

**No. 19846**

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**UNITED STATES OF AMERICA  
and  
COUNCIL OF THE ENTENTE**

**Capital Grant Agreement for livestock production. Signed  
on 31 August and 29 September 1976**

*Authentic texts: English and French.*

*Registered by the United States of America on 10 June 1981.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
CONSEIL DE L'ENTENTE**

**Accord de subvention d'investissement pour le dévelop-  
pement de l'élevage. Signé les 31 août et 29 septembre  
1976**

*Textes authentiques : anglais et français.*

*Enregistré par les États-Unis d'Amérique le 10 juin 1981.*

**CAPITAL GRANT AGREEMENT<sup>1</sup> BETWEEN THE AGENCY FOR  
INTERNATIONAL DEVELOPMENT AND THE MUTUAL AID  
AND LOAN GUARANTY FUND OF THE COUNCIL OF THE  
ENTENTE STATES FOR LIVESTOCK PRODUCTION**

Dated: 29 September 1976

Project: 626-11-130-204  
Appropriation: 72-11X1023  
Allotment: 402-60-626-00-79-51  
Fiscal Year: 1976

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<sup>1</sup> Came into force on 29 September 1976 by signature.

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GRANT AGREEMENT FOR CAPITAL ASSISTANCE dated the 29th day of September 1976 between the GOVERNMENT OF THE UNITED STATES OF AMERICA acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT (hereinafter called "A.I.D.") and the MUTUAL AID AND LOAN GUARANTY FUND OF THE COUNCIL OF THE ENTENTE STATES (hereinafter called "Entente Fund").

Whereas the Entente Fund is a regional development system composed of the five following states: Benin, Ivory Coast, Upper Volta, Niger and Togo (hereinafter called the "Member States"),

Whereas one aspect of the policy of the United States is to encourage, to promote and to assist the activities for regional economic development in Africa,

Whereas the Entente Fund has solicited the participation of the Government of the United States in a program of livestock development in the Member States,

Whereas the Government of the United States, acting through A.I.D., has approved a loan of Four Million Five Hundred Thousand United States Dollars (\$4,500,000) to the Entente Fund for livestock development in the least disadvantaged countries,

Whereas A.I.D. has approved a grant of Three Hundred Twenty-two Thousand United States Dollars (\$322,000) for the provision of technical assistance necessary for the execution of the program,

Now therefore, upon acceptance by the Entente Fund, A.I.D. hereby agrees to make a capital grant for the purposes and under the terms and conditions hereinafter set forth:

#### *Article I. GENERAL*

*Section 1.01. THE GRANT.* To assist the Entente Fund in meeting the costs of the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, hereby grants to the Entente Fund, in accordance with the terms of this Agreement, an amount not to exceed Three Million United States Dollars (\$3,000,000). This Grant may be used to finance United States Dollar costs ("Dollar Costs") and local currency costs ("Local Currency Costs") of goods and services required for the Project described herein.

*Section 1.02. THE PROJECT.* (a) The objective of the Project is to increase the availability of reasonably-priced animal protein within the Member States while also increasing the standard of living of the small livestock producers. To achieve that objective, the Project consists of aiding the Entente Fund to:

- (i) Carry out a program of technical assistance to Member States involving provision of livestock-related technical services, training, and support for programs of research and evaluation;

- (ii) Stimulate increased regional cooperation and coordination of livestock production and marketing in the Member States by means of supporting a continuing process of analysis of the regional livestock sector and facilitating exchanges of information;
- (iii) Assist in the design, financing, and implementation of Sub-projects which increase the productivity of large numbers of livestock producers or which promote the efficient marketing of livestock or meat among the Member States; and
- (iv) Encourage the Member States, by means of the combined efforts above, to apply the basic strategy of assistance to small livestock producers to other projects to the extent it proves effective and compatible with their development priorities and available resources.

