

No. 19873

**UNITED STATES OF AMERICA
and
KENYA**

**Agreement on a rural roads system project (with annexes).
Signed at Nairobi on 30 September 1977**

Authentic text: English.

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

**ÉTATS-UNIS D'AMÉRIQUE
et
KENYA**

**Accord relatif à un projet de réseau routier rural (avec
annexes). Signé à Nairobi le 30 septembre 1977**

Texte authentique : anglais.

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

PROJECT AGREEMENT¹ BETWEEN THE REPUBLIC OF KENYA ("THE GOVERNMENT") AND THE UNITED STATES OF AMERICA ACTING THROUGH AGENCY FOR INTERNA- TIONAL DEVELOPMENT ("A.I.D.")—RURAL ROADS SYS- TEM PROJECT

Date: September 30, 1977

A.I.D. Project No. 615-0168
Loan No. 615-T-011

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¹ Came into force on 30 September 1977 by signature.

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PROJECT AGREEMENT dated the 30th day of September, 1977, between the REPUBLIC OF KENYA and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT.

Article 1. THE AGREEMENT

The purpose of this Agreement is to set out the understandings of the parties named above ("Parties") with respect to the undertaking by the Government of the Project described herein, and with respect to the financing of the Project by the Parties.

Article 2. THE PROJECT

Section 2.1. DEFINITION OF PROJECT. The Project, which is further described in Annex 1, which is attached to and forms part of this Agreement, will consist of the (a) construction of approximately 1,000 kilometers of all-weather access roads (the Rural Access Road or RAR component), and (b) improvement and upgrading to an all-weather standard of approximately 2,000 kilometers of secondary and minor roads (the Graveling, Bridging and Culverting or GBC component), in Western and Nyanza Provinces. A.I.D. will assist in financing, through the provision of this Assistance, the cost of the Project inputs described in Annex 1.

Annex 1, attached, amplifies the definition of the Project contained in this Section 2.1. Within the limits of the definition of the Project in this Section 2.1., elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 9.2., without formal amendment of this Agreement. Annex 1 will identify those elements of the Project for which Grant financing will be employed, and those for which Loan financing will be employed. A detailed description of the equipment to be

procured and the services to be performed will be contained in Project Implementation Letters.

Section 2.2. INCREMENTAL NATURE OF PROJECT. (a) It is anticipated that A.I.D.'s contribution to the Project will be provided in increments, the initial one being made available in accordance with Section 3.1. of this Agreement. Subsequent increments will be subject to availability of funds to A.I.D. for this purpose, and to the mutual agreement of the Parties, at the time of a subsequent increment, to proceed. It is further anticipated that A.I.D.'s overall Grant contribution to the Project will total \$1,748,000.

(b) Within the overall Project Assistance Completion Date stated in this Agreement, A.I.D., based upon consultation with the Government, may specify in Project Implementation Letters appropriate time periods for the utilization of funds granted by A.I.D. under an individual increment of assistance.

Article 3. FINANCING

Section 3.1. THE LOAN; THE GRANT. To assist the Government to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to lend the Government under the terms of this Agreement a sum not to exceed Thirteen Million United States ("U.S.") Dollars (\$13,000,000) ("Loan") and to grant the Government under the terms of this Agreement not to exceed Four Hundred Thousand U.S. Dollars (\$400,000) ("Grant"). The aggregate amount of disbursements under the Loan is referred to as "Principal". The Loan and the Grant together are referred to as the "Assistance".

The Loan may be used to finance foreign exchange costs, as defined in Section 7.1., and local currency costs, as defined in Section 7.2., of goods and services required for the Loan financed component of the Project described in Section 2.1. The Grant may be used to finance foreign exchange and local currency costs of services required for the Grant financed component of the Project described in Sections 2.1 and 2.2.

Section 3.2. COOPERATING COUNTRY RESOURCES FOR THE PROJECT. (a) The Government agrees to provide or cause to be provided for the Project all funds, in addition to the Assistance, and all other resources required to carry out the Project effectively and in a timely manner.

(b) The resources provided by the Government for the Project will be not less than 25 percent of the total project costs, including costs borne on an "in-kind" basis. The Government's contribution is currently estimated to be U.S. \$6.5 million.

Section 3.3. PROJECT ASSISTANCE COMPLETION DATE. (a) The "Project Assistance Completion Date" (PACD), which is February 29, 1984, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the Assistance will have been performed and all goods financed under the Assistance will have been furnished for the Project as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the Assistance for services performed subsequent to the PACD or for goods furnished for the Project, as contemplated in this Agreement, subsequent to the PACD.

(c) Requests for disbursement accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in Section 8.1. no later than three (3) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Government, may at any time or times reduce the amount of the Assistance by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

Article 4. LOAN TERMS

Section 4.1. INTEREST. The Government will pay to A.I.D. interest which will accrue at the rate of two percent (2%) per annum for ten years following the date of the first disbursement of the Loan hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance will accrue from the date (as defined in Section 8.5) of each respective disbursement, and will be payable no later than six (6) months after the first disbursement of the Loan hereunder, on a date to be specified by A.I.D.

Section 4.2. REPAYMENT. The Government will repay to A.I.D. the Principal within forty (40) years from the date of the first disbursement of the Loan in sixty-one (61) approximately equal semi-annual installments of Principal and interest. The first installment of Principal will be payable nine and one-half (9-1/2) years after the date on which the first interest payment is due in accordance with Section 4.1. A.I.D. will provide the Government with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

Section 4.3. APPLICATION, CURRENCY, AND PLACE OF PAYMENT. All payments of interest and Principal hereunder will be made in U.S. Dollars and will be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, payments will be made to the Controller, Office of Financial Management, Agency for International Development, Washington, D.C. 20523, U.S.A. and will be deemed made when received by the Office of Financial Management.

