

No. 16265

**UNITED STATES OF AMERICA
and
CAPE VERDE**

**Grant Agreement — *Food for work and distribution.* Signed
at Mindelo on 30 June 1975**

**Amendment No. 1 to the above-mentioned Agreement.
Signed at Praia on 3 November 1975**

Authentic texts: English.

Registered by the United States of America on 27 January 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
CAP-VERT**

**Accord de don — *Programme «Des vivres pour du travail»
et distribution de produits alimentaires.* Signé à
Mindelo le 30 juin 1975**

**Amendement n° 1 à l'Accord susmentionné. Signé à Praia
le 3 novembre 1975**

Textes authentiques : anglais.

Enregistrés par les États-Unis d'Amérique le 27 janvier 1978.

GRANT AGREEMENT¹ BETWEEN THE TRANSITIONAL GOVERNMENT OF CAPE VERDE AND THE UNITED STATES OF AMERICA (*FOOD FOR WORK AND DISTRIBUTION*)

Dated: June 30, 1975

Project: 655-11-990-001

GRANT AGREEMENT dated the 30th day of June, 1975, between the TRANSITIONAL GOVERNMENT OF CAPE VERDE ("Grantee") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.>").

Article I. THE GRANT

Section 1.01. THE GRANT. Pursuant to the Foreign Assistance Act, as amended, A.I.D. hereby agrees to grant to the Grantee in accordance with the terms and conditions of this Agreement an amount not to exceed one million United States dollars (\$1,000,000) ("Grant") to assist in financing the United States dollar costs and local currency costs of meeting the humanitarian needs and promoting the economic welfare of the Cape Verde Islands in accordance with the Program described in section 102.

Section 1.02. PROGRAM. Except as A.I.D. may otherwise provide in Implementation Letters referred to in section 8.03 ("Implementation Letters") funds provided hereunder shall be utilized to finance (a) the United States dollar costs of food commodities for distribution to the needy, for resale on a subsidized basis, and for food-for-work programs designed to provide employment and food to the unemployed, (b) the United States dollar costs of commodity-related services and procurement services for the purchase and importation of the foregoing commodities, and (c) the local currency costs of food distribution and food-for-work programs in the Cape Verde Islands. Food commodities eligible for financing hereunder include maize, rice, wheat, and such other commodities as may be listed in Implementation Letters.

Article II. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 2.01. CONDITIONS PRECEDENT TO DISBURSEMENT. Prior to the first disbursement or to the issuance of the first Letter of Commitment or other disbursement authorization under the Grant, the Grantee shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) an opinion of the Minister of Justice of the Grantee or of other counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Grantee, and that it constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms;
- (b) a statement of the names of the persons holding or acting in the office of the Grantee, specified in section 8.02, and a specimen signature of each person specified in such statement;
- (c) a statement by the Grantee that A.I.D. has furnished to the Grantee copies of A.I.D. Regulation 1, together with amendments thereto, and has satisfactorily

¹ Came into force on 30 June 1975 by signature, in accordance with section 7.01.

explained to the Grantee the provisions and requirements thereof, in accordance with section 5.01 (c) of this Agreement.

Section 2.02. TERMINAL DATE FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. If all of the conditions specified in section 2.01 shall not have been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by giving written notice to the Grantee. Upon the giving of such notice, this Agreement and all obligations of the Parties hereunder shall terminate.

Section 2.03. NOTIFICATION OF MEETING OF CONDITIONS PRECEDENT TO DISBURSEMENT. A.I.D. shall notify the Grantee upon determination by A.I.D. that the conditions precedent to disbursement specified in section 2.01 have been met.

Article III. GENERAL COVENANTS AND WARRANTIES

Section 3.01. EXECUTION OF THE PROGRAM. The Grantee shall carry out the Program with due diligence and efficiency, and in conformity with sound financial, management, and procurement practices acceptable to A.I.D.

Section 3.02. FUNDS AND OTHER RESOURCES TO BE PROVIDED BY THE GRANTEE. The Grantee shall provide promptly as needed all funds, in addition to the Grant, and all other resources required for the punctual and effective carrying out of the Program.

Section 3.03. CONTINUING CONSULTATION. The Grantee and A.I.D. shall cooperate fully to assure that the purposes of the Grant will be accomplished. To this end, the Grantee and A.I.D. shall from time to time, at the request of either Party, exchange views through their representatives with regard to the progress of the Program, the performance by the Grantee and by A.I.D. of their respective obligations under this Agreement, and other matters relating to the Program.

