

PDBBR-641

A.I.D. Project No. 615-0243
Dollar Appropriation No. 72-1191014
Budget Plan Code: GSSA-89-31615-KG39
Project Agreement No. 615-0243

PROJECT GRANT AGREEMENT

BETWEEN

THE REPUBLIC OF KENYA

AND THE

UNITED STATES OF AMERICA

FOR

FERTILIZER PRICING AND MARKETING REFORM PROJECT

DATED: AUGUST 31, 1989

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PROJECT GRANT AGREEMENT FOR FERTILIZER PRICING AND MARKETING REFORM

Dated: August 31, 1989

Between

The Government of the Republic of Kenya (hereinafter referred to as the "Grantee")

and

The United States of America, acting through the Agency for International Development ("A.I.D").

Article 1: The Agreement

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

Article 2: The Project

SECTION 2.1. Definition of Project. The Project, which is further described in Annex 1, is designed to increase fertilizer use by smallholder farmers in rural areas. This is to be accomplished by strengthening and promoting a fertilizer market network at prices that reflect costs including adequate profits to importers and distributors. This Project Agreement provides technical assistance that complements the Fertilizer Pricing and Marketing Reform Program Agreement dated July 31, 1989.

Annex 1, attached, amplifies the above definition of the Project. Within the limits of the above definition of the Project, elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 8.2 without formal amendment of this Agreement.

SECTION 2.2. Incremental Nature of Project.

(a) A.I.D.'s contribution to the Project will be provided in increments, the initial one being made available in accordance with Section 3.1 of this Agreement. Subsequent increments will be subject to availability of funds to A.I.D. for this purpose, and to the mutual agreement of the Parties, at the time of each subsequent increment, to proceed.

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

Article 3: Financing

SECTION 3.1. The Grant. To assist the Grantee to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Grantee under the terms of this Agreement not to exceed Three Hundred Thousand United States ("U.S.") dollars (\$300,000) ("Grant").

The Grant may be used to finance foreign exchange costs, as defined in Section 6.1 of this Agreement, and local currency costs, as defined in Section 6.2 of this Agreement, of goods and services required for the Project.

SECTION 3.2. Grantee Resources for the Project.

(a) The Grantee agrees to provide or cause to be provided for the Project all funds, in addition to the Grant, and all other resources required to carry out the Project effectively and in a timely manner.

(b) The resources provided by the Grantee for the Project will be not less than the equivalent of One Hundred Thousand U.S. dollars (\$100,000), including costs borne on an "in-kind" basis. This represents twenty-five percent of U.S. dollars hereto granted by A.I.D.

SECTION 3.3. Project Assistance Completion Date (PACD).

(a) The PACD, which is September 30, 1992, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the Grant will have been performed and all goods financed under the Grant will have been furnished for the Project as contemplated in this Agreement.

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

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in Section 7.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Grantee, may at any time or times reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

Article 4: Condition Precedent

SECTION 4.1. Condition Precedent to First Disbursement.

Except as A.I.D. may otherwise agree in writing, prior to any disbursement under the Grant, or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee shall furnish or have furnished to A.I.D., in form and substance satisfactory to A.I.D., a written statement setting forth the names and titles of persons holding or acting in the Office of the Grantee and of any additional representatives, and representing that the named person or persons have the authority to act as the representative or representatives of the Grantee, together with a specimen signature of each such person certified as to its authenticity.

SECTION 4.2. Notification. When A.I.D. has determined that the condition precedent specified in Section 4.1 has been met, A.I.D. will promptly so notify the Grantee.

SECTION 4.3 Terminal Date for Condition Precedent.

If the condition specified in Section 4.1 has not been met within ninety days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Grantee.

Article 5: Special Covenant

SECTION 5.1. Project Evaluation. The Parties agree to establish an evaluation program as part of the Project. Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter:

(a) evaluation of progress towards attainment of the objectives of the Project;

(b) identification and evaluation of problem areas or constraints which may inhibit such attainment;

(c) assessment of how such information may be used to help overcome such problems; and,

(d) evaluation, to the degree feasible, of the overall development impact of the Project.

Article 6: Procurement Source

SECTION 6.1. Foreign Exchange Costs. Except as A.I.D. may otherwise agree in writing, disbursements pursuant to Section 7.1 will be used exclusively as follows:

(a) to finance the costs of goods and services required for the Project having, with respect to goods, their source and origin, and with respect to services, their nationality in countries included in A.I.D. Geographic Code 935 as in effect at the time orders are placed or contracts entered into for such goods or services, except that all reasonable efforts will be used to maximize U.S. procurement whenever practicable. Air travel and transportation to and from the U.S. shall be upon certified U.S. Flag Carriers except as provided in the Project Grant Standard Provisions Annex, Section C.1(b) with respect to marine insurance. ("Foreign Exchange Costs");

(b) to finance ocean transportation costs under the Grant only on vessels under flag registry of the countries included in AID Geographic Code 000.

SECTION 6.2. Local Currency Costs. Disbursements pursuant to Section 7.2 will be used exclusively to finance the costs of goods and services required for the Project having their source and, except as A.I.D. may otherwise agree in writing, their origin in the Republic of Kenya ("Local Currency Costs"). To the extent provided for under this Agreement, "Local Currency Costs" may also include the provision of local currency resources required for the Project.

Article 7: Disbursement

SECTION 7.1. Disbursement for Foreign Exchange Costs.

(a) In accord with requirements of conditions precedent, the Grantee may obtain disbursements of funds under the Grant for Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of this Agreement, by such of the following methods as may be mutually agreed upon:

(1) by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (A) requests for reimbursement for such goods or services, or, (B) requests for A.I.D. to procure commodities or services in the Grantee's behalf for the Project; or,

(2) by requesting A.I.D. to issue Letters of Commitment for specified amounts (A) to one or more U.S. banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, or (B) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers for such goods or services.

