

FIFTH AMENDMENT

TO

PROJECT GRANT AGREEMENT
("AGREEMENT")

BETWEEN

THE

REPUBLIC OF UGANDA
("GRANTEE")

AND THE

UNITED STATES OF AMERICA

FOR THE

DELIVERY OF IMPROVED SERVICES
FOR HEALTH PROJECT ("DISH")

USAID Project Number	: 617-0133
Appropriation Number	: 726/71021
Budget Plan Code	: GDV6-96-21617-KG13
Reservation Control No.	: P962004
Amount	: \$5,764,257
Grant Number	: GR-617-0133-G-00-96-04

DATED: 8/22/96

FIFTH AMENDMENT TO THE PROJECT GRANT AGREEMENT

FOR THE

DELIVERY OF IMPROVED SERVICES FOR HEALTH PROJECT
("DISH")

Between

The Republic of Uganda ("Grantee")

and

The United States of America, acting through
The U.S. Agency for International Development ("USAID")

1. Purpose of Amendment

This Fifth Amendment to USAID Project Grant Agreement No. 617-0133, dated August 31, 1993, as amended, is hereby entered into between the Parties named above to grant the Grantee an additional Five Million Seven Hundred Sixty Four Thousand Two Hundred Fifty-Seven United States ("U.S.") Dollars (\$5,764,257) under this Project and to modify the Project budget consistent therewith for the purposes of carrying out this Project.

2. Financing

Article 3, Section 3.1. (a) is hereby deleted and the following substituted in its stead:

"Section 3.1. The Dollar Grant.

- (a) To assist the Grantee to meet the costs of carrying out the Project, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, hereby grants to the Grantee under the terms of this Agreement an amount not to exceed Twenty-two Million Eight Hundred Twenty-Nine Thousand Two Hundred Fifty-Seven United States ("U.S.") Dollars (\$22,829,257).

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."

3. Project Financial Plan

The Project Financial Plan is hereby deleted in its entirety and Attachment 1 hereto, "Illustrative Summary of Project Costs

by Expense Category," is substituted in its stead.

4. Project Grant Standard Provisions

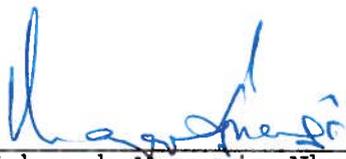
Annex 2, "Project Grant Standard Provisions Annex," is deleted in its entirety and replaced by Attachment 2 hereto, "Project Grant Standard Provisions Annex," which includes revisions to Standard Provision B.5, Reports, Accounting Records, Audits, Inspections; Standard Provision D.1, Termination; and, Standard Provision D.5, Competition with U.S. Exports, etc.

5. Other Terms and Conditions

Except as amended herein, all other terms and conditions of the Project Grant Agreement, as amended, remain in full force and effect.

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

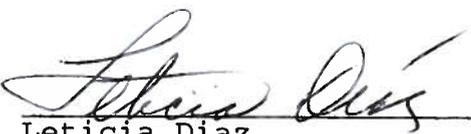
FOR THE GOVERNMENT OF
THE REPUBLIC OF UGANDA:



Jehoash Mayanja-Nkangi
Minister of Finance

Date 22-8-96

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



Leticia Diaz
Acting Mission Director
United States Agency for
International Development

Date 8/22/96

ILLUSTRATIVE SUMMARY OF PROJECT COSTS BY EXPENSE CATEGORY
 (in \$000)

Expense Category	Current Funding * USAID Grant (in US\$)	Change (in US\$)	Re-aligned Budget Totals USAID Grant (in US\$)	This Obligation USAID Grant (in US\$)	Cumulative Funding to-date USAID Grant (in US\$)	Planned Life of Project Funding USAID Grant (in US\$)
Technical Assistance	5,820	364	6,184	1,540	7,724	12,561
Implementation Costs	4,477	(180)	4,297	2,050	6,347	12,352
Commodities	1,339	(26)	1,313	582	1,895	3,230
Project Management	5,203	(101)	5,102	1,264	6,366	10,481
Evaluation	194	(58)	136	310	446	1,257
Audit	32	1	33	18	51	119
TOTAL	17,065	0	17,065	5,764	22,829	40,000

* Per DISH Proag Amendment No. 4 dated June 12, 1996

This budget is illustrative. Changes must be agreed to in writing by both parties.

Planned life of project budget is subject to the availability of funds to USAID for this purpose and to the mutual agreement of the parties to proceed at the time of each subsequent increment.

