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Paper hand
By Hon. A. Nwora, MP
Chair - DC - Agric.,
Livestock & Cooperative
on Thurs. 21.07.2016
(pm) Mmw

ELEVENTH PARLIAMENT - FOURTH - 2016

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE OF AGRICULTURE, LIVESTOCK AND CO-OPERATIVES OF THE NATIONAL ASSEMBLY

REPORT ON THE STATUS OF GALANA-KULALU FOOD SECURITY PROJECT

21 JUL 2016

DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS,
NAIROBI

JULY, 2016



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Abbreviations

GKFSP - Galana Kulalu Food Security Project

GOK - Government of Kenya

MOU - Memorandum of Understanding

1.0 CHAIR'S FOREWORD

The inquiry on the status of the implementation of the Galana-Kulalu Food Security Project was commenced pursuant Standing Order No. 216, ¹which establishes the functions of the Committee namely; to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments and to study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives among others

In 2013, the GOK initiated and noble concept of securing the Country out of the food deficit by putting one million acres of land under irrigation, this is in line with Medium Term Plan II (MTP II) of Vision 2030. In that respect, Galana-Kulalu Food Security Project (GKFSP) was identified as key flagship project where five hundred thousand acres (500,000) of the one million acres (1,000,000) is set to come from Galana Ranch.

The Committee held meetings with the Cabinet Secretary and officials from Ministry of Water and Irrigation, officials/contractors from the State of Israel and also undertook Inspection visits to the GalanaRanch. The meetings and inspectionvisitspurposed at acquainting Members of the Committee on the various aspects of the GKFSP as well as review the progress in the implementation of GKFSP.

The Committee wishes to thank the Speaker and the Clerk of the National Assembly for the logistical and technical support they accorded the committee during the inquiry.

On behalf of the Committee, and pursuant to Standing Order, 216 it is my pleasant duty to table in the House the Report of the Status of the Implementation of the GalanaKulalu Food Security Project as at April. 2016

HON. ADAN MOHAMED NOOR, MBS, CBS, MP

2.0 EXECUTIVE SUMMARY

In 2013, the GOK initiated and noble concept of securing the Country out of the food deficit by putting one million acres of land under irrigation, this is in line with Medium Term Plan II (MTP II) of Vision 2030. In that respect, GKFSP was identified as key flagship project where five hundred thousand acres (500,000) of the one million acres (1,000,000) is set to come from Galana Ranch.

The GOK advertised for the Pre-feasibility study for the GKFSP and as result of due process of procurement, the works was awarded to Agrigreen in association with Enviroplan and Management Consultant and Amiran (K) Limited for a sum of **KES 923,145,953**.

Having completed the Pre-feasibility study, the GOK indentified the government of Israel which had shown an interest to fund the project and entered into a Memorandum of Intent (MOI) in respect to this Project.

On the basis of this Memorandum of Intent entered between the government of Kenya and State of Israel, the NIB went ahead and awarded the Contract for the implementation of 10,000 acre Model/demonstration farm to Green Arava (Israeli Company) through single sourcing, at a cost of **KES 14,545,106,963** due to the following reasons:

- i. Green Arava Ltd (Israel) being a parent company of Agri-Green would be better placed to demonstrate the workability of the technology and bear full responsibility in case of failure, underperformance, or both and remedy any shortcomings attributable to the design.
- ii. The proposed technology was the most modern, cost effective and has never been implemented anywhere in Kenya .The technology was developed and perfected in Israel and Green Arava is a major consumer of the technology on large scale basis and has successfully implemented such projects in Russia, Angola and South America.
- iii. During the due diligence visit to Israel done in July 2014, Green Arava Ltd was found to offer to its clients very good long term training and capacity building programs that benefited the engineers, officers, and investors in Israel. Arising from the

aforementioned , the Ministry of Agriculture, Livestock and Fisheries wanted to utilize such unique programs in the project.

During the initial process of the implementation, the Project faced numerous challenges which resulted in the Committee raising the red flag and hence proceeded to suspend the project, a suspension which was ignored by the Ministry of Agriculture ,Livestock and Fisheries then. The major issues raised by the Committee then were as follows :

- i. The manner in which the Pre-feasibility study was undertaken and the resultant findings of the study.
- ii. The process of the procuring Green Arava Ltd (Israel) as contractor to construct the 10000 Acre Model Farm in Galana-Kulalu Ranch
- iii. The existence of an MOU between the GOK and State of Israel as well as the Attorney General Office' s advisory views on the said MOU.
- iv. The contract price of **KES 14.5 billion** to construct 10,000 acre model/demonstration farm which the Committee felt was high. as well as
- v. The unclear financing arrangement for the GKFSP as well as the low implementation rate of the project and production levels of maize crop in the first seeding.

Despite the above , the Ministry of Agriculture ,Livestock and Fisheries ignored the Committee's reservation and continued to implement the Project. However, as at December, 2015, two months before the completion date of the Project, the problems and challenges as earlier indentified by the Committee remained unresolved and had seriously hampered the implementation of GKFSP.

The Committee undertook the second field inspection visit in December ,2015 to verify the progress of the GKFSP and a result issued the second public pronouncement again suspending the GKFSP.

As result of this second public pronouncement the executive through the Ministry of Water and Irrigation acted by temporarily suspending the project and constituted and Cabinet Sub-Committee to relook at the GKFSP and advise the GOK accordingly.

The Cabinet Sub-Committee ordered for re-negotiation of the contract price for model farm with Green Arava Ltd (Israel) and the phasing of the key project components to fastrack the Project implementation. and prevent the Project from total collapse. As a result of the these negotiations, the contract price for the project was scaled down by 50% to **KES 7.2 billion** and phasing of Project components of the GKFSP was agreed upon. The proposal of a new roadmap and initiative to complete the Project was presented to the Committee by the Cabinet Secretary of Water and Irrigation in February ,2016.

The Committee was convinced with the new proposal by the Executive in the implementation of the Project. This new initiative included the phasing of the project components into two phases and securing of the Loan from State of Israel to sort project funding 100%. Consequently the Ministry Water and Irrigation proposed that the Committee should carry-out a further stock taking inspection visit the GKFSP to verify new status of the project and be further briefed on the new proposal on the ground.

Resulting from the above events , the Committee undertook in-depth inquiry and analysis into the inception and implementation of the project in order to sufficiently report to the House on the status of the GKFSP. Therefore, this report undertakes to provide status of the implementation of GKFSP and proposes critical measures to be considered by the GOK to ensure the GKFSP is a sustainable and successful flagship project.

3.0 MANDATE OF THE COMMITTEE

The Committee is established in accordance with the provisions of Standing Order No. 216 (5), with the following terms of reference: -

- i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- iii. To study and review all legislation referred to it;
- iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister;
- vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and
- vii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

3.1 Committee Subjects

The Committee is mandated to consider the following subjects:-

- i. Agricultural services
- ii. Livestock services
- iii. Fisheries
- iv. Irrigation services
- v. Cooperatives

4.0 OVERSIGHT

In executing its mandate, the Committee oversees the following Government Departments and agencies, namely:-

- i. The State Department of Agriculture
- ii. The State Department of Livestock
- iii. The State Department for Fisheries and Blue economy
- iv. The State Department of Cooperatives
- v. The State Department of Irrigation

5.0 MEMBERS OF THE COMMITTEE

Chairperson	The Hon. Adan M. Nooru, MBS, CBS, MP
Vice Chairperson	The Hon. Japhet Kareke Mbiuki, M.P
Members	The Hon. (Dr.) Victor Munyaka, M.P
	The Hon. Benjamin Washiali, M.P
	The Hon. Raphael Letimalo, M.P
	The Hon. Kabando Wa Kabando, M.P
	The Hon. Millie Odhiambo - Mabona, M.P
	The Hon. Fredrick Outa, M.P
	The Hon. John B. Serut, M.P
	The Hon. Daniel Maanzo, MBS,
	The Hon. Silas Tiren, M.P
	The Hon. Maison Leshoomo, M.P
	The Hon. Mary Wambui, M.P
	The Hon. Korei Ole Lemein, M.P
	The Hon. Peter N. Gitau, M.P
	The Hon. Florence Mutua, M.P
	The Hon. John Kobado, M.P
	The Hon. Patrick Wangamati, M.P
	The Hon. Hezron Awiti Bolo, M.P
	The Hon. Ayub Savula Angatia, M.P.
	The Hon. Waititu Munyua, M.P
	The Hon. Kimani Ichung'wah, M.P
	The Hon. Ferdinand Wanyonyi, M.P

The Hon. Justice Kemei, M.P

The Hon. Benjamin Andayi, M.P

The Hon. Jude Njomo, M.P

The Hon. Aisha Jumwa, M.P

The Hon. Alfred Kiptoo Keter, M.P

The Hon. Paul Simba Arati, M.P

6.0 COMMITTEE SECRETARIAT

First Clerk Assistant	Mr. Benjamin Magut
Clerk Assistant	Ms. NaserianLotuai
Clerk Assistant	Ms. Ahmad Guliye
Legal Counsel	Ms. Brigita Mati
Research & Policy Analyst	Ms. David Ngeno
Fiscal Analyst	Ms. Lucy Makara

7.0 LIST OF RECOMMENDATIONS

- 1) The GOK must pay the Contractor (Green Arava Ltd) all the pending certificates of works already done to enable them expedite the completion of Works in the 10,000 Acre Model Farm as per new roadmap.
- 2) The GOK must avail enough funds to fast-track the putting up of mechanism for Public Private Partnership (PPP) for the rolling out of the one (1) million acres.
- 3) The GOK through NIB must diversify to other crops and livestock instead of limiting itself to only maize production.
- 4) The Government of Kenya must immediately implement the Project Logistic Centre (Training Centre) to train Kenya's locals on the modern technological transfer from the State of Israel at minimal costs for the Youth.
- 5) The GOK must urgently fund the installation the Maize Mill in the Model Farm as envisaged in project contract to achieve the objective of reducing the price of sifted maize meal in the market to under **KES 40** per kg.
- 6) The GOK must put in place a sustainable mechanism to fight against the Tsetse fly infestation in the Galana Ranch.
- 7) In order to implement the plan to put one (1) million acres under irrigation in Galana-Kulalu Ranch, the GOK must put up a Dam which shall ensure constant supply of water to the ranch.
- 8) To ensure that the Project attract serious private sector players, the GOK should move with speed to undertake infrastructure upgrade within & without the GKFSP with the priority given to the Bridge across the River Galana, tarmacking the road between

Malindi and Galana Ranch, improvement of the road network within the ranch, enhancement security installation.

- 9) A storage facility should be immediately be constructed to store the maize harvested on the farm as it awaits transportation.
- 10) The GOK must invest more in Irrigation in all the regions in the Country to achieve food security as irrigation and adoption new technologies that does not depend on rain is the only way to address food shortage in the Country.

8.0 INTRODUCTION

Kenya is an agro-based economy where agriculture directly contributes 24% of the GDP. However this effort is constrained by the fact that the country has limited natural endowment of renewable fresh water derived mainly from annual rainfall as 84% of her land fall under Arid and Semi-Arid lands (ASALs) with less than 750 mm of rainfall per annum.

8.1 Rationale for Irrigation in Kenya

Rain-fed agriculture alone will not satisfy the country's food needs coupled with increasing population and limited land in high and medium potential areas. This scenario leaves ASALs as the only alternative areas for agriculture through irrigation in order to attain domestic food security and exploit opportunities for agricultural exports.

8.2 Irrigation Potential in Kenya

Kenya has an estimated irrigation potential of 1.3 million hectares and drainage potential of 600,000 ha. Of the available irrigation potential, 540,000 ha can be developed with the available water resources while the rest will require water harvesting and storage. Other technologies that can be of use include treating and recycling the ever increasing waste water from urban centres and from geothermal.

8.3 Galana-Kulalu Food Security Project(GKFSP)

In 2013, the GOK initiated a noble concept of securing the Country out of the food deficit by putting one million acres of land under irrigation, this is in line with Medium Term Plan II (MTP II) of Vision 2030. In that respect, GKFSP was identified as key flagship project where five hundred thousand acres (500,000) of the one million acres(1,000,000) is set to come from Galana Ranch.

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Having completed the Pre-feasibility study, the GOK indentified the government of Israel which had shown an interest to fund the project and entered into a Memorandum of Intent (MOI) in respect to this Project.

On the basis of this Memorandum of Intent entered between the government of Kenya and State of Israel. The NIB went ahead and awarded the Contract for the implementation of 10,000 acre Model/demonstration farm to Green Arava (Israeli Company) through single sourcing, at a cost of **KES 14,545,106,963** due to the following reasons:

- i. Green Arava Ltd (Israel) being a parent company of Agri-Green would be better placed to demonstrate the workability of the technology and bear full responsibility in case of failure, underperformance, or both and remedy any shortcomings attributable to the design.
- ii. The proposed technology was the most modern, cost effective and has never been implemented anywhere in Kenya .The technology was developed and perfected in Israel and Green Arava is a major consumer of the technology on large scale basis and has successfully implemented such projects in Russia, Angola and South America.
- iii. During the due diligence visit to Israel done in July 2014, Green Arava Ltd was found to offer to its clients very good long term training and capacity building programs that benefited the engineers, officers, and investors in Israel. Arising from the aforementioned , the Ministry of Agriculture, Livestock and Fisheries wanted to utilize such unique programs in the project.