(b) Proceeds of this Grant will be used by the Entente Fund to make sub-grants ("Sub-grants") in accordance with the terms of this Agreement to eligible sub-grantees, which are the Member States of Benin, Niger and Upper Volta, their semi-autonomous mixed corporations, their state corporations, their public institutions given a legal entity and financial autonomy, and their professional societies, cooperative associations or semi-private enterprises which are legally established and recommended by a Member State (hereinafter collectively referred to as "Eligible Sub-grantees" or "Sub-grantees").

(c) Sub-grant proceeds will be used by the Sub-grantees to carry out eligible livestock projects ("Sub-projects"), which shall be evidenced by and carried out in accordance with the terms of "Sub-grant Agreements", financing the foreign exchange and local currency costs of the procurement of the equipment, materials, and services required for the Sub-projects. The agreed terms and conditions of the Sub-grants and eligibility requirements and criteria for Sub-projects are stated below.

*Section 1.03. ADDITIONAL RESOURCES FOR THE PROJECT.* (a) The Entente Fund agrees to provide or cause to be provided for the Project all funds, in addition to the Grant, and all other resources required to carry out the Project effectively and in a timely manner. The resources provided by the Entente Fund for the Project will not be less than CFA 15 million annually, or more if consistent with its financial ability. In addition, the Entente Fund agrees to provide additional resources to the Member States and the eligible Sub-grantees in the nature of technical assistance, policy guidelines, coordination of activities, facts and statistics as is required to advance the Project and as is consistent with the resources available to the Entente Fund.

(b) The Entente Fund agrees to require that the Sub-grantees or the Member States in which Sub-projects are located contribute, as a minimum, 10% of the Sub-project costs as well as whatever additional funding may be required, following the termination of A.I.D. funding, for the punctual and effective carrying out and operation of the Sub-projects.

*Section 1.04. PROJECT EVALUATION.* The parties agree to establish an evaluation program as an integral part of the Project. Except as A.I.D. may otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter:

- (a) Evaluation of progress toward attainment of the objectives of the Project;

- (b) Identification and evaluation of problem areas or constraints which may inhibit such attainment;
- (c) Assessment of how such information may be used to help overcome such problems, in this or other projects;
- (d) Evaluation, to the degree feasible, of the overall development impact of the Project; and
- (e) A sector assessment.

Specific details of the evaluation program for the Project will be agreed upon at a later date by the two parties.

## *Article II. SUB-GRANT AGREEMENTS AND SUB-PROJECTS*

*Section 2.01. SUB-GRANT AGREEMENTS.* (a) Sub-grants under this Grant shall be effected by Sub-grant Agreements with each Sub-grantee. Sub-grant agreements shall be executed only for Sub-projects which have been approved pursuant to Section 2.04 below. The total amount of Sub-grants and/or Sub-loans in any one Member State shall not exceed 33 percent of the total amount of capital funds provided by A.I.D. for the Project.

(b) The terms and conditions of the Sub-grant Agreements or amendments thereto shall reflect those of this Agreement. A specimen Sub-grant Agreement shall be submitted to A.I.D. for its approval pursuant to Section 4.01(d). No Sub-grant Agreement or amendment thereto which deviates substantially from the text of the specimen Sub-grant Agreement approved by A.I.D. shall be executed without the prior approval of A.I.D.

*Section 2.02. ELIGIBLE SUB-PROJECTS.* Sub-projects financed under the Project shall be limited to those designed to test alternative ways to achieve one or more of the objectives described in Section 3.02 and must constitute either:

- (a) Livestock production projects which increase the productive capacity of large numbers of livestock producers and increase the income of the rural poor, or
- (b) Marketing/Transport projects which facilitate the effective marketing of livestock or meat among the Member States.

*Section 2.03. SUB-PROJECT CRITERIA.* (a) Sub-projects must be designed to increase the productive capacity of large numbers of traditional producers, as the primary means of expanding livestock production, or facilitate the marketing of their livestock, so as to increase the income of the rural poor.

(b) No subsidies for Sub-project inputs, including credit and feed, will be financed by Project funds, except under special circumstances, such as the demonstration of the use of these inputs or the experimentation with new methods.