(b) Banking charges incurred by the Grantee in connection with Letters of Commitment and Letters of Credit will be financed under the Grant unless the Grantee instructs A.I.D. to the contrary. Such other charges as the Parties may agree to may also be financed under the Grant.

SECTION 7.2. Disbursement for Local Currency Costs.

(a) In accord with requirements of conditions precedent, the Grantee may obtain disbursements of funds under the Grant for Local Currency Costs required for the Project in accordance with terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, requests to finance such costs.

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

(1) by acquisition by A.I.D. with U.S. dollars by purchase or from local currency already owned by the U.S. Government; or,

(2) by A.I.D., (A) requesting the Grantee to make available the local currency for such costs, and (B) thereafter making available to the Grantee, through the opening or amendment by A.I.D. of Special Letters of Credit in favor of the Grantee or its designee, an amount of U.S. dollars equivalent to the amount of local currency made available by the Grantee, which dollars will be utilized for procurement from the United States under appropriate procedures described in Project Implementation Letters.

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

SECTION 7.3. Other Forms of Disbursement. Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

SECTION 7.4. Rate of Exchange. Except as may be more specifically provided under Section 7.2, if funds provided under the Grant are introduced into Kenya by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into currency of the Republic of Kenya at the highest rate of exchange which, at the time the conversion is made, is not unlawful for any person for any purpose in the Republic of Kenya.

Article 8: Miscellaneous

SECTION 8.1. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will

be deemed duly given or sent when delivered to such party at the following addresses:

To the GOVERNMENT OF KENYA:

Mail Address: Permanent Secretary
Office of the Vice President
and Ministry of Finance
Post Office Box 30007
Nairobi, Kenya

Address for Cables: (FINANCE, NAIROBI, KENYA)

To A.I.D.:

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

Address for cables: USAID, AMEMBASSY, NAIROBI

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice. The Grantee, in addition, will provide the USAID Mission/Republic of Kenya with a copy of each communication sent to A.I.D.

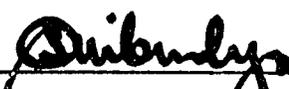
SECTION 8.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of the Permanent Secretary, Office of the Vice President and Ministry of Finance and A.I.D. will be represented by the individual holding or acting in the Office of the Director, USAID Mission to Republic of Kenya, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1 to revise elements of the amplified description in Annex 1. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

SECTION 8.3. Standard Provisions Annex. A "Project Grant Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

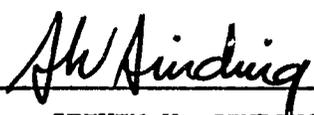
IN WITNESS WHEREOF, the Grantee and the United States of America, each acting through its duly authorized representative,

have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

REPUBLIC OF KENYA

BY: 
NAME: CHARLES MBINDYO
TITLE: PERMANENT SECRETARY
OFFICE OF THE VICE PRESIDENT
AND MINISTRY OF FINANCE

UNITED STATES OF AMERICA

BY: 
NAME: STEVEN W. SINDING
TITLE: DIRECTOR
USAID/KENYA

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SUMMARY OF PROJECT COSTS BY EXPENSE CATEGORY AND SOURCE OF FUNDING 2/
 (In 000's)

ILLUSTRATIVE

EXPENSE CATEGORY	This Obligation		Life of Project Funding 1/	
	A.I.D. (in \$)	GOK (in L/C)	A.I.D. (in \$)	GOK (in L/C) 3/
Fertilizer Pricing Studies	50	25	50	90
Market Development Studies and Action Programs	100	50	300	187
Training, Seminars and Other Educational Programs	30	15	230	55
Fertilizer Handling and Distribution Monitoring Programs	50		300	
Project Monitoring, Project Impact Evaluation and Audit	70	10	220	35
TOTAL	300	100	1,100	367

- 1/ Subject to the availability of funds to A.I.D. for this purpose, and to the mutual agreement of the parties to proceed at the time of each subsequent increment.
- 2/ Either party may unilaterally, with written notice to the other, adjust prime line items in this budget to a maximum of 15% per line item, provided, however, that the total obligated amount as shown in the budget is not exceeded.
- 3/ Subject, on a proportional basis, to the provision by A.I.D. of the LOP grant amount set forth herein.

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AMPLIFIED PROJECT DESCRIPTION
FOR
FERTILIZER PRICING AND
MARKETING REFORM
PROJECT

I. Introduction

The Fertilizer Pricing and Marketing Reform Project is designed to provide technical assistance and training in support of the Fertilizer Pricing and Marketing Reform Program. The Program is designed to increase fertilizer use by smallholder farmers in rural areas by strengthening and promoting a fertilizer market network.

II. Project Components

A. Fertilizer Pricing Studies

There will be several major studies carried out under this program related to fertilizer pricing issues. The first study undertaken will focus on the development of an efficient pricing formula and a methodology for accurate price data collection. Included in this review will be recommendations relative to official fertilizer prices which reflect more accurately changes in market conditions which use border prices as a basis for official price setting. Also included in price calculations will be costs related to transport, handling, storage, finance and exchange rate risks as well as reasonable profits.

A second key study will examine the possibility of decontrolling fertilizer prices and will examine the implications of such a move. As part of the study an action plan that will identify a step-by-step approach will be undertaken leading to the eventual decontrol of fertilizer prices.

B. Market Development Studies and Action Programs

The Fertilizer Pricing and Market Reform Project will contain funding which will be utilized to carry out studies and develop action programs to strengthen and expand the fertilizer sector. Key to this effort will be involvement with private sector firms and other agricultural input suppliers as well as government agencies in conducting

research on and identifying constraints to increased fertilizer use. Additionally, agrobusinesses will be assisted in analyzing management constraints and developing programs to improve their efficiency in servicing the needs of farmers in Kenya. Short-term consultancies with USAID agriculture staff will provide further analyses, assessment and detailed action plans for baseline studies. If necessary, the consultancies will make recommendations for special follow up studies in the areas of policy reform and use of counterpart funds, end of project status, effects on women, and any mid-term evaluations that may be called for. Specific areas which will receive attention include an analysis of credit needs by small to medium scale farm operators; the value and need for provision of liming materials as a complementary input to DAP fertilizer; continued monitoring of appropriate fertilizer bag sizes; and review of market size and firms servicing that market.

