

PD-AAL-124
ISA-2139

6150153/37

CONFIRMED COPY

A.I.D. Loan No. 615-H-005

LOAN AGREEMENT

between

THE GOVERNMENT OF KENYA

and

THE UNITED STATES OF AMERICA

for

Equipment for the Kenya National Youth Service

Dated:

11 AUGUST 1970

TABLE OF CONTENTS

<u>ARTICLE AND SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
<u>ARTICLE I. The Project</u>		
Section 1.01	- The Loan	1
Section 1.02	- The Project	1
Section 1.03	- Funds and Resources to be Provided by Borrower	1
<u>ARTICLE II. Loan Terms</u>		
Section 2.01	- Interest ,.....	2
Section 2.02	- Repayment	2
Section 2.03	- Application, Currency, and Place of Payment	3
Section 2.04	- Prepayment	3
Section 2.05	- Renegotiation of the Terms of the Loan .	3
<u>ARTICLE III. Conditions Precedent to Disbursement</u>		
Section 3.01	- Conditions Precedent to initial Disbursement	4
Section 3.02	- Terminal Date for Meeting Conditions Precedent to Disbursement	5
Section 3.03	- Notification of Meeting of Conditions Precedent to Disbursement	5
<u>ARTICLE IV. Covenants and Warranties</u>		
Section 4.01	- Execution of the Project	5
Section 4.02	- Continuing Consultation	6
Section 4.03	- Management	6
Section 4.04	- Operation and Maintenance	6
Section 4.05	- Taxation	7
Section 4.06	- Utilization of Goods and Services	7
Section 4.07	- Disclosure of Material Facts and Circumstances	8
Section 4.08	- Commissions, Fees, and Other Payments	8
Section 4.09	- Maintenance and Audit of Records	9
Section 4.10	- Reports	10

<u>ARTICLE AND SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
ARTICLE IV. <u>Covenants and Warranties</u>(Cont'd)		
Section 4.11 -	Inspections	10
Section 4.12 -	Sinking Fund	10
ARTICLE V. <u>Procurement</u>		
Section 5.01 -	Procurement from the United States	11
Section 5.02 -	Eligibility Date	12
Section 5.03 -	Goods and Services Not Financed Under Loan	12
Section 5.04 -	Implementation of Procurement Requirements	12
Section 5.05 -	Plans, Specifications, and Contracts ..	12
Section 5.06 -	Reasonable Price	13
Section 5.07 -	Shipping and Insurance	14
Section 5.08 -	Notification to Potential Suppliers ...	15
Section 5.09 -	United States Government-Owned Property	16
Section 5.10 -	Information and Marking	17
ARTICLE VI. <u>Disbursements</u>		
Section 6.01 -	Disbursements for United States Dollar Costs - Letters of Commitment to U.S. Banks	17
Section 6.02 -	Other Forms of Disbursement	17
Section 6.03 -	Date of Disbursement	18
Section 6.04 -	Terminal Dates for Disbursement	18
ARTICLE VII. <u>Cancellation and Suspension</u>		
Section 7.01 -	Cancellation by the Borrower	18
Section 7.02 -	Events of Default; Acceleration	19
Section 7.03 -	Suspension of Disbursement	20
Section 7.04 -	Cancellation by A.I.D.	22
Section 7.05 -	Continued Effectiveness of Agreement ..	22
Section 7.06 -	Refunds	22
Section 7.07 -	Expenses of Collection	23
Section 7.08 -	Nonwaiver of Remedies	24

<u>ARTICLE AND SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
ARTICLE VIII. <u>Miscellaneous</u>		
Section 8.01 -	Communications	24
Section 8.02 -	Representatives	25
Section 8.03 -	Implementation Letters	26
Section 8.04 -	Promissory Notes	26
Section 8.05 -	Termination Upon Full Payment ...	26
ANNEX A - DESCRIPTION OF THE PROJECT		a-1

pm
LOAN AGREEMENT

dated the *seventh* day of *August*, 1970 between the GOVERNMENT OF KENYA ("Borrower") and the UNITED STATES OF AMERICA, acting through the Agency for International Development ("A.I.D.").

