

OFFICIAL PROJECT
DOCUMENT

PD BAX 599

June 18, 1985

Mr. J. N. Mwangi
Voluntary Agencies Development Assistance
2nd Floor, Agip House
P.O. Box 57781
Nairobi, Kenya

Subject: Cooperative Agreement No. 615-0236-A-00-5006-00

Dear Mr. Mwangi;

Pursuant to the authority contained in the Foreign Assistance Act of 1961, as amended, and the Federal Grant and Cooperative Agreement Act of 1977, the Agency for International Development (hereinafter referred to as "A.I.D.") hereby provides to Voluntary Agencies Development Assistance (hereinafter referred to as "V.A.D.A." or "Recipient"), the sum of three million two hundred thousand dollars (\$3,200,000) to increase the development impact of PVOs operating in Kenya, as described in the Schedule (Attachment 1) of this Cooperative Agreement.

This Cooperative Agreement is effective and obligation is made as of the date of this letter. Funds obligated hereunder are available for program expenditures for the estimated period from the date of this letter through July, 1987 as shown in the Financial Plan attached.

The total estimated amount for application under the terms of this Agreement is \$12,000,000 for the Agreement period. Additional funding will be provided to V.A.D.A. by amendment to this Cooperative Agreement subject to the availability of funds up to the amount of eight million eight hundred thousand dollars (\$8,800,000) in support of this program.

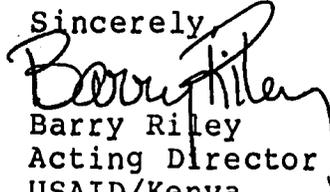
This Cooperative Agreement is made to V.A.D.A. on condition that the funds will be administered in accordance with the terms and conditions as set forth in Attachment 1, the Schedule; and Attachment 2, entitled "Standard Provisions," which have been agreed to by your organization.

Cooperative Agreement
No. 615-0236-A-00-5006-00

Please sign the Statement of Assurance of Compliance, enclosed herein, and the original and two copies of this letter to acknowledge your acceptance of the conditions under which these funds have been granted.

Please return the Statement of Assurance of Compliance and the original and two copies of this Agreement to the Agreement Officer.

Sincerely,

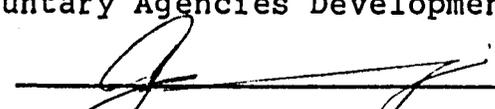

Barry Riley
Acting Director
USAID/Kenya
Agreement Officer

Attachments:

1. Schedule
2. Standard Provisions
3. Statement of Assurance of Compliance

ACKNOWLEDGEMENT

Voluntary Agencies Development Assistance

By: 

Typed Name: Jacob N. Mwangi

Title : Executive Director

Date: 18 JUNE, 1985

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Cooperative Agreement
No. 615-0236-A-00-5006-00

Fiscal Data

Appropriation:	72-1151021
Budget Plan Code:	GDA4-85-21615-AG13
PIO/T No..	615-0236-3-50012
Reservation Control No.:	K523685
Amount:	\$1,200,000
Appropriation:	72-114/51021
Budget Plan Code:	GDA4-85-21615-CG13
PIO/T No.:	615-0236-3-50012
Reservation Control No.:	K423685
Amount:	\$2,000,000
Project No.:	615-0236
Total Estimated Amount:	\$12,000,000
Total obligated Amount:	\$3,200,000
IRS Employer Identification No.:	None
Technical Office:	USAID/Kenya/HRD

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Standard Provisions

The Standard Provisions applicable to this Cooperative Agreement are AID 1420-53 and AID 1420-54, entitled respectively "Standard Provisions for Non-U.S., Nongovernmental Grantees" and "Optional Standard Provisions for Non-U.S., Nongovernmental Grantees."

ATTACHMENT 1

SCHEDULE

Article I Program Description

A. Project Goal and Purpose

The PVO Co-Financing Project seeks to work through Private and Voluntary Organizations (PVOs) to reach people which Government of Kenya programs inadequately serve. The project will increase the resource base for development, tap the delivery capability of the private, non-profit sector in Kenya, and increase the flow of low cost services to target groups.

The goal of this project is to increase the income, quality of life and self-reliance of the rural and urban poor whose development needs are otherwise inadequately served.

The purpose of the project is to increase the development impact of PVO activities in Kenya. Achievement of this purpose will promote viable national level PVO activities, enable PVOs to more effectively assist local community organizations to achieve their development aims, and help local community organizations to guide, manage and sustain their own development better.

B. Detailed Description

To increase the development impact of PVOs operating in Kenya, the Project will provide: 1) financing for PVO development activities through the Development Fund; 2) institutional strengthening assistance through the Training and Advisory Services Unit, and 3) information and evaluation services through the Information and Evaluation Unit. These three elements correspond with the planned management structure of Voluntary Agencies Development Assistance (V.A.D.A.), the Kenyan organization through which the PVO Co-Financing Project will be implemented.

By the end of the project approximately 60 large and 20 small PVO development projects will have been implemented. PVOs will be staffed by persons better trained in project development, organizational management, financial management and in technical subjects and will more efficiently utilize the resources devoted to development activities. Approximately 1,800 PVO staff members will have received training. Advisory services in project design and implementation will have fostered better project activities and allowed for the successful design and implementation of approximately 80 projects that otherwise might have suffered from design problems. Advisory services will also strengthen the financial and organizational management of approximately 60

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PVOs. The PVO community at large will be better informed about the universe of PVO activities in Kenya, the successes and failures of development projects in Kenya and elsewhere, and the services available to assist them with organizational and operational problems. V.A.D.A. will be a strong institution capable of meeting many of the organizational and informational needs of the Kenyan PVO community and of meeting its own financial requirements.

1. The Development Fund

The PVO Co-Financing Project provides financial and institutional support for the establishment of a Development Fund within V.A.D.A. which will provide financial assistance to U.S. and Kenyan PVOs. The financial assistance will be provided to registered PVOs as subgrants to support expanded PVO projects across a broad range of development activities consistent with Kenya development priorities including health and sanitation, education and training, agriculture, energy, environment, family planning and enterprise development. A condition of financial assistance under the Development Fund will be that at least one-third of each subgrant be contributed by the participating PVOs. The contribution may be obtained from any eligible non-USG source (private donations, bilateral or multilateral assistance, foundation grants, assistance from other PVOs, community organizations, etc.).

A Project Selection Committee, to be nominated by V.A.D.A. and approved by A.I.D., will review and approve all subprojects to be funded from the Development Fund. As part of the package of administrative procedures for operation of the Development Fund which V.A.D.A. must submit for A.I.D. approval prior to disbursement of funds to the Development Fund, V.A.D.A. must include a set of project selection criteria which are consonant with the criteria outlined in Annex E of the PVO Co-Financing Project Paper dated May 29, 1985. All proposals which are selected by the Project Selection Committee for funding must meet the agreed-upon criteria.

It is expected that the majority of subgrants will fund activities implemented directly by the PVO which receives the subgrant; some subgrant recipients will implement activities in affiliation with other PVOs, church groups, women's groups, or community organizations. The co-financing of Development Fund-supported projects, i.e., the one-third contribution by PVOs, can be cash and/or in-kind. However, US PVOs will generally be expected to provide a higher proportion of cash to in-kind contribution than Kenyan PVOs. In order to accommodate the time and costs necessary for community

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involvement and support in project identification, PVOs may include as part of their one-third contribution the cost of project design activities.*

Once the Project is fully operational, approximately 15 large subgrants will be approved annually. Large subgrants are \$50,000 or more, with the anticipated average value being \$130,000. All subgrants of \$100,000 or more recommended by the Project Selection Committee must be approved by A.I.D. before funds can be provided. Proposals which require Project funds of \$1 million or more must be approved by A.I.D. at the concept paper stage. There is also expected to be a substantial demand for small subgrants in a range between \$1,000 and \$50,000. When the Project is fully operational, it is expected that V.A.D.A. will finance five such subgrants a year at an average value of \$30,000 each. For all grant making activity, parity will be the goal with respect to the value of resources committed to U.S. PVOs and Kenyan PVOs.

PVO proposals are expected to address a wide range of special community development and infrastructure concerns. Preference will be given to projects which directly increase the general welfare and participation of low income groups, foster employment and income generation, indicate sustainability at the end of the subgrant period and enhance the PVO's capacity to plan and to implement development activities. Proposals must fully demonstrate the nature and magnitude of involvement by the participants.

*This feature has been incorporated into the Project in order to respond to a potentially difficult situation, i.e., A.I.D.'s requirement that a project be well-defined before submission. Such definition often involves substantial costs. The general PVO approach to development tends to involve community participation in the identification of a project and to require full community support before implementation. Recognizing the importance of this approach to the development of effective PVO projects, USAID/Kenya deems it appropriate to consider costs associated with project development as part of the PVO contribution to any given subproject financed by the Development Fund. Specific guidelines regarding allowable design costs will be developed during implementation.

Subproject proposals will be required to be submitted in a prescribed form with all supporting documentation and analyses necessary to demonstrate that the project is technically, economically, socially, administratively and environmentally sound. The evidence must also demonstrate that adequate cost estimates and implementation plans have been prepared to support proper execution of the project. Subproject documentation will include separate sections covering, among other areas, the problem to be addressed, description of the project design (goal, purpose, inputs and outputs), expected participants and intended beneficiaries, impact on beneficiaries and the environment, an evaluation and monitoring plan, administrative arrangements, and a comprehensive budget. A brief statement covering the linkages among internal project components and the external linkages of the project to other community, district, provincial, national, PVO, A.I.D. or other donor activities will be required.

2. Institutional Strengthening

The second major Project element will be institutional support, provided by V.A.D.A. to PVOs, to improve their effectiveness in carrying out development activities. The institutional support component will provide training and advisory services, primarily to Kenyan PVOs. It will be directed at mid and upper levels of staff, including project and technical personnel, financial officers and executives.

Training will be provided in the form of seminars and workshops and will cover all aspects of project development, from project identification, through implementation to evaluation; training in generic technical areas such as water and agriculture; training in techniques of financial management; and training in organizational development. This will be provided primarily to Kenyans, whether they are employed by Kenyan or U.S. PVOs.