C. Training, Seminars and Other Educational Programs

Training and education will be a key component of the Fertilizer Pricing and Market Reform Project. Training opportunities will be provided to both government and private sector personnel in a wide variety of areas dealing with fertilizer marketing, policy issues, importation and handling, fertilizer usage and business operations. Training will be conducted both within Kenya and abroad. A major effort will be directed toward the design, development and distribution of appropriate educational materials and programs in an effort to improve the understanding of the benefits of fertilizer as well as proper application and relationship to other crop husbandry practices. An annual seminar will be held dealing with appropriate topics related to fertilizer demand, policy and marketing issues. Special sessions dealing with import regulations, shipping, commodity procurement and financing issues will also be organized under the program. A key recipient of training and other development efforts will be the staff and organization of the Ministry of Agriculture's Fertilizer Inputs Unit. With its overall role in monitoring stocks, forecasting needs, developing plans, advising on policy and monitoring market performance, the Fertilizer Inputs Unit will receive special attention under this project.

D. Fertilizer Handling and Distribution Monitoring Programs

The Project will provide funding for a comprehensive monitoring program which will essentially track fertilizer imports from the time of delivery to the Port of Mombasa through receipt by the primary beneficiary of the program, the small scale landowner in Kenya. More specifically the

monitoring program will cover documentation of fertilizer received, handling at port of receipt, transportation throughout the distribution system, and documentation of deposits of counterpart shillings.

E. Project Monitoring, Project Impact and Evaluation Studies and Project Audit

Program intervention to develop a Monitoring and Evaluation (M&E) System will largely involve strengthening and coordinating various institutions that already attempt to monitor availability and use of fertilizer in Kenya. What is lacking is coordinated data collection activities, analytical capacity or a systematic approach to data collection and analysis which would provide answers to the critical questions on the performance of the fertilizer program. The planned M&E system will, throughout the life of the project, assess operational performance at every stage from budget allocation to farmer use levels, as well as impact on productivity, environment, and incomes to both traders and farmers. In addition, the M&E system will provide management information to determine whether the program is still on course, and direct follow-up corrective measures. It will also attempt to measure benefits accruing to women as a result of program implementation.

Additionally the Fertilizer Pricing and Market Reform Project will carry out impact evaluations on the Fertilizer Pricing and Marketing Reform Program. These evaluations will establish, in objective terms, what the program's impact has been on its objectives, i.e. food production and yield levels, agricultural productivity, incomes and food security.

Project audits will be carried out as appropriate.

F. Illustrative Financing Methods

It is anticipated that all contracts will be direct AID contracts and that the method of financing will be by direct AID payment.

Drafted:JTarter:nmm:08/09/89

Clearance:

AGR:JDunn (Draft)

RLA:SSpielman (Draft)

PROG:CSteele (Draft)

CONT:TTotino (Draft)

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PROJECT GRANT

STANDARD PROVISIONS ANNEX

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

Article A: Project Implementation Letters

To assist Grantee in the implementation of the Project, A.I.D., from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The parties may also use jointly agreed-upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement, Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in Annex 1.

Article B: General Covenants

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

SECTION B.2. Execution of Project. The Grantee will:

(a) carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules or other arrangements, and with any modifications therein, approved by A.I.D. pursuant to this Agreement; and

(b) provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

Article B: General Covenants (Continued)

SECTION B.3. Utilization of Goods and Services.

(a) Any resources financed under the Grant will, unless otherwise agreed in writing by A.I.D., be devoted to the Project until the completion of the Project, and thereafter will be used so as to further the objectives sought in carrying out the Project.

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

SECTION B.4. Taxation.

(a) This Agreement and the Grant will be free from any taxation or fees imposed under the laws in effect in the territory of the Grantee.

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

SECTION B.5. Reports, Records, Inspections, Audit.

The Grantee will:

(a) furnish A.I.D. such information and reports relating to the Project and to this Agreement as A.I.D. may reasonably request;

(b) maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show, without limitation, the receipt and use of goods and services acquired under the Grant. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and

Article B: General Covenants (Continued)

extent of solicitations of prospective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and

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

SECTION B.6. Completeness of Information. The Grantee confirms

(a) that the facts and circumstances of which it has informed A.I.D., or cause A.I.D. to be informed, in the course of reaching agreement with A.I.D. on the Grant, are accurate and complete, and include all facts and circumstances that might materially affect the Project and the discharge of responsibilities under this Agreement;

(b) that it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Project or the discharge of responsibilities under this Agreement.

SECTION B.7. Other Payments. Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Grant, except fees, taxes, or similar payments legally established in the country of the Grantee.

SECTION B.8. Information and Marking. The Grantee will give appropriate publicity to the Grant and the Project as a program to which the United States has contributed, identify the Project site, and mark goods financed by A.I.D., as described in Project Implementation Letters.

Article C: Procurement Provisions

SECTION C.1. Special Rules.

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

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

Article C: Procurement Provisions (Continued)

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

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

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

SECTION C.3. Plans, Specifications, and Contracts. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Grantee will furnish to A.I.D. upon preparation,

(1) any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Grant, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished A.I.D. on preparation;

(2) such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services, which, though not financed under the Grant, are deemed by A.I.D. to be of major importance to the Project. Aspects of the Project involving matters under this subsection (a) (2) will be identified in Project Implementation Letters;

(b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Grant will be approved by A.I.D. in writing prior to their issuance, and their terms will include United States standards and measurements;

(c) Contracts and contractors financed under the Grant for engineering and other professional services, for construction services, and for such other services, equipment or materials as may be specified in Project Implementation Letters, will be approved by A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution; and

Article C: Procurement Provisions (Continued)

(d) Consulting firms used by the Grantee for the Project but not financed under the Grant, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Grantee for the Project but not financed under the Grant, shall be acceptable to A.I.D.