(c) All goods and services to be financed by the Sub-grant must be delivered or performed and the Sub-project self-sustaining (with possible Member State support) within a maximum period of thirty-six (36) months from the date of the first disbursement under the respective Sub-grant Agreement; provided, however, that no Sub-grant Agreement shall have a terminal disbursement date which extends beyond the terminal date for disbursements under this Agreement as described in Section 7.05 herein. At the time of presentation of a Sub-project,

the Entente Fund will obtain from the Sub-grantee or the appropriate Member State satisfactory assurances that the latter will provide or obtain all funding which may be necessary beyond the period of availability of A.I.D. funding to insure achievement of the Sub-project objectives.

(d) Sub-projects shall be analyzed for potential dangers of ecological deterioration, and no Sub-project shall be approved which clearly will have major unfavorable environmental effects.

(e) Sub-projects in Benin which are eligible for financing under the Loan shall not be eligible for financing under this Grant.

(f) The Sub-project should address substantive aspects of project design such as technological packages, the role of women, input delivery, marketing and spread effects.

*Section 2.04. SUB-PROJECT APPROVAL.* (a) Prior to execution of a Sub-grant Agreement, or amendment thereto, providing funding for a Sub-project, the Entente Fund and the Member State shall ensure that all necessary plans and analyses are complete and that the Sub-project is technically and socially sound, financially and economically feasible and consonant with the objectives of this Project. Execution of a Sub-grant Agreement by the Entente Fund shall be based on and subsequent to its approval of a Sub-project proposal formally submitted to the Entente Fund by the Member State and meeting Sub-project requirements and criteria outlined in Sections 2.02 and 2.03 above.

(b) For each Sub-project, the Entente Fund at an early stage of project identification or design shall afford A.I.D. the opportunity to review the Sub-project in order that A.I.D. may inform the Entente Fund of its views as to whether the proposed Sub-project is consistent with the requirements and criteria of Sections 2.02 and 2.03 above and with any other planned or existing A.I.D. bilateral or other donor assistance activities in the Member State.

(c) Prior to the execution of a Sub-grant Agreement, or amendment thereto providing funding for a Sub-project, the Entente Fund shall (i) take into consideration A.I.D.'s views expressed pursuant to the preceding sentence and (ii) obtain A.I.D. written approval of any Sub-project involving more than one million United States Dollars (\$1,000,000) of A.I.D. funds.

### *Article III. SPECIAL COVENANTS*

*Section 3.01. THE ENTENTE FUND.* (a) The Entente Fund will organize an annual meeting with the Member States, the Sub-grantees, A.I.D. and the appropriate research institutes with the objective of facilitating exchanges of information concerning the implementation of Sub-projects financed under the Project and concerning the results obtained from other similar projects applying the same type of strategy of assistance to small livestock producers.

(b) The Entente Fund will organize the evaluations of the various Sub-projects with a view to improving the basic strategy so as to accomplish the sectoral objectives.

(c) Upon approval by A.I.D. and the execution of such Sub-grant Agreements, or any amendments thereto, the Entente Fund agrees to enforce such Agreements, as amended, in accordance with the terms thereof.

(d) The Entente Fund will coordinate technical assistance within and among the participating countries, keeping in mind both the short-term objectives of Sub-project design and implementation, and the long-term objective of developing the capacity of the Member States to identify, design, implement and evaluate projects to increase the efficiency and productivity of livestock production and marketing in the Member States for the benefit of the rural poor therein.

*Section 3.02. ENTENTE FUND AND THE MEMBER STATES.* The Entente Fund agrees, and will obtain from the Member States their agreements to support a common set of sectoral objectives which shall include, but not necessarily be limited to, the substance of the following:

- (a) To increase the efficiency and productivity of the Livestock Sector in the Member States and in doing so to place increased emphasis on the development and testing of low-cost technological improvements which can benefit small livestock producers and on developing systems by which livestock services in the Member States can provide these technological improvements to large numbers of small livestock producers at acceptable cost to the Government;
- (b) To increase the production of alternative sources of animal protein (small ruminants, poultry, pigs) as a means to augment the supply of animal protein which can be readily purchased by consumers at low cost;
- (c) To improve regional livestock marketing channels which facilitate the efficient movement of livestock and meat between the Member States;
- (d) To fully implement existing regional livestock agreements (protocols) and to study the benefits of, and approve and implement where appropriate, additional regional livestock agreements, both individually and collectively, through the mechanism of the Entente Livestock Community, or other institutions as may be appropriate, which would facilitate the achievement of the sectoral objectives described in this Agreement;
- (e) To endeavor to promote improved regional cooperation and coordination in the development of livestock policy within the Member States;
- (f) To support and promote research efforts designed to analyze the constraints to achievements of the above objectives and designed to recommend policy changes which Member States separately or collectively might take to facilitate the attainment of sectoral objectives;
- (g) To endeavor to design and implement additional projects for donor or national funding which will continue the movement toward the achievement of the objectives described above.

*Section 3.03. A.I.D.* A.I.D. will furnish to the Entente Fund an opinion of the Chief Legal Counsel of A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of A.I.D. and that it constitutes a valid and legally binding obligation of A.I.D. in accordance with all of its terms.

#### *Article IV. CONDITIONS PRECEDENT TO DISBURSEMENT*

*Section 4.01. GENERAL CONDITIONS PRECEDENT TO DISBURSEMENT.* Prior to the first disbursement or to the issuance of the first Letter of Commit-

ment under the Grant, the Entente Fund 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 Chief Legal Counsel for the Entente Fund 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 Entente Fund, and that it constitutes a valid and legally binding obligation of the Entente Fund in accordance with all its terms;
- (b) The name of the person or persons who will act as representative or representatives of the Entente Fund pursuant to Section 9.02 together with evidence of his or their authority and a specimen signature of each person;
- (c) Evidence that the Member States of Benin, Niger and Upper Volta have agreed to all of the elements of the Project as described in Section 1.02, to the Sub-project eligibility requirements and criteria contained in Sections 2.02 and 2.03, and to the sectoral objectives described in Section 3.02. A copy of a letter sent by the Entente Fund to the Member States which describes and discusses the foregoing elements, requirements, criteria, and objectives, which has been accepted by the counter-signature of the appropriate Ministers of those States, would constitute adequate evidence under this Sub-section;
- (d) A specimen Sub-grant Agreement;
- (e) A program management plan detailing (i) the responsibilities of the A.I.D.-financed Project Manager (ii) the procedures under which the proposed Sub-projects will be appraised; and (iii) the Entente Fund's plans for monitoring and evaluating overall Project and Sub-project progress;
- (f) Such other information or documents as A.I.D. may reasonably request with respect to the Project.

*Section 4.02. SPECIFIC CONDITIONS PRECEDENT TO DISBURSEMENT.* Prior to the first disbursement to any specific Sub-grantee, the Entente Fund 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 executed Sub-grant Agreement (relevant to the requested disbursement);
- (b) A certification by the Entente Fund that the conditions precedent to disbursement under the Sub-grant agreement, if any, have been met.

*Section 4.03. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT.* (a) If all the conditions specified in Section 4.01 shall not have been met within four (4) months 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 Entente Fund. Upon the giving of such notice this Agreement and all the obligations of the parties hereunder shall terminate.

(b) It is understood that after the due satisfaction of the Section 4.01 Conditions Precedent, each Sub-grantee immediately upon its fulfillment of the Section 4.02 Conditions Precedent shall be entitled, absent other considerations, to receive Grant disbursements. If no Sub-grantee shall have satisfied the Section 4.02 Conditions Precedent within twelve (12) months 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 in the manner and with the same effect as described in subparagraph (a) above.

*Section 4.04.* NOTIFICATION OF MEETING OF CONDITIONS PRECEDENT TO DISBURSEMENT. A.I.D. shall notify the Entente Fund upon determination by A.I.D. that the Conditions Precedent to disbursement specified in Sections 4.01 and 4.02 (for each individual Sub-grantee) have been met.

