

COUNTY GOVERNMENT OF KITUI



MINISTRY OF FINANCE, ECONOMIC PLANNING AND REVENUE MANAGEMENT

KITUI COUNTY

**MODEL INTERGOVERNMENTAL CONDITIONAL ALLOCATIONS TRANSFER
AGREEMENT**

JANUARY 2024

KITUI COUNTY MODEL INTERGOVERNMENTAL CONDITIONAL ALLOCATIONS TRANSFER AGREEMENT

I. INTRODUCTION

1.0 BACKGROUND

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. In regard to this, the Ministry of Finance, Economic Planning and Revenue Management hereby invites members of the public for their comments and views on Model Intergovernmental Conditional Allocations Transfer Agreement. The ministry has also organized for a Public Participation forum to get public views on the Model Intergovernmental Conditional Allocations Transfer Agreement on **Friday, 9th February 2024 at Kefri Centre – Kitui Town from 10.00am.**

The County Governments Additional Allocations Act, 2023 allocated Kitui County Grants amounting to **Kshs 562,088,459** and broken down as follows:

Table 1: Summary of Kitui County FY 2023/2024 Grants Allocation exclusive of Revote

Ministry	Grant	Approved Budget Estimates FY 2023/2024
Agriculture and Livestock	IDA (World Bank) credit (National Agricultural and Rural Inclusive Growth Project (NARIGP))	150,000,000
	IDA (World Bank) credit National Agricultural Value Chain Development Project (NAVCDP)	250,000,000
	World Bank (Emergency Locust Response Project (ELRP))	133,683,244
	Sweden- Agricultural Sector Development Support Programme (ASDSP) II	1,292,965
Environment	World Bank Credit to Finance Locally - Led Climate Action Program (FLLOCA)	11,000,000
Health and Sanitation	DANIDA Grant - Primary Health Care in Devolved Context	16,112,250
	Total	562,088,459

In addition, the County Assembly approved a **Revote** for Grants amounting to Kshs **332,479,877.88** in FY 2023/2024 Supplementary Budget I broken down as follows: -

Table 2: Summary of Kitui County FY 2023/2024 Grants Allocation inclusive of Revote

S/ N	Ministry	Grant Name	FY 2023/2024 Allocation as per CARA, 2023	Revote	Total Allocation FY 2023/2024
1	Ministry of Agriculture & Livestock	IDA (World Bank) credit (National Agricultural and Rural Inclusive Growth Project (NARIGP)	150,000,000.00	38,669,471	188,669,470.70
2		IDA (World Bank) credit National Agricultural Value Chain Development Project (NAVCDP)	250,000,000.00	67,192,729.00	317,192,729.00
3		Sweden- Agricultural Sector Development Support Programme (ASDSP) II	1,292,965.00	486,990.10	1,779,955.10
4		World Bank - Emergency Locust Response Project (ELRP)	133,683,244.00	25,146,724.15	158,829,968.15
5		Covid - 19 : Ministry of Agriculture and Livestock		23,148,750.00	23,148,750.00
6	Ministry of Health and Sanitation	DANIDA Grant - Primary Health Care in Devolved Context	16,112,250.00	1,604,833.65	17,717,083.65
7		Covid - 19: Ministry of Health and Sanitation		16,326,684.03	16,326,684.03
8	Ministry of Energy, Environment, Forestry, Natural & Mineral Resources	IDA (World Bank) Credit (Financing Locally- Led Climate Action (FLLoCA) Program,	11,000,000.00	11,019,260.00	22,019,260.00
9	Ministry of Finance, Economic Planning and Revenue Management	Kenya Devolution Support Programme	-	139,956,716.25	139,956,716.25
10	Ministry of Roads, Public Works & Transport	Roads Maintenance Levy Fund (RMLF)		8,927,720.00	8,927,720.00
		Total	562,088,459.00	332,479,877.88	894,568,336.88

THEREFORE,

The Total Budgeted allocation for Grants for Kitui County during the FY 2023/2024 is Kshs
894,568,336.88

II. MODEL INTERGOVERNMENTAL CONDITIONAL ALLOCATIONS TRANSFER AGREEMENT

This Intergovernmental Conditional Additional Allocations Transfer Agreement is made pursuant to section 191A of the Public Finance Management Act (PFMA), 2012. The Agreement is made **BETWEEN** The Government of Kenya represented by The National Treasury which expression shall unless the context requires include its successor(s) administrator(s) or permitted assignee(s) **AND** The County Government of Kitui 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 IV) 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

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	
10. Allocation criteria	
11. Project Duration	
12. Priority of Government that this additional	
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
6. Revised Payment Arrangements	INSERT NEW PAYMENT
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 TO THE COUNTY GOVERNMENT OF
KITUI 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)	0
2	Conditional allocation for Managed Equipment Services (MES) Project	0
3	Conditional allocation for County Aggregated Industrial Parks (CAIP) Programme	0
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)	0
2	Unconditional allocation financed from the 20% Share of Mineral Royalties (32 counties)	0
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))	150,000,000
2	IDA (World Bank) credit National Agricultural Value Chain Development Project (NAVCDP)	250,000,000
3	IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	0
4	IDA (World Bank) credit: Water & Sanitation Development Project (WSDP)	0
5	DANIDA Grant - Primary Health Care in Devolved Context	16,112,250
6	IDA (World Bank) Credit (Financing Locally- Led Climate Action (FLLoCA) Program, County Climate Institutional Support (CCIS)Grant	0
7	Sweden- Agricultural Sector Development Support Programme (ASDSP) II	1,292,965
8	German Development Bank (KfW)- Drought Resilience Programme in Northern Kenya (DRPNK)	0
9	World Bank - Emergency Locust Response Project (ELRP)	133,683,244
10	World bank - Kenya Informal Settlement Improvement Project (KISIP II)	0
11	Kenya Livestock Commercialization Project (KELCLOP)	0
12	Aquaculture Business Development Project (ABDP)	0
13	IDA (World Bank) Credit (Financing Locally- Led Climate Action (FLLoCA) Program, County Climate Resilience Grant (CCRG)	11,000,000
Total Allocation from Development Partners		562,088,459

NB: The above allocation excludes revote for grants amounting to **Kshs. 332,479,877.88** hence the total budgeted allocation from Development Partners in FY 2023/2024 is **Kshs 894,568,336.88**.