ARTICLE I

The Project

SECTION 1.01. The Loan. A.I.D. agrees to lend Borrower, pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed three million five hundred thousand United States dollars (\$3,500,000) ("Loan") to assist Borrower in carrying out the Project referred to in Section 1.02. The Loan shall be used exclusively to finance United States costs of goods and services required for the Project. The aggregate amount of disbursements under the Loan is hereinafter referred to as "Principal."

SECTION 1.02. The Project. The Project consists of the procurement of equipment and related services for The Kenya National Youth Service (NYS). The Project is described in more detail in Annex A hereto, the specific details of which may be modified by written agreement of Borrower and A.I.D.

SECTION 1.03. Funds and Resources to be Provided by Borrower. Borrower shall promptly (i) finance all local-currency

and non-United States foreign-exchange costs and (ii) provide all funds, in addition to the Loan, and all other resources required for the punctual and effective carrying out and completion of the Project.

ARTICLE II

Loan Terms

SECTION 2.01. Interest. Borrower shall pay A.I.D. interest, which shall accrue at the rate of two percent (2%) per annum for ten (10) years following the date of the first disbursement 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 shall accrue from the date of each disbursement (as such date is defined in Section 6.03) and shall be computed on the basis of a 365-day year. Interest shall be payable semi-annually. The first payment of interest shall be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by A.I.D.

SECTION 2.02. Repayment. Borrower shall repay the Principal to A.I.D. within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semi-annual installments of Principal and interest. The

first installment of Principal shall 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 2.01. A.I.D. shall provide Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

SECTION 2.03. Application, Currency, and Place of Payment. All payments of interest and Principal hereunder shall be made in United States dollars and shall 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, all such payments shall be made to the order of the "Agency for International Development" and shall be deemed paid when received by the Controller, Agency for International Development, Washington, D.C.

SECTION 2.04. Prepayment. Upon payment of all interest and refunds then due, Borrower may prepay, without penalty, all or any part of the Principal. Any such prepayment shall be applied to the installments of Principal in the inverse order of their maturity.

SECTION 2.05. Renegotiation of the Terms of the Loan. Borrower agrees to negotiate with A.I.D., at such time or times as A.I.D. may request, acceleration of the repayment of the Principal in the event that there is any significant improvement in the internal and external economic and financial position

and prospects of Kenya.

ARTICLE III

Conditions Precedent to Disbursement

SECTION 3.01. Conditions Precedent to Initial Disbursement.

Prior to the first disbursement or to the issuance of the first Letter of Commitment under the Loan, Borrower 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 Attorney General of the Borrower or of other counsel acceptable to A.I.D., that this Agreement has been duly authorized and ratified by, and executed on behalf of Borrower, and that it constitutes a valid and legally binding obligation of Borrower in accordance with all of its terms;
- (b) The name of Borrower's plenary representative specified in Section 8.02, and a specimen signature of the person specified in such statements.
- (c) Assurance that Borrower will establish an equipment maintenance and replacement sinking fund pursuant to Section 4.12, not later than March 1, 1971.
- (d) Assurance that Borrower will deposit in said sinking fund account by the date of its establishment, the

sum of \$280,000 (KL 100,000) as an irrevocable initial contribution to said fund.

- (e) Borrower shall furnish for A.I.D.'s approval all plans, specifications and bid documents for the procurement of equipment prior to their issuance.
- (f) Borrower shall furnish such other information as A.I.D. may reasonably request.

SECTION 3.02. Terminal Date for Meeting Conditions

Precedent to Disbursement. (a) If all of the conditions specified in Section 3.01 shall not have been met within ninety (90) days from the date of this Agreement, or by 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 Borrower. Upon the giving of such notice, this Agreement and all obligations of the parties hereunder shall terminate.