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

SECTION C.5. Notification to Potential Suppliers. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Grant, the Grantee will furnish A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Project Implementation Letters.

SECTION C.6. Shipping.

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

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

(c) Unless A.I.D. determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately owned United States-flag

Article C: Procurement Provisions (Continued)

commercial vessels, and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported to the territory of the Grantee on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

SECTION C.7. Insurance.

(a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Grantee may be financed as a Foreign Exchange Cost under this Agreement provided (1) such insurance is placed at the lowest available competitive rate, and (2) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Grantee (or government of Grantee), by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Grantee financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

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

SECTION C.8. U.S. Government-Owned Excess Property. The Grantee agrees that wherever practicable, United States Government-owned excess personal property, in lieu of new items financed under the Grant, should be utilized. Funds under the Grant may be used to finance the costs of obtaining such property for the Project.

Article D: Termination; Remedies.

SECTION D.1. Termination. Either Party may terminate this Agreement by giving the other Party 30 days written notice. Termination of this Agreement will terminate any obligations of the Parties to provide financial or other resources to the Project pursuant to this Agreement, except for payment which they are committed to make pursuant to noncancellable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at A.I.D.'s expense, direct that title to goods financed under the Grant be transferred to A.I.D. if the goods are from a source outside Grantee's country, are in a deliverable state and have not been off-loaded in ports of entry of Grantee's country.

SECTION D.2. Refunds.

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. Dollars to A.I.D. within sixty (60) days after receipt of a request therefor.

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

(c) The right under subsection (a) or (b) to require a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.

(d) (1) Any refund under subsection (a) or (b), or (2) any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Grant, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the cost of goods and services required for the Project, to the extent justified, and (B) the remainder, if any, will be applied to reduce the amount of the Grant.

Article D: Termination; Remedies (Continued)

(e) Any interest or other earnings on Grant funds disbursed by A.I.D. to the Grantee under this Agreement prior to the authorized use of such funds for the Project will be returned to A.I.D. in U.S. Dollars by the Grantee.

SECTION D.3. Nonwaiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.

SECTION D.4. Assignment. The Grantee agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. Dollar contract with A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.

GRANT AGREEMENT

Between

THE GOVERNMENT OF THE REPUBLIC OF KENYA
("The Cooperating Country")

and the

UNITED STATES OF AMERICA

acting through the

AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.")

for the

FERTILIZER PRICING AND MARKETING REFORM PROGRAM

A.I.D. Project No. 

DATE: 7/31/89

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COMMODITY IMPORT GRANT AGREEMENT

DATE:

Between

The Government of the Republic of Kenya ("Grantee")

and

The United States of America, acting through the
Agency for International Development ("A.I.D.").

ARTICLE 1

The Grant

A.I.D. agrees to grant to the Grantee pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed Fifteen Million United States dollars (\$15,000,000) (the "Grant") for the foreign exchange costs of fertilizer and fertilizer-related services, as such services are defined by A.I.D. Regulation 1, needed to promote the agricultural development of the Republic of Kenya. Fertilizer and fertilizer-related services authorized to be financed hereunder are hereinafter referred to as "Eligible Items," as more fully described in Section 3.2.

ARTICLE 2

Conditions Precedent to Disbursement

SECTION 2.1. Conditions Precedent to First Disbursement. Prior to the first disbursement under this Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee will, except as A.I.D. may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

(a) A statement representing and warranting that the named person or persons have the authority to act as the representative or representatives of the Grantee pursuant to Section 7.2, together with a specimen signature of each person certified as to its authenticity; and

(b) Documentation that the Grantee has established a separate, numbered Special Account entitled "1989 A.I.D. CIP Account" with two subsidiary accounts thereunder, "A" and "B," or made equivalent arrangements, for deposit of currency of the Cooperating Country in amounts equal to all proceeds accruing to the Cooperating Country or any authorized agent thereof as a result of the sale or importation of the Eligible Items under this Agreement. Said currency of the Cooperating Country shall be deposited in accordance with Section 5.6 of this Agreement and be utilized in accordance with Section 5.7 of this Agreement.

SECTION 2.2. Conditions Precedent to Disbursement of Funds for Third Tranche of Fertilizer. Except as the Parties may otherwise agree in writing, prior to the disbursement under the Grant of funds for the third tranche of fertilizer, or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee shall furnish to A.I.D., in form and substance satisfactory to A.I.D., documentation establishing that the Grantee has undertaken the following actions:

(a) By no later than August 31, 1989, allocated the first tranche of A.I.D.-financed fertilizer to recipients in accordance with selection criteria set forth in Project Implementation Letters (PILs) issued by A.I.D.

(b) By no later than September 30, 1989, developed the methodology and statistical requirements for determining official fertilizer prices utilizing technical assistance based upon terms of reference jointly developed by the Grantee and A.I.D.

(c) By no later than September 30, 1989, published official fertilizer prices as of that date, which prices were based on the Benchmark International Price (BIP) formula, as more specifically set forth in PILs issued by A.I.D.

(d) By no later than September 30, 1989, made available to A.I.D. the list of recipients of the fertilizer allocation approved by the Grantee as of that date.

(e) By no later than October 31, 1989, undertaken the allocation of the second tranche of A.I.D.-financed fertilizer to recipients in accordance with selection criteria set forth in PILs issued by A.I.D.

(f) By no later than October 31, 1989, made available to A.I.D. the list of recipients of fertilizer allocations approved by the Grantee as of that date.

(g) By no later than December 31, 1989, reviewed official fertilizer prices previously established, made necessary revisions therein and published any changes in official prices, said prices to be based upon on the BIP formula, as more specifically set forth in PILs issued by A.I.D.

(h) By no later than June 1, 1990, published official fertilizer prices as of that date, which prices were based upon the BIP formula, as more specifically set forth in PILs issued by A.I.D.

