

No. 11164

**INTERNATIONAL DEVELOPMENT ASSOCIATION
and
KENYA**

**Development Credit Agreement—*Highway Maintenance Project*
(with annexed General Conditions Applicable to Development
Credit Agreements). Signed at Washington on 28 December
1970**

Authentic text: English.

Registered by the International Development Association on 14 June 1971.

**ASSOCIATION INTERNATIONALE
DE DÉVELOPPEMENT
et
KENYA**

**Contrat de crédit de développement — *Projet relatif à l'entretien
du réseau routier* (avec, en annexe, les Conditions générales
applicables aux contrats de crédit de développement). Signé à
Washington le 28 décembre 1970**

Texte authentique: anglais.

Enregistré par l'Association internationale de développement le 14 juin 1971.

DEVELOPMENT CREDIT AGREEMENT¹

AGREEMENT, dated December 28, 1970, between REPUBLIC OF KENYA (hereinafter called the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association).

Article I

GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Development Credit Agreements of the Association, dated January 31, 1969,² with the same force and effect as if they were fully set forth herein, subject, however, to the deletion of Section 5.01 thereof (said General Conditions Applicable to Development Credit Agreements of the Association, as so modified, being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Trunk roads" means (i) international trunk roads linking centers of international importance and crossing international boundaries or terminating at international ports and (ii) national trunk roads linking nationally important centers, as listed in the Republic of Kenya's Road Reclassification dated February 1970.

(b) "Primary roads" means primary roads linking provincially important centers to each other or to higher class roads, as listed in the Republic of Kenya's Road Reclassification dated February 1970.

(c) "Secondary roads" means secondary roads linking locally important centers to each other, to a more important center or to a higher class road, as listed in the Republic of Kenya's Road Reclassification of February 1970.

¹ Came into force on 18 March 1971, upon notification by the Association to the Government of Kenya.

² See p. 66 of this volume.

(d) "Roads Department" means the Roads Department of the Borrower's Ministry of Works.

(e) "Understudy Plan" means the plan referred to in Section 8.01 of this Agreement.

Article II

THE CREDIT

Section 2.01 The Association agrees to lend to the Borrower, on the terms and conditions in the Development Credit Agreement set forth or referred to, an amount in various currencies equivalent to twelve million six hundred thousand dollars (\$12,600,000).

Section 2.02. The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule I to this Agreement, as such Schedule shall be amended from time to time, for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project described in Schedule 2 to this Agreement and to be financed under the Development Credit Agreement; provided, however, that, except as the Association shall otherwise agree, no withdrawal shall be made on account of expenditures in the territories of any country which is not a member of the Bank (other than Switzerland) or for goods produced in, or services supplied from, such territories.

Section 2.03. Except as the Association shall otherwise agree: (i) civil works included in the Project may be executed, with the agreement of the Association, by direct departmental labor; (ii) goods and services (other than consultants' services) in connection with civil works to be financed out of the proceeds of the Credit and other than civil works executed by direct departmental labor with the agreement of the Association shall be procured on the basis of local competition under procedures consistent with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in August 1969, and in accordance with, and subject to the provisions set forth in, Schedule 3 to this Agreement; and (iii) other goods and services (other than consultants' services) to be financed out of the proceeds of the Credit shall be procured on the basis of international competition under procedures consistent with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in August 1969, and in accordance with, and subject to the provisions set forth in, Schedule 3 to this Agreement.

Section 2.04. The Closing Date shall be June 30, 1975 or such other date as shall be agreed between the Borrower and the Association.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Service charges shall be payable semi-annually on April 1 and October 1 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Credit withdrawn from the Credit Account in semi-annual installments payable on each April 1 and October 1 commencing April 1, 1981 and ending October 1, 2020, each installment to and including the installment payable on October 1, 1990 to be one-half of one per cent ($\frac{1}{2}$ of 1%) of such principal amount, and each installment thereafter to be one and one-half per cent ($1\frac{1}{2}$ %) of such principal amount.

Section 2.08. The currency of the United Kingdom of Great Britain and Northern Ireland is hereby specified for the purposes of Section 4.02 of the General Conditions.

Article III

EXECUTION OF THE PROJECT

Section 3.01. The Borrower shall carry out the Project with due diligence and efficiency and in conformity with sound technical, engineering, administrative and financial practices, and shall provide, promptly as needed, the funds, facilities, staff, services and other resources required for the purpose.