SECTION 3.03. Notification of Meeting of Conditions

Precedent to Disbursement. A.I.D. shall notify Borrower upon determination by A.I.D. that the conditions precedent to disbursement specified in Section 3.01 has been met.

ARTICLE IV

Covenants and Warranties

SECTION 4.01. Execution of the Project. Borrower shall

carry out the Project with due diligence and efficiency in conformity with sound engineering, financial and administrative practices, and in conformity with all of the plans, specifications, contracts, schedules, and other arrangements, and all modifications therein, approved by A.I.D. pursuant to this Agreement.

SECTION 4.02. Continuing Consultation. The Borrower and A.I.D. shall cooperate fully to assure that the purpose of the Loan will be accomplished. To this end, the Borrower and A.I.D. shall from time to time, at the request of either party, exchange views through their representatives with regard to the progress of the Project, the performance by the Borrower of its obligations under this Agreement, the performance of the consultants, contractors, and suppliers engaged on the Project, and other matters relating to the Project.

SECTION 4.03. Management. The Borrower shall provide qualified and experienced management for the Project and it shall train such staff as may be appropriate for the maintenance and operation of the Project.

SECTION 4.04. Operation and Maintenance. The Borrower shall operate, maintain, and repair equipment provided under the Project in conformity with sound engineering, financial and administrative practices and in such manner as to insure the continuing and successful achievement of the purposes of the Project.

SECTION 4.05. Taxation. This Agreement, the Loan and any evidence of indebtedness issued in connection herewith shall be free from, and the Principal and interest shall be paid without deduction for and free from, any taxation or fees imposed under any laws in effect within Kenya. To the extent that (a) any supplier, or consultant contractor, or any personnel of the same 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 in effect in Kenya, the Borrower shall, as and to the extent prescribed in and pursuant to Implementation Letters, pay or reimburse the same under Section 1.03 of this Agreement with funds other than those provided under the Loan.

SECTION 4.06. Utilization of Goods and Services.

(a) Goods and services financed under the Loan shall be used exclusively for the Project, except as A.I.D. may otherwise agree in writing.

(b) Except as A.I.D. may otherwise agree in writing, no goods or services financed under the Loan 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 4.07. Disclosure of Material Facts and Circumstances. The Borrower represents and warrants that all facts and circumstances that it has disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Loan are accurate and complete, and that it has disclosed to A.I.D., accurately and completely, all facts and circumstances that might materially affect the Project and the discharge of its obligations under this Agreement. The Borrower 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 Borrower's obligations under this Agreement.

SECTION 4.08. Commissions, Fees, and Other Payments.

(a) Borrower warrants and covenants that in connection with obtaining the Loan, or taking any action under or with respect to this Agreement, it has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid nor will there be paid or agreed to be paid by any other person or entity, commissions, fees, or other payments of any kind, except as regular compensation to the Borrower's full time officers and employees or as compensation for bona fide professional, technical, or comparable services. The Borrower shall promptly report to A.I.D. any payment or agreement to pay for such bona

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

SECTION 4.09. Maintenance and Audit of Records.

The Borrower shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and to this Agreement. Such books and records shall, without limitation, be adequate to show:

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

successful bidders;

Books and records relating to Sections a, b, and c above shall be regularly audited, in accordance with sound auditing standards, for such period and at such intervals as A.I.D. may require, and shall be maintained for five years after the date of the last disbursements by A.I.D. or until all sums due A.I.D. under this Agreement have been paid, whichever date shall first occur.

SECTION 4.10. Reports. The Borrower shall furnish to A.I.D. such information and reports relating to the Loan and to the Project as A.I.D. may request.

SECTION 4.11. Inspections. The authorized representatives of A.I.D. shall have the right at all reasonable times to inspect the Project, the utilization of all goods and services financed under the Loan, and the Borrower's books, records, and other documents relating to the Project and the Loan. The Borrower shall cooperate with A.I.D. to facilitate such inspections and shall permit representatives of A.I.D. to visit any part of the country of the Borrower for any purpose relating to the Loan.

SECTION 4.12. Sinking Fund.