Advisory services in similar areas will be provided directly to PVOs. Most beneficiaries of the advisory services will be Kenyan PVOs awarded subgrants. Some advisory services will also be targeted to Kenyan PVOs which need assistance in organizational and financial management to comply with the registration requirements, if it has been determined that these PVOs are involved in activities consonant with the project selection criteria.

In order to allow for an orderly expansion of V.A.D.A.'s activities, training and advisory services will be increased over time. In the first year, one-third of the training and advisory services planned for the years of full

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Project operations will be executed. This level will increase to two-thirds in the second year of the Project. A full complement of activities will be conducted during the remaining five years of the project. Approximately 15 persons are expected to attend each workshop or seminar. V.A.D.A. will either provide, organize or arrange for (1) training seminars for individual PVOs or groups of PVOs in project identification and development, organizational assistance, technical assistance, and financial management, (2) specific individualized advisory services in those areas of institutional strengthening mentioned above and (3) generic technical assistance relating to subproject proposal preparation and implementation. It is estimated that V.A.D.A. itself will provide approximately 50% of the training and advisory services directly, and procure the remaining amount from outside sources, largely in Kenya.

a. Training

(1) Project Development: - In order to improve the ability of Kenyan PVOs to translate their concepts and ideas into clearly written proposals suitable for V.A.D.A. and/or other donor consideration and to improve their ability to implement and manage projects efficiently and effectively, training sessions in project development will be offered periodically by V.A.D.A. in each project year. These sessions will focus upon the stream of activities involved in project development, e.g., project design, proposal preparation (mechanics of conducting technical, economic, and social feasibility analyses, budgeting, financial planning, etc.), project implementation and management, project monitoring and evaluation. Over the life of the Project, an average of 8 training sessions are expected to be held each year. Thus, with approximately 15 persons per session, there would be about 120 PVO staff trained per year. Assuming that approximately half the participants will attend more than one training session, approximately 500 PVO staff will receive training in project development.

(2) Organizational Development Assistance: Seminars will be provided on a regular basis to directors of Kenyan PVOs. This training will focus upon assistance to help organizations more efficiently reach their objectives. It will include personnel management, reporting procedures, departmental organization, and other areas of need identified by local PVOs. Over the life of the Project, the goal is for 15 training sessions to be held each year for executives and executive-level staff with 15 participants per session. With executives participating in a number of sessions (an average of four over the life of the project) the Project expects to reach all PVO executives with this service.

(3) Technical Training: As a supplement to the short-term technical assistance provided for proposal preparation and project design, training in various relevant technical or sectoral areas also will be provided. This will foster the development of skills among participating PVOs in project design and implementation.

It is estimated that four four-day seminars will be held during the first year of full Project operations. In each subsequent year approximately eight one-week seminars will be held, half of which will offer more advanced training to participants of the previous years. Thus, each participant would receive eight days of training, an introductory course one year and an advanced course the next year.

The subjects chosen for both of these kinds of training will normally be related to the nature of the subprojects approved for funding. Priority will be given to participants from Kenyan PVOs and PVOs with subprojects in the areas being offered. With approximately 60 new participants each year, 360 PVO staff members are expected to benefit from training.

(4) Financial Management - Another high priority area of institutional strengthening identified in the PVO Sector Survey is financial management. Such training will be designed to reach financial officers of PVOs. While participants from Kenyan PVOs will have preference, Kenyans working for U.S. PVOs also will be offered training. It is expected that 8 training sessions will be held each year on different aspects of financial management, or 48 sessions over the life of the project. Assuming that each participant will attend two sessions, approximately 350 persons would benefit.

b. Advisory Services:

In addition to the training seminars outlined above, Kenyan PVOs may also take advantage of the organizational assistance and financial management advisory services that will be available to selected PVOs. It is anticipated that approximately five organizations per year will receive organizational assistance and five will receive financial management assistance. Each type will require approximately 30 days of assistance. About ten organizations per year will benefit from these two kinds of assistance or 60 PVOs over the life of the Project. This direct assistance will build on the training and be offered primarily to PVOs awarded subgrants under this Project.

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Prior to preparation of a subgrant proposal, the PVO may request technical assistance to properly design a project, or to determine the technical feasibility of a project. Assistance may also be requested to prepare proposals or to solve implementation problems. It is expected that such kinds of assistance can be provided for up to 10 PVOs per year at an average of ten days each. Many beneficiaries of this assistance will be PVOs wishing to submit proposals to the Development Fund which are deemed worthy, but which require additional support to strengthen their proposal or their internal operating systems and procedures. PVOs implementing projects funded by the Development Fund may also benefit from this form of assistance. In addition, assistance in evaluating on-going projects will be provided to five PVOs for up to 15 days each, some or all of which will be projects funded by the Development Fund.

c. V.A.D.A. Institutional Strengthening:

In recognition of V.A.D.A.'s relatively brief institutional experience, and in order to assure adequate financial and managerial controls within V.A.D.A, the Project will provide funding for the services of an A.I.D.-approved organization to assist V.A.D.A. with financial management systems development and project implementation. VADA will contract with the selected Nairobi based organization initially for a period of three years. The organization will provide V.A.D.A. and A.I.D. with quarterly financial systems monitoring reports and recommendations and assistance to strengthen other facets of management for the first three years of the Project, by which time V.A.D.A. will have acquired sufficient experience to obviate the need for outside management assistance. The project will also provide V.A.D.A. with a portion of the funding required for staff, administrative support, and short-term technical assistance.

}. Information and Evaluation

i. Information:

The Project will have a number of information components. A newsletter will be published regularly as a means for publicizing project activities, successful projects, lessons learned, useful publications and news of general interest to PVOs and donors. A computerized data base will be established for compiling information on PVOs available through registration documentation, project work and evaluations. This should contribute to a proposed comprehensive directory of PVOs operating in Kenya to be funded by the Ford Foundation. Books and reference materials will be collected which relate directly to Project activities. Such a collection will provide the beginning of a modest library.

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In order to more fully analyze some of the assumptions regarding the work of PVOs upon which much donor activity (including this Project) is founded, a few selected studies on the role and function of PVOs will be undertaken. These studies will take advantage of the data and case studies generated by project activity, and will make a valuable contribution to the on-going dialogue within and among the PVOs, A.I.D., and the donor community in general about the strength and weaknesses of the PVOs.

b. Evaluation:

The first evaluation will assess whether all inputs and operational procedures necessary for Project implementation are in place and functioning well. It will take place within months 20-24, and will be undertaken by V.A.D.A. and A.I.D. without external assistance. The second evaluation will be held mid-way through the Project within months 42-48. It will focus on an assessment of the effectiveness of Project outputs, specifically the three major project components. A sum of \$100,000 has been allocated for this evaluation. The third and final evaluation will be held in year six within months 58-64. This evaluation will assess the overall impact of the Project on the PVO community and on development in Kenya. The sum of \$150,000 has been allocated for this purpose.

In addition, VADA will provide routine evaluation of all Project components. It will assist as needed in developing evaluation plans for PVO funded projects, and will evaluate approximately five PVO projects yearly, starting in the third year of the Project as projects reach completion. Funds are available for procuring additional evaluation assistance as necessary. The IEU will provide internal evaluation services for all activities of the Training and Advisory Services Unit and the Development Fund. The IEU will assist these units in continually refining their activities to meet the needs of PVOs. Such service by the IEU will entail the provision of expertise on evaluation methodologies and materials for relevant training activities to the Training and Advisory Services Unit. Finally, the IEU will have special responsibility for arranging and overseeing Project evaluations.

All PVO project proposals must contain an evaluation plan. The Project's information and evaluations officer will provide on-going guidance to individual PVO's regarding the gathering of baseline data, project monitoring, and project evaluation. Approximately one-third of the larger development activities of the Project will be formally evaluated. All other projects will provide an end-of-project report.

ARTICLE II - Funds Obligated, Payment, Total Estimated Cost, and Allowable Costs and Contributions

A. Funds Obligated;

The amount obligated by this agreement is \$3,200,000. It is anticipated that this amount will support Recipient performance of the Program Description through July 31, 1987. Additional funds in the amount of \$8,800,000 will be made available, subject to availability of funds.

B. Payment:

The payment provision generally applicable to this agreement is number 14 "Payment - Periodic Advance", of the Standard Provisions. Recipient, upon request, will receive specific formal guidance from USAID/Kenya regarding application for periodic advances, expenditure reporting and liquidation procedures. On an exceptional basis, to be determined by A.I.D., direct payments will be made by A.I.D. to V.A.D.A. contractors in cases involving expenditure of foreign exchange.

C. Total Estimated Cost:

The total estimated contribution by A.I.D. is \$12,000,000.

D. Allowable Costs and Contributions:

Costs are subject to Standard Provision No. 1 entitled, "Allowable Costs" and No. 4 entitled, "Revision of Grant Budget".

ARTICLE III - Substantial Involvement Understandings:

It is anticipated that performance of the Program Description requires substantial involvement by A.I.D. Specific areas of involvement include, but are not limited to, the following:

- 1) Joint participation by A.I.D. in the preparation of scopes of work, solicitation documentation and evaluation of proposals for institutional strengthening and procurement services contracts to be entered into by V.A.D.A.;
- 2) Review and approval of all major contracts for technical services to V.A.D.A.;
- 3) Review and approval of the qualifications of key personnel hired by V.A.D.A. to support the project;
- 4) Review and approval of annual work plans, financial management and administrative procedures.
- 5) Review and approval of subgrants in excess of \$100,000; and
- 6) Joint participation in project evaluations.

ARTICLE IV - Period of Agreement:

The period of this agreement shall extend from the effective date set forth in the cover letter through May 31, 1990. It is anticipated that the agreement will be extended in the future to cover the full life of the PVO Co-financing Project (615-0236) through September 30, 1992.

Article V - Report and Evaluation

1. Reporting

The Recipient will provide quarterly, five copies of written reports to the USAID/Kenya Project Officer. Such reports will be presented in a format agreed upon in the course of the development of the Recipient's work program. A final comprehensive report will be delivered in two copies to USAID at least one month prior to the termination of this agreement.

2. Evaluation

Program evaluation will be carried out in accordance with section I.B.3.b above.

ARTICLE VI - Financial Plan:

The budgets contained in tables 1-4 represent the financial plan for management of costs applicable to the effort covered hereunder. Standard Provision No. 4 "Revision of Grant Budget" shall govern with respect to any changes which may be required during the period of this Agreement.