Section 3.02. (a) In order to provide qualified personnel for field positions in the Roads Department the Borrower shall, wherever the Borrower decides to employ consultants, employ consultants mutually acceptable to the Borrower and the Association upon terms and conditions mutually acceptable to the Borrower and the Association.

(b) In order to assist the Borrower in the administration and operation of the training center of the Roads Department, the Borrower shall, wherever the Borrower decides to employ consultants, employ consultants or shall employ qualified personnel mutually acceptable to the Borrower and the Association upon terms and conditions mutually acceptable to the Borrower and the Association.

(c) In order to assist the Borrower in (i) the preparation of specifications and bidding documents, (ii) the prequalification of contractors and evaluation of bids, (iii) the implementation of the reorganization of the Roads Department, and (iv) the carrying out of such other duties and functions connected with the Project as the Borrower, in consultation with the Association, may determine, the Borrower shall employ consultants mutually acceptable to the Borrower and the Association upon terms and conditions mutually acceptable to the Borrower and the Association.

Section 3.03. Except where work is executed by direct departmental labor, with the agreement of the Association, in carrying out Parts C and D (1) of the Project, the Borrower shall employ contractors mutually acceptable to the Borrower and the Association upon terms and conditions mutually satisfactory to the Borrower and the Association.

Section 3.04. For the duration of the Project, the Borrower shall use the highway maintenance equipment, including spare parts, procured under Part B of the Project only for the purpose of maintaining trunk roads, primary roads and secondary roads, except that there may be other minor and temporary uses for the purpose of maintaining other public roads in conjunction with the maintenance of the said trunk, primary and secondary roads.

Section 3.05. (a) The Borrower undertakes to insure, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Credit against marine, transit and other hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable by the Borrower to replace or repair such goods.

(b) Except as the Association shall otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Credit to be used exclusively for the Project.

Section 3.06. (a) The Borrower shall furnish to the Association, promptly upon their preparation, the plans, specifications, contract documents and work schedules for the Project, and any material modifications or additions thereto, in such detail as the Association shall reasonably request.

(b) The Borrower: (i) shall maintain records adequate to record the progress of the Project (including the cost thereof) and to identify the goods and services financed out of the proceeds of the Credit, and to disclose the use thereof in the Project; (ii) shall enable the Association's representatives to inspect the Project, the goods financed out of the proceeds of the Credit and any relevant records and documents; and (iii) shall furnish to the Association all such information as the Association shall reasonably request concerning the Project, the expenditure of the proceeds of the Credit and the goods and services financed out of such proceeds.

Article IV

OTHER COVENANTS

Section 4.01. The Borrower shall maintain or cause to be maintained records adequate to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition, in respect of the Project, of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

Section 4.02. (a) The Borrower shall, on the basis of the recommendations in a report by its Public Service Conditions of Service and Remuneration Commission relating to the recruitment and service policies of its civil service, prepare and send to the Association for its comments within six months of the acceptance of the said report by the Borrower a plan for training suitably qualified Kenyans to fill professional and other technical positions in the Roads Department. The Borrower shall notify the Association of the date of acceptance by it of the said report.

(b) In the event that the report referred to in subparagraph (a) of this Section is not accepted by the Borrower within six months of the date of this Agreement, the Borrower shall consult with the Association with a view to formulating such a training plan.

Section 4.03. The Borrower shall review from time to time with the Association the implementation of the Understudy Plan with a view to agreeing on further steps to be taken.

Section 4.04. After the completion of the Project, the Borrower shall use the highway maintenance equipment, including spare parts, procured under Part B of the Project only for the purpose of maintaining its highway system.

Section 4.05. (a) The Borrower shall cause all its road maintenance, workshop and training equipment to be adequately maintained and repaired and shall maintain sufficient and adequate workshops in suitable places for the purpose.

(b) The Borrower shall cause its highway system to be adequately maintained in accordance with sound engineering practices, and shall provide, promptly as needed, the funds, facilities, staff, services and other resources required for the purpose.

Section 4.06. (a) The Borrower shall establish and maintain facilities adequate to collect and record, in accordance with appropriate statistical methods and procedures, such information concerning road traffic, road construction and maintenance costs as shall be reasonably required for proper planning of maintenance, improvements and extensions of its highway system.

