

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF KENYA
CONCERNING THE DEVELOPMENT AND IMPLEMENTATION OF STRATEGIC
INFRASTRUCTURE PRIORITY PROJECTS IN KENYA

The Government of the United States of America and the Government of Kenya, hereinafter each individually referred to as a “Government” and collectively as the “Governments”:

Recalling that at the U.S.-Africa Leaders Summit held in Washington, D.C. in August 2014, U.S. President Barack Obama, Kenyan President Uhuru Kenyatta, and the other Heads of States and Governments present reaffirmed their shared interest in increased trade between the United States and Africa and increased U.S. investment in Africa, and highlighted the commitment of the United States to Africa’s security, its democratic and sustainable economic development, and its people;

Noting that the Government of the United States of America (the “United States Government”) seeks to further strengthen the existing commercial ties between the United States and Kenya, and, in particular, seeks to promote U.S. commercial participation and investment in Kenya’s infrastructure sector, including strategic infrastructure priority projects;

Noting further that the Government of Kenya has identified infrastructure development as a strategic priority in the Kenya Vision 2030 strategic framework, including flagship projects such as commuter rail, highways, and the development of a transport corridor connecting a new port at Lamu, Kenya, to Ethiopia and South Sudan, known as the “Lamu Port, South Sudan, Ethiopia Transport Corridor” (the “LAPSSET Corridor”);

Noting further that the procurement of public infrastructure in Kenya is governed by the following controlling legal authorities: the Constitution of the Republic of Kenya (the “Constitution”), the Public Procurement and Disposal Act CAP 412A (the “PPD Act”) and the Public Private Partnership Act of 2013 (the “PPP Act”); of which the PPD Act outlines how the Government of Kenya will procure infrastructure, while the PPP Act specifies the conditions under which the Government of Kenya may negotiate and accept solicited bids and a privately initiated investment proposal;

Considering that U.S. firms are world leaders in the products and services related to all aspects of infrastructure development;



Emphasizing the mutual benefits to the two countries of participation by U.S. companies in the development and implementation of strategic infrastructure priority projects in Kenya; and

Acting on the basis of equality and mutual benefit,

Have reached the following understanding:

1. In recognition of the complementary objectives of the two Governments relating to the development and implementation of strategic infrastructure priority projects in Kenya, the Governments of the United States and Kenya intend to develop and share information (such as a list of priority projects) that can be broadly shared by the Governments with the U.S. private sector that may have an interest in participating in priority infrastructure projects and investment opportunities in Kenya.
2. The United States Government intends to take all appropriate steps to promote awareness of such projects in the U.S. private sector; and to provide information to the U.S. private sector about the availability of potential financing, grants, and other forms of U.S. governmental resources, such as the provision of commercial advocacy, to qualified applicants to facilitate potential U.S. private sector participation in such projects.
3. The two Governments intend that commercial agreements for strategic infrastructure priority projects in Kenya, including applicable financial and technical details, be developed directly between the companies involved and the Government of Kenya, consistent with each country's applicable laws and regulations.
4. The Government of Kenya is committed to develop strategic infrastructure priority projects, in a manner fully consistent with Kenyan laws and international best practices intended to prevent, detect, and prosecute corruption, and to adhere to its obligations under the UN Convention Against Corruption and regional anti-corruption mechanisms.
5. The Government of Kenya is committed to maintaining high standards related to health, safety, the environment, labor, transparency, good governance, and sustainable debt management and to comply with all applicable human rights and other international obligations, in its development of the strategic infrastructure priority projects, including flagship projects identified in the Kenya Vision 2030 strategic framework, such as commuter rail, highways, and the LAPSSET Corridor.
6. The Government of Kenya is committed to develop strategic infrastructure priority projects in a manner that ensures the maintenance of a sustainable environment and preservation of the unique ecological and social characteristics of the East Africa region, including but not limited to the preservation of the unique ecological and social characteristics of the UNESCO World Heritage Site at Lamu and other cultural property.
7. The United States Government confirms its interest in supporting the development of strategic infrastructure priority projects in Kenya and promoting U.S. private sector participation in such



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projects, and confirms its intent to engage, as appropriate and consistent with its authority, its constituent agencies and programs including but not limited to those identified herein:

- i. The United States Government confirms the interest of the Overseas Private Investment Corporation (hereinafter referred to as "OPIC") in considering requests for financing or insurance for eligible strategic infrastructure priority projects in Kenya, subject to OPIC approval and compliance with the terms for OPIC programs, including its credit policies, the projects' financial sustainability and adherence to international best practices in governance, environmental and social safeguards. The Government of Kenya confirms that resources provided by OPIC will be free from taxes imposed under laws in effect in Kenya.
 - ii. The United States Government confirms the interest of the United States Trade and Development Agency (hereinafter referred to as "USTDA") in considering requests for assistance in conducting feasibility studies, technical assistance, pilot projects, and other project planning assistance, relating to strategic infrastructure priority projects in Kenya, and reverse trade missions to the United States, subject to USTDA approval and compliance with the terms for USTDA programs, including its internal policies. The Government of Kenya confirms that resources provided by USTDA will be free from taxes imposed under laws in effect in Kenya.
8. The Government of Kenya intends to develop strategic infrastructure projects in Kenya in a manner that promotes collaboration between Kenyan and U.S. public and private sector institutions with an aim to promote capacity building in Kenya.
9. The Government of Kenya expresses its support for the U.S. governmental resources that the United States Government intends to make available, consistent with U.S. laws and regulations, to facilitate potential U.S. private sector participation in strategic infrastructure priority projects in Kenya and is committed to ensuring that such resources provided will be free from taxation within Kenya.
10. The Governments intend that private companies that implement strategic infrastructure priority projects are to be responsible for securing appropriate financing for such projects. Potential financing sources may include OPIC, other United States Government agencies, multilateral organizations, private sector capital or finance or other financing sources.
11. The Governments intend to meet at least one time per year to review progress within the framework of this Memorandum of Understanding.
12. This Memorandum of Understanding is to become operative upon signature.
13. This Memorandum of Understanding may be modified at any time in writing by the mutual consent of the Governments.
14. The Governments may discontinue this Memorandum of Understanding at any time by mutual consent in writing. Alternatively, a Government that wishes to discontinue its cooperation

under this Memorandum of Understanding should endeavor to provide at least six months prior notice in writing to the other Government.

15. This Memorandum of Understanding does not prejudice the rights and obligations of third parties or the rights of the Governments to conclude agreements, contracts, protocols, or other arrangements with respect to any matter described in this Memorandum of Understanding.

16. This Memorandum of Understanding is not an international agreement between the Governments. In this respect, this Memorandum of Understanding does not create any rights and/or obligations for the Governments.

Signed at _____, in duplicate, this 24th day of July, 2015 in the English language.

**FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:**



The Honorable Penny Pritzker
Secretary of Commerce

**FOR THE GOVERNMENT OF THE
REPUBLIC OF KENYA:**



Mr. Henry Rotich
Cabinet Secretary for the
National Treasury