During the initial process of the implementation, the Project faced numerous challenges which caused the Committee to raise red flag and hence proceeded to suspend the project, a suspension which was ignored by the Executive. The major issues raised by the Committee then were as follows

- i. The manner in which the Pre-feasibility study was done and resultant findings.
- ii. The process of the procuring Green Arava Ltd (Israel) as contractor to construct the 10000 Acre Model Farm in Galana-Kulalu Ranch
- iii. The existence of an MOU between the GOK and State of Israel and Attorney General Office' s advisory views on the said MOU.

- iv. The apparent contract price of **KES 14.5 billion** to construct 10,000 acre model/demonstration farm as well as unclear financing arrangement for the GKFSP.
- v. The implementation rate of the project and production levels of maize crop in the first seeding.

Despite the above mentioned the Ministry of Agriculture, Livestock and Fisheries ignored the Committee's reservation and continued to implement the Project. However, as at December, 2015, two months before the completion date of the Project the problems and challenges as earlier identified by the Committee remained unresolved and had seriously hampered the implementation of GKFSP.

The Committee after further Investigation and field inspection visit undertaken in May, 2015 to verify the progress of the GKFSP issued the second pronouncement in December, 2015 again suspending the project.

As result of the second pronouncement the Executive acted and temporarily suspended the project. Further, the GOK constituted a Cabinet Sub-committee to relook at the Project and advise the GOK accordingly.

The Cabinet Sub-Committee ordered for re-negotiation of the Contract with Green Arava Ltd (Israel) and the phasing of the key project components to fast track the Project implementation and prevent the Project from total collapse. Thereafter, the Cabinet Secretary of Water and Irrigation presented to the Committee the proposal of a new roadmap and initiative to complete the Project.

After the Committee was convinced with the new proposal by the Executive in the implementation of the Project which included the phasing of the project components into two phases and securing of the Loan from State of Israel to sort project funding 100% , the Ministry proposed that the Committee should carry-out an inspection visit to Galana to verify new status of the project and be further briefed on the new proposal.

Therefore resulting from the above, the Committee resolved to undertake in-depth inquiry into the inception and implementation of the project in order to update the House on the status of the GKFSP with a view of providing clarification of the above mentioned critical issues that relate to the project and advise the House accordingly.

9.0 EVIDENCE

While appearing before the Committee on diverse dates the Cabinet Secretary of Agriculture, Livestock and Fisheries submitted that:

- a) In an effort to enhance food security as envisaged under article 43(1)(c) of the constitution of Kenya 2010 and in line with Vision 2030, the Government of Kenya undertook to put 1,000,000 acres of land under modern irrigation. To this end, Galana/Kulalu Food Security Project which cuts across Tana River and Kilifi counties was initiated.
- b) The implementation of the project was entrusted to the National Irrigation Board (NIB) and the Agricultural Development Corporation (ADC) who owns the land to be used. Both government parastatals under the ministry of Agriculture, Livestock and Fisheries and their mandates cover the development of Agriculture and Management of Irrigation Schemes. The projects would be undertaken in the ADC Galana/ Kulalu Ranch.
- c) The purpose was to increase agricultural productivity through Public Private Partnerships (PPP) arrangements where private sector investors will undertake commercialized irrigated agriculture by tapping their efficiency and technology use to raise the production to high levels.
- d) The Government of Kenya undertook the following during the preparatory stage of the project:-
 - i. Undertake Soil suitability assessment and mapping.
 - ii. Rehabilitate and open up of existing thirty three (33) water pans ,
 - iii. Rehabilitate road network within the ranch infrastructure by clearing of bush ,grading and murraming; and

- iv. Rehabilitate of Danisa and Galana River Lodge airstrips by clearing bushes, compaction and extension of the length of airstrips to 1.1km and 980m respectively.
- f) The Consultancy services for pre-investment, pre-feasibility and planning study to prepare a master plan was advertised on 10th June 2013 and was carried in three daily newspapers namely; The Star, Daily Nation, and The Standard with the following information. The Tender no: NIB/T/154/2012-2013: Consultancy services for Pre-feasibility study, planning and preparation of Bill of quantities and costs for the Galana/Kulalu Food security Project.
- g) There were a total of 41 firms that expressed interest to undertake the consultancy. Out of which 19 firms did not proceed to evaluation stage due to lack of audited financial reports, 11 firms were disqualified due to lack of financial capacity and 12 firms qualified for evaluation on strength of experience, technical/managerial capacity, key staff qualification and experience.
- h) The 12 firms were subjected to further evaluation of which 9 Firms (below) were cleared to be issued with the Request for Proposal (RFP) documents . These firms were :
- 1) Agrigreen in Association with Enviroplan and Management Consultants and Amiran (K) Limited
 - 2) A Consortium of Xingjiang Survey and Design institute of the Ministry of Agriculture of China & Erdemann Property Limited
 - 3) Korea Rural Community Corporation and Dasan Consultants
 - 4) SMEC and Networking Mapping (UK)Ltd
 - 5) PWC India, PWC(Kenya) and Gibb Africa (Kenya)
 - 6) WAPCOS(India) and Bhundia Associates Ltd (Kenya)
 - 7) Agri Africa Consortium Ltd (South Africa)
 - 8) Jiangxi Provincial Water Conservancy Planning and Designing Institute China
 - 9) Studi International (Tunisia) and Howard Humphreys Ltd Kenya

- i) The Request for Proposal (RFP) Form was issued on 20th August 2013 to shortlisted firms. The document was sent to nine firms who qualified based on the strength of experience, technical and managerial capacity, key staff qualification and experience.
- j) The Consultancy services for Pre-investment, Pre-feasibility and Planning study to prepare a master plan was therefore awarded to the Agrigreen in association with Enviroplan and Management Consultant Amiran (K) Limited for **KES 923,145,953.00**. The Terms of Reference (TOR) for consultancy included consideration of soil types, Infrastructure & Security needs, Security and design of the Model Farm
- k) KARI in August 2013 had undertaken Soil maps for Galana and Kulalu ranches which concluded that 800,000 acres of Ranch had suitable soils for Irrigation but it had the following limiting factors.
- i. Soil Slope
 - ii. Soil Moisture and Rooting depth
 - iii. Level of Oxygen and drainage quality
 - iv. Sodicity and Salinity
- l) The Pre-feasibility study undertaken by the Agri-green Consortium stated that the limiting factors raised by the KARI report would be overcome/controlled by use of pressurized irrigation system e.g. Drip irrigation and Centre Pivot technologies. The report proposed the following irrigation technologies that;
- Maize: Drip irrigation and Center Pivot
 - Sugar cane: Subsurface Drip Irrigation (SDI) and Center Pivot
 - Orchards :permanent under tree small sprinkles and drip irrigation
 - Horticulture: Drip irrigation and soil set special low sprinkles
 - Pastures and dairy crops: Centre Pivot, Side Roll and Movable Sprinkles lines.

k) Tender for the Construction Works of the 10,000 Acre Model was awarded to Green Arava on August 2014 through direct procurement at a cost **KES 14,545,106,963** [US\$163,428,168.07] only. The justification for direct procurement was as follows

- i. Since the Agri-Green International Limited was the lead consultant in the consortium that undertook the Pre-Feasibility and Pre-investment study the GOK allowed the Green Arava Ltd (Israel) a parent company of Agri-Green to demonstrate the workability of the technology and bear full responsibility in case of failure, underperformance, or both and remedy any shortcomings attributable to the design. It was the opinion of GOK that no party would guarantee the implementation of the feasibility findings better and timely than the firm that conducted the study.
- ii. The proposed technology was the most modern, cost effective and has never been implemented anywhere in Kenya .The technology was developed and perfected in Israel and Green Arava is a major consumer of the technology on large scale basis and has successfully implemented such projects in Russia, Angola and South America.
- iii. During the due diligence visit to Israel done in July 2014, Green Arava Ltd was found to offer to its clients very good long term training and capacity building programs that benefited the engineers, officers, and investors in Israel. On this, the Ministry of Agriculture, Livestock and Fisheries wanted to utilize such unique programs as they address all the phases of the project from design, implementation, supervision, management, and marketing. On this premise, the opinion of NIB was that by working with the existing consultant during implementation the Ministry will save funds that would have been expended on training.

l) The project cost was distributed in the following components

No.	Description	Costs (KES)
1	Irrigation Systems	2,573,533,429.00
2	Pumping Station	869,497,839.76
3	Logistic Centre and Agricultural Machinery	3,887,178,175.00
4	Operations and Maintenance	3,393,725,131.61
5	Business Concept Plan ,Resource exploration, Stakeholder mobilization and settlement	1,279,702,424.00
	SUB TOTAL	12,003,536,999.97
	Contingencies	360,106,110.00
	Supervision	123,636,431.10
	Taxes	2,372,583,112.80
	TOTAL 1	14,859,862,653.87
	LESS DISCOUNT	314,755,690.00
	TOTAL PROJECT COST	14,545,106,963.00

m) The implementation of the project (Model farm) commenced on 11th September,2014 and the infrastructure development was expected to take eighteen (18) months and be concluded on 10thMarch, 2016. However, due to implementation challenges the project completion has been extended September,2016. The project is expected to be handed over in September,2016

n) The following payment schedule was agreed upon;

- i. 18% of the Contract sum as advance payment

- ii. Monthly payments based on milestones for installation of irrigation systems and pumping systems;
 - iii. Payment of invoiced value for equipment and main material for irrigation systems, pumping stations, agriculture machinery and vehicles before shipment;
 - iv. Payment of invoiced value for operation and maintenance in advance; and
 - v. Payment of 40%, 40% and 20% of the quoted price for Business Model Concept for inception report ,interim report and final report respectively
- o) The main components of the award for the 10,000 Acre Model farm include the following: -
- i. Irrigation System
 - Drip Irrigation equipments to cover 4,650 acres
 - 24 No. Centre Pivot to cover 5,270 acres and
 - 20 No. green houses each covering 5 acres
 - ii. 2 .No Pumping Stations
 - iii. Logistical Centre
 - Garages
 - Training Centre
 - Cold Storage Warehouses
 - Level 2 Dispensary
 - 2 Line Maize Mill each of capacity 6 tonnes per hour and storage silos
 - Drinking water centre
 - Generators
 - iv. Assortment of Agricultural Machinery and Vehicles and Trucks
 - v. Crop Production including all inputs for two seasons for 10,000 acres.
 - vi. Housing including Police Station and other staff houses
 - vii. Hydrological Survey and explorations for ground water
 - viii. Development of business model for operations of Galana Stakeholder Support and Organization to make them part of supplies to the Farm

p) The Milestones of the project as at April ,2016 are as follows

	Item Description	Project Target	Actual Achievement	Variance	Remarks
1	Water intake(Pump House and diversion canal)	2 Intakes	1 Intake (incomplete)	1	The first intake is about to be completed
2	Pumps	23 pumps	7 pumps	16 Pumps	Balance of the 16 Pumps to be installed
3	Acreage under Irrigation and production	10,000 acres	1,000 acres	9,000 acres	
4	Pipelines	11 Pipes lines to cover a length of 150 KM	Installed 4 Pipe lines that cover a length of 18 KM	Yet to install 7 Pipe lines that shall cover a length of 132 KM	Some of the pipes to construct the 7 remaining Pipe lines are at site, <ul style="list-style-type: none"> • 32 KM of Centre pivots • 118 KM drip kits
5	Centre Pivots	24 Centre Pivots	12 Centre Pivots	12 Centre pivots	3 Centre Pivots are at site being installed. However 9 Centre Pivots are yet to be delivered.
6	Drip Irrigation System	Drip lines to cover 5,265 acres	Nil	Drip lines to cover 5,265 acres	Drip lines to cover 2000 acres are on site being installed. However drip lines to cover 3,265 acres are yet to be supplied.
7	Bush Clearing and Ripping of soil	10,000	10,000	-	This was done satisfactorily achieving the required soil ripping depth did not meet the required

8	Ploughing and Harrowing	10,000	1,500	8,500	This shall be done progressively and planting is done
9	Fencing -Solar Powered electric fence	33km	33km	-	Construction of Watch towers and installation of cameras is ongoing
10	Logistic centre	Office Block	Nil	Office Block	Leveling ,Compaction and marking out of logistic centre done
11	Garage and Tractor Shade	Garage and Tractor Shade	Nil	Garage and Tractor Shade	Material for garage and tractor parking in site but yet to be installed
12	Maize Mill, Storage Silos, School, Dispensary Green House ,Police Station, Vegetable packing and Cold rooms	Maize Mill, Storage Silos, School, Dispensary Green Houses ,Police Station, Vegetable packing and Cold rooms			Items have been deferred to the next phase
13	Machinery and Equipments	An assortment of Machinery and Equipments	70% 5 No. Tractors 2.No Harrows 1 No. Cultivators 1 No. Combine harvester 2 No. Trailers 2 No. Disc Ploughs 2. No Boom Sprayer 1. No	30%	30% of the Machinery and equipments are yet to be supplied

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			Fertilizer sprayer 2 No. Fork Lifts 1 No. backhoe 6 No. Vehicles 3 No. quads 1 No Pneumatic Seeder		
14	Hydro geological survey	Final Study Report	Draft Inception report		Draft Inception report is being reviewed

- q) The contractor has carried out a hydro Geological survey to explore ground water potential in the entire 1.78 million acres of Galana and Kulalu ranches. A draft inception report for the survey has been delivered to NIB and is under review. Design works for the construction of two billion cubic meter Water Reservoir/Dam, which is expected to adequately support irrigation of a total of five hundred thousand (500,000) acres in the Galana ranch has been completed.
- r) The first seeding included thirteen (13) varieties in May 2015 in the first five hundred (500) acres. The best six (6) varieties were selected and planted in the second seeding in April ,2016 . The harvest was as follows:-

No.	Seed Company	Sample (S)	Achieved Yield (90kg bags/acre)
1	Pannar	S1	39
2	Seed CO Ltd	S2	38
3	Kenya Seed	S3	35

4	Seed CO Ltd	S4	18
5	Monsanto	S5	15
6	Kenya Seed Co. Ltd	S6	16
7	Monsanto	S7	5
8	Pannar	S8	8
9	Kenya Seed CO Ltd	S9	9
10	Pannar	S10	6
11	Seed CO Ltd	S11	7
12	Kenya Seed CO Ltd	S12	5
13	Pannar	S13	6

s) The analysis of the production cost per acre for the initial 500 acres is are follows:-

No.	Activity	Cost Per acre (KES)
1	Land Preparation	2,000.00
2	Planting	1,000.00
3	Fertilizer	12,300.00
4	Herbicides	2,000.00
5	Pesticides	1,700.00
6	Weeding	1,000.00
7	Fertilizer application	1,000.00
8	Pesticides and Herbicides application	1,000.00
9	Irrigation	10,000.00

10	Harvesting	1,000.00
	Total Cost Per acre	33,000.00

- u) Among the key intended results of GKFSP was bring down the price of Kenya Staple food (Maize). This was expected to be achieved by installation of Maize Mill in the Model Farm to mill the maize on site.