(b) The Borrower shall take all measures reasonably necessary to ensure at all times that the dimensions and axle loads of the vehicles using its highways do not exceed limits consistent with the design standards of such highways.

Section 4.07. (a) The Borrower shall with a view to strengthening the Roads Department provide or arrange for the provision of qualified personnel in the numbers set out in Annex A to Schedule 2 to this Agreement, as such Annex shall be amended from time to time by agreement between the Borrower and the Association, to fill the positions and perform the duties set out in the said Annex.

(b) Except as the Borrower and the Association shall otherwise agree, the Borrower shall make the appointments to the said positions promptly but in any event not later than nine months after the date of this Agreement.

(c) The Borrower shall ensure that the said positions are filled by persons whose qualifications and experience are mutually acceptable to the Borrower and the Association.

Article V

CONSULTATION, INFORMATION AND INSPECTION

Section 5.01. The Borrower and the Association shall cooperate fully to assure that the purposes of the Credit will be accomplished. To that end, the Borrower and the Association shall from time to time, at the request of either party:

- (a) exchange views through their representatives with regard to the performance of their respective obligations under the Development Credit Agreement, the administration, operations and financial condition, in respect of the Project, of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof, and other matters relating to the purposes of the Credit; and
- (b) furnish to the other all such information as it shall reasonably request with regard to the general status of the Credit. On the part of the Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower, including its balance of payments, and the external debt of the Borrower, of any of its political subdivisions and of any agency of the Borrower or of any such political subdivision.

Section 5.02. (a) The Borrower shall furnish or cause to be furnished to the Association all such information as the Association shall reasonably request concerning the operations and financial condition, in respect of the Project, of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall promptly inform the Association of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit, the maintenance of the service thereof, or the performance by the Borrower of its other obligations under the Development Credit Agreement.

Section 5.03. The Borrower shall afford all reasonable opportunity for accredited representatives of the Association to visit any part of the territories of the Borrower for purposes related to the Credit.

Article VI

TAXES AND RESTRICTIONS

Section 6.01. The principal of, and service charges on, the Credit shall be paid without deduction for, and free from, any taxes imposed under the laws of the Borrower or laws in effect in its territories.

Section 6.02. The Development Credit Agreement shall be free from any taxes on or in connection with the execution, delivery or registration thereof, imposed under the laws of the Borrower or laws in effect in its territories.

Section 6.03. The payment of the principal of, and service charges on, the Credit shall be free from all restrictions, regulations, controls and moratoria of any nature imposed under the laws of the Borrower or laws in effect in its territories.

Article VII

REMEDIES OF THE ASSOCIATION

Section 7.01. If any event specified in Section 7.01 of the General Conditions shall occur and shall continue for the period, if any, therein set forth, then at any subsequent time during the continuance thereof, the Association, at its option, may by notice to the Borrower declare the principal of the Credit then outstanding to be due and payable immediately together with the service charges thereon and upon any such declaration such principal and service charges shall become due and payable immediately, anything to the contrary in the Development Credit Agreement notwithstanding.

Article VIII

EFFECTIVE DATE; TERMINATION

Section 8.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 10.01 (b) of the General Conditions:

- (i) The contract for the employment of the consultants referred to in Section 3.02 (c) of this Agreement has been entered into by the Borrower and the consultants.
- (ii) The Understudy Plan for the appointment of suitably qualified Kenyans as understudies to the qualified personnel to be provided under the Project, has been formulated by the Borrower and is mutually acceptable to the Borrower and the Association.

Section 8.02. The date March 31, 1971 is hereby specified for the purposes of Section 10.04 of the General Conditions.

Section 8.03. (a) The obligations of the Borrower under Sections 4.01, 4.03, 4.04, 4.05 (a), 4.07 (a) and 4.07 (c) of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on a date ten years after the date of this Agreement, whichever shall be the earlier.

(b) The obligations of the Borrower under Sections 4.05 (b) and 4.06 of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on a date twenty-four years after the date of this Agreement, whichever shall be the earlier.

Article IX

REPRESENTATIVE OF THE BORROWER; ADDRESSES

Section 9.01. The Minister of the Borrower for the time being responsible for finance is designated as representative of the Borrower for the purposes of Section 9.03 of the General Conditions.