(i) Continued to apply the methodology and statistical requirements developed pursuant to Condition Precedent 2.2(b) of this Agreement for determining official fertilizer prices, utilizing technical assistance based upon terms of reference jointly developed by the Grantee and A.I.D.

(j) Instituted and confirmed that it will utilize the A.I.D. Commodity Import Program (CIP) mechanism for importing and allocating the third tranche of A.I.D.-financed fertilizer. The A.I.D. CIP allocation system shall be specifically described by PILs to be issued by A.I.D.

SECTION 2.3. Conditions Precedent to Disbursement of Funds for Fourth Tranche of Fertilizer. Except as the Parties may otherwise agree in writing, prior to disbursement under the Grant of funds for the fourth tranche of fertilizer, or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee shall furnish to A.I.D., in form and substance satisfactory to A.I.D., documentation establishing that the Grantee has undertaken the following actions:

(a) Confirmed that it will continue the A.I.D. CIP mechanism for importing and allocating the fourth tranche of A.I.D.-financed fertilizer provided, however, that said CIP mechanism, in the judgment of A.I.D., has not caused significant delays in making fertilizer available to farmers.

(b) By no later than September 30, 1990, reviewed official fertilizer prices previously established, made necessary revisions therein and published any changes in official prices, said prices to be based on the BIP formula as more specifically set forth in PILs issued by A.I.D.

SECTION 2.4. Conditions Precedent to Disbursement of Funds for Fifth Tranche of Fertilizer. Except as the Parties may otherwise agree in writing, prior to disbursement under the Grant of funds for the fifth tranche of fertilizer or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee shall furnish to A.I.D., in form and substance satisfactory to A.I.D., documentation establishing that the Grantee has undertaken the following actions:

(a) Confirmed that it will continue the A.I.D. CIP mechanism for importing and allocating the fifth tranche of A.I.D.-financed fertilizer provided, however, that said CIP mechanism, in the judgment of A.I.D., has not caused any significant delays in making fertilizer available to farmers.

(b) By no later than June 1, 1991, reviewed official fertilizer prices previously established, made necessary revisions therein and published any changes in official prices, said prices to be based on the BIP formula as more specifically set forth in PILs issued by A.I.D.

(c) Continued to apply the methodology and statistical requirements developed pursuant to Condition Precedent 2.2(b) of this Agreement for determining official fertilizer prices, utilizing technical assistance based on terms of references developed by the Grantee and USAID.

SECTION 2.5. Conditions Precedent to Disbursement of Funds for Sixth Tranche of Fertilizer. Except as the Parties may otherwise agree in writing, prior to disbursement under the Grant of funds for the sixth tranche of fertilizer or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee shall furnish to A.I.D., in form and substance satisfactory to A.I.D., documentation establishing that the Grantee has undertaken the following actions:

(a) Confirmed that it will continue the A.I.D. CIP mechanism for importing and allocating the sixth tranche of A.I.D.-financed fertilizer provided, however, that said mechanism, in the judgment of A.I.D., has not caused any significant delays in making fertilizer available to farmers.

(b) By no later than September 30, 1991, reviewed official fertilizer prices previously established, made necessarily revisions therein and then published any changes in official prices, said prices to be based on the BIP formula as more specifically set forth in PILs issued by A.I.D.

SECTION 2.6. Notification. When A.I.D. has determined that each of the conditions precedent specified in Section 2 have been met, it will promptly so notify the Grantee by Project Implementation Letter issued pursuant to Section 7.1 of this Agreement.

SECTION 2.7. Terminal Date for Meeting Conditions Precedent. If all the conditions specified in Section 2.1 have not been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may specify in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Grantee.

ARTICLE 3

Procurement, Eligibility, and Utilization of Commodities

SECTION 3.1. A.I.D. Regulation 1. This Grant and the procurement and utilization of commodities and commodity-related services financed under it are subject to the terms and conditions of A.I.D. Regulation 1 as from time to time amended and in effect, except as A.I.D. may otherwise specify in writing. If any provision of A.I.D. Regulation 1 is inconsistent with a provision of this Agreement, the provision of this Agreement shall govern.

SECTION 3.2. Eligible Items. The commodity eligible for financing under this Grant shall be DAP fertilizer, as further described in Commodity Procurement Instructions issued to the Grantee. Fertilizer-related services as defined in A.I.D. Regulation 1 are eligible for financing under this Grant. Other items shall become eligible for financing only with the written agreement of A.I.D. A.I.D. may decline to finance any specific fertilizer or fertilizer-related service when in its judgment such financing would be inconsistent with the purposes of the Grant or of the Foreign Assistance Act of 1961, as amended.

SECTION 3.3. Procurement Source. All commodities financed under this Agreement shall have their source and origin from the United States of America (A.I.D. Geographic Code 000), except as A.I.D. may otherwise specify in writing. All services financed under this Agreement shall have their source and origin from the United States of America (A.I.D. Geographic Code 000) and Kenya, except as A.I.D. may otherwise specify in writing.

SECTION 3.4. Eligibility Date. No commodities or commodity-related services may be financed under the Grant if they were procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as A.I.D. may otherwise agree in writing.

SECTION 3.5. Procurement for the Public Sector The provisions of section 201.11 of A.I.D. Regulation I regarding formal competitive bid procedures will apply to procurement under this grant by or for Grantee, its departments and instrumentalities, except as A.I.D. may otherwise agree in writing.

SECTION 3.6. Utilization of Fertilizer

(a) The Grantee will assure that fertilizer financed under this Grant will be effectively used for the purposes for which the assistance is made available. To this end, the Grantee will use its best efforts to assure that the following procedures are followed:

- (i) accurate arrival and clearance records are maintained by customs authorities; fertilizer imports are promptly processed through customs at points of entry; such fertilizer is removed from customs and/or bonded warehouses within ninety (90) calendar days from the date the fertilizer are unloaded at the point of entry, unless the importer is hindered by force majeure or A.I.D. otherwise agrees in writing; and
- (ii) the fertilizer is sold or used by the importer not later than eighteen (18) months from the date the commodities are removed from customs, unless a longer period can be justified to the satisfaction of A.I.D. by reason of force majeure or special market conditions or other circumstances.