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TABLE 1
SUMMARY COST ESTIMATE
AND FINANCIAL PLAN

Category	Source										
	A.I.D.		VADA		Ford		PVOs		TOTAL		COMBINED TOTAL
	FX	LC	FX	LC	FX	LC	FX	LC	FX	LC	
Technical Assistance	120000	379140	0	0	0	60000	0	0	12000	439140	559140
Training	0	403212	0	0	0	50000	0	505860	0	959072	959072
Commodities	219200	25000	0	18950	0	0	0	0	219200	43950	263150
Operation & Maintenance	0	315133	0	273255	0	0	0	0	0	588388	588388
Other Costs	195000	1136040	0	785427	65000	160000	0	0	260000	2081467	2341467
Evaluation	200000	50000	0	0	0	0	0	0	200000	50000	250000
Sub-Total	734200	2308525	0	1077632	65000	270000	0	505860	799200	4162017	4961217
Contingency/Inflation	110130	347145	0	161645	0	0	0	0	110130	508790	618920
Development subgrants	1700000	6800000	0	0	0	0	425000	3825000	2125000	10625000	12750000
TOTAL	2554330	9445670	0	1239277	65000	270000	425000	4330860	3034330	15295807	18330137

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TABLE 2

Projection of Expenditures
By Fiscal Year
A.I.D.

Category	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	TOTAL
Technical Assistance	0	104700	80940	90300	60300	75100	43900	43900	499140
Training	3442	37740	50350	62336	62336	62336	62336	62336	403212
Commodities	148300	4000	9300	21300	7800	43900	4800	4800	244200
Operation & Maintenance	13070	65748	61280	62513	41675	29173	20838	20838	315133
Other Costs	55940	225600	229350	229350	186950	156400	139850	107600	1331040
Evaluation	0	0	100000	0	0	0	150000	0	250000
Sub-Total	220752	437788	531220	465799	359061	366909	421724	239474	3042725
Contingency/Inflation (15%)	33113	65668	79683	69870	53859	55036	63259	35921	456409
Sub-Total	253865	503456	610903	535668	412920	421945	484982	275395	3499133
Development subgrants	0	710000	1400000	2130000	2130000	2130000	0	0	8500000
TOTAL	253865	1213456	2010903	2665668	2542920	2551945	484982	275395	11999133
Rounded									12000000

TABLE 3

Projection of A.I.D. Expenditures
By Fiscal Year
for Current Obligation

CATEGORY	FY 85			FY 86			FY 87 (THROUGH 7/87)			GRAND
	FX	LC	TOTAL	FX	LC	TOTAL	FX	LC	TOTAL	TOTAL
Technical Assistance	0	0	0	60,000	44,700	104,700	30,000	39,753	69,753	174,453
Training	0	3,442	3,442	0	37,740	37,740	0	43,386	43,386	84,568
Commodities	79,800	68,500	148,300	1,000	3,000	4,000	5,020	3,028	8,048	160,348
Operation and Maintenance	0	13,070	13,070	0	65,748	65,748	0	52,823	52,823	131,641
Other Costs	10,000	45,940	55,940	40,000	185,600	225,600	34,000	163,618	197,618	479,158
Evaluation	0	0	0	0	0	0	68,920	17,231	86,151	86,151
Subtotal	89,800	130,952	220,752	101,000	336,788	437,788	137,940	319,839	457,779	1,116,319
Contingency/Inflation	13,470	19,643	33,113	15,150	50,518	65,668	20,667	47,919	68,586	167,367
Subtotal	103,270	150,595	253,865	116,150	387,306	503,456	158,607	367,758	526,365	1,283,686
Development Subgrants	0	0	0	0	710,000	710,000	0	1,206,314	1,206,314	1,916,314
TOTAL	103,270	150,595	253,865	116,150	1,097,306	1,213,456	158,607	1,574,072	1,732,679	3,200,000

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TABLE 4

Projection of Expenditures
By Fiscal Year
V.A.D.A.

Category	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	TOTAL
Technical Assistance	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0
Commodities	31285	5267	0	0	0	0	0	0	36552
Operation & Maintenance	3268	11603	16670	20838	41675	54178	62513	62513	273255
Other Costs	5125	51100	51100	71100	100600	141150	157700	189950	767825
Evaluation	0	0	0	0	0	0	0	0	0
Sub-Total	39678	67970	67770	91938	142275	195328	220213	252463	1077632
Contingency/Inflation (15%)	5951	10195	10166	13791	21341	29299	33032	37869	161645
TOTAL	45629	78165	77936	105728	163616	224627	253244	290332	1239277

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ARTICLE VII - SPECIAL PROJECT CONSIDERATIONS

Funding supplied by A.I.D. for this Cooperative Agreement is drawn from the following FAA (U.S. Foreign Assistance Act) functional accounts.

<u>FAA Section</u>	<u>Functional Account</u>	<u>Amount (\$000)</u>
103	ARDN	1,200
104(L)	Health	2,000

V.A.D.A. will ensure that activities financed under the Development Fund fit within functional account criteria as set forth in the Foreign Assistance Act of 1961, as amended, and related guidance. V.A.D.A. will ensure that subproject proposals funded from any particular functional account do not exceed the amount of funds available from that account at any point in time. Any amounts which do so exceed available funds shall be borne solely by V.A.D.A. Subproject approval criteria will include a requirement that all proposals meet the requirements of at least one of the accounts listed above.

V.A.D.A. and A.I.D. will consult early in the process of each subproject review to determine the appropriate source of funding for the subproject and to verify availability of funds for the subproject before substantial review time is invested. V.A.D.A. accounting for the project will specify the amount of funds available to the Development Fund from each functional account and indicate, on a cumulative basis, the amount of funds committed and expended from each account.

ARTICLE VIII - Special Provisions:

A. The Recipient may not send individuals outside Kenya to perform work under this Cooperative Agreement without the prior approval of the USAID/Kenya Project Officer.

B. Nonexpendable equipment is defined as having an acquisition cost of \$1000 or more per unit and a useful service life of more than two years. For the purposes of this Cooperative Agreement, such nonexpendable equipment shall include, but not be limited to, motor vehicles, computer hardware and software, office equipment, etc. It is understood that title to all nonexpendable equipment shall vest in the Recipient.

C. V.A.D.A. is precluded from expending grant funds for subprojects under the Development Fund until it has furnished to A.I.D. and A.I.D. has approved, detailed administrative and financial procedures for operation of the Development Fund.

D. V.A.D.A. will submit to A.I.D. by December 31, 1985, or such later date as the Grant Officer may agree in writing, evidence that it has developed and adopted as operating policy detailed personnel procedures, including a staffing pattern by position and the required qualifications for each position.

E. V.A.D.A. will submit to A.I.D. at least two weeks prior to the beginning of each fiscal year for V.A.D.A., an action plan for each project component which shall include quantified targets and a detailed budget by quarter.

F. V.A.D.A. will submit to A.I.D., within ninety days after the end of each fiscal year for V.A.D.A., an audited annual financial statement.

ARTICLE IX - Standard Provisions:

The Standard Provisions, contained in Attachment 3, are applicable to this Agreement with the exceptions of the modifications made hereunder.

1. The terms of Standard Provision 14 (Payment-Periodic Advance), Section (b) are modified to require submission by the Grantee of voucher forms SF 1034 and SF 1034-A on a monthly basis.

2. Standard Provision No. 20 entitled, "Local Cost Financing with U.S. Dollars," is applicable to this Agreement and is authorized for expenditures up to but not exceeding \$9,445,670 during the performance of this Cooperative Agreement without prior Agreement Officer approval.

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3. Standard Provision No. 27 entitled, "Negotiated Overhead Rates - Provisional" is not applicable as of the date of the signing of this agreement. However, A.I.D. will conduct an annual review to determine the feasibility of establishing an overhead rate structure for V.A.D.A. If it is determined that an overhead rate will be established, the terms of this provision will apply.

4. Paragraph (a) of Standard Provision 29 (Cost Sharing) is deleted and the following substituted therefore: "For each year under this grant, the grantee agrees to expend from non-Federal funds an amount equal to the total yearly expenditures specified in the schedule of the grant in Article VI, Table 4."

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**MANDATORY STANDARD PROVISIONS FOR
NON-U.S., NONGOVERNMENTAL GRANTEES
INDEX OF
MANDATORY STANDARD PROVISIONS**

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The following standard provisions are mandatory for use in all grants with non-U.S., nongovernmental organizations. When these Standard Provisions are used for cooperative agreements, the following terms apply:

- "Grantee" means "Recipient,"
- "Grant" means "Cooperative Agreement," and
- "AID Grant Officer" means "AID Agreement Officer."

1. ALLOWABLE COSTS (NOVEMBER 1984)

The grantee shall be reimbursed for costs incurred in carrying out the purposes of this grant which are determined by the grant officer to be reasonable, allocable, and allowable in accordance with the terms of this grant and the cost principles (hereinafter referred to as "applicable cost principles") in effect on the date of this grant, which are attached.*

(a) *Reasonable*. Shall mean those costs that do not exceed those which would be incurred by an ordinarily prudent person in the conduct of normal business.

(b) *Allocable Costs*. Shall mean those costs which are necessary to the grant.

(c) *Allowable Costs*. Shall mean those costs which must conform to any limitations set forth in this grant.

(d) Unallowable costs, direct or indirect, include but are not limited to the following examples: Advertising, bad debts, contingencies, entertainment, fines and penalties, interest, fund raising, investment management costs, losses on other awards, taxes, first class air fare unless specifically approved, certain relocation costs, and professional service costs incurred in connection with litigation against the U.S. Government, and organization or reorganization costs. Additionally, public information service costs are unallowable as indirect costs. The applicable cost principles do authorize some of the above listed unallowable costs in appropriate circumstances. Prior to incurring a questionable or unique cost, the grantee should obtain the grant officer's written determination as to whether the cost will be allowable.