Section 9.02. The following addresses are specified for the purposes of Section 9.01 of the General Conditions:

For the Borrower:
The Treasury
P.O. Box 30007
Nairobi, Kenya

Cable address:
Finance
Nairobi

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

Cable address:
Indevas
Washington, D.C.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names and to be delivered in the District of Columbia, United States of America, as of the day and year first above written.

Republic of Kenya:
By LEONARD O. KIBINGE
Authorized Representative

International Development Association:
By J. BURKE KNAPP
Vice President

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 amounts of the Credit to each category and the percentage of eligible expenditures so to be financed in each category:

<i>Category</i>	<i>Amount of the Credit Allocated (Expressed in Dollar Equivalent)</i>	<i>% of Expenditures to be Financed</i>
I. Headquarters and field staffing	900,000	100% of foreign expenditures, excluding any part to be financed from sources other than the Association
II. Equipment and spare parts	8,000,000	100% of foreign expenditures
III. Consultants' services:	1,300,000	
(a) for provision of assistance in prequalification and evaluation of bids		100% of foreign expenditures
(b) for other purposes		85% of total expenditures
IV. Civil works	800,000	20% of total expenditures, representing the estimated foreign expenditure component
V. Unallocated	1,600,000	
	TOTAL	
	<u>12,600,000</u>	

2. For the purposes of this Schedule:

- (a) the term "foreign expenditures" means expenditures for goods produced in, or services supplied from, the territories, and in the currency, of any member of the Bank (other than the Borrower) or of Switzerland;

- (b) the term “local expenditures” means expenditures in the currency of the Borrower, or for goods produced in, or services supplied from, the territories of the Borrower; and
- (c) the term “total expenditures” means the aggregate of foreign and local expenditures.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

- (a) expenditures prior to the date of this Agreement except that withdrawals may be made in respect of Category III on account of expenditures incurred after January 1, 1970 in an aggregate amount not exceeding \$150,000 equivalent; and
- (b) payments for taxes imposed under the laws of the Borrower or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof. To the extent that the amount represented by the percentage set forth in the third column of the table in paragraph 1 above would exceed the amount payable net of all such taxes, such percentage shall be reduced to ensure that no proceeds of the Credit will be withdrawn on account of payments for such taxes.

4. Notwithstanding the allocation of an amount of the Credit set forth in the second column of the table in paragraph 1 above:

- (a) if the estimate of the expenditures under any Category shall decrease, the amount of the Credit then allocated to such Category and no longer required therefor will be reallocated by the Association by increasing correspondingly the unallocated amount of the Credit;
- (b) if the estimate of the expenditures under any Category shall increase, the percentage set forth in the third column of the table in paragraph 1 above in respect of such expenditures shall be applied to the amount of such increase, and a corresponding amount will be allocated by the Association, at the request of the Borrower, to such Category from the unallocated amount of the Credit, subject, however, to the requirements for contingencies, as determined by the Association, in respect of any other expenditures.

5. Notwithstanding the percentages set forth in the third column of the table in paragraph 1 above, if the estimate of total expenditures under Category IV shall increase and no proceeds of the Credit are available for reallocation to such Category, the Association may, by notice to the Borrower, adjust the percentage then applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made.

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project is part of the Borrower's 1971-75 highway maintenance program and consists of:

- (A) Provision of qualified personnel (1) to fill key positions in the Roads Department in accordance with Annex A hereto, and (2) to train Kenyans to fill said positions;
- (B) The acquisition of road maintenance and workshop equipment, including spare parts;
- (C) The construction and improvement of 6 regional workshops and all necessary offices and road maintenance camps;
- (D) (1) The construction of additional training center facilities, and (2) the acquisition of training equipment; and
- (E) The provision of consultants' services and other staff to train maintenance personnel at all levels, to introduce cost accounting and management procedures and to assist with equipment procurement in the Roads Department.
The Project is expected to be completed by December 31, 1974.