Section 3.04. TAXATION. This Agreement and the amount agreed to be granted hereunder shall be free from any taxation or fees imposed under the laws in effect within the country of the Grantee. No taxes, tariffs, duties, or other levies of any nature whatsoever imposed under any laws in effect in the country of the Grantee may be financed hereunder. To the extent that (a) any contract financed hereunder, or any property, service, or transactions relating to such contracts, or any personnel thereunder, or (b) any commodity procurement transaction financed hereunder is not exempt from identifiable taxes, tariffs, duties, or other levies imposed under laws in effect in the country of the Grantee, the Grantee shall pay or reimburse the same with funds other than those provided under the Grant.

Section 3.05. UTILIZATION OF GOODS AND SERVICES. (a) Goods and services financed under the Grant shall be used exclusively for the Program, except as A.I.D. may otherwise agree in writing. Upon completion of the Program, or at such other time as goods financed under the Grant can no longer usefully be employed for the Program, the Grantee may use or dispose of such goods in such manner as A.I.D. may agree in writing prior to such use or disposition.

(b) Except as A.I.D. may otherwise agree in writing, no goods or services financed under the Grant shall be used to promote or assist any foreign aid project or activity associated with or financed by any country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section 3.06. DISCLOSURE OF MATERIAL FACTS AND CIRCUMSTANCES. The Grantee represents and warrants that all facts and circumstances that it has disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Grant are accurate

and complete, and that it has disclosed to A.I.D., accurately and completely, all facts and circumstances that might materially affect the Program and the discharge of its obligations under this Agreement. The Grantee shall promptly inform A.I.D. of any facts and circumstances that may hereafter arise that might materially affect, or that it is reasonable to believe might materially affect, the Program or the discharge of the Grantee's obligations under this Agreement.

Section 3.07. COMMISSIONS, FEES, AND OTHER PAYMENTS. (a) The Grantee warrants and covenants that in connection with obtaining the Grant, or taking any action under or with respect to this Agreement, it has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid, nor will there be paid or agreed to be paid by any other person or entity, any commissions, fees, or other payments of any kind, except as regular compensation to the Grantee's full-time officers and employees or as compensation for bona fide professional, technical, or comparable services to which it is a Party or of which it has knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable by A.I.D., the same shall be adjusted in a manner satisfactory to A.I.D.

(b) The Grantee warrants and covenants that no payments have been or will be received by the Grantee, or any official of the Grantee, in connection with the procurement of goods or services financed hereunder, except fees, taxes, or similar payments legally established in the country of the Grantee.

Section 3.08. MAINTENANCE AND AUDIT OF RECORDS. The Grantee shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Program and to this Agreement. Such books and records shall, without limitation, be adequate to show:

- (a) the receipt and use made of goods and services financed with funds disbursed pursuant to this Agreement;
- (b) the nature and extent of solicitations of prospective suppliers of goods and services acquired;
- (c) the basis of the award of contracts and orders to successful bidders and suppliers; and
- (d) the progress of the Program.

Such books and records shall be regularly audited, in accordance with sound auditing standards, for such period and at such intervals as A.I.D. may require, and shall be maintained for five years after the date of the last disbursement by A.I.D.

Section 3.09. REPORTS. The Grantee shall furnish to A.I.D. such information and reports relating to the Grant and to the Program as A.I.D. may reasonably request.

Section 3.10. INSPECTIONS. The authorized representatives of A.I.D. shall have the right at all reasonable times to inspect the Program and operations thereunder, the utilization of all goods and services financed under the Grant, and the Grantee's books, records, and other documents relating to the Program and the Grant. The Grantee shall cooperate with A.I.D. to facilitate such inspections and shall permit representatives of A.I.D. to visit any part of the country of the Grantee for any purpose relating to the Grant.

Section 3.11. RATE OF EXCHANGE. If funds provided by A.I.D. are introduced into the country of the Grantee by A.I.D. or any public or private agency for purposes of the Program or the carrying out of the obligations of A.I.D. hereunder, the

Grantee upon the request of A.I.D. shall make such arrangements within its powers as may be necessary so that the funds will be convertible into the currency of the country of the Grantee at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the country of the Grantee.