*Section 4.05.* CONTINUANCE OF REPRESENTATIONS AND MATERIALS FURNISHED TO SATISFY CONDITIONS PRECEDENT. Unless A.I.D. otherwise agrees in writing, the Entente Fund shall continue in force and effect for the life of this Agreement, exactly as originally made or furnished, any representation made or opinion or agreement furnished to satisfy a Condition Precedent under this Agreement.

#### *Article V.* GENERAL COVENANTS AND WARRANTIES

*Section 5.01.* EXECUTION OF PROJECT. The parties will cooperate to assure that the purpose of this Agreement will be accomplished. To this end:

(a) The parties, at the request of either, will exchange views on the progress of the Project, the performance of obligations under this Agreement and the Sub-grant agreements, the performance of any consultants, contractors or suppliers engaged for the requirements of the Project, and other matters relating to the Project; and

(b) The Entente Fund will:

- (i) Carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, schedules or other arrangements, and with any modifications therein, which may be approved by A.I.D. pursuant to this Agreement;
- (ii) Provide qualified and experienced management and such staff as may be necessary for the implementation of the Project, and cause the Project to be implemented and carried out in such manner as to assure the continuing and successful achievement of the purposes of the Project; and
- (iii) Bear the primary responsibility for fulfilling the representations, warranties and covenants herein despite the fact that the Sub-grantees may be in a direct position to effect the performance of such undertakings. Accordingly, the Entente Fund agrees to take such steps as may be reasonable, necessary and proper to insure the due and faithful performance of such undertakings by the Sub-grantees. Included among the obligations hereunder shall be the forwarding to the Sub-grantees and the enforcement thereof, the substance of various A.I.D. determinations made and Letters of Implementation issued pursuant hereto.

(c) A.I.D. will:

- (i) Carry out with due diligence and efficiency the actions required by it under this Agreement (approvals, disbursements, Letters of Commitment, etc.) for the timely implementation of the Project;
- (ii) Promptly inform the Entente Fund of any special circumstances which may cause an unusual delay.

*Section 5.02. TAXATION.* This Agreement, the Sub-grant Agreements, the Grant and the Sub-grants shall be free from any taxation or fees imposed under the laws in effect within any of the Member States. No clearly identifiable taxes, tariffs, duties or levies of any nature imposed on commodities or materials financed under the Grant shall be eligible for financing under the Grant. To the extent that (a) any contractor, including any consulting firm, any personnel of such contractor financed hereunder, and any property or transactions relating to such contracts and (b) any commodity procurement transaction financed hereunder, are not exempt from identifiable taxes, tariffs, duties, and other levies imposed under laws now or hereafter in effect in the Member States, the Entente Fund shall cause the Sub-grantee or appropriate Member State to reimburse the same with funds other than those provided under the Grant or the Sub-grantee or Member State's contribution; provided, however, that this Section 5.02 is not applicable to taxation of individual salaries of citizens or permanent residents of a Member State or to taxation of revenues of firms or corporations which are legally organized or incorporated in a Member State.

*Section 5.03. UTILIZATION OF GOODS AND SERVICES.* (a) Goods and services financed under the Grant shall be used exclusively for the Project, except as A.I.D. may otherwise agree in writing. Upon completion of the Project, or at such other time as goods financed under the Grant can no longer usefully be employed for the Project, the Entente Fund may use or dispose of such goods in such manner as A.I.D. may agree to 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 5.04. DISCLOSURE OF MATERIAL FACTS AND CIRCUMSTANCES.* The Entente Fund represents and warrants that all facts and circumstances disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Grant are accurate and complete, and there have been disclosed to A.I.D., accurately and completely, all facts and circumstances that might materially affect the Project and the discharge of the Entente Fund's obligations under this Agreement. The Entente Fund 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 Project or the discharge of the Entente Fund's obligations under this Agreement.