(b) The Grantee will assure that fertilizer financed under this Grant will not be re-exported in the same or substantially the same form, unless specifically authorized by A.I.D.

SECTION 3.7. Shipping

(a) Fertilizer which is to be transported to the territory of the Grantee may not be financed under this Grant if transported either: (1) on an ocean vessel or aircraft under flag registry of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment, or (2) on an ocean vessel which A.I.D., by written notice to the Grantee has designated as ineligible, or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Unless otherwise authorized, A.I.D. will finance only those transportation costs incurred on aircraft or ocean

vessels under flag registry of a country included in the Geographic Code authorized for commodities in Section 3.3 of the Agreement, except that when Code 941 is authorized, A.I.D. will finance only those transportation costs incurred on aircraft or ocean vessels under flag registry of the United States and the cooperation country. When Code 941 is authorized and there is a general unavailability of cooperating country flag aircraft or ocean vessels, A.I.D. will specifically authorize in Project Implementation Letters the financing of transportation costs incurred on aircraft or ocean vessels of any country included in Code 941.

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

Section 3.8. Insurance. Marine insurance on commodities financed by A.I.D. under this Grant may also be financed under this Grant provided that such insurance is placed in a country included in the Geographic Code authorized in Section 3.3 of this Agreement, or if Geographic Code 941 is authorized, also in the Grantee country, in accordance with the applicable provisions of A.I.D. Regulation 1, Sub-parts B and C.

ARTICLE 4

Disbursement

SECTION 4.1. A.I.D. Letters of Commitment to Banks. After satisfaction of the applicable conditions precedent, the Grantee may obtain disbursements of funds under this Grant by submitting Financing Requests to A.I.D. for the issuance of letters of commitment for specified amounts to one or more banking institutions in the United States designated by the Grantee and satisfactory to A.I.D. Such letters will commit A.I.D. to reimburse the bank or banks on behalf of the Grantee for payments made by the banks to suppliers or contractors under letters of credit or otherwise pursuant to such documentation requirements as A.I.D. may prescribe. Banking charges incurred in connection with letters of commitment and disbursements shall be for the account of the Grantee and may be financed by this Grant.

SECTION 4.2. Other Forms of Disbursement Authorizations. Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

SECTION 4.3. Terminal Date for Requests for Disbursement Authorizations. No Letter of Commitment or other disbursement authorization will be issued in response to a request received by A.I.D. after thirty (30) months from the date of signing of this Agreement, except as A.I.D. may otherwise agree in writing.

SECTION 4.4. Terminal Date for Requests for Disbursement. No disbursement of Grant funds shall be made against documentation submitted after thirty-six (36) months from the date of signing of this Agreement, except as A.I.D. may otherwise agree in writing.

ARTICLE 5

Covenants

SECTION 5.1. Taxation. This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in the Republic of Kenya.

SECTION 5.2. Reports and Records. In addition to the requirements in A.I.D. Regulation 1, the Grantee will:

(a) Furnish A.I.D. such reports and information relating to the goods and services financed by this Grant and the performance of Grantee's obligations under this Agreement as A.I.D. may reasonably request. These reports and information shall include but not be limited to: (i) a list of all importers registered with the Government of the Cooperating Country, (ii) a copy of each approved Import License Application for goods financed under this Agreement, (iii) a copy of the "Import Entry" form for each consignment of goods financed under this Agreement, and (iv) a copy of the "Out-Turn" report for each ocean vessel carrying goods financed under this Agreement.

(b) Maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, such books and records relating to this Grant as may be prescribed in Project Implementation Letters. Such books and records may be inspected by A.I.D. or any of its authorized representatives at all times as A.I.D. may reasonably require, and shall be maintained for three years after the date of last disbursement by A.I.D. under this Grant.

(c) Permit A.I.D. or any of its authorized representatives at all reasonable times during the three-year period to inspect the commodities financed under this Grant at any point, including the point of use.

SECTION 5.3. Completeness of Information. The Grantee confirms:

(a) that the facts and circumstances of which it has informed A.I.D., or caused A.I.D. to be informed, in the course of reaching agreement with A.I.D. on the Grant, are accurate and complete, and include all facts and circumstances that might materially affect the Grant and the discharge of responsibilities under this Agreement; and

(b) that it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Grant or the discharge of responsibilities under this Agreement.

SECTION 5.4. Other Payments. The Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Grant, except fees, taxes, or similar payments legally established in the country of the Grantee.

SECTION 5.5. Size of Transactions. No foreign exchange allocation or letter of credit issued pursuant to this Agreement shall be in an amount less than Three Hundred Thousand Dollars (\$300,000), nor more than One Million Five Hundred Thousand Dollars (\$1,500,000), except as A.I.D. may otherwise agree in writing.

SECTION 5.6. Deposits of Local Currency. Except as A.I.D. may otherwise agree in writing, the Cooperating Country shall deposit in the Special Account entitled "1989 A.I.D. CIP Account," with Subsidiary Accounts "A" or "B," established pursuant to Section 2.1. of this Agreement, all currency of the Cooperating Country accruing as a result of the sale or importation of Eligible Items under this Agreement. For all private sector importers, and for public sector importers who do not resell the imported commodity, the amount of local currency to be deposited shall be the local currency equivalent of the A.I.D. dollar disbursement(s) under the Grant, calculated at the highest rate per U.S. dollar not unlawful that is available to anyone in the Cooperating Country for any purpose at the time that A.I.D. effects payment to the correspondent bank in the U.S. of the participant's commercial bank in Kenya. For public importers who resell the imported

commodity, the amount of local currency to be deposited shall be the proceeds of the resale. A.I.D. shall, by Project Implementation Letter, advise the Cooperating Country as to the requirements for distribution of the Local Currency deposits between the "A" and "B" subsidiary accounts. Except as A.I.D. may otherwise specify in writing, all deposits to the Special Accounts shall become due and payable within 120 days of advice from A.I.D. as to disbursements made under the Agreement.