From the Market survey conducted in Mombasa county it emerged that the average cost of milling a Kilogram of Maize was KES 4/=for maize delivered at the Mill. The millers, however maintained that they were willing to mill the maize on behalf of GOK. The following is the analysis of build up cost from production of maize crop to maize floor on the shop shelf ;-

No.	Description	Total Cost (KES) per 90 Kg bag	Remarks
1	Production (Planting -Harvesting)	1,941.00	Whole grain
2	Transport Cost	270.00	Whole grain
3	Milling	360.00	Whole grain
4	Packaging	350.00	70% whole grain
	TOTAL	2,921.00	35 NO. 2-KG PACKETS
	Cost of 2-Kg Packet of Maize	83.00	

However, if the GOK was to install the Maize mill in GKFSP as envisioned in the contract. Then the transport costs would be eliminated and hence the expected final price in the shelf for the 2-Kg packet of (UngaGalana) would be **KES 75** as opposed to the current price of **KES 100** in the market.

- v) The GKFSP was expected to be financed by the GOK with the support of State of Israel as per the Declaration of Intent entered between the two States(See **Annex 1 Copy of MOU**) . The GOK has successfully negotiated a Loan **US\$ 71,408,014** equivalent to **KES 7.25 billion(See Annex 4 Copy of Loan Agreement)** through the State of Israel and necessary documentation has been finalized and funds are available to the project while. The State of Israel is providing a training grant of approximately KES 3.5 billion for the project. The delay in the finalizing the Loan arrangement has greatly hampered the implementation of the project due serious exchequer shortfalls from the National Treasury.
- w) Further, GOK was required to comply with the terms of conditions of the supplementary support from the State of Israel , particularly the training grant. The first batch of 25 Kenyans have benefited in the training grant by State of Israel through the MASHAF. This trainings are expected to continue to build up the local capacity in the country on irrigation technology. The Loan shall exclusively be used in the implementation of GKFSP

10.0 PROJECT REVIEW AND NEW IMPLEMENTATION SCHEDULE

Following the transfer of the Irrigation function from the Ministry of Agriculture, Livestock and Fisheries to the new Ministry of Water and Irrigation and the appointment of substantive Cabinet Secretary and Principal Secretary in the Ministry of Water and Irrigation, an inter-ministerial taskforce was formed by the Executive to review the implementation of the GKFSP. The review was necessitated by the apparent slow pace of implementation of this key flagship project.

Arising from the review of the project the Cabinet sub-committee noted that in order to accelerate the project implementation, phasing of the project components was necessary. This phasing out of the project components was informed by the following.

- a) The concern raised about the rate of project implementation and associated costs
- b) The need to comply with the terms and conditions of the supplementary support from the State of Israel, particularly training grants valued at KES 3.5 billion
- c) The need to enhance various multilateral engagement between GOK and the State of Israel
- d) The area has now been opened up and the private sector can take up some components
- e) The entire 10,000 acres Model Farm need to be irrigated as planned.
- f) The need to have a training ground before rolling out the pilot farm and the one million acres.
- g) To involve and ensure local ownership support and synergy for sustainability of the project. considered the

After the review of the project components that are long term in nature, the technical team recommended phased implementation of the project. The team recommended that the 10,000

Acre irrigation model farm must be achieved through implementation of the following components;-

- a) Infrastructure for the Centre Pivot and Drip Irrigation
- b) Water abstraction and Pumping Station.
- c) Construction of Garage, officeblock ,clean water supply, power generation , maize store and drier.
- d) Supply of Agricultural Machinery and Cars
- e) Construction of Maize storage and drying facilities
- f) Operations and maintenance to grow maize in the entire 10,000 acres
- g) Construction o staff houses for the Model Farm workers
- h) Carrying out Hydro-geological survey to determine groundwater potential in the entire 1.78 million acres in Galana and Kulalu ranches.

The overall cost of the initial phase will be **KES 7,294,853,036 (See Annex 5, Copy of Contract addendum)**. This initial phase would omit several components including Maize milling factory, Construction of School, Police Station, Green houses, Vegetable packing and Cold rooms and taxes totaling **KES 7,538,794,949**. In the reviewed project schedule proposal, GOK has prioritized the completion the basic irrigation production infrastructure of the entire 10,000 acres before embarking on the other components of the project. The deferred components shall be undertaken upon successful implementation of the basic irrigation infrastructure.

The Committee resolved the support the reviewed plan for implementation of the GKFSP as recommended by the Executive. The Committee's resolution to support the new initiative was borne from its (Committee's) aspiration to ensure the project succeeds in achieving its intended goals.

11.0 FINDINGS/ OBSERVATIONS

Having held meetings, undertaken the inspection/fact finding visit and considered the submissions presented by various witnesses, the Committee observed that:-

- 1) In an effort to enhance food security in the Country as envisaged under article 43(1)(c) of the Constitution of Kenya 2010 and in line with Vision 2030, the Government of Kenya undertook to put 1,000,000 acres of land under modern irrigation technology.
- 2) The GOK and State of Israel entered into a declaration of intent to expand their cooperation, transfer of knowledge and capacity building more specifically for GKFSP. (See Annex 1 Copy of the MOU)
- 3) The National Government identified 1,000,000 acres in Galana Ranch, a ranch owned by the Agriculture Development Corporation and which cuts across Tana River and Kilificounties. The NIB which was entrusted to implement the project leased 20,000 acres from the ADC for the purpose of the Food Security project at an annual fee of KES 5,000 per acre per annum. (See Annex 2 Copy of Lease Agreement)
- 4) During the preparatory stages of the Project the Government of Kenya advertised for consultancy services for pre-feasibility study, planning and preparation of bills quantities and costs for a 10,000 acre Model farm of the GKFSP and works was awarded to the Agrigreen in association with Enviroplan and Management Consultant and Amiran (K) Limited at a cost of **KES 923,145,953**. The Terms of Reference (TOR) for consultancy included :
 - a) Undertake comprehensive pre-feasibility study on the status of all basic resources including water and soil
 - b) Preparation of detailed land use plan on the basis of soil and other characteristics.
 - c) Undertake detailed topographical survey.
 - d) Preparation of development plan of the 1.75 million acres in Galana Ranch

- 5) The Pre-feasibility study report proposed the use a mix of modern irrigation technologies in line with different types of soils and topography in the ranch and a design of the 10,000 Acre Model farm and the Dam for water storage was done (**See Annex 3 Pre-feasibility Report**)
- 6) The Pre-feasibility study revealed that River Galana could only support a maximum of 30,000 acres of farming in Galana ranch without construction of a dam/reservoir.
- 7) As part of the basic infrastructural development the National Irrigation Board expended **KES 1.174,150,074** on the following components
 - a) Rehabilitation of Roads network and Airstrips
 - b) Rehabilitation of Water Pans
 - c) Bush Clearing
 - d) Construction of Anti-Elephant moat and Tsetse fly Control
 - e) Land Lease costs
- 8) Tenders for the Construction Works of the 10,000 Acre Model Farm tested the various modern irrigation technologies proposed in the pre-feasibility study, was awarded to Green Arava Ltd through direct procurement at a cost of **KES 14,545,106,963**. This tender award was executed on the strength of, first the Memorandum of Understanding (MOU) entered between GOK and State of Israel (**See Annex 1 -copy of MOU**).
- 9) The main components of the contract for the 10,000 Acre Model farm include the following: -
 - i. Irrigation System which included Drip Irrigation equipments to cover 4,650 acres, 24 No. Centre Pivot to cover 5,270 acres and 20 No. green houses each covering 5 acres
 - ii. 2 No Pumping Stations
 - iii. Logistical Centre which included Tractor and Equipment Garages, fully fledged Training Centre, Cold Storage Warehouses , Level 2 Dispensary, 2 Line Maize Mill each of capacity 6 tonnes per hour and storage silos, Drinking water centre and Generators
 - iv. Assortment of Agricultural Machinery and Vehicles and Trucks
 - v. Crop Production including all inputs for two seasons for 10,000 acres.

- vi. Housing including Police Station and other staff houses
- vii. Hydrological Survey and explorations for ground water
- viii. Development of business model for operations of Galana Stakeholder Support and Organization to make them part of supplies to the Farm

10) The key role of the 10,000 acre Model Farm is to act as demonstration farm to test the various modern irrigation technologies on the various crops and demonstrate the viability of commercial production and processing in order to attract private investors.

11) The implementation of the GKFSP (Model farm) commenced on **11th September, 2014** and was expected to be on **10th March, 2016**. However, due to implementation challenges the project completion date has been extended **September, 2016**. The project is therefore expected to be handed over in **September, 2017**

12) As at February, 2016, NIB had paid the Green Arava (contractor) **KES 2,555,917,097** from the exchequer being 17.5% of the original contract amount.

13) The Milestones of the project as at April, 2016 are as follows

	Item Description	Project Target	Actual Achievement	Variance	Remarks
1	Water intake(Pump House and diversion canal)	2 Intakes	1 Intake	1	The first intake is about to be completed
2	Pumps	23 pumps	7 pumps	16 Pumps	Balance of the 16 Pumps to be installed
3	Acreage under Irrigation and production	10,000 acres	1,000 acres	9,000 acres	
4	Pipelines	11 Pipes lines to cover a length of 150 KM	Installed 4 Pipe lines that cover a length of 18 KM	Yet to install 7 Pipe lines that shall cover a length of 132 KM	Some of the pipes to construct the 7 remaining Pipe lines are at site, <ul style="list-style-type: none"> • 32 KM of Centre pivots • 118 KM drip kits

5	Centre Pivots	24 Centre Pivots	12 Centre Pivots	12 Centre pivots	3 Centre Pivots are at site being installed. However 9 Centre Pivots are yet to be delivered.
6	Drip Irrigation System	Drip lines to cover 5,265 acres	Nil	Drip lines to cover 5,265 acres	Drip lines to cover 2000 acres are on site being installed. However drip lines to cover 3,265 acres are yet to be supplied.
7	Bush Clearing and Ripping of soil	10,000	10,000	-	This was done satisfactorily achieving the required soil ripping depth did not meet the required
8	Ploughing and Harrowing	10,000	1,500	8,500	This shall be done progressively and planting is done
9	Fencing -Solar Powered electric fence	33km	33km	-	Construction of Watch towers and installation of cameras is ongoing
10	Logistic centre	Office Block	Nil	Office Block	Leveling ,Compaction and marking out of logistic centre done
11	Garage and Tractor Shade	Garage and Tractor Shade	Nil	Garage and Tractor Shade	Material for garage and tractor parking in site but yet to be installed
12	Maize Mill, Storage Silos, School, Dispensary Green House ,Police Station, Vegetable packing and Cold rooms	Maize Mill, Storage Silos, School, Dispensary Green Houses ,Police Station, Vegetable packing and Cold rooms			Items have been deferred to the next phase
13	Machinery and	An assortment	70%	30%	30% of the Machinery and equipments are yet

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	Equipments	of Machinery and Equipments	5 No. Tractors 2.No Harrows 1 No. Cultivators 1 No. Combine harvester 2 No. Trailers 2 No. Disc Ploughs 2. No Boom Sprayer 1. No Fertilizer sprayer 2 No. Fork Lifts 1 No. backhoe 6 No. Vehicles 3 No. quads 1 No Pneumatic Seeder		to be supplied
14	Hydro geological survey	Final Study Report	Draft Inception report		Draft Inception report is being reviewed

14) The Contractor undertook the first seeding with 13 different varieties of maize in 500 acres in May, 2015. The highest yielding produced thirty nine (39) 90kg bags per acre while lowest yielding variety produced six (6) 90kg bags per acre. The second seeding undertaken in December, 2015 involved the six (6) top performing variety of maize realized from the first harvest and is scheduled for harvest in April 2016.