*Section 5.05. COMMISSIONS, FEES, AND OTHER PAYMENTS.* (a) The Entente Fund warrants and covenants that in connection with obtaining the Grant, or taking any action under or with respect to this Agreement or any Sub-grant 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, commission, fees, or other payments of any kind, except as regular compensation to the Entente Fund's full-time officers and employees or as compensation for bonafide professional, technical, or comparable services. The Entente Fund shall promptly report to A.I.D. any payment or agreement to pay for such bonafide 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 Entente Fund warrants and covenants that no payments have been or will be received by the Entente Fund, or any official of the Entente Fund, in connection with the procurement of goods and services financed hereunder, except fees, taxes, or similar payments legally established in the Member States.

*Section 5.06.* REPORTS, RECORDS, INSPECTIONS, AUDIT. The Entente Fund will:

- (a) Furnish A.I.D. a semi-annual report and such information and reports relating to the Project, to this Agreement and to the Sub-grant Agreements as A.I.D. may reasonably request;
- (b) Maintain or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating to the Project, to this Agreement and the Sub-grant Agreements adequate to show, without limitation:
  - (i) The receipt and use of goods and services acquired under the Grant;
  - (ii) The nature and extent of solicitations of prospective suppliers of goods and services acquired;
  - (iii) The basis of award of contracts and orders; and
  - (iv) The progress of the Project.

Such books and records shall be regularly audited, in accordance with sound auditing standards, and maintained for three years after the date of last disbursement by A.I.D. under this Agreement; and

- (c) Afford authorized representatives of A.I.D. the right at all reasonable times to inspect the Project, the utilization of goods and services financed under the Grant and the Sub-grants, and books, records and other documents relating to the Project, the Grant and the Sub-grants. The Entente Fund and the Member States shall each cooperate with A.I.D. to facilitate such inspection and audit, and shall permit representatives of A.I.D. to visit any part of the Member States for any purpose relating to the foregoing.

*Section 5.07.* INFORMATION AND MARKING. The Entente Fund shall give publicity to the Grant as a program of United States aid, instruct the Sub-grantees to so identify their Sub-grants and Sub-project sites and mark goods financed under the Grant, as prescribed in Implementation Letters.

*Section 5.08.* ASSIGNMENT OF CAUSE OF ACTION. The Grantee agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Entente Fund in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. dollar contract with A.I.D. financed in whole or in part out of funds granted by the United States Government under this Agreement.

#### *Article VI.* PROCUREMENT

*Section 6.01.* SOURCE AND ORIGIN OF PROCUREMENT. (a) Except as provided in subsections (b) and (c) of this Section or as A.I.D. otherwise agrees in writing, disbursements made under this Grant shall be used exclusively to finance the procurement for the Project of goods and services having both their source

and origin in the Member States or in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into therefor. Ocean shipping shall qualify as an eligible service provided the vessel furnishing the transportation is registered in any Member State or in a country included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of shipment. Not less than ten percent (10%) of the total amount of the funds obligated by A.I.D. for the Project under the present Agreement shall be used for the procurement of goods and services having both their source and origin in countries included in Code 941. For purposes of this Agreement the Member States, other than the Member State in which is located a Sub-project for which a procurement is being effected, shall be deemed to be included in Code 941.

(b) Up to \$200,000 of the total amount of Loan and Capital Grant funds obligated by A.I.D. for the Project may be disbursed for procurement of the transportation requirements of Sub-projects, including motor vehicles and spare parts. Except as otherwise agreed by A.I.D. in writing, all such funds disbursed for motor vehicles must be included in the \$200,000 limitation set forth in this Sub-section unless such motor vehicles are of United States manufacture.

(c) Up to \$200,000 of the total Project funds may be used for procurement of Sub-project related technical services having 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 or contracts entered into therefor. Procurement under this Sub-section shall be subject to prior A.I.D. approval and shall be based on criteria and procedures to be prescribed by A.I.D. in Implementation Letters.

*Section 6.02. 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 6.03. GOODS AND SERVICES NOT FINANCED UNDER THE GRANT.* Goods and services procured for the Project, 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 except as A.I.D. may otherwise agree in writing. The preceding sentence shall not apply to goods and services procured on commercial terms (including any financing thereof), provided that the procurement and use of such goods is not accompanied by any special non-commercial identification of the source or origin thereof in connection with the Project.