Article IV. SPECIAL PROVISIONS

Section 4.01. LOCAL CURRENCY PROCEEDS. Local currency generated by the subsidized resale of food commodities financed under the Grant shall be accounted for and used in such manner and for such Program purposes as are agreed upon between the Grantee and A.I.D.

Article V. PROCUREMENT

Section 5.01. PROCUREMENT. (a) Except as A.I.D. may otherwise agree in writing, agricultural commodities financed hereunder shall be of United States source and origin, and all other goods and services financed hereunder shall have their source and origin in the United States or Cape Verde.

(b) Except as A.I.D. may otherwise specify in writing, the procurement and utilization of commodities and commodity-related services hereunder shall be subject to the terms and conditions of A.I.D. Regulation 1 as from time to time amended and in effect, which is incorporated herein and made a part hereof. If any provision of A.I.D. Regulation 1 is inconsistent with this Agreement, the provisions of this Agreement shall govern. Grantee shall take steps as are necessary to assure that Parties to transactions financed hereunder are informed that the provisions of A.I.D. Regulation 1 are applicable to such transactions as hereinabove provided. References in A.I.D. Regulation 1 to "cooperating country" shall be deemed to be references to the Cape Verde Islands.

(c) A.I.D. agrees to furnish to the Grantee copies of A.I.D. Regulation 1, together with amendments thereto, and, for the purpose of section 2.01 (c) of this Agreement, to explain to the Grantee the provisions and requirements thereof.

Section 5.02. ELIGIBILITY DATE. Except as A.I.D. may otherwise agree in writing, no goods or services may be financed under the Grant which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement.

Section 5.03. GOODS AND SERVICES NOT FINANCED UNDER GRANT. Except as A.I.D. may otherwise agree in writing, goods and services procured for the Program, but not financed under the Grant, shall have their source and origin in countries included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

Section 5.04. IMPLEMENTATION OF PROCUREMENT REQUIREMENTS. The definitions applicable to the eligibility requirements of sections 5.01, 5.02, and 5.03 will be set forth in detail in Implementation Letters.

Section 5.05. REASONABLE PRICE. No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the Grant, as more fully described in Implementation Letters. Such items shall be procured on a fair and, except for any professional services, on a competitive basis in accordance with procedures therefor prescribed in Implementation Letters.

Section 5.06. SHIPPING AND INSURANCE. (a) Goods financed under the Grant shall be transported to the country of the Grantee only on flag carriers of a country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

(b) Unless A.I.D. shall determine that privately owned United States-flag commercial vessels are not available at fair and reasonable rate for such vessels, (i) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed under the Grant which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels; and (ii) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed under the Grant and transported to the country of the Grantee on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (i) and (ii) above must be achieved with respect to both cargo transported from U.S. ports and cargo transportation from non-U.S. ports, computed separately.

(c) Marine insurance on goods may be financed under the Grant with disbursements made pursuant to section 6.01, provided (i) such insurance is placed at the lowest available competitive rate in the country of the Grantee or in a country included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of placement, and (ii) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Government of the Grantee, by statute, decree, rule, regulation, or practice, discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any state of the United States, then all goods shipped to the cooperating country financed under the Grant shall be insured against marine risks and such insurance shall be placed in the United States with a company or companies authorized to do a marine insurance business in a state of the United States.

(d) Except as A.I.D. may otherwise agree in writing, the Grantee shall insure, or cause to be insured, all goods financed under the Grant against risks incident to their transit to the point of their use in the Program. Such insurance shall be issued upon terms and conditions consistent with sound commercial practice and shall insure the full value of the goods. Any indemnification received by the Grantee under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse the Grantee for the replacement or repair of such goods. The source and origin of any such replacements shall be as provided in section 5.01 and shall be otherwise subject to the provisions of this Agreement.

Section 5.07. NOTIFICATION TO POTENTIAL SUPPLIERS. In order that United States firms shall have the opportunity to participate in furnishing goods and services to be financed under the Grant, the Grantee shall furnish to A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Implementation Letters.

Section 5.08. INFORMATION AND MARKING. Grantee shall give publicity to the Grant and the Program as a program of United States aid and shall mark goods financed under the Grant, as prescribed in Implementation Letters.