ANNEX 2

PROJECT GRANT STANDARD PROVISIONS ANNEX

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, USAID, 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 USAID pursuant to this Agreement; and

(b) provide qualified and experience management for, and train such staff as may be appropriate for the maintenance and operation of the Project, and, as applicable for continuing

activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

SECTION B.3 Utilization of Goods and Services

(a) Any resources financed under the Grant will, unless otherwise agreed in writing by USAID, be devoted to the Project until the completion or termination of the Project, and thereafter (as well as during any period of suspension of the project) 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 USAID may otherwise agree in writing, will not be used to promote or assist a foreign USAID project or activity associated with or financed by a country not included in Code 935 of the USAID Geographic Code Book as in effect at the time of such use. (See USAID Handbook 18.)

SECTION B.4. Taxation

(a) This Agreement and the Grant will be free from any taxation or fees imposed under 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, ACCOUNTING RECORDS, AUDITS
INSPECTIONS

(a) The Grantee shall furnish USAID such information and reports relating to the Project and to this Agreement as USAID may reasonably request.

(b) The Grantee shall maintain accounting books, records, documents, and other evidence relating to the Project and to this Agreement adequate to show, without limitation, all costs incurred under the Grant, the receipt and use of goods and services acquired under the Grant the costs of the Project supplied from other sources, the nature and 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 towards completion ("Project books and records"). At the Grantee's option, with approval by USAID, Project books and records shall be maintained in accordance with one of the following methods:

(1) Generally accepted accounting principles prevailing in the United States,

(2) Generally accepted accounting principles prevailing in the country of the Grantee,

(3) Accounting principles prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants), or

(4) Such other accounting principles as the Parties may agree to in writing. Project books and records shall be maintained for at least three years after the date of last disbursement by USAID.

(c) If \$25,000 or more is disbursed directly to the Grantee in any one calendar year under the grant, the Grantee, except as the Parties may otherwise agree in writing, shall have financial audits made of the funds disbursed to the Grantee under the Grant in accordance with the following terms:

(1) The Grantee shall select an independent auditor in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the USAID Inspector General ("Guidelines"), and the audits shall be performed in accordance with the "Guidelines".

(2) An audit of the funds provided under the Grant shall be conducted for each fiscal year of the Grantee. The audit shall determine whether the receipt and expenditure of the funds provided under the Grant are presented in accordance with generally accepted accounting principles agreed to in section (b) above and whether the Grantee has complied with the terms of the Agreement. Each audit shall be completed no later than one year after the close of the grantee's fiscal year.

(d) The Grantee shall submit an audit report to USAID within 30 days after completion of each audit arranged for by the Grantee in accordance with this section. The USAID Inspector General will review each report to determine whether it complies with the audit requirements of the Agreement. Subject to USAID approval, costs of audits performed in accordance with the terms of this section may be charged to the Grant. In cases of continued inability or unwillingness to have an audit performed in accordance with the terms of this section, USAID will consider appropriate sanctions which include suspension of all or a portion of disbursements until the audit is satisfactorily completed or A.I. D. performs its own

audit.

(e) The Grantee shall submit to USAID, in form and substance satisfactory to USAID, a plan by which the Grantee will ensure that funds made available to subrecipients that receive \$100,000 or more in any one calendar year under the Grant are audited in accordance with this agreement. The plan should describe the methodology to be used by the Grantee to satisfy its audit responsibilities with respect to any subrecipient to which this section applied. Such audit responsibilities with respect to subrecipients may be satisfied by relying on independent audits of the subrecipients or on appropriate procedures performed by the Internal Audit or Program Staff of the Grantee, by expanding the scope of the Independent Financial Audit of the Grantee to encompass testing of subrecipients' accounts, or by a combination of these procedures. The plan should identify the funds made available to subrecipients that will be covered by audits conducted in accordance with other audit provisions that would satisfy the Grantee's audit responsibilities (a non-profit organization organized in the United States is required to arrange for its own audits; a for-profit contractor organized in the United States that has a direct contract with USAID is audited by the cognizant U.S. Government Agency; a private voluntary organization organized outside the United States with a direct Grant from USAID is required to arrange for its own audits; and a host-country contractor should be audited by the cognizant Grantee contracting agency). The Grantee shall ensure that appropriate corrective actions are taken on the recommendations contained in the subrecipients' audit reports; consider whether subrecipients' audits necessitate adjustment of its own records; and require each subrecipient to permit independent auditors to have access to records and financial statements as necessary.

(f) USAID may, at its discretion, perform the audits required under this agreement on behalf of the grantee by utilizing funds under the grant or other resources available to USAID for this purpose. The grantee shall afford authorized representatives of USAID the opportunity at all reasonable times to audit or inspect the Project. The utilizations of goods and services financed by USAID 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 USAID, or cause USAID to be informed, in the course of reaching agreement with USAID 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 USAID 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 USAID, 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).