*Section 6.04. IMPLEMENTATION OF PROCUREMENT REQUIREMENTS.* The definitions applicable to the eligibility requirements of Sections 6.01 and 6.03 will be set forth in detail in Implementation Letters.

*Section 6.05. 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 competitive basis in accordance with procedures therefor prescribed in Implementation Letters.

*Section 6.06. SHIPPING AND INSURANCE.* (a) Goods financed under the Grant shall be transported to the Member States on flag carriers of any 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 rates for such vessels, (i) at least fifty percent (50%) of the gross tonnage of all goods financed under the Grant (computed separately for bulk carriers, dry cargo liners, and tankers) and 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 on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels.

(c) No such goods may be transported on any ocean vessel (or aircraft), (i) which A.I.D., in a notice to the Entente Fund, has designated as ineligible to carry A.I.D.-financed goods, or (ii) which has been chartered for the carriage of A.I.D.-financed goods, unless such charter has been approved by A.I.D.

(d) If in connection with the placement of marine insurance on shipments financed under the United States legislation authorizing assistance to other nations, the relevant Member State, by statute, decree, rule, or regulation, favors any marine insurance company of any country over any marine insurance company authorized to do business in any state of the United States of America, goods procured from the United States and financed under the Grant shall during the continuance of such discrimination be insured against marine risks in the United States of America with a company or companies authorized to do a marine insurance business in a state of the United States of America.

(e) The Entente Fund shall insure, or cause to be insured, all goods procured in any country included in Code 941 of the A.I.D. Geographic Code Book and financed under the Grant against risks incident to their transit to the point of their use in the Project. Such insurance shall be purchased on a competitive basis, issued upon terms and conditions consistent with sound commercial practice, shall insure the full value of the goods, and shall be payable in United States dollars or in a freely convertible currency. Any indemnification received by the Entente Fund 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 Entente Fund for the replacement or repair of such goods. Any such replacement shall be of the source and origin permissible under the terms of this Agreement and subject to the other provisions of this Agreement.

*Section 6.07. NOTIFICATION TO POTENTIAL SUPPLIERS.* In order that all United States firms shall have the opportunity to participate in furnishing goods and services to be financed under the Grant, the Entente Fund shall furnish to A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Implementation Letters.

## *Article VII. DISBURSEMENTS*

*Section 7.01. DISBURSEMENT FOR UNITED STATES DOLLAR COSTS—LETTER OF COMMITMENT TO UNITED STATES BANKS.* Upon satisfaction of conditions precedent, the Entente Fund may, from time to time, request A.I.D.:

(a) To issue Letters of Commitment for specified amounts to one or more United States banks, satisfactory to A.I.D., for dollar costs of goods and services required for the Project 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. Banking charges incurred in connection with Letters of Credit shall be eligible for financing under the Grant;

- (b) To make direct dollar payments to contractors or other suppliers of goods and services required for the Project. Payment will be made by A.I.D. upon presentation by the Fund to A.I.D. of such supporting documentation as A.I.D. may prescribe.

*Section 7.02. DISBURSEMENT FOR LOCAL CURRENCY COSTS.* Upon satisfaction of conditions precedent, the Entente Fund may, from time to time, request disbursement by A.I.D. of CFA francs or other local currency as is legal tender in the Member States for the local currency costs of goods and services required for the Project in accordance with the terms of this Agreement by submitting to A.I.D. such supporting documentation as A.I.D. may prescribe in Implementation Letters. The United States dollar equivalent of the local currency made available hereunder will be the amount of United States dollars required by A.I.D. to obtain such currency.

*Section 7.03. OTHER FORMS OF DISBURSEMENT.* Disbursement of the Grant may be also made through such other means as the Entente Fund and A.I.D. may agree to in writing.

*Section 7.04. TERMINAL DATE FOR DISBURSEMENT.* Except as A.I.D. may otherwise agree in writing, no Letter of Commitment, or other commitment documents which may be called for by another form of disbursement under Section 7.02 or 7.03, shall be issued in response to requests received by A.I.D. after fifty-four (54) months, and no disbursement shall be made against documentation received by A.I.D. or any bank described in Section 7.01 after five (5) years from the date the Entente Fund meets the Conditions Precedent to Disbursement in Section 4.01.