Section 4.4. PREPAYMENT. Upon payment of all interest and any refunds then due, the Government may prepay, without penalty, all or any part of the Principal. Unless A.I.D. otherwise agrees in writing, any such prepayment will be applied to the installments of Principal in the inverse order of their maturity.

Section 4.5. RENEGOTIATION OF TERMS. (a) The Government and A.I.D. agree to negotiate, at such time or times as either may request, an acceleration of the repayment of the Loan in the event that there is any significant and continuing improvement in the internal and external economic and financial position and prospects of Kenya, which enable the Government to repay the Loan on a shorter schedule.

(b) Any request by either Party to the other to so negotiate will be made pursuant to Section 9.1., and will give the name and address of the person or persons who will represent the requesting Party in such negotiations.

(c) Within thirty (30) days after delivery of a request to negotiate, the requested Party will communicate to the other, pursuant to Section 9.1., the name

and address of the person or persons who will represent the requested Party in such negotiations.

(d) The representatives of the Parties will meet to carry on negotiations no later than thirty (30) days after delivery of the requested Party's communication under Sub-section (c). The negotiations will take place at a location mutually agreed upon by the representatives of the Parties, provided that, in the absence of mutual agreement, the negotiations will take place at the office of the Government's Ministry of Finance and Planning in Kenya.

Section 4.6. TERMINATION ON FULL PAYMENT. Upon payment in full of the Principal and any accrued interest, this Agreement and all obligations of the Government and A.I.D. relating to the Loan provisions of this Agreement will cease. However, with respect to any obligations arising out of the expenditure of Grant funds, this Agreement will remain in full force and effect.

Article 5. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 5.1. FIRST DISBURSEMENT. Prior to the first disbursement of the Assistance, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Government will, 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 counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Government and that it constitutes a valid and legally binding obligation of the Government in accordance with all of its terms;
- (b) A statement of the name of the person holding or acting in the office of the Government specified in Section 9.2., and of any additional representatives, together with a specimen signature of each person specified in such statement.

Section 5.2. ADDITIONAL DISBURSEMENT—GRAVELLING, BRIDGING AND CULVERTING COMPONENT. Prior to the first disbursement of the Grant for engineering services for the GBC component, the Government will, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D., an executed contract for engineering and maintenance technical services, or, in the event the Government desires A.I.D. to act on its behalf to initiate the procurement of these services, a written request by the representative specified in Section 9.2. for A.I.D. to so act.

Section 5.3. ADDITIONAL DISBURSEMENT—RURAL ACCESS ROAD COMPONENT. Prior to any disbursement, or the issuance of any commitment documents under the Project Agreement for the RAR component of the Project, the Government shall furnish in form and substance satisfactory to A.I.D., documentary evidence that it will provide the requisite engineering services, and that these services will be available on a timely basis, for the RAR component of the Project.

Section 5.4. NOTIFICATION. When A.I.D. has determined that the conditions precedent specified in Sections 5.1., 5.2. and 5.3. have been met, it will promptly notify the Government.

Section 5.5. TERMINAL DATES FOR CONDITIONS PRECEDENT. (a) If all of the conditions specified in Section 5.1. have not been met within 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 written notice to the Government.

(b) If the conditions specified in Sections 5.2. and 5.3. have not been met within 120 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 cancel the then undisbursed balance of the Assistance, to the extent not irrevocably committed to third parties, and may terminate this Agreement by written notice to the Government. In the event of such termination, the Government will repay immediately the Principal then outstanding and any accrued interest; on receipt of such payments in full, this Agreement and all obligations of the Parties hereunder will terminate, except with respect to any obligations arising out of the expenditure of Grant funds.

Article 6. SPECIAL COVENANTS

Section 6.1. PROJECT EVALUATION. The Parties agree to implement, as part of the Project, the evaluation program described in Annex 1, elements of which may be changed by written agreement of the authorized representatives of the Parties named in Section 9.2, without formal amendment of this Agreement.

Section 6.2. ROAD SELECTION. (a) The Government covenants that road selection for both the GBC and RAR components of the Project will be made in accordance with the procedures and criteria set forth in Annex 1 of this Agreement. These procedures and criteria may be modified by written agreement of the authorized representatives of the Parties named in Section 9.2. without formal amendment of this Agreement.

(b) The Government covenants that it will submit, with regard to the Rural Access Road component of this Project, an Evaluation Report of the roads selected for construction which will have, as one of its objectives, the demonstration that road selection procedures and criteria have been complied with. The report will contain cost/benefit analyses of the selected roads and analyses of the economic development effects of the proposed roads. More specific details as to the content of this report as well as the timing for submission to A.I.D. will be given in Project Implementation Letters (PIL's); however, the report will be required to be submitted to A.I.D. for its approval prior to commencement of work on the roads which are the subject of the report. Unless otherwise agreed to in writing by A.I.D., no reimbursement under the RAR component will be made for any road which is not included in an approved Evaluation Report.

(c) Unless otherwise agreed to by the Parties in writing, the Parties covenant to prepare an environmental examination of each road package proposed to be constructed as part of the RAR component. This examination will be included in the Evaluation Report submitted by the Government in accordance with paragraph (b), above. It is understood by the Parties that, in the event the environmental examination reveals that a proposed road package will have a significant environmental impact, a formal environmental assessment will be required in order for the proposed road package to be eligible for financing by A.I.D. under this Agreement. Project Implementation Letters will more fully define the requirements contained in this covenant, including the format, procedures, and environmental standards to be used in implementing this covenant.

(d) The Government covenants that it will submit for A.I.D. review and approval annual work plans for the GBC component of the Project. Such work plans will be submitted on dates agreed upon in PIL's and will be adequate to identify, at least:

(i) Planned roads for upgrading and/or rehabilitating;

- (ii) Types of planned upgrading and/or rehabilitating;
- (iii) Sequence of the work to be undertaken;
- (iv) Plan(s) for evaluation; and
- (v) That selection criteria and procedures have been followed.

More specific guidance as to the scope and content of these work plans will be the subject of subsequent Project Implementation Letters.