No.	Seed Company	Sample (S)	Achieved Yield (90kg bags/acre)
1	Pannar	S1	39
2	Seed CO Ltd	S2	38
3	Kenya Seed	S3	35
4	Seed CO Ltd	S4	18
5	Monsanto	S5	15
6	Kenya Seed Co. Ltd	S6	16
7	Monsanto	S7	5
8	Pannar	S8	8
9	Kenya Seed CO Ltd	S9	9
10	Pannar	S10	6
11	Seed CO Ltd	S11	7
12	Kenya Seed CO Ltd	S12	5
13	Pannar	S13	6

15) The harvesting of the first maize crop from the 500 acres was commissioned on 9th September, 2015 and ended on 15th November, 2015. Seven hundred and seventy (770) tonnes of maize was realized. 684.75 tonnes of maize was transported to the National Cereal and Produce Board depots in Voi for direct storage, while 85.36 tonnes was transported to Nairobi depot for further drying and storage. The analysis of the production cost per acre for the initial 500 acres is as follows:-

No.	Activity	Cost Per acre (KES)
1	Land Preparation	2,000.00
2	Planting	1,000.00
3	Fertilizer	12,300.00
4	Herbicides	2,000.00
5	Pesticides	1,700.00
6	Weeding	1,000.00
7	Fertilizer application	1,000.00
8	Pesticides and Herbicides application	1,000.00
9	Irrigation	10,000.00
10	Harvesting	1,000.00
	Total Cost Per acre	33,000.00

Source National Irrigation Board 2016

- 16) Among the key intended results of GKFSP was bring down the price of Kenya staple food (Maize). From the Market survey conducted in Mombasa county it emerged that the average cost of milling a Kilogram of Maize was KES 4/=for maize delivered at the Mill. The millers, however maintained that they were willing to mill the maize on behalf of GOK. The following is the analysis of build up cost from production of maize crop to maize floor on the shop shelf ;-

No.	Description	Total Cost (KES) per 90 Kg bag	Remarks
1	Production (Planting -Harvesting)	1,941.00	Whole grain
2	Transport Cost	270.00	Whole grain
3	Milling	360.00	Whole grain
4	Packaging	350.00	70% whole grain
	TOTAL	2,921.00	35 NO. 2-KG

			PACKETS
	Cost of 2-Kg Packet of Maize	83.00	

Source National Irrigation Board 2016

- However, if the GOK was to install the Maize mill in GKFSP as envisioned in the contract. Then the transport costs would be eliminated and hence the expected final price in the shelf for the 2-Kg packet of (UngaGalana) would be **KES 75** as opposed to the current price of **KES 120** in the market.
- 17) Due to topography of the Galana ranch, continuous pumping of irrigation water from water intake will be required hence the project has to be connected to the national power grid.
- 18) Despite the efforts by NIB through Kenya National Trypanosomiasis Eradication Council (KENTTEC) the Tsetse fly infestation is still a serious challenge facing both animals and humans in Galana ranch.
- 19) The project has in the recent past faced serious financial exchequer shortfalls from the National Treasury which explains noticeable lag in the implementation of the project as per the initial project plan. However, the same has been addressed through the finalization of a Loan agreement of **US\$ 71,408,014 (KES 7.2 billion)** which has been duly executed between GOK and State of Israel (**See Annex 4 Copy of Loan Agreement**)
- 20) In view of the challenges facing the project implementation, the GOK has proposed a review of the implementation Plan of the 10,000 acre Model Farm. In the proposal, GOK has prioritized the completion of the basic irrigation production infrastructure of the entire 10,000 acres at a cost of **KES 7,294,853,036 (See Annex 5, Copy of contract addendum)** before embarking on the other components of the project. The deferred components shall be undertaken upon successful implementation of the basic irrigation infrastructure.

12.0 LIST OF RECOMMENDATIONS

Arising from the observation and findings above, the Committee recommends that:-

- 1) The GOK must pay the Contractor (Green Arava Ltd) all the pending certificates of works to enable the Contractor expedite the completion of Works in the 10,000 acre Model Farm as per new timelines.
- 2) The GOK must avail enough funds to fast-track the putting up of mechanism for Public Private Partnership (PPP) in the rolling out of the one (1) million acres.
- 3) The GOK through NIB must diversify to other crops and livestock instead of limiting itself to only maize production.
- 4) The Government of Kenya must immediately implement the Project Logistic centre (Training Centre) to train Kenya's locals on the modern technological transfer from the State of Israel at minimal costs on behalf of the youth.
- 5) The GOK must urgently fund the installation the Maize Mill in the Model farm as envisaged in project contract to achieve the objective of reducing the price of sifted maize meal in the market to under **KES 40** per kg.
- 6) The GOK must put in place a sustainable mechanism to fight against the Tsetse fly infestation in the Galana Ranch.
- 7) In order for the GOK to implement the plan to put one (1) million acres under irrigation in Galana Ranch, the GOK must put up a Dam which shall ensure constant supply of water.


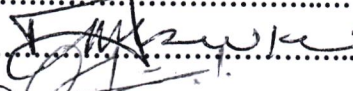

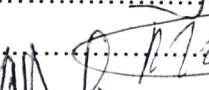
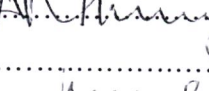

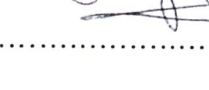
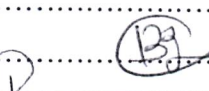
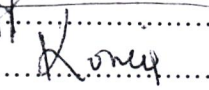

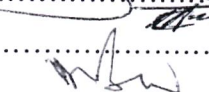



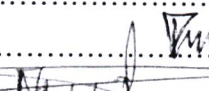

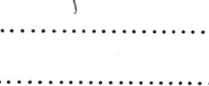



- 8) To ensure that the Project attract serious private sector players, the GOK should move with speed to undertake infrastructure upgrade within & without the GKFSP with the priority given to the Bridge across the River Galana, tarmacking the road between Malindi and Galana Ranch, improvement of the road network within the ranch, enhancement security installation.
- 9) A storage facility should be immediately be constructed to store the maize harvested on the farm as it awaits transportation.
- 10) The GOK must invest more in Irrigation in all the regions in the Country to achieve food security as irrigation and adoption new technologies that does not depend on rain is the only way to address Food Shortage in the Country.



HON. ADAN MOHAMED NOOR, MBS, CBS, MP

**CHAIRMAN OF DEPARTMENTAL COMMITTEE ON AGRICULTURE
,LIVESTOCK AND FISHERIES**

We the members of the Departmental Committee on Agriculture ,Livestock and Cooperatives have pursuant to Standing Order 199 adopted this Report on the Inquiry on Status of Galana-Kulalu Food Security Project and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, Thursday 24th March ,2016 :-

1. The Hon. Adan M. Nooru, MBS,CBS, M.P. **Chairman**..... 
2. The Hon. Kareke Mbiuki, M.P. **Vice Chairman**..... 
3. The Hon. Kabando Wa Kabando, M.P. 
4. The Hon. Raphael Letimalo, M.P. 
5. The Hon. Mary Wambui Munene, M.P. 
6. The Hon. Francis Munyua Waititu, M.P. 
7. The Hon. Peter Njuguna Gitau, M.P. 
8. The Hon. Maison Leshoomo, M.P. 
9. The Hon. Anthony Kimani Ichung'wah, M.P. 
10. The Hon. Alfred Kiptoo Keter, M.P. 
11. The Hon. Ayub Savula Angatia, M.P. 
12. The Hon. Justice Kemei, M.P. 
13. The Hon. Philip L. R. Rotino, M.P. 
14. The Hon. Korei Ole Lemein, M.P. 
15. The Hon. Silas Tiren, M.P. 
16. The Hon. Benjamin Jomo Washiali, M.P. 
17. The Hon. (Dr.) Victor Kioko Munyaka, M.P. 
18. The Hon. John Bomett Serut, M.P. 
19. The Hon. Millie Odhiambo, M.P. 
20. The Hon. Fredrick Outa, M.P. 
21. The Hon. Maanzo, Daniel Kitonga, M.P.
22. The Hon. James Opiyo Wandayi, M.P.
23. The Hon. Patrick Wangamiti, M.P.
24. The Hon. Ferdinand Kevin Wanyonyi, M.P.
25. The Hon. Paul Simba Arati, M.P.
26. The Hon. Florence Mwikali Mutua, M.P.
27. The Hon. John Kobado, M.P.
28. The Hon. Hezron Bollo Awitti, M.P.

MINUTES OF THE 7th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Adoption of KPCU, KTDA & Galana-Kulalu Reports) HELD ON THURSDAY 18th FEBRUARY 2016, AT 2nd FLOOR, PROTECTION HOUSE PARLIAMENT BUILDINGS AT 10.30 A.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairperson
2. Hon. Kareke Mbiuki, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. Mary Wambui, M.P
5. Hon. Patrick Wangamati, M.P
6. Hon. John B. Serut, M.P
7. Hon. Benjamin Washiali, M.P
8. Hon. Silas Tiren, M.P
9. Hon. Peter N. Gitau, M.P
10. Hon. Maison Leshoomo, M.P
11. Hon. Phillip Rotino, M.P
12. Hon. Raphael Letimalo, M.P
13. Hon. Ferdinand Wanyonyi, M.P
14. Hon. Florence Mutua, M.P
15. Hon. (Dr.) Victor Munyaka, M.P
16. Hon. James Opiyo Wandayi, M.P
17. Hon. Zuleikha Hassan Juma, M.P
18. Hon. John Kobado, M.P

Absent with Apologies

1. Hon. Alfred K. Keter, M.P
2. Hon. Waititu Munyua, M.P
3. Hon. Millie Odhiambo - Mabona, M.P
4. Hon. Korei Ole Lemein, M.P
5. Hon. Fredrick Outa, M.P
6. Hon. Justice Kemei, M.P
7. Hon. Paul Simba Arati, M.P
8. Hon. Kabando Wa Kabando, M.P
9. Hon. Ayub Savula Angatia, M.P.

10. Hon. Kimani Ichung'wah, M.P

11. Hon. Hezron Awiti Bollo, M.P

In Attendance:

Kenya National Assembly Secretariat

- | | |
|--------------------------|-------------------------|
| 1. Mr. Benjamin Magut | - First Clerk Assistant |
| 2. Mr. Ahmad Adan Guliye | - Third Clerk Assistant |
| 3. Mr. David Ngeno | - Research Officer |

Min. 029/2016: Preliminaries

- I. The meeting was called to order at 10.49 a.m. and prayers were said by Hon. Kareke Mbiuki, M.P
- II. The agenda of the day's meeting was adopted as stipulated in the notice of meeting.

Min. 030/2016: Confirmation of Minutes

The minutes of the 5th sitting was confirmed as true record of the Committee's deliberation after it was proposed and seconded by Hon. Mary Wambui, M.P and Hon. Philip Rotino, M.P

Min. 031/2016: Matters Arising

Under min. 025/2016-III

The Committee resolved to visit Kenya Meat Commission (KMC) on Tuesday, 23rd February 2016 at 11.30 a.m. after the consideration of Budget Policy Statement (BPS).

Min. 032/2016: Adoption of Reports

- a) **Adoption of the report of the petition by the Stakeholders of Kenya Planters Cooperative Union (KPCU) Ltd on the removal of the Commissioner for Cooperative Development**

The Committee adopted the report of the petition by the Stakeholders of Kenya Planters Cooperative Union (KPCU) Ltd on the removal of the Commissioner for Cooperative Development with the following recommendation;

Due to *Sub-Judicere*, the Committee cannot deliberate further on the issues raised in the Petition without substantially commenting on the matters the Court has to determine. However if and when the Judicial Review in the Court of Appeal is finalized

and petitioners are of the view that critical matters regarding their prayers to National Assembly are not addressed, the Petitioners have a right to Petition the National Assembly afresh.

b) Adoption of the report on The Petition on the Alleged Change of the Management Model of Kenya Tea Development Authority to Kenya Tea Development Agency (A Private Entity)

The Committee adopted the report on the petition on the Alleged Change of The Management Model of Kenya Tea Development Authority to Kenya Tea Development Agency (A Private Entity) with the following recommendation;

Due to the Sub Judice rule, the Committee cannot deliberate further, on the issues raised in the Petition without substantially commenting on the matters the Court has to determine. However if when the Petition in the High Court is finalized and petitioners are of the view that critical matters regarding their prayers to National Assembly are not addressed the Petitioners have a right to Petition Parliament afresh.

c) Adoption of the Report of the Galana/Kulalu Food Security Project (GKFSP)

The Committee has deliberated on the Galana/Kulalu Food Security Project report and adopted it pending submission of the such as copies of the signed loan agreement, the lease agreement between National Irrigation Board (NIB) and Agricultural Development Corporation (ADC) by the Ministry of Water and Irrigation.

Min. 033/2016: Adjournment

There being no other business to discuss, the meeting was adjourned at 11.58 a.m.

Signature



HON ADAN MOHAMEDNOORU, MBS, M.P.