Article VI. DISBURSEMENTS

Section 6.01. DISBURSEMENT FOR UNITED STATES DOLLAR COSTS—LETTERS OF COMMITMENT TO UNITED STATES BANKS. Upon satisfaction of conditions precedent, the Grantee may, from time to time, request A.I.D. to issue Letters of Commitment for specified amounts to one or more United States banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, through the use of Letters of Credit or otherwise, for dollar costs of goods and services procured for the Program in accordance with the terms

and conditions of this Agreement. Payment by a bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as A.I.D. may prescribe in Letters of Commitment and Implementation Letters. Banking charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Grantee and may be financed under the Grant.

Section 6.02. DISBURSEMENT FOR LOCAL CURRENCY COSTS. Upon satisfaction of conditions precedent, the Grantee may, from time to time, request disbursement by A.I.D. of local currency for local currency costs of goods and services procured or to be procured for the Program in accordance with the terms and conditions of this Agreement by submitting to A.I.D. such supporting documentation as A.I.D. may prescribe in Implementation Letters. A.I.D. may make such disbursements from local currency of the country of the Grantee owned by the U.S. Government and obtained by A.I.D. with United States dollars.

Section 6.03. OTHER FORMS OF DISBURSEMENT. Disbursements of the Grant may also be made through such other means as the Grantee and A.I.D. may agree to in writing.

Section 6.04. TERMINATION DATE FOR DISBURSEMENT. Except as A.I.D. may otherwise agree in writing, no Letter of Commitment, or other commitment document which may be called for by another form of disbursement, or any amendment thereto, shall be issued in response to requests received by A.I.D. after eighteen (18) months, and no disbursement shall be made against documentation received by A.I.D. or any bank described in section 6.01 after twenty-four (24) months from the date of execution of this Agreement. A.I.D., at its option, may at any time or times after twenty-four (24) months from the date of execution of this Agreement reduce the Grant by all or any part thereof for which documentation was not received by such date.

Article VII. TERMINATION AND REMEDIES

Section 7.01. TERMINATION. This Agreement shall enter into force when signed by both Parties. Either Party may terminate this Agreement by giving notice in writing to the other Party not less than thirty (30) days prior to the effective date specified for such termination. Any such termination shall terminate the respective obligations of the Parties to make contributions pursuant to this Agreement, except for payments which they are committed to make pursuant to non-cancellable commitments entered into with third Parties prior to the termination of this Agreement. It is expressly understood that all other obligations of the Parties under this Agreement shall remain in full force and effect after such termination.

Section 7.02. TERMINATION OF DISBURSEMENT. In the event that at any time:

- (a) the Grantee shall have failed to comply with any provision of this Agreement, or
- (b) an event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Grant will be attained or that the Grantee will be able to perform its obligations under this Agreement, or
- (c) any disbursement by A.I.D. would be in violation of the legislation governing A.I.D., or
- (d) the Grantee shall have defaulted in its obligations under any other agreement between the Grantee or any of its agencies and the United States or any of its agencies,

then A.I.D. may, at its option:

- (i) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit, in which event A.I.D. shall give notice to the Grantee promptly thereafter;
- (ii) decline to make disbursements other than under outstanding commitment documents;
- (iii) decline to issue additional commitment documents;
- (iv) at A.I.D.'s expense, direct that title to goods financed under the Grant shall be transferred to A.I.D. if the goods are from a source outside the country of the Grantee, are in a deliverable state and have not been offloaded in ports of entry of the country of the Grantee.

Section 7.03. REFUNDS. (a) If A.I.D. determines that any disbursement is not supported by valid documentation in accordance with the terms of this Agreement, or is not made or used in accordance with the terms of this Agreement, or is in violation of legislation governing A.I.D. or of any applicable laws or regulations of the United States Government, A.I.D., notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement, may require the Grantee to refund such amount in United States dollars to A.I.D. within thirty days after receipt of a request therefor. Unless A.I.D. agrees otherwise in writing, refunds paid by the Grantee pursuant to this section shall be considered as a reduction in the amount of A.I.D.'s obligation under this Agreement and shall not be available for reuse under this Agreement. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursement under the Loan shall continue for five years following the date of such disbursement.

(b) Subject to the provisions of paragraph (a) above, in the event that A.I.D. receives a refund from any contractor, suppliers, or from any other third Party connected with the Grant with respect to goods or services financed under the Grant, and such refund related to an unreasonable price for goods or services, or to goods that did not conform to specifications, or to services that were inadequate, A.I.D. may, at its option, make such refund available for the cost of goods and services procured for the Program hereunder, to the extent justified.