Unless otherwise agreed to by A.I.D., the initial work plan for the GBC component of the Project will be submitted prior to the commencement of the work under the GBC component of the Project.

Section 6.3. MANPOWER TRAINING. (a) The Government covenants to provide, for both components of the Project, trained personnel adequate to upgrade, construct and maintain the roadwork financed by A.I.D. without detracting from non-A.I.D. financed roadwork and maintenance being undertaken, or projected to be undertaken, elsewhere in Kenya.

(b) The Government covenants, in order to achieve the purposes in paragraph (a) above, to expand its existing training facilities for skilled construction and maintenance personnel so as to meet the requirements of this Project and other, non-A.I.D. financed, roads projects. Any adjustments necessary in the training program will be subject to agreement at the time of the required annual evaluations.

(c) The Government covenants that it will submit to A.I.D., at dates and in a form to be specified by A.I.D. in PIL's, reports adequate to demonstrate, *inter alia*, how the personnel requirements of this Project are being satisfied.

Section 6.4. PROJECT FUNDING. The Government covenants that it will supply funding adequate for the continued support of roads construction and maintenance work in the A.I.D. project area in addition to meeting other present and projected construction and maintenance requirements.

Section 6.5. ROAD MAINTENANCE. (a) The Government covenants that it will provide all personnel and funds required, and take all actions necessary to maintain the roads upgraded or constructed by this Project. To this end, appropriate officials of the Ministry of Works will discuss with A.I.D. representatives, at intervals which will be set forth in PIL's, proposed maintenance plans and procedures, including the frequency of road maintenance efforts. The results of these discussions, in the form of maintenance work plans, will be the subject of subsequent Implementation Letters.

(b) The Government covenants that it will submit reports, as required by PIL's, which will assess the work undertaken pursuant to the Pilot Maintenance Program described in Annex 1 and which will describe the extent to which the recommendations of this program have been, or will be, implemented and integrated into the Ministry of Works' overall existing maintenance program.

Section 6.6. GBC SPARE PARTS PROCUREMENT. The Government covenants that it will establish an appropriate, timely and effective system for procuring and transporting spare parts provided in the A.I.D. Project and that it will establish a separate warehouse for storage of spare parts provided in the A.I.D. Project. To this end, the Government will submit, prior to the arrival in Kenya of the first shipment of A.I.D. project equipment, a plan satisfactory to A.I.D. which describes in detail the proposed procurement, storage, and transportation system.

Section 6.7. RAR EQUIPMENT. The Government covenants that, except as A.I.D. may otherwise agree in writing, all equipment required for construction under the RAR component which the Government is providing as part of its contribution to the Project, will be procured and in Kenya within four months after execution of the Project Agreement. The Government will covenant to have equipment for each RAR unit on the construction site in accordance with a schedule to be mutually agreed upon in PIL's.

Article 7. PROCUREMENT SOURCE

Section 7.1. FOREIGN EXCHANGE COSTS. Disbursement pursuant to Section 8.1. ("Foreign Exchange Costs") will be used exclusively to finance the costs of goods and services required for the Project and meeting the following source and origin requirements, except as A.I.D. may otherwise agree to in writing and except as provided in the Standard Provisions Annex, Article C, with respect to Marine Insurance, motor vehicle procurement, and Grant financed air transportation:

- (a) Except for ocean shipping, equipment and other goods and services financed under the Loan will have their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book in effect at the time orders are placed or contracts entered into for such goods or services;
- (b) Goods and services financed under the Grant will have their source and origin in the United States (Code 000 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods or services);
- (c) Ocean shipping financed under the Loan shall be procured from any country included in Code 941 of the A.I.D. Geographic Code Book in effect at the time contracts are entered into for such services. The requirements and limitations for such financing are more fully explained in Section C.6. of Annex 2.

Section 7.2. LOCAL CURRENCY COSTS. Disbursements pursuant to Section 8.2. will be used exclusively to finance the costs of goods and services required for the Project having their source and, except as A.I.D. may otherwise agree in writing, their origin in Kenya ("Local Currency Costs"). To the extent provided for under this Agreement, Local Currency Costs may also include the provision of local currency resources required for the Project.

Article 8. DISBURSEMENTS

Section 8.1. DISBURSEMENT FOR FOREIGN EXCHANGE COSTS. (a) After satisfaction of conditions precedent, the Government may obtain disbursements of funds under the Loan or the Grant for the Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of the Agreement, by such of the following methods as may be mutually agreed upon:

- (1) By submitting to A.I.D. with necessary supporting documentation as prescribed in Project Implementation Letters, (a) requests for reimbursement for such goods or services, or (b) requests for A.I.D. to procure or finance the procurement of commodities or services in the Government's behalf for the Project; or
- (2) By requesting A.I.D. to issue Letters of Commitment for specified amounts (a) to one or more U.S. 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, under Letters of Credit or otherwise, for such goods or services, or (b) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers for such goods or services.

- (3) Banking charges incurred by the Government in connection with Letters of Commitment and Letters of Credit incident to the Loan will be financed under the Loan unless the Government instructs A.I.D. to the contrary. Such other charges, incident to the Loan, as the Parties may agree to may also be financed under the Loan.

Section 8.2. DISBURSEMENT FOR LOCAL CURRENCY COSTS. (a) After satisfaction of conditions precedent, the Government may obtain disbursement of funds under the Loan or the Grant for Local Currency Costs required for the Project in accordance with the terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursement hereunder may be obtained:

- (1) By acquisition by A.I.D. with U.S. dollars by purchase;
- (2) By A.I.D. (a) requesting the Government to make available the local currency for such costs, and (b) thereafter making available to the Government through the opening or amendment by A.I.D. of Special Letters of Credit in favor of the Government or its designee, an amount of U.S. dollars equivalent to the amount of local currency made available by the Government which dollars will be utilized for procurement from the United States under appropriate procedures described in Project Implementation Letters;
- (3) By such other means as the Parties may agree to in writing.