2. ACCOUNTING, AUDIT, AND RECORDS (NOVEMBER 1984)

(a) The grantee shall maintain books, records, documents, and other evidence in accordance with the grantee's usual accounting procedures to sufficiently substantiate charges to the grant. The grantee's financial management system shall provide for the following:

(1) Accurate, current, and complete disclosure for each AID-sponsored project or program in accordance with the reporting requirements of this grant. While AID requires reporting on an accrual basis, the grantee shall not be required to establish an accrual accounting system but shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for AID-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income.

(3) Effective control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes.

(4) Comparison of actual outlays with budget amounts for each grant. Financial information should be related to performance and unit-cost data whenever appropriate.

(5) Accounting records that are supported by documentation that at a minimum will identify, segregate, accumulate, and record all costs incurred under a grant and which fully disclose (i) the amount and disposition by the grantee of the proceeds of such assistance, (ii) the total cost of the project or undertaking in connection with which such assistance is given or used, (iii) the amount of that portion of the cost of the project or undertaking supplied by other sources, and (iv) such other records as will facilitate an effective audit.

*NOTE: OMB Circular A-21 shall apply to universities.

OMB Circular A-122 shall apply to all other non-profits.

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(b) The grantee shall preserve and make available such records for examination and audit by AID and the Comptroller General of the United States, or their authorized representatives (1) until the expiration of three years from the date of termination of the grant and (2) for such longer period, if any, as is required to complete an audit to resolve all questions concerning expenditures unless written approval has been obtained from the grant officer to dispose of the records. AID follows generally accepted accounting principles and auditing standards in determining that there has been proper accounting and use of grant funds. The grantee agrees to make available any further information requested by AID with respect to any questions arising as a result of the audit.

(c) The grantee shall require subgrantees to adopt the standards in paragraph (b) above.

3. REFUNDS (NOVEMBER 1984)

(a) If use of the AID funds results in accrual of interest to the grantee or to any other person to whom the grantee makes AID funds available, the grantee shall refund to AID the amount of interest accrued.

(b) Funds obligated by AID but not disbursed to the grantee at the time the grant expires or is terminated shall revert to AID, except for such funds encumbered by the grantee by a legally binding transaction applicable to this grant. Any funds disbursed to but not expended by the grantee at the time of expiration or termination of the grant shall be refunded to AID.

(c) If, at any time during the life of the grant, or as a result of final audit, it is determined by AID that funds it provided under this grant have been expended for purposes not in accordance with the terms of this grant, the grantee shall refund such amount to AID.

4. REVISION OF GRANT BUDGET (NOVEMBER 1984)

(a) The approved grant budget is the financial expression of the grantees program as approved during the grant award process.

(b) The grantee shall immediately request approval from the grant officer when there is reason to believe that within the next 30 calendar days a revision of the approved grant budget will be necessary for any of the following reasons:

(1) To change the scope or the objectives of the project and/or revise the funding allocated among project objectives.

(2) Additional funding is needed.

(3) The grantee expects the amount of AID authorized funds to exceed its needs by more than \$5,000 or five percent of the AID award, whichever is greater.

(4) The grantee plans to transfer funds budgeted for indirect costs to absorb increases in direct costs or vice versa.

(5) The grantee intends to contract or subgrant any of the work under this grant, and such contracts or subgrants were not included in the approved grant budget.

(c) Except as required by other provisions of this grant specifically stated to be an exception from this provision, the Government shall not be obligated to reimburse the grantee for costs incurred in excess of the total amount obligated under the grant. The grantee shall not be obligated to continue performance under the grant (including actions under the "Termination" provision) or otherwise to incur costs in excess of the amount obligated under the grant, unless and until the grant officer has notified the grantee in writing that such obligated amount has been increased and has specified the new grant total amount.

5. TERMINATION AND SUSPENSION (NOVEMBER 1984)

(a) *For Cause.* This grant may be terminated for cause at any time, in whole or in part, by the grant officer upon written notice to the grantee, whenever it is determined that the grantee has failed to comply with the conditions of the grant.

(b) *For Convenience.* This grant may be terminated for convenience at any time by either party, in whole or in part, if both parties agree that the continuation of the grant would not produce beneficial results commensurate with the further expenditure of funds. Both parties shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The agreement to terminate shall be set forth in a letter from the grant officer to the grantee.

(c) *Termination Procedures.* Upon receipt of and in accordance with a termination notice as specified in either paragraph (a) or (b) above, the grantee shall take immediate action to minimize all expenditures and obligations financed by this grant and shall cancel such unliquidated obligations whenever possible. Except as provided below, no further reimbursement shall be made after the effective date of termination. The grantee shall within 30 calendar days after the effective date of such termination repay to the Government all unexpended AID funds which are not otherwise obligated by a legally binding transaction applicable to this grant. Should the funds paid by the Government to the grantee prior to the effective date of the termination of this grant be insufficient to cover the grantee's obligations in the legally binding transaction, the grantee may submit to the government within 90 calendar days after the effective date of such termination a written claim covering such obligations. The grant officer shall determine the amount(s) to be paid by the Government to the grantee under such claim in accordance with the applicable cost principles.

(d) *Suspension: Termination for Changed Circumstances.* If at any time AID determines that continuation

of funding for a program should be suspended or terminated because such assistance is not in the national interest of the United States or that it would be in violation of an applicable law, then AID may, following notice to the grantee, suspend this grant and prohibit the grantee from incurring additional obligations chargeable to this grant other than necessary and proper costs in accordance with the terms of this grant during the period of suspension. If the situation causing the suspension continues for 60 days or more, then AID may terminate this grant on written notice to the grantee and cancel that portion of this grant which has not been disbursed or irrevocably committed to third parties. Financial settlement of this grant shall be governed by the termination procedures specified in paragraph (c) above.

6. DISPUTES (NOVEMBER 1984)

(a) Any dispute under this grant shall be decided by the AID grant officer. The grant officer shall furnish the grantee a written copy of the decision.

(b) Decisions of the AID grant officer shall be final unless, within 30 days of receipt of the decision of the grant officer, the grantee appeals the decision to the Administrator of AID. Any appeal made under this provision shall be in writing and addressed to the Administrator, Agency for International Development, Washington, D.C. 20523. A copy of the appeal shall be concurrently furnished to the grant officer.

(c) In connection with any appeal proceeding under this provision, the grantee shall be given an opportunity to be heard and to offer evidence in support of its appeal.

(d) A decision under this provision by the Administrator or an authorized representative shall be final unless overruled by a court of competent jurisdiction.

7. INELIGIBLE COUNTRIES (NOVEMBER 1984)

Unless otherwise approved by the AID grant officer, no funds will be expended for costs incurred in countries ineligible for assistance under the Foreign Assistance Act of 1961, as amended, or under acts appropriating funds for foreign assistance.

8. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (NOVEMBER 1984)

No person in the United States, consistent with the laws of the United States, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded

by this grant on the basis of race, color, national origin, age, handicap, or sex.

9. U.S. OFFICIALS NOT TO BENEFIT (NOVEMBER 1984)

No member of or delegate to the U.S. Congress or resident U.S. Commissioner shall be admitted to any share or part of this grant or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this grant if made with a corporation for its general benefit.

10. COVENANT AGAINST CONTINGENT FEES (NOVEMBER 1984)

The grantee certifies that no person or selling agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees or bona fide established commercial or selling agencies maintained by the grantee for the purpose of securing business. For breach or violation of this certification, AID shall have the right to cancel this grant without liability or, to deduct from the grant amount, or otherwise recover, the full amount of each commission, percentage, brokerage, or contingent fee.

11. NONLIABILITY (NOVEMBER 1984)

AID does not assume liability for any third party claims for damages arising out of this grant.

12. AMENDMENT (NOVEMBER 1984)

The grant may be amended by formal modifications to the basic grant document or by means of an exchange of letters between the grant officer and an appropriate official of the grantee.

13. NOTICES (NOVEMBER 1984)

Any notice given by AID or the grantee shall be sufficient only if in writing and delivered in person, mailed, or cabled as follows:

To the AID grant officer, at the address specified in the grant.

To grantee, at grantee's address shown in the grant or to such other address designated within the grant.

Notices shall be effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

14. PAYMENT—PERIODIC ADVANCE (NOVEMBER 1984)

(This provision is applicable when (1) the grantee has an acceptable accounting system (2) the grantee has the ability to maintain procedures that will minimize the time elapsing between the transfer of funds and the disbursement thereof, and (3) the grantee's financial management system meets the standards for fund control and accountability required under the standard provision of this agreement entitled "Accounting, Audit and Records".)

(a) AID funds shall not be commingled with other grantee owned or controlled funds. The grantee shall deposit all AID cash advances in a separate bank account and shall make all disbursements for goods and services from this account.

(b) Each quarter, after the initial cash advance, the grantee shall submit to the AID Controller, identified in the schedule, voucher SF 1034 (original) and SF 1034-A (three copies), entitled "Public Voucher for Purchases and Services Other Than Personal", copies of which are attached.

(c) Each Voucher shall be identified by the appropriate grant number and shall be accompanied by an original and three copies of a report in the following format:

FEDERAL CASH ADVANCE STATUS REPORT
(Report Control No. W-245)

A. Period covered by this report:
 FROM (Month, day, year) _____
 TO (Month, day, year) _____
 Period covered by the next report
 FROM (Month, day, year) _____
 TO (Month, day, year) _____

B. Cash Advance Use and Needs:

1. Cash advance on hand at the beginning of this reporting period	\$ _____
2. U.S. Treasury check advance(s) received during this reporting period . .	\$ _____
3. Interest earned on cash advance during this reporting period	\$ _____
4. GROSS cash advance available during this reporting period (Lines 1, 2, & 3)	\$ _____
5. LESS, interest remitted to AID during this reporting period	\$ _____

6. NET cash advance available during this reporting period (Line 4 minus Line 5)	\$ _____
7. Total disbursements during this reporting period, including subadvances (see footnote 1)	\$ _____
8. Amount of cash advances available at the end of this reporting period (Line 6 minus Line 7)	\$ _____
9. Projected disbursements, including subadvances, for the next reporting period (see footnote 2)	\$ _____
10. Additional cash advance requested for the next reporting period (Line 9 minus Line 8)	\$ _____
11. Total interest earned on cash advance from the start of the grant to the end of this reporting period, but not remitted to AID	\$ _____
12. Total cash advances to subgrantees, if any, as of the end of this reporting period	\$ _____

FOOTNOTES:

1. The grantee shall submit a cumulative detailed report of disbursements by BUDGET Line item quarterly.
2. The grantee shall attach a Summary, by BUDGET line item, of its projected disbursements for the next reporting period.