- (a) The Borrower shall establish an equipment maintenance and replacement fund not later than March 1, 1971.

- (b) Said sinking fund shall be subject to the approval of A.I.D. and shall provide for the replacement of all equipment financed hereunder,
- (c) Borrower shall make an initial contribution to the fund by an irrevocable deposit of \$280,000 (KL 100,000) by the date of its establishment.
- (d) Said sinking fund shall be established on the basis of recognized accounting principles for the maintenance and replacement of capital equipment, such as the system presently being operated by the Government of Kenya Ministry of Works.

ARTICLE V

Procurement

SECTION 5.01. Procurement from the United States. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Section 6.01 shall be used exclusively to finance the procurement for the Project of goods and services having both their source and origin in the United States of America. All ocean shipping and marine insurance financed under the Loan shall have both their source and origin in the United States of America.

SECTION 5.02. Eligibility Date. Except as A.I.D. may otherwise agree in writing, no goods or services may be furnished under the Loan which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this agreement.

SECTION 5.03. Goods and Services not Financed under Loan. Goods and services procured for the Project, but not financed under the Loan, shall have their source and origin in countries included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

SECTION 5.04. Implementation of Procurement Requirements. The definitions applicable to the eligibility requirements of Sections 5.01 and 5.03 will be set forth in detail in Implementation Letters.

SECTION 5.05. Plans, Specifications, and Contracts.

(a) Except as A.I.D. may otherwise agree in writing, the Borrower shall furnish to A.I.D. promptly upon preparation, all specifications, procurement schedules, bid documents, and contracts relating to the Project, and any modifications therein, whether or not the goods and services to which they relate are financed under the Loan.

(b) Except as A.I.D. may otherwise agree in writing, all of the specifications and procurement schedules furnished

pursuant to subsection (a) above shall be approved by A.I.D. in writing.

(c) All bid documents and documents related to the solicitation of proposals relating to goods and services financed under the Loan shall be approved by A.I.D. in writing prior to their issuance. All plans, specifications, and other documents relating to goods and services financed under the Loan shall be in terms of United States standards and measurements, except as A.I.D. may otherwise agree in writing.

(d) The following contracts financed under the Loan shall be approved by A.I.D. in writing prior to their execution:

(i) contracts for engineering, technical and other professional services, and

(ii) contracts for equipment and materials.

In the case of any of the above contracts for services, A.I.D. shall also approve in writing the contractor and such contractor personnel as A.I.D. may specify. Material modifications in any of such contracts and changes in any of such personnel shall also be approved by A.I.D. in writing prior to their becoming effective.

SECTION 5.06. Reasonable Price. No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the loan, as more fully described in Implementation

Letters.

SECTION 5.07. Shipping and Insurance.

(a) Goods procured from the United States and financed under the Loan shall be transported to Kenya 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) At least fifty percent (50%) of the gross tonnage of all goods procured from the United States and financed under the Loan (computed separately for dry bulk carriers, dry cargo liners, and tankers) which shall be transported on ocean vessels shall be transported on privately owned United States flag commercial vessels unless A.I.D. shall determine that such vessels are not available at fair and reasonable rates for United States flag commercial vessels. No such goods may be transported on any ocean vessel (or aircraft) (i) which A.I.D., in a notice to the Borrower, 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.

(c) If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, Kenya, 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 Loan shall during the continuance of such discrimination be insured against marine risk in the United States of America with a company or companies authorized to do a marine insurance business in any state of the United States of America.

(d) The Borrower shall insure, or cause to be insured, all goods procured in the United States and financed under the Loan against risks incident to their transit to the point of their use in the Project. Such insurance shall be issued upon terms and conditions consistent with sound commercial practice, shall insure the full value of the goods, and shall be payable in the currency in which such goods were financed. Any indemnification received by the Borrower 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 Borrower for the replacement or repair of such goods. Any such replacements shall be of United States source and origin and otherwise subject to the provisions of this Agreement.

SECTION 5.08. Notification of 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 Loan, the Borrower shall furnish to A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Implementation Letters.