The U.S. dollar equivalent of the local currency made available hereunder will be, in the case of Sub-section (b) (1) above, the amount of U.S. dollars required by A.I.D. to obtain the local currency, and in the case of Sub-section (b) (2) above, an amount calculated at the rate of exchange specified in the applicable Special Letter of Credit Implementation memorandum hereunder as of the date of opening or amendment of the applicable Special Letter of Credit.

Section 8.3. OTHER FORMS OF DISBURSEMENT. Disbursements of the Loan or the Grant may also be made through such other means as the Parties may agree to in writing.

Section 8.4. RATE OF EXCHANGE. Except as may be more specifically provided under Section 8.2., if funds provided under the Loan or the Grant are introduced into Kenya by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Government will make such arrangements as may be necessary so that such funds may be converted into currency of Kenya at the highest rate of exchange which, at the time the conversion is made, is not unlawful in Kenya.

Section 8.5. DATE OF DISBURSEMENT. Disbursements of the Loan by A.I.D. will be deemed to occur (a) on the date on which A.I.D. makes a disbursement to the Government or its designee, or to a bank, contractor or supplier pursuant to a Letter of Commitment, contract or purchase order; (b) on the date on which A.I.D. disburses to the Government or its designee local currency

acquired in accordance with Section 8.2. (b) (1); or (c) if local currency is obtained in accordance with Section 8.2. (b) (2), on the date on which A.I.D. opens or amends the Special Letter of Credit there referred to.

Article 9. MISCELLANEOUS

Section 9.1. COMMUNICATIONS. Any notice, request, document or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such Party at the following address:

To the Government of Kenya:

Mail address:

Permanent Secretary
Ministry of Finance and Planning
Post Office Box 30007
Nairobi, Kenya

Address for cables:

FINANCE, Nairobi, Kenya

To A.I.D.:

Mail address:

Director
U.S.A.I.D. Mission to Kenya
Post Office Box 30261
Nairobi, Kenya

Address for cables:

USAID, AMEMBASSY, Nairobi

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

Section 9.2. REPRESENTATIVES. For all purposes relevant to this Agreement, the Government will be represented by the individual holding or acting in the office of Permanent Secretary, Ministry of Finance and Planning, and A.I.D. will be represented by the individual holding or acting in the office of the Director, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1. to revise elements of the amplified description in Annex 1. The names of the representatives of the Government with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

Section 9.3. STANDARD PROVISIONS ANNEX. A "Combined Loan and Grant Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

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

Republic of Kenya:

By: [Signed — Signé]¹

*Title: Deputy Permanent Secretary
Ministry of Finance and Planning*

United States of America:

By: [Signed — Signé]²

Title: Ambassador to Kenya

Appropriation: 72-11×1023

Allotment:	402-50-615-00-69-71	\$ 400,000
	402-61-615-00-68-71	\$13,000,000

ANNEX 1

AMPLIFIED PROJECT DESCRIPTION

This amplified project description elaborates on the description provided in Section 2.1. of this Agreement. Except as may be specifically limited in this Annex, elements of the amplified description may be changed by written agreement of the authorized representative of the Parties named in Section 9.2. without formal amendment of this Agreement provided that any such change is made within the limits of the definition of the Project as set forth in Section 2.1.

A. *The Project*

The Kenya Rural Roads System Project consists of a Gravelling, Bridging and Culverting (GBC) component and a Rural Access Road (RAR) component. The A.I.D. Loan will assist in financing for the RAR component, not less than eight labor-intensive construction units, which will construct, in general, from existing tracks and rights-of-way, approximately 1,000 kms. of all-weather rural access roads in Western and Nyanza Provinces. The A.I.D. Loan will be used to finance the local costs of this construction while the Government will assume the foreign exchange cost of equipment for the RAR component. Under the GBC component, the A.I.D. Loan will be used to finance imports of U.S. capital equipment (and procurement services), construction materials, and spare parts necessary to equip, operate and maintain one construction unit to function within the GBC program of the Government's Ministry of Works (the Ministry or MOW). The construction unit will be used to upgrade approximately 2,000 kms. of secondary and minor roads in Western and/or Nyanza Provinces to an all-weather standard. This unit is a companion to the construction unit financed under the Kenya Roads Gravelling Loan.

The Project will, additionally, finance with Grant funds the services of: (a) a deputy project engineer who will work at the Ministry's Special Projects Branch, and a construc-

¹ Signed by Harrison Mule — Signé par Harrison Mule.

² Signed by Wilbert J. Le Melle — Signé par Wilbert J. Le Melle.

tion superintendent and maintenance mechanic who will both work with the A.I.D.-provided gravelling unit, (b) a road engineer to design and test a pilot maintenance scheme applicable to but not limited to the project area, including the area encompassed by the A.I.D.-financed Kenya Roads Gravelling Project, and (c) subject to later agreement as to procedures, an evaluation of the Rural Roads System Program which would measure, in part, the economic, social and environmental effects of improved roads on rural residents in the A.I.D. project area.

B. Road Selection Procedures and Criteria—GBC Component

Primary responsibility for the implementation of the procedures for the selection of roads to be upgraded under this Project will rest with the Ministry. The following system of procedures and criteria developed by the Ministry and A.I.D. identifies and assigns priorities for the construction unit. The system selects secondary and minor roads which require improvement and are economically feasible and/or associated with local development projects. This selection process includes the MOW's evaluation of technical and economic criteria, as well as allowing for formal consultation between the MOW and the District Development Committees (DDC) which are the local planning bodies in the project area. The selection procedure and criteria are as follows:

Step One

The MOW examines existing data and establishes a list of candidate roads. Supplemental data may be obtained from the DDC or traffic counts and surveys may be conducted by the Ministry. Phase data will relate to road conditions, soil types and traffic levels.