(c) Any motor vehicles financed under the Grant will be of United States manufacturers, except as USAID 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 Parties may otherwise agree in writing:

(a) The Grantee will furnish to USAID 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 by USAID on preparation;

(2) such documentation will also be furnished to USAID, upon preparation, relating to any goods or services, which, though not financed under the Grant, are deemed by USAID 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 USAID 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 USAID in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by USAID prior to execution; and

(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 USAID may specify, and construction contractors used by the Grantee for the Project but not financed under the Grant, shall be acceptable to USAID

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 produced 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 USAID such information with regard thereto, and at such times, as USAID 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 USAID Geographic Code 935 as in effect at the time of shipment, or (2) on an ocean vessel which USAID, by written notice to the Grantee has designated as ineligible; or (3) under an ocean or air charter which has not received prior USAID 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 USAID approval or on a non-U.S. flag air carrier if a U.S. flag carrier is available (in accordance with criteria which may be contained in Project Implementation Letters) without prior written USAID approval; or (2) on an ocean vessel which USAID, by written notice to the Grantee, has designated as ineligible; or (3) under an ocean vessel or air charter which has not received prior USAID approval.

(c) Unless USAID 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 USAID 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 USAID 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 USAID which are to be transported to the territory of the Grantee may be financed as insurance is placed at the lowest available competitive rate, and (2) claims thereunder are payable in U.S. dollars or, as USAID may agree in writing, 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 USAID-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 USAID 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 USAID 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 USAID 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.

(a) Either party may terminate this Agreement in its entirety by giving the other Party 30 days written notice. USAID also may terminate this Agreement in part by giving the Grantee 30 days written notice, and suspend this agreement in whole or in part upon giving the Grantee written notice. In addition, USAID may terminate this Agreement in whole or in part, upon giving the Grantee written notice, if (i) the Grantee fails to comply with any provision of this Agreement, (ii) an event occurs that USAID determines makes it improbable that the objectives of the project or the assistance program will be attained or that the Grantee will be able to perform its obligations under this Agreement, or (iii) any disbursement by USAID would be in violation of the legislation governing USAID

(b) Except for payment which the parties are committed to make pursuant to noncancellable commitments entered into with third parties prior to such suspension or termination, suspension or termination of the entirety or part of this Agreement will suspend (for the period of the suspension) or terminate, as applicable, any obligation of the parties to provide financial or other resources

to the Project, or to the suspended or terminated portion of the Project, as applicable. Any portion of this Agreement which is not suspended or terminated shall remain in full force and effect.

(c) In addition, upon such full or partial suspension or termination, USAID may, at USAID's expense, direct that title to goods financed under the Grant, or under the applicable portion of the Grant, be transferred to USAID if the goods are from a source outside the Grantee's country, are in a deliverable state and have not been offloaded 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, USAID, notwithstanding the availability or exercise of any remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. dollars to USAID within sixty (60) days after receipt of a request thereof.

(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, USAID 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 USAID 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 USAID 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 requires for the Project, to the extent justified, and (B) the remainder, if any, will be applied to reduce the amount of the Grant.

(e) Any interest or other earnings on Grant funds disbursed by USAID to the Grantee under this Agreement prior to the authorized use of such funds for the Project will be returned to USAID 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 constructed as a waiver of such right or remedy.

SECTION D.4. Assignment. The Grantee agrees, upon request, to execute an assignment to USAID 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 USAID financed in whole or in part out of funds granted by USAID under this Agreement.

SECTION D.5 Competition with U.S. Exports, etc.

(a) No funds or other support provided hereunder may be used in a project or activity reasonably likely to involve the relocation or expansion outside of the United States, of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States.

(b) No funds or other support provided hereunder may be used in a project or activity the purpose of which is the establishment or development in a country other than the United States of any export processing zone or designated area where the labor, environmental, tax, tariff, and safety laws of the country would not apply, without the prior written approval of USAID.

(c) No funds or other support provided hereunder may be used in an activity which contributes to the violation of internationally recognized rights of workers in the recipient country, including those in any designated zone or area in that country.

(d) Grant funds may not be used for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in the country of the Grantee of any agricultural commodity for export which would compete with a similar commodity grown or produced in the United States unless (i) such activity addresses food security in a developing country and will not have a significant impact in the export of agricultural commodities of the United States or (ii) research activities are intended primarily to benefit American producers.

(e) Further, grant funds may not be used for feasibility or prefeasibility studies for, or project profiles of potential investment in, or support in establishment of facilities specifically designed for the manufacture, for export to the United States or to third country markets in direct competition with United States exports, of articles of textile and apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather

wearing apparel, watches, import sensitive (i.e., affecting domestic sales of U.S. goods) electronic articles, import sensitive steel articles, and import sensitive manufactured and semi-manufactured glass products.

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