

PD-Annex-11.0
~~PD-Annex-11.0~~
9/29/94

LIMITED SCOPE GRANT AGREEMENT

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

AND

The Republic of Kenya
(Cooperating Country)

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- | | |
|--|------------------------------------|
| 1. Project Title:
Program Development
and Support (PD&S) | 2. AID Project Number:
615-0510 |
|--|------------------------------------|

The above named parties hereby mutually agree to carry out the Project described in this Agreement in accordance with (1) the terms of this agreement, including and annexes attached hereto, and (2) any general agreement between the two governments regarding economic or technical cooperation.

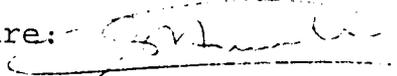
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| 3. Amount of USAID Grant:
\$117,885 | 4. Cooperating Country
Contribution:
\$39,256 | 5. Project Assistance
Completion Date:
09/30/95 |
|--|---|---|

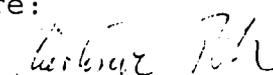
6. This agreement consists of this title page and Annexes A and B.

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| 7. For the Cooperating Country:

Typed Name: GEORGE KIOKO WA LUKA | 8. For the Agency for
International Development

Typed Name: KIERTISAK TOH |
|---|---|

Signature: 

Signature: 

Title: Under Secretary/
U.S. Desk Officer
External Resources Division

Title: ACTING DIRECTOR
USAID/KENYA

Date: September 29, 1994

Date: September 29, 1994

Annex A

Project Description

Kenya Program Development and Support Project (1994) 615-0510

1. Project Title: Kenya Development and Support Project (1994)
2. A.I.D. Project Number: 615-0510
3. Project Description:

A. These funds may be used to finance:

(1) Project or program development, feasibility studies, operational research, and pilot testing of hypotheses which may lead to a final project design or to the exploration of new program directions.

(2) CPSP-related studies, sector assessments, or other special studies to enhance policy dialogue efforts or lead to a better understanding of technical or institutional constraints.

(3) General purpose activities such as seminars, workshops, and special economic, sectoral or statistical surveys and studies which cannot be associated with a single, discrete project. This category includes the publication and other dissemination of appropriate research and technical studies.

(4) Small exploratory research activities or support thereto, including state-of-the-art surveys/studies required for preliminary program explorations.

On an exceptional basis and with justification to and approval by the Mission Director or the equivalent in AID/W, the following:

(5) Evaluations and financial management/audit activities not otherwise budgeted in specific project, program or other agreements. However, it should be stressed that all project design documents should include funds for evaluation and, if deemed necessary, funds for audit or financial management review.

(6) Reasonable pre-project implementation costs or bridge funding between termination and follow-on projects.

(7) Program costs associated with monitoring or auditing non-project activities such as non-project assistance under the Development Fund for Africa (DFA) or other forms of sector assistance, PL 480, and CIP, when the relevant program assistance agreement does not contain funding for such purposes.

PROJECT AGREEMENT

PROAG STANDARD PROVISIONS ANNEX

A. Reference to "this Agreement" means the original Project Agreement as modified by any revisions which have entered into effect. Reference to "cooperating country" means the country or territory of the Grantee.

B. (1) USAID will make available the amount specified in section 3 of this Agreement, as necessary for the Project, as may be further described in Annex A.

(2) The Grantee will make available the amount specified in Block 4 of this Agreement, as necessary for the Project, as may further be described in Annex A. The Grantee will also make, or arrange to have made, additional contributions of property, services, facilities and funds required for carrying out the Project as specified in Annex A.

C. USAID and the Grantee may obtain the assistance of other public and private agencies in carrying out their respective obligations under this Agreement. The two parties may agree to accept contributions of property, services, facilities and funds for purposes of this Agreement from other public and private agencies, and may agree upon the participation of any such third party in carrying out activities under this Agreement.

D. Except as otherwise specified herein or subsequently agreed by the parties, all contributions of the parties pursuant to this Agreement shall be made on or before the Project Assistance Completion Date, or amended date. A contribution of goods or services shall be considered to have been made when the services have been performed and the goods furnished as contemplated in this Agreement. Disbursement of funds may take place after final contributions have been made, but USAID shall not be required to disburse funds hereunder after the expiration of nine months following the estimated Project Assistance Completion Date (Block 5 of this Agreement) or any amended Project Assistance Completion Date specified.