Criteria

Non-all-weather links that are impassable during the year, which provide increased access to relatively isolated rural areas, which are in areas where local inhabitants give high priority to road improvement, and which (a) have average traffic levels greater than or equal to 20 ADT on good or fair soils, (b) have average traffic levels less than 20 ADT on good or fair soils and which connect to rural development project areas or all-weather roads on good or fair soils, (c) have traffic levels greater than 20 ADT on poor soils which connect in rural development project areas, and (d) all of above roads with gradients of 8 percent or more.

Step Two

MOW conducts an inspection of the candidate road list to determine the actual type of improvements needed.

Criteria

(a) Spot improvement when, on an average, 25 percent or less of the road links are impassable, when this procedure is technically feasible and when the average ADT is between 20 and 70, (b) construction to MOW standard road (5.5 meter surface with 1.25 meter shoulders) where the ADT is greater than or equal to 70, and (c) built to MOW standards with bituminous seal on steep grades of 8 percent or more on sections with intense rainfall and where the ADT is greater than or equal to 60.

Step Three

The MOW submits the list to the DDC for their review and verification and to include other priority roads which in their view were not included in the list.

Criteria

- (a) Local knowledge of road conditions;
- (b) Local knowledge of present and planned rural development activities; and
- (c) Local knowledge of present and future traffic levels.

Step Four

The MOW will prepare a final short list on the basis of the DDC's comments. This list will become the final "candidate roads" list.

Criteria

- (a) Availability of funds;
- (b) The output capacity of MOW.

Step Five

From this short list, the MOW develops an annual program of work for the GBC units.

Criteria

Select base area and subsequent work areas as those which have the largest percentage of highest priority roads (see Step One above) and which minimize necessary movement of the units.

Step Six

The MOW will submit the annual work plans to USAID for review and approval prior to the commencement of work on the applicable roads. (*Note:* The annual program is actually projected for eighteen months.)

The traffic levels used for the above described selection process should be the future traffic in the opening year of the road. This traffic should include an allowance of 8 percent per year for growth from the last traffic count and 10 ADT for each significant development project to which the road is directly linked (to be verified by evaluation). This would include a rural access road project, a health center or agricultural training center, or any other project that can be expected to generate some traffic.

C. Roads Selection Procedures and Criteria—RAR Component

The Government has placed major responsibility for the selection of the rural access roads to be constructed with the local DDC of the districts in which the roads are planned. The respective DDC selects the roads to be improved within the framework of the district's annual program and Ministry guidelines relating to objectives, function, terrain, length, etc. In particular, road selection criteria and procedures are as follows:

Initial Selection Criteria and Procedure

As a first step in the planning procedure for selecting access roads, each DDC is required to select a total of 600 kms. of rural access roads and identify 90 to 100 kms. which it considers to be of the highest priority. The DDC will develop information following specific MOW instructions on the physical characteristics of the roads and the areas that they serve. In making its selection, the DDC will use the following guidelines:

- (a) Roads should be in general between 5 and 10 kms. long;
- (b) They should directly serve underdeveloped areas having agricultural potential or areas where they may be expected to bring about a change from a subsistence to cash crop farming;
- (c) They must not be constructed in areas which already have reasonable access to existing roads;
- (d) They should benefit the small farmer who has a land holding of three hectares or less;
- (e) They should benefit as many people as possible by passing through high population areas or should pass through areas of low population where the population may be expected to increase as a result of migration;

- (f) They should avoid, if possible, areas of predominantly black cotton soil;
- (g) They should be preferably unclassified earth tracks; and
- (h) They should provide access to social service and health facilities.

The District Agricultural Officer will provide land use data, crop and livestock information, off-farm sales figures, number of hectares of cultivated area to be serviced by the proposed road project, availability of agricultural services, market potential and other relevant information.

Evaluation Procedure

The MOW then, on the basis of this data and the District Development Plan, will assess the probable impact of the proposed access roads on the development of the area it serves, and will prepare an initial Evaluation Report. The purpose of this Evaluation Report of the road package selected by the DDC's is to make possible an inter-district appraisal to determine priorities between districts and to obtain financing from donor agencies by providing them with information about the program. The report actually evaluates a package of roads, not specific roads. At this stage in eligibility screening, the proposed roads must fulfill the following MOW criteria:

- (a) The road proposed for construction must connect to an all-weather road which, in turn, leads to a marketing center. The purpose of this requirement is to insure that the anticipated agricultural benefits attributed to the Project will be maximized;
- (b) The distance requiring improvement should generally not exceed 10 kms.;
- (c) The proposed route must serve an average farm density of 20 farms per km. Using the projected average construction cost of about \$6,200 per km., this is the minimum number of farms which assures a favorable cost/benefit ratio, based on available information to date; and
- (d) The proposed route improvement should serve a zone of influence which has a significant agricultural potential—this criteria encourages a preliminary appraisal of the general economic potential of the sub-project area.

Final Selection Criteria

If the DDC road proposals have passed the above eligibility screening, they are then subjected to a further and final review to insure their financial and economic viability:

(a) The MOW is responsible for determining the technical feasibility of constructing the DDC road package. This involves on-site inspections and consideration of the following factors:

- (i) Necessary changes in road alignment;
- (ii) Necessary structures (bridges, culverts);
- (iii) Nature of soils to be excavated;
- (iv) Extent of necessary excavation of rock and conglomerate;
- (v) Amount of earth to be removed;
- (vi) Appropriate method of road improvement; and
- (vii) Construction period.

(b) The road packages which are determined to be technically feasible to construct will be subject to an economic analysis by an MOW economist. The economist will undertake the preparation of the final Evaluation Report which will include a technically and economically reasonable estimate of road induced benefits and costs associated with each road package under consideration. The report will contain a computation of Project benefits on a "with and without" Project basis. The internal rate of return will be calculated for the net benefits of each road package (cluster of roads under consideration) over a

period of 20 years. A comprehensive analysis of non-quantifiable benefits will be required for any road cluster failing to achieve an internal rate of return of at least 10 percent.