SECTION 5.7. Utilization of Local Currency Deposits.
Local currency deposits in the two sub-accounts established pursuant to Section 2.1 of this Agreement shall be utilized as follows:

(a) Except as A.I.D. may otherwise agree in writing, the Kenya Shilling equivalent at the time of deposit to United States dollars two million two hundred thousand (\$2,200,000) shall be provided to A.I.D. for deposit into a Trust Account to meet the requirements of A.I.D., according to a schedule to be agreed upon by A.I.D. and the Grantee by no later than December 1, 1989. These funds shall be used for administrative costs related to operation of USAID/Kenya. Funds so deposited shall be held in trust by A.I.D. for the Grantee and interest earnings, if any, on said Trust Account shall be added to the Trust Account. Title to any tangible assets purchased from the Trust Account shall be vested in the Grantee. Any such assets on hand as of the date of the mutually agreed upon termination of the Trust Account or the United States Assistance Program in Kenya, whichever is earlier, shall be returned to the Grantee. An accounting of the Trust Account by categories shall be rendered annually, upon request of the GOK. A.I.D. will advise the GOK by Project Implementation Letter whether such funds will be withdrawn from sub-account A and B/or referenced in Section 5.6 above.

(b) Except as A.I.D. may otherwise specify in writing, approximately Kenya Shillings equivalent at the time of deposit to United States dollars twelve million eight hundred thousand (\$12,800,000) in the sub-accounts shall be utilized for mutually agreed upon purposes within the following categories: (i) Financing local cost host country contributions (except salaries and personnel costs) to USAID-assisted projects in the agricultural sector; (ii) Support of line items within the Grantee's Agricultural Development budget, in which A.I.D. has particular interest and which are supportive of the general objectives of USAID's Country Development Strategy Statement; and (iii) Support of line items within the Grantee's Development budget other than Agriculture, in which A.I.D. has particular interest and which are supportive of the general objectives of USAID's Country Development Strategy Statement.

(c) The Grantee will provide A.I.D. with a detailed accounting of the use of the local currency utilized pursuant to subparagraph (b) above; the timing and format for such reports will be specified in a Project Implementation Letter.

(d) Unless otherwise provided for in this Section, any unencumbered balances of funds which remain in the Special Accounts upon termination of assistance hereunder shall be disbursed for such purposes as may, subject to applicable law, be agreed to between the Grantee and A.I.D.

SECTION 5.8. Continuing Consultation. The Grantee and A.I.D. agree to cooperate fully to assure that the purpose of the Grant will be accomplished. To this end, the Grantee and A.I.D. shall from time to time, at the request of either Party, exchange views through their representatives with regard to the Grantee's economic development and its progress in achieving the objectives of its development program, including the level of current expenditures and its foreign exchange position, and the performance by the Grantee of its obligations under this Agreement, the performance of consultants or suppliers under the Grant, and other matters relating to this Agreement.

SECTION 5.9. Validity of Licenses. The Grantee, with respect to all commodities financed under this Agreement, covenants to issue all Import Licenses and all Foreign Exchange Allocation Licenses with a validity of not less than six months, except as A.I.D. may otherwise agree in writing.

SECTION 5.10. License Application Fee. The Grantee covenants that it will inform all importers financed under this Agreement that, in recognition that no Society General Surveillance or other inspection will be required for CIP commodities, the usual one and a half percent import license application fee paid to the Central Bank will be reduced to one half of one percent for CIP commodity import license applications, except as A.I.D. may otherwise agree in writing.

SECTION 5.11. Kenya Exchange Control Notice No. 19. The Grantee covenants that with respect to Exchange Control Notice No. 19, guarantees issued to Kenya-Registered companies, regardless of owner nationality, will not be considered as local borrowing under this Agreement, and further agrees to so notify importers, except as A.I.D. may otherwise agree in writing.

SECTION 5.12. Insurance. The Grantee agrees that it will inform Kenyan importers that funds from this Agreement are available to cover marine insurance costs as set forth in Section 3.8. of the Agreement, except as A.I.D. may otherwise

SECTION 5.13. Timeliness of Approvals. The Grantee covenants that, except as A.I.D. may otherwise agree in writing:

a. The Central Bank of Kenya will process all applications for Foreign Exchange Allocation Licenses under this Agreement within a maximum of five Government of Kenya working days, such five days to include the time before sending to the Ministry of Commerce and Industry as well as the time between the return from the Ministry of Commerce and Industry and the despatch to A.I.D.; and

b. The Ministry of Commerce and Industry will review and process all Import License applications under this Agreement within a maximum of ten Government of Kenya working days after receipt from the Central Bank of Kenya.

SECTION 5.14. Fertilizer Pricing. Except as A.I.D. may otherwise agree in writing, the Grantee covenants and agrees as follows:

(a) By no later than February 28, 1990, to undertake and complete a study in collaboration with A.I.D. to assess the potential for decontrol of fertilizer prices, providing A.I.D. with a copy of said study. The terms of reference for the study to be jointly developed by the Government of Kenya and A.I.D.

(b) By no later than August 31, 1990, to incorporate the results of said study on the decontrol of fertilizer prices into a fertilizer pricing policy, subject to assessment of administrative and economic feasibility.

SECTION 5.15. Fertilizer Importing. Except as A.I.D. may otherwise agree in writing, the Grantee covenants and agrees as follows:

(a) To prepare annual import plans to maximize adequate and timely fertilizer imports by the private sector.

(b) To expedite the issuance of fertilizer import licenses and to make available adequate foreign exchange for fertilizer imports to achieve a minimum 5% growth per year of total fertilizer imports.

(c) By no later than June 30, 1990, to introduce import performance bonding to minimize the duplication of import licensing applications.

