

LIMITED SCOPE GRANT AGREEMENT NO. 615-LSGA-001

LIMITED SCOPE GRANT AGREEMENT

BETWEEN

THE REPUBLIC OF KENYA

AND THE

UNITED STATE OF AMERICA

FOR

PROGRAM DEVELOPMENT AND LEARNING

DATE: 19 AUG 2002

LIMITED SCOPE GRANT AGREEMENT

Between

The Government of the Republic of Kenya

And

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

1. Activity Title: Program Development and Learning.
2. USAID Activity Number: 615-LSGA-001
3. Purpose: USAID and the Government of the Republic of Kenya (GOK) hereby agree to carry out the activities described in this Agreement in accordance with (a) the terms of this Agreement and (b) any general agreement between the two governments regarding economic or technical cooperation.
4. USAID Contribution: USAID, pursuant to the Foreign Assistance Act of 1961, as amended, hereby grants to the GOK One Million and Fifty Thousand United States Dollars (U.S.\$1,050,000) (the "Grant") to be expended as described herein.
5. GOK Contribution: The GOK will provide the equivalent of Three Hundred and Fifteen Thousand United States Dollars (U.S.\$315,000), all in-kind contribution.
6. Completion Date: September 30, 2005
7. This Agreement consists of (a) this Title Page, (b) Annex 1, the Activity Description, and (c) Annex 2, the Standard Provisions,

8. USAID Mailing Address:

P.O. Box 30261-00100

Nairobi, Kenya

Phone: 254-2-862400/862402

Fax : 254-2-860870

9. GOK Mailing address

Permanent Secretary

Ministry of Finance and Planning

P. O. Box 30007

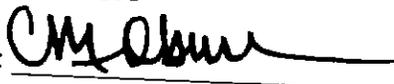
Nairobi, Kenya

Phone: 254-2-338111

Fax: 254-2-217593

FOR THE GOVERNMENT OF THE
REPUBLIC OF KENYA

SIGNATURE:



NAME: Hon. Christopher M. Obure

TITLE: Minister of Finance

DATE:

19 15 August 2002

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

SIGNATURE:



NAME: Kiertisak Toh

TITLE: USAID/Kenya, Director

DATE:

Aug. 19, 2002



ANNEX 1

AMPLIFIED ACTIVITY DESCRIPTION

I. Introduction

This Annex describes activities to be undertaken with the funds obligated under this Agreement. Nothing in this Annex 1 shall be construed as amending any of the definitions or terms of the Agreement.

This Limited Scope Grant Agreement (LSGA or the Agreement) establishes a formal partnership between USAID and Government of Kenya (GOK), and provides a mechanism for addressing priority economic studies, sector assessments, monitoring and evaluations, training or workshops/seminars as mutually agreed upon between the two parties.

II. Activity Description

The following types of activities will be financed under this Agreement. It is expected that all activities will contribute to achievement of USAID's strategic objectives in the following sectors: (1) Population, Health and HIV/AIDS; (2) Natural Resources Management; (3) Democracy and Governance and (4) Agriculture and Microenterprise Development. Specific line item activities will be agreed upon between the Parties through Implementation Letters.

Funds may be used to finance the following types of activities:

- a) Travel or short-term training costs of GOK officials or private sector counterpart personnel when funds from other programs or activities are unavailable for this purpose.
- b) USAID and GOK strategy-related or macroeconomic studies, sector assessments, or other special studies that assist in defining strategic objectives, enhance government policy dialogue efforts or lead to a better understanding of Kenya's institutional or technical constraints.
- c) Development programs or activities, feasibility studies, operations research, and pilot testing of development hypotheses that may lead to the exploration of new strategic directions, or to the final design of a program or activity.
- d) Small research activities or support thereto, including state-of-the-art surveys/studies required for exploration of new strategic directions
- e) General purpose activities such as seminars, workshops, and special economic, sectoral or statistical surveys and studies that cannot be associated with a single, discrete program or activity. This category includes the publication and other dissemination of appropriate research and technical studies.

- f) Reasonable pre-activity or pre-program implementation costs or bridge funding between terminating and follow-on activities or programs.
- g) Assistance to support design and/or assessment of public sector reform, such as strengthening accountability functions, privatization, and other reform efforts.

III Procurement

USAID will directly contract for goods and services to be provided under this Agreement and make payment directly to suppliers, as appropriate. The GOK will not be responsible or accountable for funds contracted by USAID. It is not anticipated that any long-term technical assistance or advisors will be provided under the Agreement.

**Limited Scope Grant Agreement
Program Development and Learning**

**Annex 2
Standard Provisions**

Table of Contents

Article A: Definitions.