*Section 7.05. USE OF DISBURSEMENTS.* Any interest or other earnings on Grant funds disbursed by A.I.D. to the Entente Fund under this Agreement prior to the authorized use of such funds for the Project will be returned to A.I.D. in U.S. dollars by the Entente Fund.

#### *Article VIII. TERMINATION AND REMEDIES*

*Section 8.01. TERMINATION.* Either party may terminate this Agreement by giving the other party 30 days' written notice. Termination of this Agreement will terminate any obligations of the parties to provide financial or other resources to the Project pursuant to this Agreement, except for payments which they are committed to make pursuant to non-cancelable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at A.I.D.'s expense, direct that title to goods financed under the Grant be transferred to A.I.D. if the goods are from a source outside a Member State, are in a deliverable state and have not been offloaded in ports of entry of a Member State.

*Section 8.02. REFUNDS.* (a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies under this Agreement, may

require the Entente Fund to refund the amount of such disbursement in U.S. dollars to A.I.D. within sixty days after receipt of a request therefor. However, in the event that such disbursement was originally made in local currency and if A.I.D. determines that the amount of such refund can be used to pay the local currency costs of other goods and services approved for financing under the Grant, A.I.D. will accept such refund in local currency. The right to require such a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.

(b) Any refund under the preceding subsection, or any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Grant, which refund relates to an unreasonable price for goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will be made available first for the cost of goods and services required for the Project, to the extent justified, and the remainder, if any, will be applied to reduce the amount of the Grant.

*Section 8.03. NONWAIVER OF REMEDIES.* No delay in exercising or omission to exercise any right, power, or remedy accruing to either party under this Agreement will be construed as a waiver of any of such rights, powers or remedies.

#### *Article IX. MISCELLANEOUS*

*Section 9.01. COMMUNICATIONS.* Any notice, request, document, or other communication given, made or sent by the Entente Fund 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 Entente Fund:

Mail address:

Administrative Secretary  
Mutual Aid and Loan Guaranty Fund  
of the Council of the Entente States  
B.P. 20.824  
Abidjan, Ivory Coast

Telex address:

Entente 558

To A.I.D.:

Mail address:

Director  
West Africa Regional Economic  
Development Services Office  
American Embassy  
B.P. 1712  
Abidjan, Ivory Coast

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 or French.

*Section 9.02. REPRESENTATIVES.* For all purposes relative to this Agreement, the Entente Fund will be represented by the individual holding or acting in the office of Administrative Secretary and A.I.D. will be represented by the individual holding or acting in the office of Director, West Africa Regional Economic Development Services Office. In the event of any replacement or other designation of a representative hereunder, the Entente Fund 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 Entente Fund 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 9.03. IMPLEMENTATION LETTERS.* A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedure applicable hereunder in connection with the implementation of this Agreement.

*Section 9.04. SUCCESSORS ASSIGNMENT.* This Agreement shall be binding upon and inure to the benefit of any successor or assignee of A.I.D. This Agreement may not be assigned nor may any obligation hereunder be delegated by the Entente Fund without the written consent of A.I.D.

*Section 9.05. GOVERNING DOCUMENT.* This Agreement is prepared in both English and French languages. In the event of any ambiguity or question of interpretation of the Agreement, the English version shall be controlling.

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

The Mutual Aid and Loan Guaranty  
Fund of the Council of the Entente:

By: [*Signed — Signé*]<sup>1</sup>

Title: Acting Administrative Secretary

Date: August 31, 1976

United States of America:

By: [*Signed — Signé*]<sup>2</sup>

Title: Director, REDSO/WA

Date: September 29, 1976

<sup>1</sup> Signed by R. Mingès — Signé par R. Mingès.

<sup>2</sup> Signed by Miles G. Wedeman — Signé par Miles G. Wedeman.