The Evaluation Report will further include an environmental examination of each road package, pursuant to Section 6.2.(c) of the Agreement.

The Evaluation Reports will be submitted to the USAID for review and approval on the roads evaluated in the reports.

D. *Pilot Maintenance Program*

To assist the MOW in revising its maintenance procedures for low class roads and in developing an appropriate system for maintaining the RAR and GBC component roads, A.I.D. will provide Grant financing to MOW for one road engineer for approximately five years to work within the MOW to design and manage a pilot maintenance scheme in the project area. The scheme will attempt to maximize the use of labor-intensive methods and minimize recurrent financial costs to the Government where practical. The scheme is expected to result in actions being taken by the MOW that will lead to savings of resources on one hand and improved maintenance on the other. The basic concept of the pilot scheme is to convert over a period of time the existing permanent MOW labor force to a locally hired casual labor force.

E. *Evaluation*

Subject to subsequent modification in Project Implementation Letters, annual evaluations will be undertaken commencing twelve (12) months from the date of satisfaction of initial Conditions Precedent. The initial evaluation will focus on the implementation phase of the Project, a review of performance to date and whether any actions are required to head off problems that could arise at a later date. The initial evaluation will also review with the Ministry the baseline data that is being collected under their GBC/RAR selection criteria to ensure it is adequate for future evaluations.

The annual evaluations will be broken down into two parts: engineering, which will be the primary responsibility of the USAID Project Manager (Engineer), and the economic, social and environmental evaluation, which may require outside consultant expertise.

The engineering evaluation will measure progress against input and output indicators which will appear in a subsequent Implementation Letter. It will determine whether adequate human and financial resources are being made available by the Government, equipment utilization, adequacy of cost projections, meeting of construction schedules, etc., all in the light of achieving all-weather access. The engineering/financial evaluation will evaluate the need for a revision of RAR costs *vis-à-vis* Fixed Amount Reimbursement (FAR) arrangements.

The economic, social and environmental evaluation will determine if the forecast benefits are being achieved, the distribution of these benefits between farmers, traders and consumers, and whether distribution could be improved, the level of local participation in the Project and the degree of coordination of A.I.D. programs and other Government rural development programs.

After one year of GBC construction/improvement, the annual evaluation will, in addition to standard engineering and economic evaluations listed above, focus on the construction methodology itself. Combining experience gained from CIDA and the A.I.D. GBC units, it is expected that a comprehensive evaluation of the effectiveness of the spot improvement methodology can be undertaken in order to determine if the A.I.D. financed GBC unit should continue to focus most of its work on spot improvements or if the unit should concentrate on full length gravelling. This evaluation will need to consider the engineering realities encountered on the roads already improved with spot gravelling as well as the economic benefits and costs associated with various improvement methodologies.

Private socio-economic consultants may be required to test the hypothesis that the rural roads proposed for financing under this program have a direct economic impact on the target group.

The fact that the project area also contains significant inputs from other Government and donor agriculture programs aimed specifically at small farmers enhances the value of such an evaluation. In most instances, the A.I.D. roads program will be coordinated with these agricultural programs. However, road construction will also be carried out in some locations where these other programs will not yet be operating, thus affording the opportunity to determine the importance of rural roads in the development equation.

The USAID's Roads Graveling Loan commits \$200,000 in Grant assistance for a three-year evaluation effort to assess the performance of the GBC unit being funded under that Loan, as well as to determine benefits generated and whether they in fact reach the intended beneficiary—the low income agricultural producer. This proposed Project adds a further \$400,000 to extend the evaluation to roads constructed under integrated RAR/GBC activities. The latter amount will be used to conduct a comprehensive evaluation of this Project, in coordination with the evaluation of the Roads Graveling Loan, and may be carried out through a host country contract with a U.S. consulting firm. (Prior to committing funds to a private consulting firm, the MOW and USAID will consult to determine the feasibility of a joint evaluation with other donor agencies.) The consultant, if appointed, will assist the GOK in designing the evaluation scope of work and will conduct the evaluation using annual short-term visits to Kenya by home office personnel. Full-time Kenyan field personnel will be provided either through direct hiring or a sub-contract with a local organization to gather the necessary baseline data at the district level. In order to assess the impact on the target population of rural roads construction, field data will be gathered and tabulated to establish baseline information in areas which include: employment, technology, standard of living, production, transportation costs, marketing, and accessibility of social, educational and health services.

A more detailed design of the evaluation activities broadly described herein and the obligations of the Parties with regard to these activities, will be the subject of Project Implementation Letters.

F. Financial Plan and Procedures

Table I below indicates, by Project component, the contribution to the Project presently contemplated by the Parties. The financial plan represented by Table I is subject to change by the representatives named in Section 9.3. without formal amendment of the Agreement provided that such changes do not cause (a) A.I.D.'s Grant and Loan contributions to the Project to exceed the amounts stated therefor in Section 3.1., or (b) the Government's contribution to the Project to be less than the amount stated therefor in Section 3.2.(b). Shifting of funds between line items within each Project component which has the effect of increasing or decreasing a particular line item by more than 15 percent from the amount stated in Table I, may be undertaken only with the prior written agreement of the aforementioned representatives.

G. Disbursement Procedures

Generally, the foreign exchange element of the Loan financed GBC component will be disbursed in a manner similar to that of the Kenya Roads Graveling Project. A more detailed discussion will be found in subsequent PIL's.

The Fixed Amount Reimbursement (FAR) method will be used for the local construction costs of the RAR component. A more detailed analysis of this disbursement mechanism may, also, be found in subsequent PIL's but, basically, it is understood that A.I.D. will reimburse to the Government the Kenya Shilling equivalent of \$4,762 per each km. of all-weather rural access road completed. A.I.D. will reimburse only for a completed

all-weather rural access road. Completed segments of a road will not be considered for reimbursement. It is recognized that different roads constructed over different terrain will require various levels of construction inputs to reach an all-weather standard. A.I.D.'s reimbursement at the fixed per kilometer rate will be based on a road meeting an all-weather standard, not on the investment required for the particular road. The Evaluation Report, approved by A.I.D. prior to construction, will identify each road to be constructed and which is eligible for reimbursement.