(Chairperson)

Date..... 23 / 02 / 2016

MINUTES OF THE 10th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Presentation by Cabinet Secretary Ministry of Water and Irrigation and Adoption of the 2016/17 Budget Policy Statement Report) HELD ON TUESDAY 29TH FEBRUARY 2016, COMMITTEE ROOM 9, PARLIAMENT BUILDINGS AT 09:30 A.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P Chairperson
2. Hon. Daniel Maanzo, M.P
3. Hon. Mary Wambui, M.P
4. Hon. Ferdinand Wanyonyi, M.P
5. Hon. Florence Mutua, M.P
6. Hon. Kabando WaKabando, M.P
7. Hon. Raphael Letimalo, M.P
8. Hon. Korei Ole Lemein, M.P
9. Hon. Patrick Wangamati, M.P
10. Hon. Paul Simba Arati, M.P
11. Hon. Silas Tiren, M.P

Apologies

1. Hon. (Dr.) Victor Munyaka, M.P
2. Hon. Phillip Rotino, M.P.
3. Hon. Hezron Awiti Bollo, M.P
4. Hon. Kimani Ichung'wah, M.P
5. Hon. Zuleikha Hassan Juma, M.P
6. Hon. Millie Odhiambo - Mabona, M.P
7. Hon. Ayubv Savula Angatia, M.P
8. Hon. John Kobado, M.P
9. Hon. Kareke Mbiuki, M.P
10. Hon. Francis Waititu Munyua, M.P
11. Hon. Benjamin Washiali, M.P
12. Hon. Justice Kemei, M.P
13. Hon. James Opiyo Wandayi, M.P
14. Hon. Alfred K. Keter, M.P
15. Hon. John B. Serut, M.P
16. Hon. Fredrick Outa, M.P
17. Hon. Maison Leshoomo, M.P
18. Hon. Peter N. Gitau, M.P

In Attendance:

Ministry of Water and Irrigation

1. Hon Eugene Wamalwa - CS Ministry of Water and Irrigation
2. Eng Wilfred Onchoke - Director Irrigation Ministry of Water and Irrigation
3. Eng Daniel K. Barasa - GM National Irrigation Board
4. Eng Raphael Ongendo -National Irrigation Board

Kenya National Assembly Secretariat

1. Mr. Ahmad Adan Guliye - Third Clerk Assistant
2. Ms. Angeline Naserian - Third Clerk Assistant
3. Mr. David Ngeno -Research Officer
4. Mr. Eugene Luteshi -Hansard Officer

Min. 042/2016: Preliminaries

- I. The meeting was called to order at 10.47 a.m.
- II. The Agenda of the meeting was adopted as stipulated in the notice of Agenda.

Min. 046/2016: Presentation by the Cabinet Secretary Ministry of Water and irrigation on 2016/17 BPS.

The Cabinet Secretary in his presentation informed the Committee that:-

- I. The ceiling provided to the Ministry in 2016/17 was a total of KES.13.357 billion. KES.854 recurrent and KES 12.503 billion for development.
- II. The new ceilings are lower than FY 2015/16 ceilings by KES 3.5 billion.
- III. The current year the Ministry has faced very serious challenges with the exchequer release that has seriously affected the implementation of projects.
- IV. Despite the challenges in exchequer release, the Ministry had made efforts to fast track the implementation of various irrigation as follows:
 - a. 203 irrigation projects under the Expanded national irrigation program have been initiated and are under different stages of development.
 - b. Small Holder Irrigation Development
 - c. Food Security through improved agricultural productivity in western Kenya
 - d. Drought resilience programme in northern Kenya.
 - e. Sustainable smallholder irrigation development and management in semi-Arid lands
 - f. Galana /Kulalu Food Security project
- V. The planned Activities for financial 2016/17 include the following :
 - a. Completion of Galana-Kulalu food security project

- b. Implementation of Expanded National Irrigation program
- c. Completion of Bura gravity irrigation project
- d. Completion of Mwea Thiba dam project
- e. Lower Kuja irrigation project
- f. LowerSio irrigation project

VI. Committee Recommendations

The Committee therefore recommended that 13.357 billion be allocated to the Ministry of Water and Irrigation being a total for Ksh 854 million recurrent plus Ksh.12.503 billion for development.

Min. 047/2106: Any Other Business (A.O.B)

The Committee was concern that the completion rate of projects in the Ministry of Water and Irrigation was unnecessarily low and the Cabinet Secretary should ensure that speedy completion of all the projects in order to fulfill the promises made by the government.

The Chairperson informed the Members that during the upcoming Committee retreat the Ministry is expected to brief the Members on its agendas on implementation of budget are deliberated.

Min. 048/2016: Adjournment

Since no other business to discuss, the meeting was adjourned at 12.40 p.m.

Signature


HON. ADAN MOHAMED NOORU, MBS, M.P.

(Chairperson)

Date.....

03-03-2016

**MINUTES OF THE 5th OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE,
LIVESTOCK AND COOPERATIVES (Visit to Galana/Kulau Food Security Project Site)
HELD ON FRIDAY 12TH FEBRUARY 2016, AT GALANA/KULALU SITE AT 12.00 P.M.**

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairperson
2. Hon. Kareke Mbiuki, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. Paul Simba Arati, M.P
5. Hon. Raphael Letimalo, M.P
6. Hon. Patrick Wangamati, M.P
7. Hon. John B. Serut, M.P
8. Hon. Benjamin Washiali, M.P
9. Hon. Silas Tiren, M.P
10. Hon. Fredrick Outa, M.P
11. Hon. Phillip Rotino, M.P
12. Hon. Ferdinand Wanyonyi, M.P
13. Hon. Alfred K. Keter, M.P
14. Hon. (Dr.) Victor Munyaka, M.P
15. Hon. John Kobado, M.P

Absent with Apologies

1. Hon. Mary Wambui, M.P
2. Hon. Korei Ole Lemein, M.P
3. Hon. Kimani Ichung'wah, M.P
4. Hon. James Opiyo Wandayi, M.P
5. Hon. Millie Odhiambo - Mabona, M.P
6. Hon. Zuleikha Hassan Juma, M.P
7. Hon. Kabando Wa Kabando, M.P
8. Hon. Maison Leshoomo, M.P
9. Hon. Hezron Awiti Bollo, M.P
10. Hon. Waititu Munyua, M.P
11. Hon. Florence Mutua, M.P
12. Hon. Ayub Savula Angatia, M.P
13. Hon. Peter N. Gitau, M.P

14. Hon. Justice Kemei, M.P

Min. 018/2016: Committee tour to the Galana/Kulalu Field

The Committee undertook a tour on the Galana/Kulau field and established the following;

- i. An electric fence had been erected and an elephant proof trench dug parallel to electric fence.
- ii. 10,000 acres of land had been bush cleared, levelled and ripped.
- iii. 12 centre pivots had been installed out of the 15 that were supplied. 3 were still awaiting installation. Three water pans had been constructed for the local community.
- iv. The machinery supplied so far comprised of the following:
 - Five farm tractors
 - One combine harvester
 - Two fork lifts
 - One backhoe excavator
 - Six vehicles
 - Five quads
 - Eight other assorted machinery and equipment
- v. Materials for garage and tractor parking have been supplied and were awaiting installation
- vi. Materials for drip line irrigation for 2000 acres have been supplied.
- vii. The six best varieties of maize from the previous harvest that have been selected and planted in 500 acres were ready for harvesting.

Min. 019/2016: Presentation by the Principal Secretary, State Department of Irrigation

The Principal Secretary, State Department of Irrigation informed the Committee of the following;

- i) The revision of the cost in the model farm was informed by the recommendations of the task force that had been set up by the Cabinet Secretary of Water and Irrigation to review the project. The review team considered the core and critical infrastructure that directly touched on Irrigation. This undertaking brought down the overall cost to **KES 7,294,853,036.00**
- ii) Data on soil suitability to different varieties of crops was on-going and that there was intention to practice crop rotation by introducing other crops such as Soya beans among others.
- iii) 100 students would be trained in Israel every year for six years in the technical areas of irrigation through grant from Israeli government. 50 students will

undertake a short course of three weeks while 50 others will undertake a course of 11 months.

- iv) There is a cash flow challenge from Treasury and that the Loan from Israeli Government has been signed but had not been effected.

Min. 020/2016: Presentation by the Project Manager, Green Arava Ltd

The contractor who is the project manager representing Green Arava Ltd informed the Committee of the following;

- i) The contractor was only paid 18% of work done which translates to about 26 million US dollars.
- ii) He faces a lot of challenges with the delayed payments and at times it takes 4 to 6 months to be paid after the certificate of completion of work has been signed.
- iii) The ripping of the soil was poorly done thus making subsequent field operations difficult.
- iv) The phasing out of some components of the project has no effect on his work but he might not complete the project on the scheduled time if delay of payment is not addressed immediately.
- v) The loan and the grant by the Israeli government are tied together in the sense that if the loan is not effected, the grant to the Kenyan students might not come forth hence jeopardize their training.

Min. 021/2016: Adjournment

There being no other business to discuss, the meeting was adjourned at 1.30 p.m.

Signature


HON ADAN MOHAMED NOORU, MBS, M.P.

(Chairperson)

Date.....

MINUTES OF THE 66th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Consideration of G alana/Kulalu Draft Report) HELD ON MONDAY 30th NOVEMBER, 2015 AT CONTINENTAL HOUSE, 4th FLOOR, PARLIAMENT BUILDINGS AT 3.00 P.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairperson
2. Hon. Kareke Mbiuki, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. Paul Simba Arati, M.P
5. Hon. Florence Mutua, M.P
6. Hon. Raphael Letimalo, M.P
7. Hon. Ferdinand Wanyonyi, M.P
8. Hon. Mary Wambui, M.P
9. Hon. Justice Kemei, M.P
10. Hon. Patrick Wangamati, M.P
11. Hon. Alfred K. Keter, M.P
12. Hon. John B. Serut, M.P
13. Hon. Korei Ole Lemein, M.P

Absent with Apologies

1. Hon. Benjamin Washiali, M.P
2. Hon. Kimani Ichung'wah, M.P
3. Hon. James Opiyo Wandayi, M.P
4. Hon. Millie Odhiambo - Mabona, M.P
5. Hon. Fredrick Outa, M.P
6. Hon. Kabando Wa Kabando, M.P
7. Hon. Zuleikha Hassan Juma, M.P
8. Hon. Peter N. Gitau, M.P
9. Hon. Silas Tiren, M.P
10. Hon. Maison Leshoomo, M.P
11. Hon. (Dr.) Victor Munyaka, M.P
12. Hon. Waititu Munyua, M.P
13. Hon. Phillip Rotino, M.P

14. Hon. John Kobado, M.P
15. Hon. Ayub Savula Angatia, M.P.
16. Hon. Hezron Awiti Bollo, M.P

In Attendance:

Kenya National Assembly Secretariat

- | | |
|--------------------------|-------------------------|
| 1. Mr. Benjamin Magut, | - First Clerk Assistant |
| 2. Mr. Ahmad Adan Guliye | - Third Clerk Assistant |
| 3. Ms. Angeline Naserian | - Third Clerk Assistant |
| 4. Mr. David Ngeno | - Research Officer |
| 5. Mr. Stephen Nyakuti | - Audio Officer |

Min. 287/2015: Preliminaries

- I. The meeting was called to order at 3.30 p.m. and prayers by Hon. Kareke Mbiuki, M.P

Min. 288/2015: Adoption of Agenda

The agenda of the day was adopted as follows;

- I. Consideration of petition by small scale tea farmers particularly from Bomet County on the alleged change of the management model of KTDA.
- II. Consideration of draft report on Galana/Kulalu Food Security Project
- III. Any Other Business

Min. 289/2015: Consideration of petition by small scale tea farmers particularly from Bomet County on the alleged change of the management model of KTDA

- I. The Committee was informed that the petition is before a court of law and the prayers raised in the petition are the same as the prayed before a court of law.
- II. The Committee was availed with documentary evidence confirming that the matter is indeed before a court of law.
- III. The Committee resolved not to consider the petition as the matter is pending before a court of law and report to the House on the same.

Min. 290/2015: Consideration of draft report on Galana/Kulalu Food Security Project

The Committee considered a draft report on Galana/Kulalu Food Security Project and made the following observations;

- I. The total number and names of the firms that applied for the tender on the prefeasibility consultancy could not be found on the documents provided.

- II. Out of the twelve (12) firms that were qualified to be issued with Request for Proposal Forms (RPF), only nine (9) firms could be retrieved from the documents provided as to have returned the forms.
- III. There was disparity in closing and opening dates of the tender as the tender was closed on 20th September 2013 and opened on 11th October 2013. A difference of twenty one (21) days while the closing and opening of tenders should be at the same time as per procurement procedures.
- IV. Only three of the nine qualified firms were evaluated and the technical and evaluation scores were the same.
- V. There is no proof that there was no reasonable alternative competent contractor as claimed in the documents provided as the tender was not open to all.
- VI. Green Arava was awarded the tender through direct procurement.
- VII. The reasons given for direct procurement were not satisfactory.
- VIII. Agrigreen and Green Arava are two in one. Green Arava is the parent firm to Agrigreen and Agrigreen was awarded consultancy services that came up with technical specifications which were then given to the parent firm to implement.
- IX. There is no concrete relationship between the reasons given by NIB for direct sourcing and provisions of the Procurement Act, Article 74(3).
- X. Newspaper cuttings that were used to advertise for the tender were not provided in the documents submitted.
- XI. The secretariat was asked to write to Treasury requesting for the amount allocated and amount disbursed to Galana/Kulalu food Security Project for the last three financial years.

Min. 291/2015: Any Other Business (A.O.B)

The members were informed that the Committee is scheduled to vet the nominees for the positions of Principal Secretaries of State Department of Livestock and State Department of Irrigation on 10th December 2015.

Min. 292/2015: Adjournment

There being no other business to discuss, the meeting was adjourned at 6.10 P.M

Signature

HON ADAN MOHAMED NOORU, MBS, M.P.

(Chairperson)

Date.....