Article B: Implementation Letters.

Article C: USAID Contribution.

Article D: GOK Contribution.

Article E: Completion Date.

Article F: Utilization of Goods and Services.

Article G: Taxation.

Article H: Reports and Information, Agreement Books and Records, Audits, and Inspections.

Article I: Other Payments

Article J: Procurement of Goods and Services.

Article K: Suspension, Termination and Other Remedies.

Article L: Job Loss, Export Processing Zones and Workers' Rights.

Article A: Definitions. As used in this Annex, "Agreement" means the Limited Scope Grant Agreement to which this Annex is attached, and any amendments to the Agreement. "Cooperating Country" means the Republic of Kenya. Terms used in this Annex have the same meaning or reference as in the Agreement.

Article B: Implementation Letters. To assist GOK in the implementation of this Agreement, USAID, from time to time, will issue Implementation Letters ("ILs") that will furnish additional information about matters stated in this Agreement. The Parties may also issue jointly agreed-upon ILs to confirm and record their mutual understanding on aspects of the implementation of this Agreement.

Article C: USAID Contribution.

Section C.1. USAID shall expend funds and implement this Agreement only in accordance with the laws and regulations of the United States Government.

Section C.2. If at any time USAID determines that its contribution exceeds the amount which reasonably can be committed for achieving the results or activities of this Agreement during the current or next U.S. fiscal year, USAID may, upon written notice to the GOK, withdraw the excess amount, thereby reducing the amount of the Grant. Actions taken pursuant to this subsection will not revise USAID's contribution, subject to the availability of funds to USAID for this purpose and the mutual agreement of the Parties, at the time of any subsequent increment, to proceed.

Article D: GOK Contribution. The GOK agrees to provide or cause to be provided all its in-kind contribution, and other resources required to complete, on or before the completion date, all activities necessary to achieve the results. Such "in-kind" contributions will be agreed upon by the parties in Implementation Letters on a case-by-case basis, and may be waived, if warranted, by mutual agreement of the parties.

Article E: Completion Date.

Section E.1. The Completion Date, which is set forth on the Title Page of this Agreement, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that the activity will be completed.

Section E.2. Except as USAID may otherwise agree in writing, USAID will not issue or approve documentation which would authorize disbursement of the Grant for services performed or goods furnished after the Completion Date.

Section E.3. Requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, are to be received by USAID no later than nine (9) months following the Completion Date, or such other period to which USAID agrees in writing before or after such period. After such period USAID, at any

time or times, may give notice in writing to the GOK and reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, were not received before the expiration of such period.

Article F: Utilization of Goods and Services. Any goods and services financed under this Agreement, unless otherwise agreed in writing by USAID, will be devoted to this Agreement until the completion or termination of this Agreement, and thereafter (as well as during any period of suspension of this Agreement) will be used to further the objectives of this Agreement or as USAID may direct in ILs.

Article G: Taxation.

Section G.1. The funds provided under this Agreement may not be used to pay any taxes imposed under laws in effect in the Republic of Kenya. The Parties agree that exemptions contained in the VAT Act and the Customs and Excise Act of Kenya shall apply to this Agreement. The GOK will pay any taxes levied on project goods, activities or entities.

Section G.2. The prohibition on payment of taxes in section G.1 applies to, but is not limited to, the following taxes:

- (1) Taxes levied on any transaction for the purchase of goods or services financed by USAID under this Agreement, including sales taxes, value-added taxes (VAT), or taxes on purchases or rentals of real or personal property.
- (2) (a) Taxes on the income of a non-Resident organization in respect of management or professional fee, royalty or interest certified by the Minister in accordance with paragraph 11 of the First Schedule to the Income Tax Act of Kenya as may be amended from time to time.

(b) Tax on non-resident employees or employees who are resident solely for the purpose of performing duties under this Limited Scope Grant Agreement in regard to emoluments paid under this Limited Scope Grant Agreement in respect of duties performed in Kenya in accordance with paragraph 27 of the First Schedule to the Income Tax Act of Kenya as may be amended from time to time.

(c) Taxes on any other income as the Minister may by notice in the Gazette Specify.
- (3) Customs duties, tariffs, import taxes, or other levies on the importation upon first arrival in Kenya, and re-exportation upon leaving Kenya, of personal effects (including a personally-owned automobile) for the personal use of non-Kenyan individuals or their family members under this Agreement.

Section G.3. If a tax has been levied and paid contrary to the provisions of Article G, USAID may, in its discretion, (1) require the GOK to refund to USAID or to others as USAID may direct the amount of such tax with funds other than those provided under this Agreement, or (2) offset the amount of such tax from amounts to be disbursed under this or any other agreement between the Parties.