SECTION 5.09. United States Government-Owned Property.

The Borrower shall utilize, with respect to goods financed under the Loan to which the Borrower takes title at the time of procurement, such reconditioned United States Government-owned excess property as may be consistent with the requirements of the Project and as may be available within a reasonable period of time. The Borrower shall seek assistance from A.I.D. and A.I.D. will assist the Borrower in ascertaining the availability of and in obtaining such excess property. A.I.D. will make arrangements for any necessary inspection of such property by the Borrower or its representative. The costs of inspection and of acquisition, and all charges incident to the transfer to the Borrower of such excess property, may be financed under the Loan. Prior to the procurement of any goods, other than excess property, financed under the Loan and after having sought such A.I.D. assistance, the Borrower shall indicate to A.I.D. in writing, on the basis of information then available to it, either that such goods cannot be made available from reconditioned United States Government-owned excess property on a timely basis or that the goods that can be made available are not technically suitable

for use in the Project.

SECTION 5.10. Information and Marking. Borrower shall give publicity to the Loan and the Project as a program of United States aid, identify the Project site, and mark goods financed under the Loan, as prescribed in Implementation Letters.

ARTICLE VI

Disbursements

SECTION 6.01. Disbursements for United States Dollar Costs - Letters of Commitment to United States Banks. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request A.I.D. to issue Letters of Commitment for specified amounts to one or more United States banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, through the use of Letters of Credit or otherwise, for Dollar Costs of goods and services procured for the 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 and Implementation Letters. Banking charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Borrower and may be financed under the Loan.

SECTION 6.02. Other Forms of Disbursement. Disbursements of the Loan may also be made through such other means as the Borrower and A.I.D. may agree to in writing.

SECTION 6.03. Date of Disbursement. Disbursements by A.I.D. shall be deemed to occur on the date on which A.I.D. makes a disbursement to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment.

SECTION 6.04. 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 6.02 or amendment thereto shall be issued in response to requests received by A.I.D. after June 30, 1971 and no disbursement shall be made against documentation received by A.I.D. or any bank described in Section 6.01 after December 31, 1971. A.I.D., at its option, may at any time or times after December 31, 1971 reduce the Loan by all or any part thereof for which documentation was not received by such date.

ARTICLE VII

CANCELLATION AND SUSPENSION

SECTION 7.01. Cancellation by the Borrower. The Borrower may, with the prior written consent of A.I.D., by written notice to A.I.D., cancel any part of the Loan (1) which, prior to the giving of such notice, A.I.D. has not disbursed or committed itself

to disburse, or (ii) which has not then been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit.

SECTION 7.02. Events of Default; Acceleration. If any one or more of the following events ("Events of Default") shall occur:

- (a) The Borrower shall have failed to pay when due any interest or installment of Principal required under this Agreement;
- (b) The Borrower shall have failed to comply with any other provision of this Agreement, including, but without limitation, the obligation to carry out the Project with due diligence and efficiency;
- (c) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and A.I.D., or any of its predecessor agencies,

then A.I.D. may, at its option, give to the Borrower notice that all or any part of the unrepaid Principal shall be due and payable sixty (60) days thereafter, and, unless the Event of Default is cured within such sixty (60) days:

- (i) such unrepaid Principal and any accrued interest hereunder shall be due and payable immediately; and
- (ii) the amount of any further disbursements made under then outstanding irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

SECTION 7.03. Suspension of Disbursement. In the event that at any time:

- (a) An Event of Default has occurred;
- (b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement;
- (c) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or
- (d) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement,

or any other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies;

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

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

SECTION 7.04. Cancellation by A.I.D. Following any suspension of disbursements pursuant to Section 7.03, if the cause or causes for such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to irrevocable Letters of Credit.

SECTION 7.05. Continued Effectiveness of Agreement. Notwithstanding any cancellation, suspension of disbursement, or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of all Principal and any accrued interest hereunder.

SECTION 7.06. Refunds.