ANNEX A

MINISTRY OF WORKS (ROADS DEPARTMENT)
POSITIONS TO BE STAFFED

<i>Post</i>	<i>Number</i>	<i>Functions and duties</i>
A. HEADQUARTERS		
1. Chief Engineer (Roads)	1	To direct and control all operations of the Roads Department of the Ministry of Works
2. Senior Superintending Engineers		To take executive charge, under the Chief Engineer (Roads), of a Division of the Roads Department of the Ministry of Works specializing in one of three main activities
(a) Development	1	Responsible for planning, engineering design, contract documentation and supervision of construction of road and bridge works

<i>Post</i>	<i>Number</i>	<i>Functions and duties</i>
(b) Maintenance	1	Responsible for all aspects of organization and supervision of the maintenance of all public roads including control of mechanical equipment, work studies and methods and inspectorate
(c) Materials	1	Responsible for organization and supervision of the materials laboratory of the Ministry of Works including the execution of a road research program
3. Superintending Engineers		To take executive charge of a section of the Roads Department of the Ministry of Works under a Senior Superintending Engineer
(a) Planning	1	Responsible for pre-investment planning, feasibility studies, economic assessments and preliminary engineering for all road projects, development plans and the preparation of reports and applications for technical assistance
(b) Engineering Design	1	Responsible for final engineering for road and bridge construction projects; the preparation of contract documents, pre-qualification of contractors, bid analysis, and the briefing of consultants
(c) Construction	1	Responsible for the supervision of road and bridge construction projects carried out by contract including direction of consultants and financial control
(d) Maintenance Programming	1	Responsible for planning maintenance programs; resealing, regravelling, minor improvements and betterment; preparation of the road maintenance estimates

<i>Post</i>	<i>Number</i>	<i>Functions and duties</i>
(e) Mechanical	1	Responsible for proper distribution, utilization and maintenance of road maintenance equipment, spare parts and workshops
(f) Inspection	1	Responsible for independent inspection and assessment of maintenance activities of the field organization
(g) Maintenance	1	Responsible for supervision of the field organization including financial control, administration and execution of the maintenance program and analysis of road maintenance costs
(h) Materials	1	Responsible to the Senior Superintending Engineer (Materials) for the execution of the site investigation, field control, testing and research program of the materials laboratory
B. FIELD		
4. Provincial Road Engineers	5	Required to take executive charge of road maintenance operations in a Province under the direction of the Senior Superintending Engineer (Maintenance)
5. Deputy Provincial Engineers	5	Required to assist the Provincial Road Engineers
6. Road Superintendents	5	Required to supervise road maintenance work under a Provincial Road Engineer and to train field staff in mechanical highway maintenance

SCHEDULE 3

PROCUREMENT

1. *Contracts for Equipment and Civil Works*

With respect to any contract:

(a) If bidders are required to pre-qualify, the Borrower shall, before qualification is invited, inform the Association in detail of the procedure to be followed and shall introduce such modifications in said procedure as the Association shall reasonably request. The list of pre-qualified bidders, together with a statement of their qualifica-

tions and of the reasons for the exclusion of any applicant for pre-qualification, shall be furnished by the Borrower to the Association for its comments before the applicants are notified and the Borrower shall make such additions to or deletions from the said list as the Association shall reasonably request.

(b) Before bids are invited, the Borrower shall furnish to the Association, for its comments, the text of the invitations to bid and the specifications and other bidding documents, together with a description of the advertising procedure to be followed for the bidding, and shall make such modifications in the said documents or procedure as the Association shall reasonably request. Any further modification or addition to the bidding documents shall require the Association's concurrence before it is issued to the prospective bidders.

(c) After bids have been received and evaluated, the Borrower shall, before a final decision on the award is made, inform the Association of the name of the bidder to whom it intends to award the contract and shall furnish to the Association, in sufficient time for its review, a detailed report by the Borrower's consultants on the evaluation and comparison of the bids received, together with the recommendations for award of said consultants, and the reasons for the intended award. The Association shall promptly inform the Borrower whether it has any objection to the intended award and shall state the reasons for any objection it may have.

(d) If the contract shall be awarded over the Association's objection or if its terms and conditions shall, without the Association's concurrence, materially differ from those on which bids were asked, no expenditures thereunder shall be financed out of the proceeds of the Credit.

(e) Copy of the contract shall be furnished to the Association promptly after its execution.

2. *Exceptions to the Procedures in the Guidelines for Procurement*

Notwithstanding the provisions of the *Guidelines for Procurement under World Bank Loans and IDA Credits*, bid invitations for civil works contracts may be limited to advertisements in newspapers of general circulation in the territories of the Borrower.

INTERNATIONAL DEVELOPMENT ASSOCIATION

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO DEVELOPMENT CREDIT AGREEMENTS

[*Not published herein. See United Nations, Treaty Series, vol. 703, p. 244.*]