MINUTES OF THE 65th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Consideration of Food Security Bill, 2014) HELD ON TUESDAY 24TH NOVEMBER, 2015 AT SMALL DINING, PARLIAMENT BUILDINGS AT 10.30 A.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairperson
2. Hon. Kareke Mbiuki, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. (Dr.) Victor Munyaka, M.P
5. Hon. Paul Simba Arati, M.P
6. Hon. Florence Mutua, M.P
7. Hon. Phillip Rotino, M.P
8. Hon. Raphael Letimalo, M.P
9. Hon. James Opiyo Wandayi, M.P
10. Hon. Millie Odhiambo - Mabona, M.P
11. Hon. Fredrick Outa, M.P
12. Hon. Ferdinand Wanyonyi, M.P
13. Hon. Kabando Wa Kabando, M.P
14. Hon. Zuleikha Hassan Juma, M.P
15. Hon. Peter N. Gitau, M.P
16. Hon. Silas Tiren, M.P
17. Hon. Maison Leshoomo, M.P
18. Hon. Mary Wambui, M.P
19. Hon. Justice Kemei, M.P
20. Hon. Waititu Munyua, M.P

Absent with Apologies

1. Hon. Benjamin Washiali, M.P
2. Hon. Kimani Ichung'wah, M.P

3. Hon. Patrick Wangamati, M.P
4. Hon. Alfred K. Keter, M.P
5. Hon. John Kobado, M.P
6. Hon. John B. Serut, M.P
7. Hon. Ayub Savula Angatia, M.P.
8. Hon. Korei Ole Lemein, M.P
9. Hon. Hezron Awiti Bollo, M.P

In Attendance:

Kenya National Assembly Secretariat

- | | |
|--------------------------|-------------------------|
| 1. Mr. Benjamin Magut, | - First Clerk Assistant |
| 2. Mr. Ahmad Adan Guliye | - Third Clerk Assistant |
| 3. Ms. Angeline Naserian | - Third Clerk Assistant |
| 4. Mr. David Ngeno | - Research Officer |

Min283/2015: Preliminaries

- I. The meeting was called to order at 10.50 a.m. and prayers were said by Hon. Kareke Mbiuki, M.P.

Min. 284/2015: Consideration of Food Security Bill, 2014

- I. The Committee was informed that the Food Security Bill, 2014 is a money Bill according to Article 114 (3) and hence can only originate from the National Assembly in accordance with Article 109 (5).
- II. The Committee resolved that the Bill not be considered at this stage and a report on the same be done to the House once certification is received from the Budget Committee.

Min. 285/2105: Any Other Business

1. **Cooperative Bank of Kenya**
 - I. Hon. Opiyo Wandayi, M.P informed the Committee that there are malpractices reported in the Cooperative Bank of Kenya with the shareholding of the Cooperative Societies that formed the Bank.
 - II. The Researcher was tasked to research on the current status of the said Bank and whether such review falls under the purview of this Committee since the Committee oversees the Cooperative Sector.
2. **Galana/Kulalu Irrigation Project**
 - I. The secretariat was tasked to compile a draft report from all the presentations and submissions presented to this Committee on Galan/Kulalu irrigation project. The draft report should be ready on Monday, 30th November 2015.

- II. The Secretariat was also asked to invite the Cabinet Secretary for Water and Irrigation to appear before the Committee on Friday, 4th December 2015 to shed light on Galana/Kulalu related questions.

Min.286/2015: Adjournment

Since no other business to discuss, the meeting was adjourned at 1.13 p.m.

Signature

HON ADAN MOHAMEDNOORU, MBS, M.P.

(Chairperson)

Date.....

MINUTES OF THE 68th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Consideration of G alana/ Kulalu Draft Report) HELD ON WEDNESDAY 2ND DECEMBER, 2015 AT CONTINENTAL HOUSE, 4TH FLOOR, PARLIAMENT BUILDINGS AT 4.00 P.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairperson
2. Hon. Kareke Mbiuki, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. Paul Simba Arati, M.P
5. Hon. Florence Mutua, M.P
6. Hon. Raphael Letimalo, M.P
7. Hon. Mary Wambui, M.P
8. Hon. Justice Kemei, M.P
9. Hon. Patrick Wangamati, M.P
10. Hon. John B. Serut, M.P
11. Hon. Korei Ole Lemein, M.P
12. Hon. Benjamin Washiali, M.P
13. Hon. Kimani Ichung'wah, M.P
14. Hon. James Opiyo Wandayi, M.P
15. Hon. Fredrick Outa, M.P
16. Hon. Kabando Wa Kabando, M.P
17. Hon. Zuleikha Hassan Juma, M.P
18. Hon. Peter N. Gitau, M.P
19. Hon. Silas Tiren, M.P
20. Hon. Maison Leshoomo, M.P
21. Hon. Waititu Munyua, M.P
22. Hon. Phillip Rotino, M.P

Absent with Apologies

1. Hon. Ferdinand Wanyonyi, M.P
2. Hon. Alfred K. Keter, M.P
3. Hon. Millie Odhiambo - Mabona, M.P
4. Hon. (Dr.) Victor Munyaka, M.P

5. Hon. John Kobado, M.P
6. Hon. Ayub Savula Angatia, M.P.
7. Hon. Hezron Awiti Bollo, M.P

In Attendance:

Kenya National Assembly Secretariat

- | | |
|--------------------------|-------------------------|
| 1. Mr. Benjamin Magut, | - First Clerk Assistant |
| 2. Mr. Ahmad Adan Guliye | - Third Clerk Assistant |
| 3. Ms. Angeline Naserian | - Third Clerk Assistant |
| 4. Mr. David Ngeno | - Research Officer |

Min. 296/2015: Preliminaries

The meeting was called to order at 4.20 p.m. and prayers were said by Hon. Kareke Mbiuki, M.P.

Min. 297/2015: Consideration of Galana/Kulalu Draft Report

The Committee considered the draft report on Galana/Kulalu food security project and made the following observations;

a. Committee Observations

The Committee observed the following with regard to Galana/Kulalu Food Security Project;

- i. There was no feasibility study done but rather prefeasibility study.
- ii. Agrigreen Company was awarded the consultancy tender at Ksh. 923,145,953 while they quoted an amount to the tune of 793 million shillings.
- iii. Basing on the outcome of the prefeasibility study, a model farm of 10,000 Ha was established.
- iv. The project was conceived and initiated without proper financial planning.
- v. How the consultant metamorphosed into the main contractor is ambiguous. The relationship between the main contractor and the consultant is shrouded in mystery.
- vi. The owners of the local partners of the consortium that won the tender for the prefeasibility study should be established.
- vii. A yield of ten (10) bags per acre was realized instead of the expected forty (40) bags.
- viii. The amount quoted for the bush clearing was over estimated.
- ix. There was no formal agreement between the Governments of Kenya and the Israel with regard to the financing of the project.

- x. The reservations of the Attorney General on the project ought to be considered.
 - b. Possible Recommendations:
 - I. The Committee proposed the following recommendations on the draft report of the Galana/Kulalu Food Security Project;
 - a. Forensic audit on the entire Galana/Kulalu Food Security Project should be conducted.
 - b. Investigations should be conducted on the relevant bodies such as National Irrigation Board (NIB) on the manner in which they awarded the prefeasibility tender.
 - II. The secretariat was asked to polish the report and present it to the Committee the following for consideration and adoption.

Min. 298/2015: Adjournment

Since no other business to discuss, the meeting was adjourned at 7.30 p.m.

Signature

HON ADAN MOHAMED NOORU, MBS, M.P.

(Chairperson)

Date.....

MINUTES OF THE 11th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Confirmation of Minutes) HELD ON TUESDAY 1st MARCH 2016, AT CPA ROOM, MAIN PARLIAMRNT BUILDINGS AT 10.30 A.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairperson
2. Hon. Kareke Mbiuki, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. Mary Wambui, M.P
5. Hon. John B. Serut, M.P
6. Hon. Benjamin Washiali, M.P
7. Hon. Florence Mutua, M.P
8. Hon. (Dr.) Victor Munyaka, M.P
9. Hon. James OpiyoWandayi, M.P
10. Hon. Kabando Wa Kabando, M.P
11. Hon. Peter N. Gitau, M.P
12. Hon. Maison Leshoomo, M.P
13. Hon. Raphael Letimalo, M.P
14. Hon. Millie Odhiambo - Mabona, M.P
15. Hon. Korei Ole Lemein, M.P
16. Hon. Fredrick Outa, M.P
17. Hon. Patrick Wangamati, M.P
18. Hon. Silas Tiren, M.P
19. Hon. Kimani Ichung'wah, M.P
20. Hon. Hezron Awiti Bollo, M.P

Apologies

1. Hon. Phillip Rotino, M.P
2. Hon. Ferdinand Wanyonyi, M.P
3. Hon. Zuleikha Hassan Juma, M.P
4. Hon. Paul Simba Arati, M.P
5. Hon. John Kobado, M.P
6. Hon. Alfred K. Keter, M.P
7. Hon. Waititu Munyua, M.P
8. Hon. Justice Kemei, M.P
9. Hon. Ayub Savula Angatia, M.P.

In Attendance:

Kenya National Assembly Secretariat

1. Mr. Benjamin Magut - First Clerk Assistant
2. Mr. Ahmad Adan Guliye - Third Clerk Assistant
3. Ms. Angeline Naserian - Third Clerk Assistant
4. Mr. David Ngeno - Research Officer

Min. 049/2016: Preliminaries

The meeting was called to order at 10.40 a.m. and prayers were said by Hon. Kimani Ichung'wah, M.P.

Min.050/2106: Confirmation of Minutes

- I. The minutes of the 8th sitting were confirmed as true record of the Committee's deliberations having being proposed by Hon. John B. Serut, M.P and Hon. Maison Leshoomo, M.P respectively.
- II. The minutes of 9th sitting were confirmed as true record of the Committee's deliberations having being proposed by Hon. Raphael Letimalo, M.P. and Hon. Benjamin Washiali, M.P respectively.

Min.051/2016: Matters Arising

- I. Under minute 036/2016
 - i. The Committee was informed that the Loan agreement between the GOK and State of Israeli has been duly signed and executed.
 - ii. The Secretariat was asked to write to the Cabinet Secretary, Water and Irrigation to remind them to submit the following documents ;-
 - a) Copy of the Lease agreement between National Irrigation Board (NIB) and Agricultural Development Corporation (ADC) for the lease of one million acres in Galana Ranch.
 - b) Copies of the signed Loan agreement and Memorandum of Understanding (MOU) between the Government of Kenya and State of Israel regarding the Galana-Kulalu Food Security project.
 - c) Copy of the Addendum to the contract between Government of Kenya and Green Arava Ltd for the construction of the 10,000 Acre model farm.
 - d) Comprehensive report of all expenditures incurred by the National Irrigation Board in the Project excluding payments made to the Contractor (Green Arava)

II. Under minute 040/2016 – VI(d)

The Committee was concern in the manner in which the Ministry plans to implement the policy on Youth in Agriculture should be implemented.

Min. 052/2016: Any Other Business (A.O.B)

- I. The Committee was informed that the a delegation of four Committee members accompanied the H.E President to a State Visit to the State Israel.
- II. Members took issue with the comments by H.E questioning the role of Legislators in the project.
- III. The Leader of the delegation promised to avail to the Committee the Visit report in due course.

Min. 053/2016: Adjournment

There being no other business to transact, the meeting was adjourned at 12.02 p.m

Signature



HON ADAN MOHAMED NOORU, MBS, M.P.

(Chairperson)

Date.....

ANEX I

COPY OF SIGNED LOAN
AGREEMENT AND
MEMORANDUM OF
UNDERSTANDING BETWEEN THE
GOVERNMENT OF KENYA AND
STATE OF ISRAEL



DECLARATION OF INTENT

BETWEEN

THE MINISTRY OF AGRICULTURE,
LIVESTOCK & FISHERIES,
REPUBLIC OF KENYA

AND

THE MINISTRY OF FOREIGN AFFAIRS,
STATE OF ISRAEL

ON

"GALANA-KULALU FOOD SECURITY
PROJECT"



DECLARATION OF INTENT BETWEEN THE MINISTRY OF
AGRICULTURE, LIVESTOCK AND FISHERIES OF THE REPUBLIC
OF KENYA AND THE MINISTRY OF FOREIGN AFFAIRS OF THE
STATE OF ISRAEL

ACKNOWLEDGING the friendly and good relations between the
Republic of Kenya and the State of Israel and the desire to further
deepen these relations;

SHARING the desire to expand their cooperation and transfer of
knowledge;

WHEREAS MASHAV – Israel's Agency for International
Development Cooperation, Ministry of Foreign Affairs of the State
of Israel. (hereinafter: "MASHAV"), is responsible for all technical
assistance and capacity building programs in Development
Cooperation, on behalf of the Government of the State of Israel;

WHEREAS the "Galana-Kulalu food Security Project" (GKFSP) is a
Kenyan Government flagship agricultural/food security national
project, which forms part of Kenya's Government national
development program, and is fully supported by the Ministry of
Agriculture, Livestock & Fisheries of Kenya.

IT IS HEREBY DECLARED AS FOLLOWS:



1. The Parties express their desire to promote cooperation between Kenya and Israel in the "Galana-Kulalu Food Security Project" (GKFSP).
2. The Parties have agreed to consider ways to enhance cooperation between both countries in the framework of this project, involving private sector Israeli companies in the field of agriculture and irrigation, who will offer their expertise on a commercial basis, and MASHAV (The Israeli Agency for International Development Cooperation), who will offer training and capacity building activities, both in Israel and in Kenya, on a G2G basis.
3. The Ministry of Agriculture, Livestock & Fisheries of Kenya extended an invitation for representatives of the governmental and private sectors in Israel to visit Kenya in order to explore cooperation possibilities.
4. The Parties will explore possibilities for the efficient advancement of this project.



5. This Declaration of Intent is not legally binding and does not create any legally binding obligations.

Signed at NAIROBI on the 18th day of June 2014, in duplicate in the English language.

Handwritten signature of Mr. Felix K. Koskei in black ink.

MR. FELIX K. KOSKEI
CABINET SECRETARY FOR
AGRICULTURE, LIVESTOCK &
FISHERIES OF THE
REPUBLIC OF KENYA

Handwritten signature of Mr. Avigdor Liberman in black ink.