Section 7.04. CAUSES OF ACTION AGAINST CONTRACTORS AND SUPPLIERS. The Grantee agrees to execute an assignment to A.I.D. upon request of any cause of action which may accrue to the Grantee or to any of its agencies in connection with or arising out of a contractor's or supplier's performance or breach of performance of any contract for procurement of goods or services financed in whole or in part out of funds provided by A.I.D. under this Agreement.

Section 7.05. EXPENSES OF COLLECTION. All reasonable costs incurred by A.I.D., other than salaries of its staff, in connection with the collection of any refund due A.I.D. under this Agreement may be charged to the Grantee and reimbursed to A.I.D. in such manner as A.I.D. may specify.

Section 7.06. PROHIBITED BENEFITS. No member of or delegate to the United States Congress or U.S. resident commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

Section 7.07. NONWAIVER OF REMEDIES. No delay in exercising or omission to exercise any right, power, or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any such right, power, or remedy or of any other right, power, or remedy hereunder.

Article VIII. MISCELLANEOUS

Section 8.01. COMMUNICATIONS. Any notice, request, documents, or other communication given, made, or sent by the Grantee or A.I.D. pursuant to this Agreement shall be in writing or by telegram, cable, or radiogram and shall be deemed to have been duly given, made, or sent to the Party to which it is addressed when it shall be delivered to such Party by hand or by mail, telegram, cable, or radiogram at the following addresses:

To Grantee:

Mail and cable address:

Ministro da Coordenação Económica
Praia, Cabo Verde

To A.I.D.:

Mail and cable address:

Director
Office of Africa Regional Affairs
Bureau for Africa
Agency for International Development
Washington, D.C. 20513

Grantee, in addition, shall provide the A.I.D. representative, Amembassy, Lisbon, with a copy of each communication sent to A.I.D. Other addresses may be substituted for the above upon the giving of notice. All notices, requests, communications, and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

Section 8.02. REPRESENTATIVES. For all purposes relative to this Agreement, the Grantee will be represented by the individual holding or acting in the office of Ministro da Coordenação Económica. For the purpose of issuing Implementation Letters under this Agreement, A.I.D. will be represented by the individual holding or acting in the office of Director, Office of Africa Regional Affairs, A.I.D. Such individuals shall have the authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, Grantee shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. Until receipt by A.I.D. of written notice of revocation of the authority of any of the duly authorized representatives of the Grantee designated pursuant to this section, it may accept the signature of any such representative or representatives on any instrument as conclusive evidence that any action effected by such instrument is duly authorized.

Section 8.03. IMPLEMENTATION LETTERS. A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Agreement.

IN WITNESS WHEREOF, the Grantee and the United States of America, each acting through its respective duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

Transitional Government of Cape Verde:

By: [Signed]

Name: AMARO ALEXANDRE DA LUZ

Title: Ministro da Coordenação Económica e Trabalho¹

United States of America:

By: [Signed]

Name: ROBERT L. CHAMBERLAIN

*Title: Officer-in-Charge of A.I.D. Affairs
for Portuguese-speaking Africa*

¹ Minister of Co-ordination for the Economy and Labour.

AMENDMENT NO. 1¹ TO GRANT AGREEMENT² BETWEEN THE
GOVERNMENT OF CAPE VERDE AND THE UNITED STATES OF
AMERICA

DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C.

The Grant Agreement dated the 30th day of June 1975 is hereby amended as follows:

Article I, section 1.01

Delete the amount “one million United States dollars (\$1,000,000)” and substitute the amount “two million United States dollars (\$2,000,000)”.

Article V, section 5.06, paragraph (c)

Delete the words “Code 941” and substitute the words “Code 000”.

All other provisions of the Grant Agreement remain unchanged.

Government of Cape Verde:

By: AMARO ALEXANDRE DA LUZ

Title: Ministro de Finanças³

Date: 3 de Novembro de 1975⁴

United States of America:

By: E. DENNIS CONROY

Title: Director, Africa Regional Affairs,
A.I.D.

Date: 3 November 1975

¹ Came into force on 3 November 1975 by signature.

² See p. 4 of this volume.

³ Minister of Finance.

⁴ 3 November 1975.