

FOREIGN ASSISTANCE

Development Activities

**Agreement Between
the UNITED STATES OF AMERICA
and KENYA**

Signed at Nairobi July 20, 2015



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

KENYA

**Foreign Assistance:
Development Activities**

*Agreement signed at Nairobi July 20, 2015;
Entered into force July 20, 2015.*

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF KENYA REGARDING THE NON-TAXATION OF THE UNITED STATES TRADE AND DEVELOPMENT AGENCY'S DEVELOPMENT ASSISTANCE ACTIVITIES IN KENYA

The Government of the United States of America, acting through the U.S. Trade and Development Agency ("USTDA"), and the Government of the Republic of Kenya (together, the "Parties") hereby enter into this agreement ("Agreement") regarding the non-taxation of USTDA-funded assistance to support economic development activities in Kenya (the "Assistance").

WHEREAS, USTDA is a foreign assistance agency of the Government of the United States of America that advances economic development in host countries such as Kenya by providing foreign project sponsors with access to U.S. technology and expertise;

WHEREAS, the Assistance takes the form of feasibility studies, technical assistance, pilot projects and reverse trade missions in a wide array of commercial and industrial sectors;

WHEREAS, USTDA's program in Kenya dates back to 1981 and has involved more than two dozen activities related to the transportation, energy and information and communication technology sectors;

WHEREAS, USTDA provides the Assistance by funding the provision of services by U.S. firms to private and public sector project sponsors in Kenya (each, a "grantee");

WHEREAS, USTDA commits to funding Assistance by first entering into a grant agreement with a grantee and such grantee then selects and contracts directly with a U.S. firm to perform the Assistance;

WHEREAS, the grantee is responsible for reviewing the work performed by the U.S. firm and for approving invoices submitted by the U.S. firm for payment by USTDA, and invoices approved by the grantee are paid by USTDA directly to the U.S. firm in the United States; as a result, the grant amount is never paid or distributed, directly or indirectly, to the grantee, and USTDA funds never leave the United States;

WHEREAS, because of various United States legal, financial and administrative requirements, USTDA cannot provide the Assistance if it would be subject to taxation by the host country or if USTDA is required to withhold any taxes relating to the Assistance;

WHEREAS, the taxation in Kenya of the Assistance would be contrary to the principle of non-taxation of assistance funded by the United States, which USTDA adheres to in all of its projects around the world, and which principles have been recognized by the Government of Kenya in its past dealings with the United States Government; and

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WHEREAS, recognizing the nature of USTDA's program and the important benefits conferred on Kenya by the Assistance and wishing to facilitate the Assistance, the Parties have entered into this Agreement in order to confirm the non-taxation of the Assistance.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Purpose. The purpose of this Agreement is for the Parties to set forth their agreement with respect to the non-taxation of the Assistance.

Section 2. Non-Taxation.

2.1 Consistent with existing arrangements between the United States and Kenya, the Republic of Kenya agrees that the U.S. firms implementing the Assistance shall be free from any taxes imposed under laws in effect in Kenya with respect to their implementation of the Assistance, and USTDA funds shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in Kenya (the "General Exemption"). The Republic of Kenya will not seek reimbursement from USTDA for such taxes, tariffs, duties, fees or other levies.

2.2. The General Exemption applies to, but is not limited to, (i) any activity, contract, subcontract or other implementing agreement financed by USTDA; (ii) any transaction or supplies, equipment, materials, property or other goods under (i) above to the extent financed by USTDA; (iii) any contractor, subcontractor or other organization carrying out activities financed by USTDA to the extent of those activities; (iv) any employee of such organizations to the extent of their engagement in activities financed by USTDA; and (v) any individual contractor or subcontractor carrying out activities financed by USTDA to the extent of those activities.

2.3. The General Exemption applies to, but is not limited to, taxes on the income, profits or property of all (i) non-national organizations of any type performing activities of USTDA, (ii) non-national employees of non-national organizations performing activities of USTDA, or (iii) non-national individual contractors and subcontractors performing activities of USTDA, including income and social security taxes of all types and all taxes on the property, personal or real, owned by such non-national organizations or persons. The term "national" refers to organizations established under the laws of Kenya and citizens of Kenya, other than permanent resident aliens in the United States.

2.4. If a tax has been levied and paid contrary to the provisions of this section, the Republic of Kenya acknowledges and agrees that USTDA may, in its sole discretion, require the particular Kenyan grantee receiving the Assistance to refund to USTDA or to others as USTDA may direct the amount of such tax.

2.5. In accordance with the General Exemption, USTDA shall have no duty to withhold any income taxes or remit any such taxes to the Republic of Kenya.

Section 3. Disputes. In the event of a disagreement about the application of the General Exemption, USTDA and the Republic of Kenya will promptly resolve such matters, guided by

the principle that the Assistance is free from direct taxation, so that all of the Assistance will contribute directly to the economic development of Kenya. Any dispute arising from the implementation or interpretation of this Agreement shall be settled amicably through consultation and negotiation by the Parties through diplomatic channels.

Section 4. General Provisions. This Agreement shall enter into force on the date of its signature.

4.1. This Agreement may be amended only by written agreement of the Parties. Either Party may propose in writing amendments to this Agreement. Such proposal shall be conveyed to the other through an exchange of notes and through diplomatic channels and shall come into force upon approval by the other Party.

4.2. Either Party may terminate this Agreement by giving at least 180 days advance notice in writing to the other Party. The termination of this Agreement shall not affect the tax treatment of Assistance which was ongoing prior to the date of its termination.

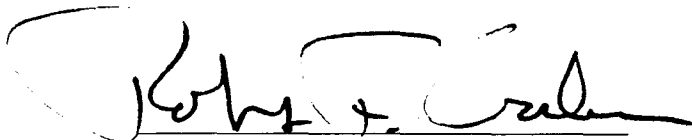
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IN WITNESS WHEREOF, the Parties, each acting through its duly authorized representative, have signed this Agreement.

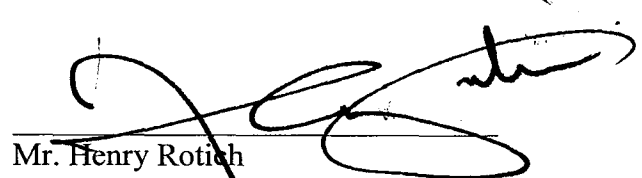
Done at Nairobi, in duplicate, this 20th day of July, 2015.

**FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:**

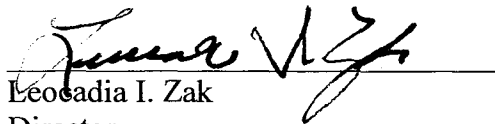
**FOR THE GOVERNMENT OF THE
REPUBLIC OF KENYA:**



H.E. Robert F. Godec
Ambassador



Mr. Henry Rotich
Cabinet Secretary for the
National Treasury



Leocadia I. Zak
Director
U.S. Trade and Development Agency