

CONFORMED COPY

CREDIT NUMBER 1820 KE

Project Agreement

(Second Railway Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

KENYA RAILWAYS CORPORATION

Dated September 24, 1987

CREDIT NUMBER 1820 KE

PROJECT AGREEMENT

AGREEMENT, dated September 24, 1987, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and KENYA RAILWAYS CORPORATION (KRC).

WHEREAS (A) by the Development Credit Agreement of even date herewith between Republic of Kenya (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to twenty-one million eight hundred thousand Special Drawing Rights (SDR 21,800,000), on the terms and conditions set forth in the Development Credit Agreement but only on condition that KRC agree to undertake such obligations toward the Association as are set forth in this Agreement;

(B) by a subsidiary loan agreement to be entered into between the Borrower and KRC, the proceeds of the Credit provided for under the Development Credit Agreement will be made available to KRC on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS KRC, in consideration of the Association's entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Development Credit Agreement, the Preamble to this Agreement and in the General Conditions (as so defined) have the respective meanings

therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) KRC declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Development Credit Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and railway management practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section, KRC shall carry out the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement, as such Schedule may be amended from time to time by agreement between the Association and KRC.

Section 2.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. KRC shall carry out the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of this Agreement.

Section 2.04. KRC shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Association shall otherwise agree, KRC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) KRC shall, at the request of the Association, exchange views with the Association with regard to the progress of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Credit.

(b) KRC shall promptly inform the Association of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Credit, or the performance by KRC of its obligations under this Agreement and under the Subsidiary Loan Agreement.

ARTICLE III

Management and Operations of KRC

Section 3.01. KRC shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and railway management practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. KRC shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and railway management practices.

Section 3.03. KRC shall take out and maintain with responsible insurers, or make other provision satisfactory to the Association, for insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

Section 4.01. (a) KRC shall maintain records and accounts adequate to reflect, in accordance with sound accounting practices, its operations and financial condition.

(b) KRC shall:

- (i) have its accounts and financial statements (balance sheets, statements of income and expenses and related statements), for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than seven months after the end of each such year: (A) certified copies of its financial statements for such year as so audited; and (B) the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and
- (iii) furnish to the Association such other information concerning said accounts and financial statements as well as the audit thereof and said records, as the Association shall from time to time reasonably request.

Section 4.02. Except as the Association may otherwise agree, KRC shall from time to time take all such measures within its power (including, without limitation, adjustments to the structure or levels of its railway tariffs), as shall be required to enable KRC to meet, as of its fiscal year beginning July 1, 1988, a working ratio of not more than 80%, in FY1989 and FY1990 a working ratio of not more than 75% and, in FY1991 and thereafter, a working ratio of not more than 70%. For the purpose of this Section:

(a) the term "working ratio" means the total working expenses divided by the total operating revenues;

(b) the term "total working expenses" means the sum of all operating costs and administrative expenses of KRC related to its railway operations, including adequate maintenance and taxes (if any) but excluding depreciation and interest, and other charges on debt; and

(c) the term "total operating revenues" means the sum of gross revenues from all sources accruing to KRC from its railway operations.

Section 4.03. (a) Except as the Association shall otherwise agree, KRC shall maintain a ratio of current assets to current liabilities of not less than 2.0:1 in FY1988 and FY1989, and 2.5:1 thereafter.

(b) Before March in each of its fiscal years, KRC shall, on the basis of forecasts prepared by KRC and satisfactory to the Association, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Association the results of such review upon its completion.

(c) If any such review shows that KRC would not meet the requirements set forth in paragraph (a) for KRC's fiscal years covered by such review, KRC shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its tariffs) in order to meet such requirements.

(d) For the purposes of this Section:

- (i) The term "current assets" means cash, all assets which could, in the ordinary course of business be converted into cash within twelve months, including accounts receivable, marketable securities, inventories and pre-paid expenses properly chargeable to operating expenses within the next fiscal year.
- (ii) The term "current liabilities" means all liabilities which will become due and payable within twelve months,

such as customer advances, debt service requirements, taxes, and dividends.

- (iii) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (iv) Whenever, for the purposes of this Section, it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

Section 4.04. (a) Except as the Association shall otherwise agree, KRC shall not incur any debt, if after the incurrence of such debt, the ratio of debt to equity shall in FY1988 and thereafter be greater than 1.22:1.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of KRC maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for specific liabilities.
- (iii) The term "equity" means the sum of the total unimpaired paid-up capital, retained earnings and reserves of the Borrower not allocated to cover specific liabilities.
- (iv) Whenever, for the purposes of this Section, it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

Section 4.05. KRC shall, by March 31 of each year, prepare, for review by the Borrower and the Association, an analysis of its expected and past performance against the indicators set forth in Schedule 3 to this Agreement.

Section 4.06. Until completion of the Project and without limitation or restriction upon the obligations of the Borrower pursuant to Section 4.01 of the Development Credit Agreement, KRC shall not undertake any investment larger than \$500,000 equivalent, not included in this Project and other ongoing development projects, without the prior consent of the Borrower and the Association.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 5.02. (a) This Agreement and all obligations of the Association and of KRC thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or
- (ii) the date 20 years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify KRC of this event.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INDEVAS
Washington, D.C.