C. Certification:

The undersigned hereby certifies: (1) that the amount in paragraph B.9 above represents the best estimate of funds needed for the disbursements to be incurred over the period described, (2) that appropriate refund or credit to the grant will be made in the event of disallowance in accordance with the terms of the grant, (3) that appropriate refund or credit to the grant will be made in the event funds are not expended, and (4) that any interest accrued on the funds made available herein will be refunded to AID.

DATE _____ BY _____
TITLE _____

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15. AIR TRAVEL AND TRANSPORTATION (NOVEMBER 1984)

(This provision is applicable when any costs for air travel or transportation are included in the budget.)

(a) The grantee is required to present to the project officer for written approval an itinerary for each planned international trip financed by this grant, which shows the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advance of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence. At least one week prior to commencement of approved international travel, the grantee shall notify the cognizant mission, with a copy to the project officer, of planned travel, identifying the travelers and the dates and times of arrival.

(b) Travel to certain countries shall, at AID's option, be funded from U.S.-owned local currency. When AID intends to exercise this option, AID will, after receipt of advice of intent to travel required above, either issue a Government Transportation Request (GTR) which the grantee may exchange for tickets, or AID will issue the tickets directly. Use of such U.S.-owned currencies will constitute a dollar charge to this grant.

(c) All air travel and shipments under this grant are required to be made on United States flag air carriers to the extent service by such carriers is available. A U.S. flag air carrier is defined as an air carrier which has a certificate of public convenience and necessity issued by the U.S. Civil Aeronautics Board authorizing operations between the United States and/or its territories and one or more foreign countries.

(d) Use of foreign air carrier service may be deemed necessary if a U.S. flag air carrier cannot provide the foreign air transportation needed, or if use of such service will not accomplish the agency's mission. Travel and transportation on non-free world air carriers are not reimbursable under this grant.

(e) U.S. flag air carrier service is considered available even though:

(1) Comparable or a different kind of service can be provided at less cost by a foreign air carrier;

(2) Foreign air carrier service is preferred by or is more convenient for the agency or traveler; or

(3) Service by a foreign air carrier can be paid for in excess foreign currency, unless U.S. flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies.

(f) Except as provided in paragraph (b) of this section, U.S. flag air carrier service must be used for all Government-financed commercial foreign air travel if

service provided by such carriers is available. In determining availability of a U.S. flag air carrier, the following scheduling principles should be followed unless their application results in the last or first leg of travel to or from the United States being performed by a foreign air carrier:

(1) U.S. flag air carrier service available at point of origin should be used to destination or in the absence of direct or through service to the farthest interchange point on a usually traveled route;

(2) Where an origin or interchange point is not served by U.S. flag air carrier, foreign air carrier service should be used only to the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service; or

(3) Where a U.S. flag air carrier involuntarily reroutes the traveler via a foreign air carrier the foreign air carrier may be used notwithstanding the availability of alternative U.S. flag air carrier service.

(g) For travel between a gateway airport in the United States (the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives) and a gateway airport abroad (that airport from which the traveler last embarks enroute to the U.S. or at which the traveler first debarks incident to travel from the U.S.) passenger service by U.S. flag air carrier will not be considered available:

(1) Where the gateway airport abroad is the traveler's origin or destination airport, and the use of U.S. flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by foreign air carrier:

(2) Where the gateway airport abroad is an interchange point, and the use of U.S. flag air carrier service would require the traveler to wait six hours or more to make connections at that point, or delayed departure from or accelerated arrival at the gateway airport in the United States would extend the time in a travel status by at least six hours more than travel by foreign air carrier.

(h) For travel between two points outside the United States the rules in paragraphs (d) through (f) of this section will be applicable, but passenger service by U.S. flag air carrier will not be considered to be reasonably available:

(1) If travel by foreign air carrier would eliminate two or more aircraft changes enroute;

(2) Where one of the two points abroad is the gateway airport (as defined in paragraph (g) of this section) enroute to or from the United States, if the use of a U.S. flag air carrier would extend the time in a travel status by at least six hours more than travel by foreign

air carrier including accelerated arrival at the overseas destination or delayed departure from the overseas origin as well as delay at the gateway airport or other interchange point abroad; or

(3) Where the travel is not part of a trip to or from the United States, if the use of a U.S. flag air carrier would extend the time in a travel status by at least six hours more than travel by foreign air carrier including delay at origin, delay enroute and accelerated arrival at destination.

(i) When travel under either paragraph (g) or (h) of this section involves three hours or less between origin and destination by a foreign air carrier, U.S. flag air carrier service will not be considered available when it involves twice such travel time or more.

(j) Nothing in the above guidelines shall preclude and no penalty shall attend the use of a foreign air carrier which provides transportation under an air transport agreement between the United States and a foreign government, the terms of which are consistent with the international aviation policy goals set forth at 49 U.S.C. 1502 (b) and provide reciprocal rights and benefits.

(k) Where U.S. Government funds are used to reimburse the grantee's use of other than U.S. flag air carriers for international transportation, the grantee will include a certification on vouchers involving such transportation which is essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

I hereby certify that the transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reason(s): state appropriate reason(s) as set forth above).

(l) *International Travel*

(1) As used herein, the term "international travel" includes travel to all countries other than travel within the home country of the grantee.

(2) The grantee will be reimbursed for travel and the reasonable cost of subsistence, post differentials and other allowances paid to employees in an international travel status in accordance with the grantee's established policies and practices which are uniformly applied to federally financed and other activities of the grantee. The standard for determining the reasonableness of reimbursement for overseas allowance is the Standardized Regulations (Government Civilians, Foreign Areas), published by the U.S. Department of State, as from time to time amended. The most current subsistence, post differentials, and other allowances may be obtained from the grant officer.

(m) This provision will be included in all subagreements and contracts which require air travel and transportation under this grant.

16. OCEAN SHIPMENT OF GOODS (NOVEMBER 1984)

(This provision is applicable when goods purchased with funds provided under this grant are transported to cooperating countries on ocean vessels.)

(a) A least 50% of the gross tonnage of all goods purchased under this grant and transported to the cooperating countries shall be made on privately owned U.S. flag commercial ocean vessels, to the extent such vessels are available at fair and reasonable rates for such vessels.

(b) At least 50% of the gross freight revenue generated by shipments of goods purchased under this grant and transported to the cooperating countries on dry cargo liners shall be paid to or for the benefit of privately owned U.S. flag commercial ocean vessels to the extent such vessels are available at fair and reasonable rates for such vessels.

(c) When U.S. flag vessels are not available, or their use would result in a significant delay, the grantee may

request a determination of non-availability from the AID Transportation Support Division, Office of Commodity Management, Washington, D.C. 20523, giving the basis for the request which will relieve the grantee of the requirement to use U.S. flag vessels for the amount of tonnage included in the determination. Shipments made on non-free world ocean vessels are not reimbursable under this grant.

(d) Vouchers submitted for reimbursement which include ocean shipment costs shall contain a certification essentially as follows:

"I hereby certify that a copy of each ocean bill of lading concerned has been submitted to the U.S. Department of Transportation, Maritime Administration, Division of National Cargo, 400 7th Street, S.W., Washington, D.C. 20590, and that such bills of lading state all of the carrier's charges including the basis for calculation such as weight or cubic measurements."

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**17. PROCUREMENT OF GOODS AND SERVICES
(NOVEMBER 1984)**

(This provision is applicable when goods or services are procured under the grant.)

The grantee may use its own procurement policies and practices for the procurement of goods and services under this grant, provided they conform to all of AID's requirements listed below and the standard provision entitled "Ineligible and Restricted Goods and Services":

(a) General Requirements:

(1) The recipient shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using AID funds. No employee, officer or agent shall participate in the selection, award or administration of a contract in which AID funds are used, where, to his/her knowledge, he/she or his/her immediate family, partners, or organization in which he/she or his/her immediate family or partners has a financial interest or with whom he/she is negotiating or has any arrangement concerning prospective employment. The recipients' officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violations of such standards by the recipients' officers, employees or agents.

(2) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/offeror whose bid/offer is responsive/responsible to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.

(3) All grantees shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:

(i) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives

to determine which would be the most economical practical procurement. Such an analysis shall not be required for motor vehicles.

(ii) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand-name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement and when so used the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

(iii) Positive efforts shall be made by the recipients to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing AID funds. To permit AID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under this grant, the grantee shall to the maximum extent possible provide the following information to the Office of Small Disadvantaged Business Utilization, AID/Washington, D.C. 20523, at least 45 days prior (except where a shorter time is requested of and granted by the Office of Small and Disadvantaged Business Utilization) to placing any order or contract in excess of \$25,000:

- (A) Brief general description and quantity of goods or services;
- (B) Closing date for receiving quotations, proposals, or bids; and
- (C) Address where invitations or specifications can be obtained.

(iv) The type of procuring instruments used, e.g. fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(v) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(vi) All proposed sole source contracts or where only one bid or proposal is received in which the aggregate

expenditure is expected to exceed \$5,000 shall be subject to prior approval by an appropriate official within the grantee's organization.

(vii) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(viii) Procurement records and files for purchases in excess of \$10,000 shall include the following:

- (A) Basis for contractor selection;
- (B) Justification for lack of competition when competitive bids or offers are not obtained;
- (C) Basis for award cost or price.

A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

(b) Each contract shall contain the following contract provisions as well as any provision within this grant which requires such inclusion of that provision. Whenever a provision is required to be inserted in a contract under this grant, the grantee shall insert a statement in the contract that in all instances where the U.S. Government is mentioned the grantee's name shall be substituted.

(1) Contracts in excess of \$10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the recipient including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded for more than \$100,000, recipients shall observe generally accepted bonding requirements.

(4) Contracts, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields that directly concern public health, safety or welfare; or contracts in the fields of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract are subject to the regulations included in these grant provisions. The contractor shall

be advised as to the source of additional information regarding these matters.

(5) All negotiated contracts over \$10,000 awarded by recipients shall include a provision to the effect that the recipient, AID, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts and transcriptions.