SECTION 5.16. Fertilizer Promotion. Except as A.I.D. may otherwise agree in writing, the Grantee covenants and agrees as follows:

(a) By no later than February 28, 1990, to publish and distribute and/or encourage private fertilizer distributors to publish and distribute educational materials to farmers to promote appropriate use of fertilizer.

(b) To continue to pack fertilizer in ten and twenty-five kilogram bags as consumer demand warrants.

(c) To continue to maintain adequate pricing incentives for agricultural output prices consistent with the promotion of fertilizer use at cost price.

SECTION 5.17. Fertilizer Monitoring. Except as A.I.D. may otherwise agree in writing, the Grantee covenants and agrees to develop, by no later than March 31, 1990, a plan of action to strengthen the Fertilizer Inputs Unit of the Ministry of Agriculture, particularly in the areas of price analysis and monitoring of fertilizer market developments.

ARTICLE 6

Environmental Studies

The Grantee covenants to undertake and complete or cause to be undertaken and completed, as of the dates shown below, the following actions to address environmental concerns, copies of all studies to be provided to USAID/Kenya:

(a) In consultation with USAID/Kenya, develop a protocol (the SOW) for a study which investigates the changes in soil pH and consequent effects on agricultural productivity, to be completed not later than December 31, 1989.

(b) Baseline studies relating to acid soils, fertilizer usage and effects of DAP fertilizer on soil pH, to be completed not later than June 30, 1990.

(c) To begin by no later than the midpoint of the program and to complete by the end of the program, the study called for by the SOW, including recommendations for mitigating environmental concerns, if any.

ARTICLE 7

Additional Representation and Covenant

The Grantee hereby reaffirms its commitment to eventual elimination of price controls and quantitative restrictions on fertilizer imports, and in furtherance of that objective, covenants (a) to take appropriate steps to achieve the eventual elimination of price controls and quantitative

restrictions on fertilizer imports, and (b) on a periodic basis, to consult with A.I.D. as to its plans, projections and progress in furtherance of the liberalization of fertilizer importation.

ARTICLE 8

Termination; Remedies

SECTION 8.1. Termination. This Agreement may be terminated by mutual agreement of the Parties at any time. Either Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

SECTION 8.2. Suspension. If at any time:

(a) The Grantee shall fail to comply with any provision of this Agreement; or

(b) Any representation or warranty made by or on behalf of Grantee with respect to obtaining this Grant or made or required to be made under this Agreement is incorrect in any material respect; or

(c) An event occurs that A.I.D. determines to be an extra-ordinary situation that makes it improbable either that the purposes of the Grant will be attained or that the Grantee will be able to perform its obligations under this Agreement; or

(d) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or

(e) A default shall have occurred under any other agreement between the Grantee or any of its agencies and the Government of the United States or any of its agencies;

Then, in addition to remedies provided in A.I.D. Regulation 1, A.I.D. may:

- (1) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through irrevocable commitments to third parties or otherwise, or to the extent that A.I.D. has not made direct reimbursement to the Grantee thereunder, giving prompt notice to the Grantee thereafter;
- (2) decline to issue additional commitment documents or to make disbursements other than under existing ones; and
- (3) at A.I.D.'s expense, direct that title to goods financed under the Grant be vested in A.I.D. if the goods are in a deliverable state and have not been off-loaded at points of entry in Kenya.

SECTION 8.3. Cancellation by A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 8.2, the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Grant that is not then disbursed or irrevocably committed to third parties.

SECTION 8.4. Refunds.

(a) In addition to any refund otherwise required by A.I.D. pursuant to A.I.D. Regulation 1, if A.I.D. determines that any disbursement is not supported by valid documentation in accordance with this Agreement, or is in violation of United States law, or is not made or used in accordance with the terms of this Agreement, A.I.D. may require the Grantee to refund the amount of such disbursement in U.S. dollars to A.I.D. within sixty (60) days after receipt of request therefore. Refunds paid by the Grantee to A.I.D. resulting from violations of the terms of this Agreement shall be considered as a reduction in the amount of A.I.D.'s obligation under the Agreement and shall be available for reuse under the Agreement if authorized by A.I.D. in writing

(b) The right to require such a refund of a disbursement will continue notwithstanding any other provision of this Agreement, for three (3) years from the date of the last disbursement under this Agreement.

SECTION 8.5. Nonwaiver of Remedies. No delay in exercising or omitting to exercise, any right, power, or remedy accruing to A.I.D. under this Agreement will be construed as a waiver of such rights, powers, or remedies.

ARTICLE 9

Miscellaneous

SECTION 9.1. Implementation Letters. From time to time, for the information and guidance of both parties, A.I.D. will issue Implementation Letters and Commodity Procurement Instructions describing the procedures applicable to the implementation of the Agreement. Except as permitted by particular provisions of this Agreement, Implementation Letters and Commodity Procurement Instructions will not be used to amend or modify the text of this Agreement.

SECTION 9.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of Permanent Secretary, Office of the Vice President and Ministry of Finance and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID/Kenya, each of whom, by

written notice, may designate additional representatives. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

SECTION 9.3. Communications. Any notice, request, document or other communications submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such party at the following address:

To the Grantee: Mail Address:

Alternate address for cables:

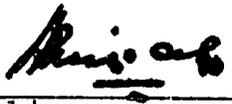
To A.I.D.: Mail Address: Director
USAID/Kenya
P.O. Box 30261
Nairobi, Kenya

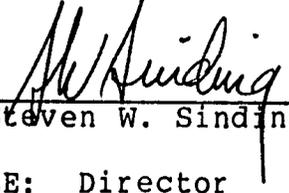
Alternate address for cables: Amembassy
USAID/Kenya
Nairobi, Kenya

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

REPUBLIC OF THE KENYA

UNITED STATES OF AMERICA

BY: 

BY: 

Adam H. Ali

Steven W. Sinding

TITLE: Financial Secretary
Office of the Vice President
and Ministry of Finance

TITLE: Director
USAID/Kenya