Section G.4. In the event of a disagreement about the application of Article G, the Parties agree to promptly meet and resolve such matters, guided by the principle that the assistance furnished by USAID is free from direct taxation, so that all of the assistance furnished by USAID will contribute directly to the economic development of the country of the Republic of Kenya.

Article H: Reports and Information, Agreement Books and Records, Audits, and Inspections.

(a) Reports and Information. The Parties shall furnish each other with accounting records and such other information and reports relating to the Agreement as may be deemed necessary.

(b) Agreement Books and Records. The Parties shall maintain accounting books, records, documents and other evidence relating to the Agreement, adequate to show, without limitation, all costs incurred by the GOK under the Agreement, the receipt and use of goods and services acquired under the Agreement by the GOK, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the GOK, the basis of award of GOK contracts and orders, and the overall progress of the Agreement toward completion ("Agreement books and records"). The Parties shall maintain Agreement books and records in accordance with generally accepted accounting principles prevailing in the United States, or at the GOK's option, with approval by USAID, other accounting principles, such as those (1) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (2) prevailing in the Republic of Kenya. Agreement books and records shall be maintained for at least three years after the date of last disbursement by USAID or for such longer period, if any, required to resolve any litigation, claims or audit findings.

(c) GOK Audit. If \$300,000 or more of USAID funds are expended directly by the GOK in its fiscal year under the Agreement, the GOK shall have financial audits made of the expenditures in accordance with the following terms, except as the Parties may otherwise agree in writing:

(1) With USAID approval, the GOK shall use its Supreme Audit Institution or 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"; and

(2) The audit shall determine whether the receipt and expenditure of the funds provided under the Agreement are presented in accordance with generally accepted accounting principles agreed to in section (b) above and whether the GOK has complied with the terms of the Agreement. Each audit shall be completed no later than nine months after the close of the GOK's year under audit.

(d) Sub-recipient Audits. The GOK, except as the Parties may otherwise agree in writing, shall submit to USAID, in form and substance satisfactory to USAID, a plan for the audit of the expenditures of "covered" sub-recipients, as defined below, that receive funds under this Agreement pursuant to a direct contract or agreement with the GOK.

(1) A "covered" sub-recipient is one who expends \$300,000 or more in its fiscal year in "USAID awards" (i.e., as recipients of USAID cost reimbursable contracts, grants or cooperative agreements and as sub-recipients under USAID strategic objective and other grant agreements with foreign governments).

(2) The plan shall describe the methodology to be used by the GOK to satisfy its audit responsibilities for covered sub-recipients. The GOK may satisfy such audit responsibilities by relying on independent audits of the sub-recipients; expanding the scope of the independent financial audit of the GOK to encompass testing of sub-recipients' accounts; or a combination of these procedures.

(3) The plan shall identify the funds made available to covered sub-recipients that will be covered by audits conducted in accordance with other audit provisions that would satisfy the GOK's audit responsibilities. (A nonprofit 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. GOK contractor should be audited by the GOK's auditing agency.)

(4) The GOK shall ensure that covered sub-recipients under direct contracts or agreements with the GOK take appropriate and timely corrective actions; consider whether sub-recipients' audits necessitate adjustment of its own records; and require each such subrecipient to permit independent auditors to have access to records and financial statements as necessary.

(e) Audit Reports. The GOK shall furnish or cause to be furnished to USAID an audit report for each audit arranged for by the GOK in accordance with this Section within 30 days after completion of the audit and no later than nine months after the end of the period under audit.

(f) Other Covered Sub-recipients. For "covered" sub-recipients who receive funds under the Agreement pursuant to direct contracts or agreements with USAID, USAID will include appropriate audit requirements in such contracts or agreements and will, on

behalf of the GOK, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(g) Cost of Audits. Subject to USAID approval in writing, costs of audits performed in accordance with the terms of this Section may be charged to the Agreement.

(h) Audit by USAID. USAID retains the right to perform the audits required under this Agreement on behalf of the GOK by utilizing funds under the Agreement or other resources available to USAID for this purpose, conduct a financial review or otherwise ensure accountability of organizations expending USAID funds regardless of the audit requirement.

(i) Opportunity to Audit or Inspect. The GOK shall afford authorized representatives of USAID the opportunity at all reasonable times to audit or inspect activities financed under the Agreement, the utilization of goods and services financed by USAID, and books, records and other documents relating to the Agreement.