18. INELIGIBLE AND RESTRICTED GOODS AND SERVICES (NOVEMBER 1984)

(This provision is applicable when goods or services are procured under the grant.)

(a) *Ineligible and Restricted Goods and Services:* If AID determines that the grantee has procured any of the restricted or ineligible goods and services specified below, or has procured goods and services from unauthorized sources, and has received reimbursement for such purpose without the prior written authorization of the grant officer, the grantee agrees to refund to AID the entire amount of the reimbursement.

(1) *Ineligible Goods and Services.* Under no circumstances shall the grantee procure any of the following under this grant:

- (i) Military equipment,
- (ii) Surveillance equipment,
- (iii) Commodities and services for support of police or other law enforcement activities,
- (iv) Abortion equipment and services,
- (v) Luxury goods and gambling equipment, or
- (vi) Weather modification equipment.

(2) *Ineligible Suppliers.* Funds provided under this grant shall not be used to procure any commodity or commodity-related services furnished by any supplier whose name appears on the List of Ineligible Suppliers under AID Regulation 8, "Suppliers of Commodities and Commodity-Related Services Ineligible for AID Financing" (22 CFR 208). The grantee agrees to review said list prior to undertaking any procurement under this grant. AID will provide the grantee with this list.

(3) *Restricted Goods.* The grantee shall not procure any of the following goods and services without the prior written authorization of the grant officer:

- (i) Agricultural commodities,
- (ii) Motor vehicles,
- (iii) Pharmaceuticals,
- (iv) Pesticides,
- (v) Rubber compounding chemicals and plasticizers,
- (vi) Used equipment,
- (vii) U.S. Government-owned excess property, or
- (viii) Fertilizer.

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(b) *Source, Origin, and Nationality:* The eligibility of the source, origin, and nationality of the goods and services is divided into the following categories of under and over \$250,000 for the total procurement element during the life of the grant. The total procurement element includes procurement of all goods (e.g. equipment, materials, supplies) and services. Guidance on the eligibility of specific goods or services may be obtained from the grant officer. AID policies on source, origin, and nationality are contained in Chapters 4 and 5 of AID Handbook 1, Supplement B, (Procurement Policies).

(1) When the total procurement element during the life of this grant is valued at \$250,000 or less, the following rules apply:

(i) All goods and services, the costs of which are to be reimbursed under this grant and which will be financed with United States dollars, shall be purchased in and shipped from only "Special Free World" countries (i.e., AID Geographic Code 935) in accordance with the following order of preference:

(A) The United States (AID Geographic code 000),

(B) The Cooperating Country,

(C) "Selected Free World" countries (AID Geographic Code 941),

(D) "Special Free World" countries (AID Geographic Code 935)."

(ii) Application of Order of Preference: When the grantee procures goods and services from other than U.S. sources, under the order of preference in paragraph b(1) above, the grantee shall document its files to justify each such instance. The documentation shall set forth the circumstances surrounding the procurement and shall be based on one or more of the following reasons, which will be set forth in the grantee's documentation:

(A) The procurement was of an emergency nature, which would not allow for the delay attendant to soliciting U.S. sources.

(B) The price differential for procurement from U.S. sources exceeded by 50% or more the delivered price from the non-U.S. source,

(C) Impelling local political considerations precluded consideration of U.S. sources,

(D) The goods or services were not available from U.S. sources, or

(E) Procurement of locally available goods and services, as opposed to procurement of U.S. goods and services, would best promote the objectives of the Foreign Assistance program under the grant.

(2) When the total procurement element exceeds \$250,000, the following rule applies: Except as may be

specifically approved or directed in advance by the grant officer, all goods and services, which will be reimbursed under this grant and financed with United States dollars, shall be procured in and shipped from the United States (Code 000) and from any other countries within the authorized geographic code as specified in the Schedule of this grant.

(c) *Marine Insurance:* The eligibility of marine insurance is determined by the country in which it is placed. Insurance is placed in a country if payment of the insurance policy is issued by an insurance company located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if Code 941 is authorized, the Cooperating Country is also eligible. Section 604(d) of the Foreign Assistance Act requires that if a recipient country discriminates by statute, decree, rule, or practice with respect to AID-financed procurement against any marine insurance company authorized to do business in the United States, then any AID-financed commodity shipped to that country shall be insured against marine risk and the insurance shall be placed in the United States with a company or companies authorized to do marine insurance business in the United States.

(d) Ocean and air transportation shall be in accordance with the applicable provisions contained within this grant.

e. *Printed or Audio-Visual Teaching Materials:* If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities financed by AID in whole or in part and if other funds including U.S.-owned or U.S.-controlled local currencies are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources, in order of preference:

(1) Code 000, United States.

(2) The Cooperating Country.

(3) Code 941, Selected Free World.

(4) Code 899, Free World.

(f) *Special Restriction on the Procurement of Construction or Engineering Services:* Section 604(g) of the Foreign Assistance Act provides that AID funds may not be used for "procurement of construction or engineering services from advanced developing countries, eligible under Geographic Code 941, which have attained a competitive capability in international markets for construction services or engineering services." In order to insure eligibility of a Code 941 contractor for construction or engineering services, the grantee shall obtain the grant officer's prior approval for any such contract.

19. SUBAGREEMENTS (NOVEMBER 1984)

(This provision is applicable when subgrants or cooperative agreements are financed under the grant.)

All subagreements shall as a minimum contain the following provisions as well as any that are specifically required by any other provision in this grant. Whenever a provision within this grant is required to be inserted in a subagreement, the grantee shall insert a statement in the subagreement that in all instances where the U.S. Government is mentioned, the grantee's name will be substituted.

(a) Subagreements in excess of \$10,000 shall contain provisions or conditions that will allow for administrative or legal remedies in instances where subrecipients violate subagreement terms and provide for such remedial action as may be appropriate.

(b) All subagreements in excess of \$10,000 shall contain suitable provisions for termination by the recipient including the manner by which the termination will be effected and the basis for settlement. In addition, such subagreements shall describe conditions under which the subagreement may be terminated for default as well as conditions where the subagreement may be terminated

because of circumstances beyond the control of the subrecipient.

(c) Subagreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields that directly concern public health, safety or welfare; or subagreements in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the subagreement are subject to the regulations contained in the provisions of this grant. The subrecipient shall be advised as to the source of additional information regarding these matters.

(d) All subagreements over \$10,000 issued by recipients shall include a provision to the effect that the recipient, AID, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the subrecipient which are directly pertinent to the specific program for the purpose of making audits, examinations, excerpts and transcriptions.

20. LOCAL COST FINANCING WITH U.S. DOLLARS (NOVEMBER 1984)

(This Provision is applicable when local financing is authorized under the grant and must be used in conjunction with the provisions entitled "Procurement of Goods and Services" and "Ineligible and Restricted Goods and Services".)

(a) Local cost financing is the use of appropriated U.S. dollars to finance the procurement of goods and services paid for with local currency in the cooperating country for furtherance of grant purposes. Local cost financing must be specifically authorized in the Schedule of the grant. The amount of U.S. dollars which may be used must be specified in the authorization, together with any special restrictions on their use.

(b) Procurement of goods and services under local cost financing is subject to the restrictions listed in the grant provisions entitled "Procurement of Goods and

Services" and "Ineligible and Restricted Goods and Services."

(c) Authorization of local cost financing makes the cooperating country, in addition to the United States and any other country included in the authorized geographic code for the project, an eligible source for the purchase of goods or services in the cooperating country. Goods or services purchased under local cost financing must be located in the cooperating country at the time they are purchased; they cannot be imported specifically for the project being implemented by this grant. The supplier from which goods or services are purchased under local cost financing must also be in the cooperating country. Suppliers of goods or services under local cost financing must meet the nationality eligibility tests prescribed in Chapter 5 of AID Handbook 1, Supplement B.

(d) Unless otherwise specifically authorized, the policies in Chapter 18 of AID Handbook 1, Supplement B are applicable to all local cost financing.

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21. PUBLICATIONS (NOVEMBER 1984)

(This provision is applicable when publications are financed under the grant.)

(a) If it is the grantee's intention to identify AID's contribution to any publication resulting from this grant, the grantee shall consult with AID on the nature of the acknowledgement prior to publication.

(b) The grantee shall provide the AID project officer with one copy of all published works developed under this grant and with lists of other written work produced under the grant.

(c) In the event grant funds are used to underwrite the cost of publishing, in lieu of the publisher assuming this cost as is the normal practice, any profits or royalties up to the amount of such cost shall be credited to the grant.

(d) Except as otherwise provided in the terms and conditions of the grant, the author or the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under this grant, but AID reserves a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

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22. PATENT RIGHTS (NOVEMBER 1984)

(This provision is applicable whenever patentable processes or practices are financed by the grant).

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) "Subject Invention", means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when use in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern which meets the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization which is not organized for profit as described in the laws of the country in which it was organized.

(b) Allocation of Principal Rights.

The recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient.

(1) The recipient shall disclose each subject invention to AID within two months after the inventor discloses it in writing to recipient personnel responsible for patent matters. The disclosure to AID shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any

publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to AID the recipient shall promptly notify AID of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the recipient.

(2) The recipient shall elect in writing whether or not to retain title to any such invention by notifying AID within twelve months of disclosure to the recipient, provided that in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by AID to a date that is no more than 60 days prior to the end of the statutory period.

(3) The recipient shall file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The recipient shall file patent application in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent application where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to AID, election, and filing may, at the discretion of AID, be granted.

(d) Conditions When the Government May Obtain Title.

The recipient shall convey to AID upon written request, title to any subject invention:

(1) If the recipient fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title. AID may only request title within sixty days after learning of the recipient's failure to report or elect within the specified times.

(2) In those countries in which the recipient fails to file patent applications within the times specified in c. above; provided, however, that if the recipient has filed a patent application in a country after the times specified in c., above, but prior to its receipt of the written request of AID the recipient shall continue to retain title in that country.

(3) In any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on a patent on a subject invention.

(e) Minimum Rights to Recipient.

(1) The recipient shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the

recipient fails to disclose the subject invention within the times specified in e., above. The recipient's license extends to its subsidiaries and affiliates, if any, within the corporate structure of which the recipient is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of AID except when transferred to the successor of that party of the recipient's business to which the invention pertains.