MR. AVIGDOR LIBERMAN.
MINISTER OF FOREIGN
AFFAIRS OF THE STATE OF
ISRAEL

ANNEX II

COPY OF LEASE AGREEMENT
BETWEEN NIB AND ADC

ANNEX II



DATED THE 7TH DAY OF April 2014

LEASE

BETWEEN

AGRICULTURAL DEVELOPMENT CORPORATION

AND

NATIONAL IRRIGATION BOARD

OVER

A PORTION OF LAND COMPRISING TWENTY THOUSAND

(20,000) ACRES ON

TITLE NUMBER

GALANA RANCH/BLOCK 1/1

DRAWN BY:

**A. ADEMBA ADVOCATE
DEVELOPMENT HOUSE
9TH FLOOR, MOI AVENUE
P.O. BOX 47101 - 00100
NAIROBI**



REPUBLIC OF KENYA

IN THE MATTER OF THE LAND ACT, 2012, NO. 6 OF 2012

IN THE MATTER OF THE LAND REGISTRATION ACT, NO. 3 OF 2012

TITLE NUMBER:- GALANA RANCH/BLOCK 1/1

LEASE

THIS LEASE is made on This.....^{7TH}.....day of.....^{APRIL}..... Two Thousand and Fourteen **Between:**

PARTIES

(1) **AGRICULTURAL DEVELOPMENT CORPORATION** a Body Corporate established under the provisions of the Agricultural Development Corporation Act (Chapter 444 of the Laws of Kenya) of P.O Box 47101-00100 Nairobi (hereinafter referred to as "the Lessor" which expression shall where the context so admits include its successors in title and assigns) of the one part

AND

(2) **NATIONAL IRRIGATION BOARD**, a body corporate established under the provisions of the Irrigation Act Chapter 347 of the Laws of Kenya and of Post Office Box 30372-00100, Nairobi (hereinafter referred to as "the Lessee" which expression shall where the context so admits include its successors and assigns) of the other part.

WHEREAS:

1. The Lessor is the registered proprietor as lessee from the Government of the Republic of Kenya **ALL THAT** piece or parcel of land situated in Kilifi/Tana River County in the Republic of Kenya, containing by measurement approximately 1,500,000 Hectares or thereabouts comprised in a Lease ("**The originating Lease**") and known as the **Title Number: Galana Ranch/Block 1/1** which said piece of land is held under the provisions of the Originating Lease and subject to the payment of a revisable annual rent of Kenya Shillings Seven Hundred and Four Thousand One Hundred and Sixty (Kshs. 704,160/-) per annum **HELD** for the residue of the Term of **Forty Five (45) years** from First day of November Two Thousand and Eleven subject to the special conditions and other matters specified in the Lease hereinafter called ("**Galana Ranch**").
2. The Lessee is engaged in the development, promotion and management of all national Irrigation Programmes and/or schemes in the country.

REPUBLIC OF KENYA

IN THE MATTER OF THE LAND ACT, 2012, NO. 6 OF 2012

IN THE MATTER OF THE LAND REGISTRATION ACT, NO. 3 OF 2012

TITLE NUMBER:- GALANA RANCH/BLOCK 1/1

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THIS LEASE is made on This.....^{7th}.....day of ^{APRIL}..... Two Thousand and Fourteen **Between:**

PARTIES

(1) **AGRICULTURAL DEVELOPMENT CORPORATION** a Body Corporate established under the provisions of the Agricultural Development Corporation Act (Chapter 444 of the Laws of Kenya) of P.O Box 47101-00100 Nairobi (hereinafter referred to as "the Lessor" which expression shall where the context so admits include its successors in title and assigns) of the one part

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2. The Lessee is engaged in the development, promotion and management of all national Irrigation Programmes and/or schemes in the country.

3. The Lessor has agreed to grant a lease to the Lessee of a portion of Galana Ranch ("Lease Land") (as hereinafter defined) for a term of **Five (5) years** from the commencement date (as hereinafter defined)

1. PARTICULARS

Lease Land All that land containing approximately **20,000 acres** being a portion of all that piece of land comprised in the above mentioned title.

Commencement Date - 1st April, 2013 (Now past).

Term; **Five (5) years** from and including the commencement Date.

Rent: The Rent detailed in clause 3 below:

1. DEFINITION INTERPRETATIONS

- 1.1 For all purposes of this Lease the terms defined in this clause have the meanings herein specified
- 1.1.1 The Lease shall be this grant of a Lease of the land by the Lessor to the Lessee subject to the terms and conditions herein.
- 1.1.2 The expressions "the Lessor" and "the Lessee" wherever the context so admits include respectively the person for the time being entitled to the reversion immediately expectant on the determination of the term and the Lessee's successors in title.
- 1.1.3 References to "the last year of the Term" include the last year of the term if the Term shall determine otherwise than by effluxion of time.
- 1.1.4 References to any "right of the Lessor to have access to the Leased Land" shall be construed as extending to any charge of the Building and all persons authorised by the Landlord and charge.
- 1.1.5 Reference to "Consent of the Lessor" or words to similar effect mean consent in writing signed by or on behalf of the landlord.
- 1.1.6 **Gender and Number:-**Words importing one gender include all genders; words importing the singular include the plural and Vice Versa.
- 1.1.7 References to any clause or schedule without further designation shall be construed as a reference to the clause or schedule of this lease or numbered.

1.1.8 The clause and schedule headings do not form part of this lease and shall not be taken into account in its construction and interpretation.

2. GRANT OF LEASE

2.1 The Lessor **HEREBY LEASES** to the Lessee and the Lessee hereby accepts the Lease of **ALL THAT** the Lease Land with the rights specified in the schedule hereto to **HOLD FOR** the Term stipulated in this Lease and subject to and including all the rights, assessments, privileges, covenants and stipulations of whatever nature affecting the Lease Land and subject to the payment to the Lessor of the Rent payable as herein described without any deduction unless otherwise stipulated in writing.

3. RENT

3.1 The rent is to be calculated on the following basis:

3.1.1 The rent payable under this Lease will be Kenya Shillings Three Thousand (Kshs. 3,000/-) per acre leased for the five years and shall be payable upon execution of this lease, However, any review to the rate shall be mutually agreed upon by the two parties in writing anytime within the lease period.

3.1.2 All lease rent shall be payable annually in advance or as is varied between the two parties in writing.

3.2 The lease rent shall be payable as set out below.

Year of Lease	Leased Land in acres	Rate (Kshs.)	Rent payable (Kshs.)	Period
1	20,000	3000/-	60,000,000/-	01/04/2013 - 31/03/2014
2	20,000	3000/-	60,000,000/-	01/04/2014 - 31/03/2015
3	20,000	3000/-	60,000,000/-	01/04/2015 - 31/03/2016
4	20,000	3000/-	60,000,000/-	01/04/2016 - 31/03/2017
5	20,000	3000/-	60,000,000/-	01/04/2017 - 31/03/2018

3.3 The rent for the first year of Kenya Shillings Sixty Million (Kshs. 60,000,000/-) shall be paid by the Lessee to the Lessor upon execution of this Agreement.

4. LESSEE COVENANTS

4.1 The Lessee hereby covenants with the Lessor as follows:-

4.2 Pay the rent hereby reserved at the times and in the manner aforesaid.

- 4.3 To submit from time to time in triplicate to the Lessor plans, (including block plans showing the positions of the buildings and a system of drainage for the disposal of sewerage surface and silage water drawings elevations and specifications of the buildings the Lessee proposes to erect on the plantation and no buildings shall be erected on the leased land nor shall material additions or external alterations be made to any buildings otherwise in conformity with the plans and specifications previously approved in writing by the Lessor such approval shall not be unreasonably withheld conditioned on delayed if no formal response is received from the Lessor within a period of One (1) Month after they are submitted and the Lessee may then proceed to erect such buildings, additions or external alterations without further notice to the Lessor.
- 4.4 To maintain in good and substantial repair and condition all buildings at any time erected on the leased land.
- 4.5 To use the leased Land, subject to all applicable laws and regulations for all or any of the following purposes.
- 4.6 To carry on and engage in the development of a model farm.
- 4.7 To farm and/or cultivate crops on the model farm
- 4.8 To construct or erect and use, operate and maintain together with egress and ingress there upon all wells, canals pumps, pipes, pipelines, buildings, plants, sumps, reservoirs, tanks, waterworks, pumping stations, roads, electric power generating plants, transmission lines, industrial facilities electric telegraph and telephone lines or cables and such other works and structures and to use so much of the surface of the leased Land as may be necessary or convenient for crop production, or for the full enjoyment of the rights granted by this lease, subject to compliance with all applicable laws and regulations.
- 4.9 In so far as it may be necessary for the activities of the Lessee to;
- 4.9.1 Erect, construct, rehabilitate, and maintain wells, canals, drains, dykes, ditches, irrigation systems as may be necessary;
- 4.9.2 Erect, construct and maintain factories, offices, produce storage facilities, garages, houses, plant machinery buildings and other improvements as may be necessary.
- 4.9.3 Subject to the water Act, and in accordance with any other rules and regulations set forth by the government of Kenya drill and construct all necessary boreholes, reclaim, extract and utilise any water from any water source whatsoever.
- 4.9.4 Subject to the Environmental Management and Co-ordination Act and in accordance with any other rules and regulations set forth by the Government of Kenya dredge, reopen, watercourses, canals and rivers; and

to cut down such trees, bushes, shrubs, etc as may be necessary to carry out its proposed developments and projects on the Lease Land;

- 4.9.5 Construct and maintain roads, airstrips and other means of communication.
- 4.9.6 To dig terraces and install such irrigation systems as Lessee thinks fit.
- 4.10 To use reasonable diligence to control vermin, noxious weeds and grasses and destructive pests, insects and especially Tsetse flies within the Leased Land.
- 4.11 To endeavour to develop the land leased in such a way as to minimise the risk of forest fires breaking out or spreading and to ensure proper fire fighting principles are enforced and mechanisms are in place within the Leased Land;
- 4.12 Not to use the Leased Land for purposes of any trade or business which the Local Authorities or the Landlord consider to be dangerous or offensive;
- 4.13 To pay all telephone, electricity rates and other similar charges of every nature and kind which or may hereafter be assessed or imposed upon the said land or any part thereof during the said term of the lease.
- 4.14 The Lessee shall have the right to establish such fencing as it may deem necessary and in accordance with the development plans and projects. Where fencing is established the Lessee shall be required to remove the same as its own cost at the expiry of this Lease hereby created unless the Lessor specifically requests the tenant to leave it in situ.
- 4.15 To take all necessary, proper and usual measures for preventing erosion of the soil it being accepted by both parties that the changes in the course of the Athi River (Sabaki/Galana) may occur by an Act of God;
- 4.16 To pay such rates, taxes, charges, duties, assessments or outgoings of whatever description as may be imposed upon the leased land or the building erected thereto in accordance with the Laws of Kenya.
- 4.17 To permit the Lessor or any agent appointed by it upon giving the Lessee reasonable notice to do so to enter upon the said land reasonable times and view the state of repair and condition of the leased land thereof;
- 4.18 Not to sell, transfer, sub-let or otherwise part with the possession of the Leased land or any part or any other building thereon without the prior consent in writing of the Lessor which shall not be unreasonably withheld, conditioned or delayed. In the event that the lessor does not respond within 30 days, it will be deemed that approval shall have been given.
- 4.20 At the expense of the Lessee to duly comply with all orders, notices or other requirements of any competent authority in respect of or affecting or likely to affect the said land or any part.

- 4.21 At the Lessee's expense to maintain and keep in good repair and working conditions the Lessor's water pipes, infrastructure and water tanks currently existing (if any) within the premises and to construct dams on an appointed piece of land of the lessor's.
- 4.22 At the end of the term whether by effluxion of time or otherwise.
- 4.22.1 To yield up the leased land including any building improvements belonging to the lessor in good repair fair wear and tear and shall remove all Lessee's fixtures and fitting (unless terms shall have previously been agreed between the Lessor and the Lessee on the acquisition of such fixtures and fittings by the lessor) and remove all signs erected by the lessee upon or near the leased land;
- 4.22.2 In the event the lessor wishes to acquire any of the lessee's fixtures on termination of this lease, the lessor shall in the event of termination of the term by effluxion of time give notice to the tenant of this fact one (1) year prior to the expiry of the lessee or otherwise as soon as feasible prior to determination of the Term listing all terms that it wishes to acquire ("the items").
- 4.22.3 The lessee shall indicate the willingness or otherwise to sell all such items and required price for each of the items listed. The lessor shall have a period of Fourteen (14) days in which to indicate its acceptance of the terms of sale or make a counter-offer for the items.
- 4.22.4 Upon terms of sale being agreed pursuant to the preceding sub-clauses or otherwise the lessee shall be entitled to deduct all agreed sums from any rent and outstanding on determination of the terms in its satisfaction of the purchase price for the items and the lessor shall remit the balance (if any) of all sums payable for the items not later than Sixty (60) days prior to termination of the lease;
- 4.23 Failing agreement being reached on the terms of sale of the items or payment of the price being received in full, the Lessee shall be entitled to remove all such items from the leased land following expiry or termination of the Lease.
- 4.24 Not to suffer or permit waste or spoil any part of the said land except in terms of this lease and to use its best endeavours not to permit any encroachment or systematic trespass or the acquisition of any new rights of public or private or easement over any part of the said land.
- 4.25 Subject to the use of the lease land set out above, should the lessee desire to use the land for any other purpose than the purpose stated in this lease, it should first notify the lessor and obtain the lessor's consent in writing which consent shall not be unreasonably withheld.
- 4.26 The Lessee undertakes not to interfere with the Lessor's activities and the Lessor undertakes to give quiet possession to the Lessee and not to

encroach or in any way interfere with the Lessee's activities, particularly its crop production activities, located within the leased premises and to give the Lessee licence (if required) to access the leased premises through the Lessor's adjoining and or remaining piece of land.

