSERT YEAR) first above

Authorized to sign for and on behalf of the National Treasury

Name

Designation

Signature

Date

Witnessed by

Name

Designation

Signature

Date

Authorized to sign for and on behalf of the (County Government)

Name

Designation

Signature

Date

Witnessed by

Name

Designation

Signature

Date

ANNEX I: CONDITIONAL ADDITIONAL ALLOCATIONS FRAMEWORK

	Project/ programme Name	Insert Name of Project
1.	Ministry/State Department Responsible	
2.	Accounting officer of National Government Responsible	
3.	Responsibilities of the National Government Accounting officer	
4.	County Department Responsible	
5.	Accounting officer of County Government Responsible	
6.	Responsibilities of the County Government Accounting officer	
7.	Conditions	
8.	Cost of Project	
9.	Purpose and Objective of the Conditional Additional Allocation	

10.	Allocation criteria	
11.	Project Duration	
12.	Priority of Government that this additional allocation primarily contributes to	
13.	Reasons not incorporated in the Equitable Share	

ANNEX II: VARIATION REQUEST

WHEREAS the National Treasury and the County Government of (INSERT NAME) entered into an Agreement for the approved Project dated (INSERT DATE) as varied on (INSERT DATE) and now wish to amend the Conditional Additional Allocations Framework.

IT IS AGREED as follows

1. DEFINITION

1.1 Terms defined in the Conditional Additional Allocations Framework shall have the same meaning when used in this Variation Request, unless defined otherwise.

2. VARIATION

2.1 With effect from (INSERT START DATE) the Conditional Additional Allocations Framework shall be amended as set out in this Variation Request:

1.	Variation requestor	INSERT NAME OF CECM
2.	Summary of variation	INSERT FULL DETAILS OF VARIATION
3.	Reason for variation	INSERT REASONS FOR VARIATION
4.	Revised Amounts	INSERT NEW AMOUNT
5.	Revised Funding Period	INSERT NEW START DATE AND END

		DATE
6.	Revised Payment Arrangements	INSERT NEW PAYMENT ARRANGEMENTS
7.	Other Variation	INSERT ANY OTHER NEW PROPOSED CHANGE TO THE CONDITIONAL ADDITIONAL ALLOCATIONS FRAMEWORK TERMS

2.2 Save as herein amended all other Terms and Conditions of the Agreement shall remain in full force and effect.

Authorized to sign for and on behalf of
Principal Secretary,
The National Treasury

Signature
Name in Capitals Date
Address in full

Authorized to sign for and on behalf of
(Name of County Government)

Signature
Name in Capitals Date
Address in full

**ANNEX III: ADDITIONAL ALLOCATIONS..... (tick appropriate projects)TO
THE COUNTY GOVERNMENT OF [insert county] IN FY
2023/24**

S/NO	Project Description	AMOUNT IN KSHS
I. Conditional Additional Allocations from the National Government's Share of revenue for Financial Year 2023/24		
1.	Conditional allocation for the Construction of County Headquarters (5 counties: Lamu, Isiolo, Nyandarua, Tana River & Tharaka Nithi)	
2.	Conditional allocation for Managed Equipment Services (MES) Project	
3.	Conditional allocation for County Aggregated Industrial Parks (CAIP) Programme	
II. Unconditional Additional Allocations from the National Government's Share of revenue for Financial Year 2023/24		
1.	Unconditional allocation financed from court fees and fines emanating from contravention of County Legislation (10 counties)	
2.	Unconditional allocation financed from the 20% Share of Mineral Royalties (32 counties)	
Total Allocation from GoK		
III. Conditional Additional Allocations Financed from proceeds of loans and grants from Development Partners for Financial Year 2023/24		
1.	IDA (World Bank) credit (National Agricultural and Rural Inclusive Growth Project (NARIGP)	
2.	IDA (World Bank) credit National Agricultural Value Chain Development Project (NAVCDP)	
3.	IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	
4.	IDA (World Bank) credit: Water & Sanitation Development Project (WSDP)	
5.	DANIDA Grant - Primary Health Care in Devolved Context	
6.	IDA (World Bank) Credit (Financing Locally- Led Climate Action (FLLoCA) Program, County Climate Institutional Support (CCIS)Grant	
7.	Sweden- Agricultural Sector Development Support Programme (ASDSP) II	
8.	German Development Bank (KfW)- Drought Resilience Programme in Northern Kenya (DRPNK)	
9.	World Bank - Emergency Locust Response Project (ELRP)	
10.	World bank - Kenya Informal Settlement Improvement Project (KISIP II)	
11.	Kenya Livestock Commercialization Project (KELCLOP)	
12.	Aquaculture Business Development Project (ABDP)	
13.	IDA (World Bank) Credit (Financing Locally- Led Climate Action (FLLoCA) Program, County Climate Resilience Grant (CCRG)	
Total Allocation from Development Partners		
GRAND TOTAL (SUM OF GoK & DEVELOPMENT PARTNERS ALLOCATION) IN FY 2023/24		