(2) The recipient's license may be revoked or modified by AID to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the recipient has achieved practical application and continues to make the benefits of the practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of AID to the extent the recipient, its licensees, or its subsidiaries or affiliates have failed to achieve practical application.

(3) Before revocation or modification of the license, AID shall furnish the recipient written notice of its intention to revoke or modify the license, and the recipient shall be allowed thirty days (or such other time as may be authorized by AID for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable agency licensing regulations (if any) and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient Action to Protect the Government's Interest.

(1) The recipient agrees to execute or to have executed and promptly deliver to AID all instruments necessary to (i) establish or conform the rights the Government has throughout the world in those subject inventions to which the recipient elects to retain title, and (ii) convey title to AID when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the recipient each subject invention made under agreement in order that the

recipient can comply with the disclosure provisions of paragraph e. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by e. (1) above. The recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent application prior to U.S. or foreign statutory bars.

(3) The recipient shall notify AID of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the agreement awarded by AID). The Government has certain rights in this invention."

(g) Subagreements and Contracts.

The recipient shall include this clause suitably modified to identify the parties, in all subagreements and contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient or contractor shall retain all rights provided for the recipient in this clause, and the recipient shall not, as part of the consideration for awarding the contract or subagreement obtain rights in the contractor's or subrecipient's subject inventions.

(h) Reporting Utilization of Subject Inventions.

The recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the recipient, and such other data and information as AID may reasonably specify. The recipient also agrees to provide additional reports as may be requested by AID in connection with any march-in proceedings undertaken by AID in accordance with paragraph j. of this provision. To the extent data or information supplied under this section is considered by the recipient, its licensee or assignee to be privileged and confidential and is so marked, AID agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States Industry.*

Notwithstanding any other provision of this clause, the recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by AID upon a showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances manufacture in the United States is not commercially feasible.

(j) *March-in Rights*

The recipient agrees that with respect to any subject invention in which it has acquired title, AID has the right in accordance with the procedures in OMB Circular A-124 to require the recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the recipient, assignee, or exclusive licensee refuses such a request, AID has the right to grant such a license itself if AID determines that:

(1) Such action is necessary because the recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph i. of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special Provisions for Agreements with Nonprofit Organizations.*

If the recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention may not be assigned without the approval of AID, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee shall be subject to the same provisions as the recipient.

(2) The recipient may not grant exclusive licenses under the United States patents or patent applications in subject inventions to person other than small business firms for a period in excess of the earlier of:

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, AID approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use shall not be deemed commercial sale or use as to other fields of use and a first commercial sale or use with respect to a product of the invention shall not be deemed to end the exclusive period to different subsequent products covered by the invention.

(3) The recipient shall share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, shall be utilized for the support of scientific research or education.

(l) *Communications.*

Communications concerning this provision shall be addressed to the grant officer at the address shown on the face of this agreement.

**23. REGULATIONS GOVERNING EMPLOYEES
(NOVEMBER 1984)**

(The following applies to the grantees employees who are not citizens of the cooperating country.)

(a) The grantee's employees shall maintain private status and may not rely on local U.S. Government offices or facilities for support while under this grant.

(b) The sale of personal property or automobiles by grantee employees and their dependents in the foreign country to which they are assigned shall be subject to the same limitations and prohibitions which apply to direct-hire AID personnel employed by the Mission except as this may conflict with host government regulations.

(c) Other than work to be performed under this grant for which an employee or consultant is assigned by the grantee, no employee or consultant of the grantee shall engage directly or indirectly, either in the individual's own name or in the name or through an agency of another person, in any business, profession, or occupation in the foreign countries to which the individual is assigned, nor shall the individual make loans or investments to or in

any business, profession or occupation in the foreign countries to which the individual is assigned.

(d) The grantee's employees, while in a foreign country, are expected to show respect for its conventions, customs, and institutions, to abide by its applicable laws and regulations, and not to interfere in its internal political affairs.

(e) In the event the conduct of any grantee employee is not accordance with the preceeding paragraphs, the grantee's chief of party shall consult with the AID Mission Director and the employee involved and shall recommend to the grantee a course of action with regard to such employee.

(f) The parties recognize the rights of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this grant of any third country national when, in the discretion of the Ambassador, the interests of the United States so require.

(g) If it is determined, under either (e) or (f) above, that the services of such employee shall be terminated, the grantee shall use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

24. PARTICIPANT TRAINING (NOVEMBER 1984)

(This provision is applicable when any participant training is financed under the grant.)

(a) Definitions:

(1) Participant training is the training of any non-U.S. individual outside of his or her home country using AID funds or under AID sponsorship.

(2) A participant is any non-U.S. individual being trained under this grant outside of his or her home country.

(b) Application of Handbook 10:

Participant training under this grant is to be conducted according to the policies established in AID Handbook 10, *Participant Training*, except to the extent that specific exception to Handbook 10 have been provided in this grant with the concurrence of the Office of International Training. (Handbook 10 may be obtained by submitting a request to the grant officer.) The following provisions summarized from Handbook 10, however, may not be excluded from any grant.

(c) Participant Training Information System:

All grantees shall ensure that participants trained in the United States or in a third country are included in the Agency's Participant Training Information System.

For participants trained in the United States, data is submitted by means of the form AID 1381-4, "Participant Data Form", simultaneously with enrollment in the Health and Accident Coverage Program (see Section (f) below). For participants trained in third countries, grantees shall submit to the grant officer only the top white sheet of the Participant Data Form (and blue copies if subsequent changes in the participant's training program are made). Copies of the Participant Data Form may be obtained from the grant officer. The grant officer will submit the completed forms to the Office of International Training (S&T/IT), Washington, D.C. 20523.

(d) Visa Requirements For Training Within The United States

(1) Under the authority of Section 635(f) of the Foreign Assistance Act, AID-sponsored participants are admitted to the United States under the Department of State/UISA Exchange Visitor Program and are issued J-1 visas. The program identification number is G-2-0263.

(2) J-1 visas are issued by the U.S. Embassy or consulate for AID-sponsored participants upon submission by the participant of form IAP-66A which may be obtained only from the AID Mission.

(3) Holders of J-1 visas are subject to the Immigration and Nationality Act, as amended, and may not apply for an immigrant or a nonimmigrant visa until 2 years' residency is completed in their home country, after completion of training.

(4) Participant passports and visas should normally be valid for six months beyond the duration of the proposed program to allow for program readjustments if necessary. This may not be regarded as an opportunity to encourage program extensions.

(e) Maintenance and Other Allowances:

Grantees must observe the maintenance and other allowances for AID-sponsored participants in the United States and third countries as set forth in Handbook 10. No exceptions or variations are permissible except with the advance concurrence of the Office of International Training.

(f) Health and Accident Coverage (HAC) Program For Training Within The United States

The grantee shall enroll all participants training in the United States in AID's HAC Program.

(1) The HAC Program enables the participant, or the provider of medical services, to submit bills for medical costs resulting from illness and accident to the HAC Claims Office which pays all reasonable and necessary medical charges for covered services not otherwise covered by other insurance programs (see paragraph 5 below), in accordance with the standard coverage established by AID under the HAC Program.

(2) The grantee shall, as early as possible and no later than the initiation of travel to the United States by each participant financed by AID under this grant, fill out form AID 1381-4 entitled "Participant Data Form" and mail it to the grant officer, who shall transmit it to the addressees indicated on the back of the form. The grantee can obtain a supply of these forms and instructions for completing them from the grant officer.

(3) Enrollment fees shall be submitted, thirty days prior to the beginning of each new enrollment period. The current enrollment fee amount shall be obtained from the grant officer. Payments will be made via check made payable to AID and submitted to:

Agency for International Development
Office of Financial Development
Central Accounting Division-Cashier
(FM/CAD)
Washington, D.C. 20523

(i) The enrollment fee shall be accompanied by a letter which lists the names of the enrollees (identical to that on the Participant Data Form) period of coverage, fee amount paid, grant number, and the U.S. Government appropriation number as shown on the grant cover letter.

(ii) The enrollment fees shall be calculated on the basis of fixed rates per participant per each 30 day period. The enrollment fees may not be prorated for fractional periods of less than 30 days and should cover the current training period for which funds are obligated under the grant.

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(4) The grantee shall assure that enrollment begins immediately upon the participant's departure for the United States for the purpose of participating in a training program financed or sponsored by AID, and that enrollment continues in full force and effect until the participant returns to his or her country of origin or is released from AID's responsibility, whichever occurs first.

(5) The grantee shall provide each participant with a copy of the HAC brochure, copies of which are available from the grant officer.

(6) If the grantee has a *mandatory, nonwaivable* health and accident insurance program for participants, the costs of such insurance will be allowable under this grant. Any claims eligible under such insurance will *not* be payable under AID's HAC plan or under this grant. However, even though the participant is covered by the grantee's mandatory, nonwaivable health and accident insurance program, the participant must be enrolled in AID's HAC Program. In addition, a copy of the mandatory insurance policy must be forwarded to the grant officer, who will forward it to the HAC Claims Office.

(7) Medical costs not covered by the grantee's health service program, or mandatory, nonwaivable health and accident insurance program, or AID's HAC Program shall not be reimbursable under this grant unless specific written approval from the grant officer has been obtained.

(g) Participant Counseling For Training Within The United States.

Problems involving participants such as serious physical or emotional illness, accident or injury, arrest, death, the voluntary or involuntary early termination of a program,

and the refusal of a participant to return to the home country upon completion of the program should be referred to the AID Participant Counselor at the Office of International Training.

The Counselor can be reached by calling the Office of International Training during workdays and the AID Duty Officer (202-632-1512) at other times. In referring cases, give the Counselor the name, country, and current location of the participant as well as a brief description of the problem with names and telephone numbers of hospitals, physicians, attorneys, etc. following verbal referral, the participant's name, home address, and next of kin, and location of training should be sent to the grant officer, who will transmit the information to the S&T/IT Counselor.