(j) Sub-recipient Books and Records. The GOK will incorporate paragraphs (a), (b), (d), (e), (g), (h) and (i) of this provision into all sub-agreements with non-U.S. organizations which meet the \$300,000 threshold of paragraph (c) of this provision. Sub-agreements with non-U.S. organizations, which do not meet the \$300,000 threshold, shall at a minimum incorporate paragraphs (h) and (i) of this provision. Sub-agreements with U.S. organizations shall state that the U.S. organization is subject to the audit requirements contained in OMB Circular A-133.

Article I: Other Payments. GOK affirms that no payments have been or will be received by any official of the GOK in connection with the procurement of goods or services financed under this Agreement, except fees, taxes, or similar payments legally established in the country of the GOK.

Article J: Procurement of Goods and Services.

Section J.1. Any goods and services financed by USAID under this Agreement may be procured pursuant only to an Implementation Order ("IO") or IL issued by USAID.

Section J.2. Title to goods or other property financed by USAID under this Agreement shall be in the GOK or other entity as the GOK may designate, except as the parties agree or as specified by USAID in an IO or IL.

Article K: Suspension, Termination and Other Remedies.

Section K.1. Suspension and 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 GOK 30 days written notice, and suspend this Agreement in whole or in part upon giving GOK written notice. In addition, USAID may terminate this Agreement in whole or in part, upon giving GOK written notice, if (i) GOK fails to comply with any provision of this Agreement, (ii) an event occurs that USAID determines makes it improbable that the result or related objective of this Agreement or the assistance program will be attained or that GOK will be able to perform its obligations under this Agreement, or (iii) any disbursement or use of funds in the manner herein contemplated would be in violation of the legislation governing USAID, whether now or hereafter in effect.

(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 this entire Agreement or part thereof will suspend (for the period of the suspension) or terminate, as applicable, any obligation of the Parties to provide financial or other resources to this Agreement, or to the suspended or terminated portion of this Agreement, 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 this Agreement, or under the applicable portion of this Agreement, be transferred to USAID if the goods are in a deliverable state.

Section K.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 other remedies under this Agreement, may require GOK to refund the amount of such disbursement in U.S. Dollars to USAID within sixty (60) days after receipt of a request therefor.

(b) If the failure of GOK to comply with any of its obligations under this Agreement has the result that goods or services financed or supported under this Agreement are not used effectively in accordance with this Agreement, USAID may require GOK to refund all or any part of the amount of the disbursements under this Agreement for or in connection with such goods or services in U.S. Dollars to USAID within sixty (60) days after receipt of a request therefor.

(c) The right under subsections (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 refunds under subsections (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 this Agreement, 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 this Agreement, 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 funds disbursed by USAID to GOK under this Agreement prior to the authorized use of such funds for this Agreement will be returned to USAID in U.S. Dollars by the GOK, unless USAID otherwise agrees in writing.

Section K.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 K.4. Assignment. GOK agrees, upon request, to execute an assignment to USAID of any cause of action which may accrue to GOK in connection with or arising out of the contractual performance or breach of performance by a Party to a direct U.S. Dollar contract which USAID financed in whole or in part out of funds granted by USAID under this Agreement.

Article L: Job Loss, Export Processing Zones and Workers' Rights.

Section L.1. No funds or other support provided hereunder may be used in an 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.

Section L.2. No funds or other support provided hereunder may be used in an activity the purpose of which is the establishment or development in a foreign country 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.

Section L.3. 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.

PD&L - 615-LSGA-001

Clearance: PDA:SRagama [Signature]
ABEO:MBrown [Signature]
OPH:MStrong [Signature]
RLA:KHansen [Signature]
CONT:RAmin [Signature] 8/27/02

ACCOUNTING DATA:

APP: 722/31021
BPC: GDV2-02-21615-KG13
OBL RES NO: LSGA615-PDL-005-000
RCN: V221066
AMT: \$150,000.00

APP: 72X1095
BPC: GCDX-02-21615-BG13
OBL RES NO: LSGA615-PDL-003-000
RCN: V221069
AMT: \$100,000.00

APP: 722/31021
BPC: GDV2-02-21615-KG13
OBL RES NO: LSGA615-PDL-006-000
RCN: V221067
AMT: \$200,000.00

APP: 72X1095
BPC: GCDX-02-21615-1G13
OBL RES NO: LSGA615-PDL-003-000
RCN: V221070
AMT: \$200,000.00

APP: 722/31021
BPC: GDV2-02-21615-KG13
OBL RES NO: LSGA615-PDL-007-000
RCN: V221068
AMT: \$250,000.00

APP: 722/31021
BPC: KDV2-02-24615-KG11
OBL RES NO: LSGA615-PDL-007-000
RCN: V221098
AMT: \$150,000.00

TOTAL GRANT AMT: \$1,050,000.00