Table I

ILLUSTRATIVE FINANCIAL PLAN

	AID	GOK	Total
<i>Loan Program</i>			
A. Rural access roads			
TOTAL	\$ 4,450,000	\$1,619,000	\$ 6,069,000
B. Gravelling, bridging, culverting			
1. Equipment and spare parts	5,890,000	—	5,890,000
2. Construction materials	2,225,000	400,000	2,625,000
3. Procurement services	435,000	—	435,000
4. Labor	—	1,200,000	1,200,000
5. POL	—	1,650,000	1,650,000
6. Equipment maintenance	—	200,000	200,000
7. Camp operations	—	300,000	300,000
8. Bridge construction	—	800,000	800,000
9. Equipment transportation	—	200,000	200,000
10. Provincial Headquarters construction ...	—	100,000	100,000
TOTAL	8,550,000	4,850,000	13,400,000
TOTAL LOAN PROGRAM (A + B)	\$13,000,000	\$6,469,000	\$19,469,000
<i>Grant Program</i>			
Engineering T/A—Evaluation services	400,000	—	400,000
TOTAL GRANT PROGRAM	400,000*	—	400,000
TOTAL PROGRAM	\$13,400,000	\$6,469,000	\$19,869,000

* First Increment to Grant Program. Refer to Section 2.2 of Project Agreement. It is anticipated that AID's overall Grant Contribution to the Project will total \$1,748,000. [Footnote in the original.]

ANNEX 2

COMBINED LOAN AND GRANT PROJECT STANDARD PROVISIONS ANNEX

Definitions. As used in this Annex, the "Agreement" refers to the Loan and Grant Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

Article A. PROJECT IMPLEMENTATION LETTERS

To assist the Government in the implementation of the Project, A.I.D., from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The Parties may also use jointly agreed upon Project

Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in Annex 1.

Article B. GENERAL COVENANTS

Section B.1. CONSULTATION. The Parties will cooperate to assure that the purpose of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on the progress of the Project, the performance of obligations under this Agreement, the performance of any consultants, contractors or suppliers engaged on the Project, and other matters relating to the Project.

Section B.2. EXECUTION OF PROJECT. The Government will:

- (a) 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, contracts, schedules, or other arrangement, and with any modifications therein, approved by A.I.D. pursuant to this Agreement; and
- (b) Provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

Section B.3. UTILIZATION OF GOODS AND SERVICES. (a) Any resources financed under the Assistance will, unless otherwise agreed in writing by A.I.D., be devoted to the Project until the completion of the Project, and thereafter will be used so as to further objectives sought in carrying out the Project.

(b) Goods or services financed under the Assistance, except as A.I.D. may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section B.4. TAXATION. (a) This Agreement, and the Assistance will be free from, and the Principal and interest will be paid free from, any taxation or fees imposed under laws in effect in Kenya.

(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Assistance, and any property or transaction relating to such contracts, and (2) any commodity procurement transaction financed under the Assistance, are not exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in Kenya, the Government will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Assistance.

Section B.5. REPORTS, RECORDS, INSPECTIONS, AUDIT. The Government will:

- (a) Furnish A.I.D. such information and reports relating to the Project and to this Agreement as A.I.D. may reasonably request;
- (b) Maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show, without limitation, the receipt and use of goods and services acquired under the Assistance. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and service acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and

- (c) Afford authorized representatives of a Party the opportunity at all reasonable times to inspect the Project, the utilization of goods and services financed by such Party, and books, records and other documents relating to the Project and the Assistance.

Section B.6. COMPLETION OF INFORMATION. The Government confirms:

- (a) That the facts and circumstances of which it has informed A.I.D., or caused A.I.D. to be informed, in the course of reaching agreement with A.I.D. on the Assistance, are accurate and complete and include all facts and circumstances that might materially affect the Project and the discharge of responsibilities under this Agreement; and
- (b) That it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Project or the discharge of responsibilities under this Agreement.

Section B.7. OTHER PAYMENTS. The Government affirms that no payments have been or will be received by any official of the Government in connection with the procurement of goods or services financed under the Assistance except fees, taxes, or similar payments legally established in Kenya.

Section B.8. INFORMATION AND MARKING. The Government will give appropriate publicity to the Assistance and the Project as a program to which the United States has contributed, identify the Project site, and mark goods financed by A.I.D., as described in Project Implementation Letters.

Article C. PROCUREMENT PROVISIONS

Section C.1. SPECIAL RULES. (a) The source and origin of ocean air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(b) Premiums for marine insurance placed in Kenya will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C.7(a).

(c) Any motor vehicle financed under the Assistance will be of United States manufacture, except as A.I.D. may otherwise agree in writing.

(d) Transportation by air, financed under the Grant, of property or persons (and their personal effects) will be on carriers holding United States certification, to the extent service by such carriers is available. Details on this requirement will be described in a Project Implementation Letter.

Section C.2. ELIGIBILITY DATE. No goods or services may be financed under the Assistance which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

Section C.3. PLANS, SPECIFICATIONS, AND CONTRACTS. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Government will furnish to A.I.D. upon preparation;

- (1) Any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Assistance, including documentation and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished A.I.D. on preparation;
- (2) Such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services which, though not financed under the Assistance, are deemed by A.I.D. to be of major importance to the Project. Aspects of the Project involving matters under this subsection (a) (2) will be identified in Project Implementation Letters.

- (b) Documents related to the prequalification of contractors, and to the solicitation of proposals for goods and services financed under the Assistance will be approved by A.I.D. in writing prior to their issuance, and their terms will include United States standards and measurements.
- (c) Contracts and contractors financed under the Assistance for engineering and other professional services, for construction services, and for such other services, equipment or materials as may be specified in Project Implementation Letters, will be approved by A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution.
- (d) Consulting firms used by the Government for the Project but not financed under the Assistance, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Government for the Project but not financed under the Assistance shall be acceptable to A.I.D.