(h) Orientation:

In addition to the above mandatory requirements for all participants, grantees are strongly encouraged to provide, in collaboration with the Mission training officer, predeparture orientation (see Chapter 13 of Handbook 10) and orientation in Washington at the Washington International Center (See Chapter 18D of Handbook 10). The latter orientation program also provides the opportunity to arrange for home hospitality in Washington and elsewhere in the United States through liaison with the National Council for International Visitors (NCIV). If the Washington orientation is determined not to be feasible, arrangements for home hospitality can be arranged in most U.S. cities if a request for such is directed to the grant officer, who will transmit the request to NCIV through S&T/IT.

**25. VOLUNTARY POPULATION PLANNING
(NOVEMBER 1984)**

(This provision is applicable to all grants involving any aspect of voluntary population planning activities.)

(a) Voluntary Participation

The grantee agrees to take any steps necessary to ensure that funds made available under this grant will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the grantee agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

(b) Prohibition on Abortion-Related Activities

(1) No funds made available under this grant will be used to finance, support, or be attributed to the following activities: (a) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (b) special fees or incentives to women to coerce or motivate them to have abortions; (c) payments to persons to perform abortions or to solicit persons to undergo abortions; (d) information, education, training, or communication programs that seek to promote abortion as a method of family planning; and (e) lobbying for abortion.

(2) No funds made available under this grant will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortion is not precluded.

(c) Voluntary Participation Requirements For Sterilization Programs

(1) None of the funds made available under this grant shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to practice sterilization.

(2) The grantee shall ensure that any surgical sterilization procedures supported in whole or in part by funds from this grant are performed only after the individual has voluntarily gone to the treatment facility and has given informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the option to withdraw consent anytime prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress, or other forms of coercion or misrepresentation.

(3) Further, the grantee shall document the patient's informed consent by (a) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (b) when a patient is unable to read adequately a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation. The receipt of the oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall be of the same sex and speak the same language as the patient.

(4) Copies of informed consent forms and certification documents for each voluntary sterilization procedure must be retained by the grantee for a period of three years after performance of the sterilization procedure.

(d) The grantee shall insert this provision in all subsequent subgrants and contracts involving family planning or population activities which will be supported in whole or part from funds under this grant.

26. PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT (NOVEMBER 1984)

(This provision is applicable when human subjects are involved in research financed by the grant.)

(a) Safeguarding the rights and welfare of human subjects involved in research supported by AID is the responsibility of the organization to which support is awarded. It is the policy of AID that no work shall be initiated under any grant for the support of research involving human subjects unless the research is given initial and continuing review and approval by an appropriate committee of the applicant organization. This review shall assure that (1) the rights and welfare of the individuals involved are adequately protected, (2) the methods used to obtain informed consent are adequate and appropriate, and (3) the risks and potential medical benefits of the investigation are assessed.

(b) The organization must provide written assurance to AID that it will abide by this policy for all research involving human subjects supported by AID. This assurance shall consist of a written statement of compliance with the requirements regarding initial and continuing review of research involving human subjects and a description of the organization's review committee structure, its review procedures, and the facilities and personnel available to protect the health and safety of human

subjects. In addition to providing the assurance, the organization must also certify to AID for each proposal involving human subjects that its committee has reviewed and approved the proposed research before any work may be initiated.

(c) Since the welfare of the subject individual is a matter of concern to AID as well as to the organization; AID advisory groups, consultants, and staff may independently review all research involving human subjects, and prohibit research which presents unacceptable hazards. This provision, however, shall not derogate in any manner from the responsibility of the organization set forth herein.

(d) All of the above provisions apply to any research involving human subjects conducted outside of the United States and, in addition, such overseas research will conform to legal and other requirements governing human research in the country where they are conducted.

(e) In addition to the procedures set forth above, studies with unmarketed drugs will be carried out in accordance with provisions applicable in the country where the study is conducted.

(f) Guidance on procedures to safeguard human subjects involved in research is found in Title 45, Part 46, of the Code of Federal Regulation. Compliance with these procedures, except as modified above, is required.

**27. NEGOTIATED OVERHEAD RATES--
PROVISIONAL (NOVEMBER 1984)**

(This provision is applicable to all recipients who have an established provisional overhead rate.)

(a) An overhead rate shall be established for each of the grantee's accounting periods during the term of this grant. Pending establishment of a final rate, provisional overhead payments shall be at the rate(s), on the base(s), and for the period(s) shown in the Schedule of this grant.

(b) The grantee, not later than 6 months after the close of each of its accounting periods during the term of this grant, shall submit to the grant officer a proposed final rate(s) for the period, together with supporting cost data. Negotiation of final overhead rate(s) by the grantee and the grant officer shall be undertaken as promptly as practicable after receipt of the grantee's proposal.

(c) The results of each negotiation shall be set forth in an amendment to the grant and shall specify (1) the agreed upon final rate(s), (2) the base(s) to which the rate(s) apply, and (3) the period for which the rates apply. The overhead rate amendment shall not change any monetary ceiling, grant obligation, or specific cost allowance or disallowance provided for in this grant.

(d) To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this provision shall be set forth in an amendment to this grant.

(e) Any failure by the parties to agree on any final rate(s) under this provision shall be considered a dispute within the meaning of the standard provision of the grant, entitled "Disputes".

28. TITLE TO AND USE OF PROPERTY (GRANTEE TITLE) (NOVEMBER 1984)

(This provision is applicable when the Government vests title in the grantee only.)

Title to all property financed under this grant shall vest in the grantee, subject to the following conditions:

(a) The grantee shall not charge for any depreciation, amortization, or use of any property, title to which remains in the grantee under this provision under this grant

or any other U.S. Government grant, subagreement, contract, or subcontract.

(b) The grantee agrees to use and maintain the property for the purposes of the grant in accordance with the requirements of paragraph 1T of Chapter 1 of Handbook 13.

(c) With respect to nonexpendable property having an acquisition cost of \$1,000 or more, title to which vests in the grantee, the grantee agrees to report such items to the grant officer from time to time as they are acquired and to maintain a control system which will permit their ready identification and location.

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29. COST SHARING (NOVEMBER 1984)

(This provision is applicable when the recipient is either voluntarily cost sharing or is required to provide a matching share.)

(a) For each year (or funding period) under this grant, the grantee agrees to expend from non-Federal funds an amount at least equal to the percentage of the total expenditures under this grant specified in the schedule of the grant. The schedule of this grant may also contain restrictions on the application of cost sharing/matching funds. The schedule takes precedence over the terms of this provision.

(b) Eligibility of non-Federal funds applied to satisfy cost sharing/matching requirements under this grant are set forth below:

(1) Charges incurred by the grantee as project costs. Not all charges require cash outlays by the grantee during the project period; examples are depreciation and use charges for buildings and equipment.

(2) Project costs financed with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, and private organizations and individuals, and

(3) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.

(c) All contributions, both cash and in-kind, shall be accepted as part of the grantee's cost sharing and matching when such contributions meet all of the following criteria:

(1) Are verifiable from the grantee's records;

(2) Are not included as contributions for any other Federally assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges that would be allowable under the applicable Federal cost principles;

(5) Are not paid by the Federal Government under another grant or agreement (unless the grant or agreement is authorized by Federal law to be used for cost sharing or matching);

(6) Are provided for in the approved budget when required by AID; and

(7) Conform to other provisions of this paragraph.

(d) Values for grantee in-kind contributions will be established in accordance with the applicable Federal cost principles.

(e) Specific procedures for the grantee in establishing the value of in-kind contributions from non-Federal third parties are set forth below:

(1) *Valuation of volunteer services.* Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(i) *Rates for volunteer services.* Rates for volunteers should be consistent with those paid for similar work in the grantee's organization. In those instances in which the required skills are not found in the grantee's organization, rates should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(ii) *Volunteers employed by other organizations.* When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are of the same skill for which the employee is normally paid.

(2) *Valuation of donated expendable personal property.* Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost/matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

(3) *Valuation of donated nonexpendable personal property, buildings, and land or use thereof.*

(i) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant as follows:

(A) If the purpose of the grant is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(B) If the purpose of the grant is to support activities that require the use of equipment, buildings, or land, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that AID has approved the charges.

(ii) The value of donated property will be determined in accordance with the usual accounting policies of the grantee with the following qualifications:

(A) *Land and buildings.* The value of donated land and buildings may not exceed its fair market value, at the time of donation to the grantee as established by an independent appraiser; and certified by a responsible official of the grantee.

(B) *Nonexpendable personal property.* The value

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of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(C) *Use of space.* The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.

(D) *Borrowed equipment.* The value of borrowed equipment shall not exceed its fair rental value.

(f) The following requirements pertain to the grantee's supporting records for in-kind contributions from non-Federal third parties.

(1) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees.

(2) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented.

(g) Individual expenditures do not have to be shared or matched provided that the total expenditures incurred during the year (or funding period) are shared or matched in accordance with the agreed upon percentage set forth in the schedule of the grant.

(h) If at the end of any year (or funding period)

hereunder, the grantee has expended an amount of non-Federal funds less than the agreed upon percentage of total expenditures, the difference may be applied to reduce the amount of AID funding the following year (or funding period), or, if this grant has expired or been terminated, the difference shall be refunded to AID.

(i) Failure to meet the cost sharing/matching requirements set forth in paragraph (a) above shall be considered sufficient reasons for termination of this grant for cause in accordance with paragraph (a) entitled "For Cause" of the standard provision of this grant entitled "Termination."

(j) The restrictions on the use of AID grant funds hereunder set forth in the standard provisions of this grant are applicable to expenditures incurred with AID funds provided under this grant. The grantee will account for the AID funds in accordance with the standard provision of this grant entitled "Accounting, Audit and Records".

(k) Notwithstanding paragraph (b) of the standard provision of this grant entitled "Refunds", the parties agree that in the event of any disallowance of expenditures from AID grant funds provided hereunder, the grantee may substitute expenditures made with funds provided from non-Federal sources provided they are otherwise eligible in accordance with paragraph (b) of this provision.

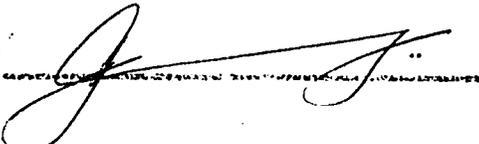
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This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Agency, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Voluntary Agencies Development Assistance

(Applicant)

BY (Signature)



TITLE Executive Director

TYPED NAME Jacob N. Mwangi.

DATE June 18, 1985

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** New Material

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