(a) In the case of any disbursement not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement not made or used in accordance with the terms of this Agreement, A.I.D., notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement may require the Borrower to refund such amount in United States dollars to A.I.D. within thirty days after receipt of a request therefor. Such amount shall be made available first for the cost of goods and services procured for the Project

hereunder, to the extent justified; the remainder, if any, shall be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursement under the Loan shall continue for five years following the date of such disbursement.

(b) In the event that A.I.D. receives a refund from any contractor, supplier, or banking institution, or from any other third party connected with the Loan, with respect to goods or services financed under the Loan, and such 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, A.I.D. shall first make such refund available for the cost of goods and services procured for the project hereunder, to the extent justified, the remainder to be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder.

SECTION 7.07. Expenses of Collection. All reasonable costs incurred by A.I.D., other than salaries of its staff, in connection with the collection of any refund or in connection

with amounts due A.I.D. by reason of the occurrence of any of the events specified in Section 7.02 may be charged to the Borrower and reimbursed to A.I.D. in such manner as A.I.D. may specify.

SECTION 7.08. Nonwaiver of Remedies. No delay in exercising or omission to exercise any right, power, or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any of such rights, powers, or remedies.

ARTICLE VIII

Miscellaneous

SECTION 8.01. Communications. Any notice, request, document, or other communication given, made, or sent by the Borrower 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 mail, telegrams, cable or radiogram at the following addresses:

TO BORROWER:

Mail Address: The Permanent Secretary to the Treasury
P. O. Box 30007
Nairobi, Kenya

Cable Address: Finance, Nairobi

TO A.I.D.: (two copies)

Mail Address: Agency for International Development
Bureau for Africa (CDF)
c/o Mission Director
USAID Mission to Kenya
The American Embassy
Nairobi, Kenya

Cable Address: A.I.D.
Washington, D.C.

Borrower, in addition, shall provide the USAID Mission in Kenya with a copy of each communication sent to A.I.D. Other addresses may be substituted for the above upon the giving of notice. All notices, requests, communications, and documents submitted to A.I.D. hereunder shall be in English.

SECTION 8.02. Representatives. For all purposes relative to this Agreement, the Borrower will be represented by the individual holding or acting in the office of Permanent Secretary to the Treasury. Such individual shall have the authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, Borrower 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 revocation of the authority of any of the duly authorized representatives of the Borrower designated pursuant to this Section, it may accept the signature of any such representative or representatives on any instrument as conclusive evidence that any action effected by such instrument is duly authorized.

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

SECTION 8.04. Promissory Notes. At such time or times as A.I.D. may request, the Borrower shall issue promissory notes or such other evidences of indebtedness with respect to the loan, in such form, containing such terms and supported by such legal opinions as A.I.D. may reasonably request.

SECTION 8.05. Termination Upon Full Payment. Upon payment in full of the Principal and of any accrued interest, this Agreement and all obligations of the Borrower and A.I.D. under this Loan Agreement shall terminate.

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

THE GOVERNMENT OF KENYA

BY: *Mantibaki*

TITLE: MINISTER OF FINANCE *RM*

UNITED STATES OF AMERICA

BY: *Robinson*

TITLE: AMBASSADOR *RM*

DESCRIPTION OF THE PROJECT

This project provides for the purchase of road construction and maintenance equipment to support that part of the Kenya Roads Program undertaken by the N.Y.S. In addition, this will provide assistance to NYS agricultural, training, land clearing, and airstrip construction and other development and training programs. To meet these and other construction, maintenance and supply requirements, a flexible mix of new construction and allied equipment is necessary. This equipment will include tracked tractors (bulldozers) loaders, motorized scrapers, rollers, motor graders, trucks, generators and other equipment necessary to move equipment, supplies and personnel between N.Y.S. installations.

Also included will be financing for such expert assistance required to advise on and expedite the procurement of and to provide inspection services for the equipment financed hereunder.

The new equipment furnished under this project will be used for N.Y.S. training and development projects.