E. The procurement of commodities and services to be financed in whole or in part by USAID may (where so required by USAID procedures) be undertaken only pursuant to Project Implementation Orders (PIOs) issued by USAID.

F. Unless otherwise specified in the applicable PIO or Project Implementation Letter (PIL), the procurement of commodities imported specifically for the Project and financed with the USAID contribution referred to in Block 3 of this Agreement shall be subject to the provisions of USAID Regulation 1.

G. Unless otherwise agreed by the parties or otherwise specified in the applicable PIO, title to all property procured through financing by USAID pursuant to Block 3 of this Agreement, shall be in the Grantee, or such public or private agency as it may authorize.

H. (1) Any property furnished to either party through financing by the other party pursuant to this Agreement shall, unless otherwise agreed by the party which financed the procurement, be used effectively for the purpose of the Project in accordance with this Agreement, and upon completion of the Project (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. Either party shall offer to return to the other, or to reimburse the other for, any property which it obtains through financing by the other party pursuant to this Agreement which is not used in accordance with the preceding sentence.

(2) Any funds provided to either party pursuant to this Agreement which are not used in accordance with this Agreement, shall be refunded to the party providing the funds.

(3) Any interest or other earnings on funds provided by USAID to the Grantee under this Agreement will be returned to USAID by the Grantee.

I. (1) If USAID and any public or private organization furnishing commodities through USAID financing for operations hereunder in cooperating country, is, under the laws, regulations or administrative procedures of the cooperating country, liable for customs, duties and import taxes on commodities imported into the cooperating country for purposes of carrying out this Agreement, the Grantee will pay such duties and taxes unless exemption is otherwise provided by any applicable international agreement.

(2) If any personnel (other than citizens and residents of the cooperating country), whether United States Government employees or employees of public or private organizations under contract with, or individuals under contract with USAID, the Grantee or any agency authorized by the Grantee, who are present in the cooperating country to provide services which USAID has agreed to furnish or finance under this Agreement, are under the laws, regulations or administrative procedures of the cooperative country, liable for income and social security taxes with respect to income which they are obliged to pay income or social security taxes to the Government of the United States of America, for property taxes on personal property intended for their own use, or for the payment of any tariff or duty upon personal or household goods brought into the cooperating country for the personal use of themselves and members of their families (not including such personal or household goods as may be sold by any such personnel in the cooperating country) or if any firm, not

normally resident in the cooperating country), is liable for income, receipts, or other taxes on work financed by USAID hereunder, the grantee will pay such taxes, tariff, or duty unless exemption is otherwise provided by any applicable international agreement.

J. If funds provided by USAID are introduced into the cooperating country by USAID or any public or private agency for purposes of carrying our obligations of USAID hereunder, the Grantee will make such arrangements as may be necessary so that such funds shall be convertible into currency of the cooperating country.

K. USAID shall expend funds and carry on operations pursuant to this Agreement only in accordance with the applicable laws and regulations of the United States Government.

L. The two parties shall have the right at any time to observe operations carried out under this Agreement. Either party during the term of the Project and for three years after the completion of the Project shall further have the right (1) to examine any property procured through financing by the party under this Agreement, wherever such property is located, and (2) to inspect and audit any records and accounts with respect to funds provided by, or any properties and contract services procured through financing by, that party under this Agreement, wherever such records may be located and maintained. Each party, in arranging for any disposition of any property procured through financing by the other party under this Agreement, shall assure that the rights of examination, inspection and audit described in the preceding sentence are reserved to the party which did the financing.

M. USAID and the Grantee shall each furnish the other such information as may be needed to determine the nature and scope of operations under this Agreement and to evaluate the effectiveness of such operations.

N. The present Agreement shall enter into force when signed.

(1) 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.

(2) 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.

(3) 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.

O. To assist in the implementation of the Project, USAID from time to time, may issue PILs that will furnish additional information about matters stated in this Agreement. The parties may also use jointly agreed upon PILs to confirm and record their mutual understanding on aspects of the implementation of this Agreement.

P. 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.

Q. 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 toward 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

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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 compiled 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 such 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 this 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 USAID 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 \$25,000 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 applies. 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 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; 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 whether 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 utilization of goods and services financed by USAID, and books, records and other documents relating to the project and the grant.

R. (1) 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;

(2) 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.

(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;

(4) 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 an agricultural commodity for export which would compete with a

similar commodity grown or produced in a United States unless a) 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 b) research activities are intended primarily to benefit American producers;

(5) 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.