Telex:

440098 (ITT)
248423 (RCA) or
64145 (WUI)

For KRC:

Kenya Railways Corporation
P.O. Box 30121
Nairobi, Kenya

Cable address:

RAILWAYS
Nairobi

Telex:

22254

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of KRC, or by KRC on behalf of the Borrower under the Development Credit Agreement, may be taken or executed by the Managing Director of KRC or such other person or persons as the Board of Directors of KRC shall designate in writing, and the Managing Director of KRC shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Edward V.K. Jaycox
Regional Vice President
Africa

KENYA RAILWAYS CORPORATION

By /s/ Sospeter O. Mageto
Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: International Competitive Bidding

1. Except as provided in Part B hereof, goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1985 (the Guidelines).
2. To the extent practicable, contracts for goods shall be grouped together for the purposes of inviting bids.

Part B: Other Procurement Procedures

1. Contracts for civil works for construction of fuelling and sand-drying facilities and "running-rooms" for the train crews may be awarded on the basis of competitive bidding advertised locally, in accordance with procedures acceptable to the Association, provided, however, that the aggregate cost of civil works so procured shall not exceed the equivalent of \$800,000.
2. Proprietary spare parts may be purchased on the basis of negotiated contracts on terms and conditions satisfactory to the Association.

Part C: Review by the Association of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:
 - (a) With respect to each contract, estimated to cost the equivalent of \$50,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply.
 - (b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix I to the Guidelines shall apply.
2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

1. In order to assist KRC in carrying out the Project, KRC shall employ consultants and experts, whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Association on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by The World Bank as Executing Agency" published by the Bank in August 1981.

SCHEDULE 2

Implementation Program

1. KRC shall, subject to the provisions of the Development Credit Agreement and this Agreement, be responsible for the overall coordination, monitoring and supervision of activities under the Project.

2. KRC shall appoint persons to the technical assistance positions and undertake the studies referred to in the Annex to this Schedule.

3. Except as the Borrower and the Association shall otherwise agree, the appointments for the positions referred to in paragraph 1 above, except those of Program Coordinator, General Manager (Finance, Supplies and Information), Maintenance Adviser, and Operations and Planning Adviser shall be made by no later than four months after Credit effectiveness.

4. The qualifications, experience and terms of reference for all such positions shall be acceptable to the Association.

ANNEX TO SCHEDULE 2

PART A OF THE PROJECT - INSTITUTIONAL DEVELOPMENT

Post	Staff Months
Corporate Management:	
(i) Program Coordinator	30
(ii) General Manager (Finance, Supplies and Information)	24
(iii) Business Development Manager	24
(iv) Chief Accidents Inspector	24
(v) Management Information Adviser	6
Operational Management:	
(i) Management Accounting Adviser	24
(ii) Workshop Costing Adviser	9
(iii) Traffic Costing Adviser	6
(iv) Supplies Advisory Team	30
(v) Software Support	36
Human Resources	
Personnel Department:	
(i) Manpower Planning Adviser	24
(ii) Personnel Management Training Adviser	12
(iii) Manpower Information Specialist	6
Training School:	
(i) Director of Studies	24
(ii) Head of Management Training Center	24
(iii) Curriculum Development Advisers	96

PART B OF THE PROJECT - MOTIVE POWER

Post	Staff Months
Workshop Restructuring:	
(i) Maintenance Adviser	42
(ii) Production Planning Adviser	36
(iii) Quality Control Adviser	24
(iv) Training Specialist	24
(v) Maintenance Specialists: 93 Class	12
87/71 Class	36
(vi) Trade Testing Specialists	24

PART C OF THE PROJECT - OPERATIONAL IMPROVEMENTS

Post	Staff Months
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Traffic Management:

(i) Operations and Planning Adviser	30
(ii) Commercial Adviser	8

Permanent Way Efficiency:

(i) Telecommunications and Signalling Engineer	24
(ii) Telecommunications Adviser	12

Studies:

(i) Asset Evaluation	6
(ii) Job Evaluation Review	18
(iii) Suburban Traffic Study	8
(iv) Catering Study	2
(v) Road Service Study	2
(vi) Software Support	12
(vii) Signalling and Telecommunications Study	12
(viii) Survey of Viaducts	5
(ix) Traffic Costing and Compensation	4

SCHEDULE 3

KRC shall measure its performance against the following indicators:

PERFORMANCE INDICATORS

		Target		
		FY1988;89	FY1990	FY1991
1.	Locomotive Availability (%)			
	Main Line Class	94	90	90
	93 (GE)		70	75
	92 (MLW)		60	65
	87 (EE)		45	50
	Transfer Duty Class	62	65	75
	Shunters		60	75
2.	Locomotive Reliability			
	Kms per failure per unit			
	Class 94	50,000	50,000	50,000
	93	14,000	17,600	19,000
	92	6,500	8,000	8,000
	87	6,500	9,000	10,000
3.	Locomotive Utilization			
	(000kms) Class			
	94	120	120	120
	93	120	120	120
	92	107	107	107
	87	107	100	100
4.	Wagons Availability (%)	92	93	94
	Wagon km/Wagon day	48	60	65
	Turnaround General			
	uses(days)	13	12	12
	Tank (POL) (days)	12	11	10
	Average load/loaded			
	wagon (tons)	16.0	16.0	16.5
	Productivity per			
	available wagon			
	unit per year			
	(000 ton km)	190	190	190
5.	Freight traffic net			
	net ton kms (billions)	2.3	2.5	2.6

6.	Number of staff at year-end	22,600	21,900	21,600
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