Section C.4. REASONABLE PRICE. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Assistance. Such items will be procured on a fair and, to the maximum extent practicable, on a competitive basis.

Section C.5. NOTIFICATION TO POTENTIAL SUPPLIERS. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Assistance, the Government will furnish A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Project Implementation Letters.

Section C.6. SHIPPING. (a) Goods which are to be transported to Kenya may not be financed under the Assistance if transported either: (1) on an ocean vessel or aircraft under the flag of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment, or (2) on an ocean vessel which A.I.D., by written notice to the Government, has designated as ineligible, or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Assistance, if such goods or persons are carried: (1) on an ocean vessel under the flag of a country not, at the time of shipment, identified under the paragraph of the Agreement entitled "Procurement Source: Foreign Exchange Costs", without prior written A.I.D. approval; or (2) on an ocean vessel which A.I.D., by written notice to the Government, has designated an ineligible; or (3) under an ocean vessel or air charter which has not received prior A.I.D. approval.

(c) Unless A.I.D. determines that privately-owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately-owned United States-flag commercial vessels, and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported to Kenya 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 (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

Section C.7. INSURANCE. (a) Marine insurance on goods financed by A.I.D. which are to be transported to Kenya may be financed under the Assistance, as a Foreign Exchange Cost under this Agreement provided (1) such insurance is placed at the lowest available competitive rate, and (2) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Government 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 Kenya financed by A.I.D. hereunder will be insured against marine risks and such insurance will 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.

(b) Except as A.I.D. may otherwise agree in writing, the Government will insure, or cause to be insured, goods financed under the Assistance imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Government under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Government for the replacement or repair of such goods. Any such replacement will be of source and origin of countries listed in A.I.D. Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

Section C.8. U.S. GOVERNMENT-OWNED EXCESS PROPERTY. The Government agrees that wherever practicable United States Government-owned excess personal property, in lieu of new items financed under the Assistance should be utilized. Funds under the Assistance may be used to finance the costs of obtaining such property for the Project.

Article D. TERMINATION; REMEDIES

Section D.1. CANCELLATION BY THE GOVERNMENT. The Government may, by giving A.I.D. 30 days written notice, cancel any part of the Loan or Grant which has not been disbursed or committed for disbursement to third parties.

Section D.2. EVENTS OF DEFAULT; ACCELERATION. It will be an "Event of Default" if the Government shall have failed: (a) to pay when due any interest or installment of Principal required under this Agreement, or (b) to comply with any other provision of this Agreement, or (c) to pay when due any interest or installment of Principal or other payment required under any other loan, guaranty or other agreement between the Government or any of its agencies and A.I.D. or any of its predecessor agencies. If an Event of Default shall have occurred, then A.I.D. may give the Government notice that all or any part of the unrepaid Principal will be due and payable sixty (60) days thereafter, and, unless such Event of Default is cured within that time:

- (a) Such unrepaid Principal and accrued interest hereunder will be due and payable immediately; and
- (b) The amount of any further disbursements made pursuant to then outstanding commitments to third parties or otherwise will become due and payable as soon as made.

Section D.3. SUSPENSION. If at any time:

- (a) An Event of Default has occurred; 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 Assistance will be attained or that the Government will be able to perform its obligations under this Agreement; or
- (c) Any disbursements by A.I.D. would be in violation of the legislation governing A.I.D.; or
- (d) The Government shall have failed to pay when due any interest, installment of principal or other payment required under any other loan, guaranty, or other agreement between the Government or any of its agencies and the Government of the United States or any of its agencies;

then A.I.D. may:

- (1) Suspend or cancel outstanding commitment documents to the extent they have not been utilized through irrevocable commitment to third parties or otherwise, giving prompt notice thereof to the Government;

- (2) Decline to issue additional commitment documents or to make disbursements other than under existing ones; and
- (3) At A.I.D.'s expense, direct that title to goods financed under the Assistance be transferred to A.I.D. if the goods are from a source outside Kenya, are in a deliverable state and have not been offloaded in ports of entry of Kenya. Any disbursement made under the Loan with respect to such transferred goods will be deducted from Principal.

Section D.4. CANCELLATION BY A.I.D. If, within sixty (60) days from the date of any suspension of disbursement pursuant to Section D.3., the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Assistance that is not then disbursed or irrevocably committed to third parties.

Section D.5. CONTINUED EFFECTIVENESS OF AGREEMENT. Notwithstanding any cancellation, suspension of disbursement, or acceleration of repayment, the provisions of this Agreement will continue in effect until the payment in full of all Principal and accrued interest hereunder.

Section D.6. 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 provided for under this Agreement, may require the Government to refund the amount of such disbursement in U.S. Dollars to A.I.D. within sixty days after receipt of a request therefor.

(b) If the failure of the Government to comply with any of its obligations under this Agreement has the result that goods or services financed under the Assistance are not used effectively in accordance with this Agreement, A.I.D. may require the Government to refund all or any part of the amount of the disbursements under this Agreement for such goods or services in U.S. Dollars to A.I.D. within sixty days after receipt of a request therefor.

(c) The right under subsection (a) or (b) 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.

(d) (1) Any refund under subsection (a) or (b), or (2) any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Assistance, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (a) be made available first for the cost of goods and services required for the Project, to the extent justified, and (b) the remainder, if any, (i) if derived from Loan funds, will be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan reduced by the amount of such remainder, and (ii) if derived from Grant funds, will be paid to reduce the amount of the Grant.

(e) Any interest or other earnings on Grant funds disbursed by A.I.D. to the Government 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 Government.

Section D.7. NONWAIVER OF REMEDIES. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.

Section D.8. ASSIGNMENT. The Government agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Government 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 A.I.D. under this Agreement.