5. TERMINATION

5.1 If the Lessee shall not pay rent due herein within Ninety (90) days from the date when the same is due, a penalty at the rate of Five (5%) per centum per annum shall accrue on the rent so outstanding from the expiry of the said Ninety (90) days and the said penalty shall be recoverable together with the rent outstanding without further notice. If the said rent or any part thereof shall be in arrears for the space of Ninety (90) days next after any of the delay whereon the same ought to have been paid or if there shall be any breach of non-performance or non-observance by the Lessee of any of the covenants, agreements, conditions, restrictions, stipulations or provisions herein contained and on its part to be performed and observed or if the Lessee shall enter into liquidation whether compulsory or voluntary and nota voluntary liquidation merely for the purpose of reconstruction or amalgamation) then and in any such case it shall be lawful or the Lessor although it may not have taken advantage of some previous default of a like nature to re-enter upon the premises or any other part thereof in the name of the whole and to have gain repossess and enjoy the same again as in its former estate notwithstanding anything herein contained to the contrary without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the covenants agreements, conditions, restrictions, stipulations or provisions herein contained or implied and on the part of the Lessee to be performed and observed. **PROVIDED ALWAYS** that in the event of breach and non performance or non observance by the lessee of any covenants, agreements, conditions, restrictions, stipulations or provisions herein then the lessor in the first instance provide notice identifying the breach complained of and give the lessee a period of **Three (3) Months** to rectify the same.

5.2 Either party may terminate this lease for any reason upon giving the recipient party a written notice of three (3) months.

6. LESSOR COVENANTS

6.1 The Lessor hereby covenants and agrees with the lessee as follows:-

6.1.1 That the Lessee paying the rent hereby reserved and performing and observing the several covenants and stipulations on the part of the Lessee herein contained or implied shall peacefully hold and enjoy the lease land during the term without interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

- 6.1.2 Not to interfere with the business of the Lessee or the projects undertaken by the lessee in the Lease Land in any way whatsoever, unless specifically requested to do by the lessee.
- 6.1.3 To permit the Lessee to use and apply such seeds, fertilizers, pesticides and herbicides as it shall think fit provided that such application and seeds fertilizers is within the relevant applicable Laws of Kenya.
- 6.1.4 To assist and support the Lessee in any way possible in respect of any application for such authority, approval, licence or consent as may be required by the lessee from time to time.

7. OPTION TO RENEW

In the event that the Lessee wishes to renew this lease from the date of expiry, for a further term, the lessee shall give the lessor written notice of its intention at least ~~one~~ (1) year before the expiry of the term and if the lessee shall at all times during the same term have duly performed and observed all the covenants, conditions, stipulations, and provisions herein contained prior to the expiration of the said term, the lessor shall consider giving an option to renew for a further term to be mutually agreed between the parties.

8. NOTICES

- 8.1 All notices or other communications to be given under this lease to either party shall be made in writing and sent by letter or electronic transmission (unless as otherwise stated herein) and shall be deemed to be duly given or made at 9.00am on the business day following the date when delivered at the address specified below (in the case of personal delivery), when dispatched (in case of electronic transmission, **PROVIDED THAT** the sender has received a receipt indicating proper transmission, and a hard copy of such notice or communication is forthwith delivered or sent by prepaid post as set out herein) or Ten (10) days after being deposited in the post, postage, prepaid, by the quickest mail available and by receipt of electronic notice specified below in **Clause 8.2**, or at such other address or electronic address as such party may hereafter specify for such purpose to the other by notice in writing.

8.2 The addresses are:

- 8.2.1 In the case of notice to the lessor

Attention: Managing Director
Delivery: Agricultural Development Corporation
Address: P.O Box 47101-00100
NAIROBI
Telephone: +254 20 2250695/185
Cell phone 0724930920/0734930920
Fax: +254 20 2243571
Email: info@adc.co.ke

8.2.2. In the case of notice given to the Lessee

Attention: General Manager
Delivery: National Irrigation Board
Unyunyizi House, Lenana Road
Address: P.O Box 30372 - 00100
 NAIROBI
Telephone: +254 20 271 1380/468
Cell phone: +2540722-321 653
Fax: +254 20 2722821
Email: enquiries@nib.co.ke

8.3 A notice or other communication received on a day other than a business day shall be deemed to be given on the following business day in such place.

9. RESOLUTION DESPUTE

In the event of any dispute or difference arising between the parties hereto, such dispute or difference shall be referred to a single Arbitrator to be appointed by the Chairman for the time being of Kenya Branch of Chartered Institute of Arbitrators. The reference to arbitration shall be done in writing to the Chairman attaching a copy of this Agreement and copying a letter to the other party.

10. GOVERNING LAW

This Lease is governed by Kenyan law and parties submit to the exclusive jurisdiction of the Kenyan courts.

11. COSTS

The Lessee shall pay all legal costs, stamp duty and registration fees, in connection with the preparation and completion of this lease.

12. ACCEPTANCE

12.1 This Lease constitutes the entire agreement and understanding between the parties.

12.2 The Lessor hereby grants and the Lessee hereby accepts this Lease subject to the conditions, restrictions and stipulations set out herein.

IN WITNESS WHEREOF the Lessor and Lessee have caused their respective Common Seals to be hereunto affixed the day and year first hereinbefore written.

SEALED with the COMMON SEAL)
of the AGRICULTURAL DEVELOPMENT CORPORATION)
In the presence of)
MANAGING DIRECTOR)
DIRECTOR/SECRETARY)

I HEREBY CERTIFY that the MANAGING DIRECTOR and the DIRECTOR/SECRETARY of AGRICULTURAL DEVELOPMENT CORPORATION appeared before me on the.....day of.....Two Thousand and Fourteen and being known to me or being identified by.....acknowledged the above signatures or marks to be theirs and that they have freely and voluntarily executed this document and understood its contents.

Commissioner for Oaths
P.O. Box 47101-00100 NAIROBI

Signature and designation
of person certifying

SEALED with the COMMON SEAL)
of NATIONAL IRRIGATION BOARD)
In the presence of)
GENERAL MANAGER)
DIRECTOR/SECRETARY)

I HEREBY CERTIFY that the GENERAL MANAGER and DIRECTOR/SECRETARY of NATIONAL IRRIGATION BOARD appeared before me on the 30th day of MAY.....Two Thousand and Fourteen and being known to me or being identified by.....acknowledged the above signatures or marks to be theirs and that they have freely and voluntarily executed this document and understood its contents.

JOHN OSCAR JUMA, ADVOCATE
COMMISSIONER FOR OATHS
P.O. Box 8939 00200
NAIROBI

Signature and Designation
of person certifying

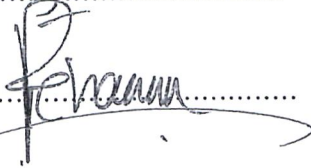
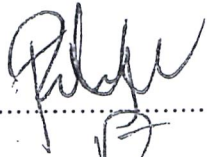
SEALED with the COMMON SEAL)

of the AGRICULTURAL DEVELOPMENT CORPORATION)

In the presence of)

MANAGING DIRECTOR)

DIRECTOR/SECRETARY)



I HEREBY CERTIFY that the **MANAGING DIRECTOR** and the **DIRECTOR/SECRETARY** of **AGRICULTURAL DEVELOPMENT CORPORATION** appeared before me on the.....day of.....Two Thousand and Fourteen and being known to me or being identified by.....acknowledged and ~~executed~~ **performed** the above signatures or marks to be theirs and that they have freely and voluntarily executed this document and understood its contents.

Commissioner for Oaths
P.O. Box 47101-00100 NAIROBI



Signature and designation
of person certifying

SEALED with the COMMON SEAL)

of NATIONAL IRRIGATION BOARD)

In the presence of)

GENERAL MANAGER)

DIRECTOR/SECRETARY)



I HEREBY CERTIFY that the **GENERAL MANAGER** and **DIRECTOR/SECRETARY** of **NATIONAL IRRIGATION BOARD** appeared before me on the.....30th day of.....MAY.....Two Thousand and Fourteen and being known to me or being identified by.....acknowledged the above signatures or marks to be theirs and that they have freely and voluntarily executed this document and understood its contents.

JOHN OSCAR JUMA, ADVOCATE
COMMISSIONER FOR OATHS
P.O. Box 9939 00200
NAIROBI

Signature and Designation
of person certifying

ANNEX IV

LOAN AGREEMENT



12

REPUBLIC OF KENYA
THE NATIONAL TREASURY

Telegraphic Address: 22921
Finance – Nairobi
FAX NO. 310833
Telephone: 2252299
When Replying Please Quote

THE NATIONAL TREASURY
P O BOX 30007 - 00100
NAIROBI

MOF/ERD/20/78/01/(10)

August 25, 2015

Mrs. Sicily Kanini Kariuki, MBS
Principal Secretary, Agriculture
Ministry of Agriculture, Livestock & Fisheries
Kilimo House
NAIROBI

Dear

Madam PS

RE: FINANCING OF GALANA/KULALU FOOD SECURITY PROJECT

The Ministry of Foreign Affairs of Jerusalem has confirmed the commitment made by the Israeli Government during the recent negotiations for Loan Agreement for the above project to finance the following capacity building programmes through a grant.

1. Full 50 annual scholarships (excluding air fare) for 3 weeks course in Mashav training centers in Israel for 6 consecutive years. (270 \$ per student per day).
2. Full 50 annual slots for Kenyan students for on the job training by doing for a period of 11 months combined with advance agriculture classes and practical projects in Israel for 6 consecutive years. This program is supervised by the Israeli Government but implemented by a private entity.
3. 84 Israeli Expert days annually at "The Kenya Israel Galana-Kulalu MASHAV Agriculture Training Center" for 6 consecutive years. These experts will hold on site consultancies or courses for local trainees, to assist local capacity building for the Galana/Kulalu Food Security Project (600 USD per Expert per day).

The purpose of this letter is to notify your Ministry on the assistance.

Yours

Sincerely,
Jackson Kinyanjui

Jackson Kinyanjui, OGW
Ag. Director General/PDMO/DRMD
For: PRINCIPAL SECRETARY/NATIONAL TREASURY



ISO 9001:2005



BUYERS CREDIT LOAN AGREEMENT

DATED AUGUST 31, 2015

BETWEEN

BANK LEUMI LE-ISRAEL B.M.
as Lender

and

THE GOVERNMENT OF THE REPUBLIC OF KENYA
REPRESENTED BY THE NATIONAL TREASURY
as Borrower

IN THE AMOUNT OF UP TO US\$ 71,408,014.00

SG

AW

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Sb 



BUYERS CREDIT LOAN AGREEMENT

THIS AGREEMENT dated August 21, 2014, is signed and entered into by and between BANK LEUMI LE-ISRAEL B.M., a banking corporation, of 24-32 Yehuda Halevi Street, Tel-Aviv 65546, Israel (the "Bank or the "Lender") and THE GOVERNMENT OF THE REPUBLIC OF KENYA, REPRESENTED BY THE NATIONAL TREASURY (the "Borrower").

WHEREAS:-

- (a) On 20th August, 2014, the National Irrigation Board of Kenya (the "Buyer") entered into a contract, bearing Contract no. NIB/IT/003/2014-5, with Green Arava Ltd of Israel (the "Seller") for the construction works of the 10,000 acre model farm for the Galana/Kulalu food security project, located at Tana river and Kilifi counties, Republic of Kenya (the "Commercial Contract") and the Commercial Contract has entered into force;
- (b) the Contract Price under the Commercial Contract is US\$137,334,595.07 (one hundred and thirty seven million three hundred and thirty four thousand five hundred and ninety five United States Dollars and seven cents) not including taxes, duties and other charges payable by the Buyer (the "Contract Price"); and
- (c) the Borrower has requested the Bank to grant to it a loan in the maximum aggregate amount of up to US\$ 71,408,014 (seventy one million four hundred and eight thousand and fourteen United States Dollars) (the "Loan"), of which (i) US\$63,158,000 (sixty three million one hundred fifty eight thousand United States Dollars), shall be used for the purpose of financing part of the Contract Price of the Commercial Contract and (ii) US\$8,250,014 (eight million two hundred and fifty thousand and fourteen United States Dollars) shall be used for the purpose of financing 100% of ASHRA's Premium, which the Bank is prepared to do upon the conditions herein contained.

NOW THEREFORE IT IS HEREBY AGREED AND DECLARED BETWEEN THE PARTIES AS FOLLOWS:

1. Definitions and Interpretation

- 1.1 The preamble to this Agreement forms an integral part hereof.
- 1.2 In addition to those terms defined above, the following terms shall have the meanings set forth below, which shall include both singular and plural thereof, unless otherwise specifically provided for:

"ASHRA" – shall mean ASHRA -the Israel Foreign trade Risks Insurance Corporation Ltd.

"ASHRA's Policy" - shall mean the insurance policy to be issued by ASHRA in favor of the Lender in terms, wording, and substance to the Lender's full satisfaction.

"ASHRA's Premium" – shall mean the upfront, non-refundable and one-time premium and related costs due and payable to ASHRA pursuant to ASHRA's Policy, as set forth in clause 18, and as invoiced by ASHRA.

"Authorised Signatory" - shall mean the Cabinet Secretary to the National Treasury or such other person authorised by him in a manner reasonably satisfactory to the Bank to sign, on behalf of the Borrower, this Loan Agreement, each Request for Disbursement and any other document to be delivered by the Borrower pursuant to this Loan Agreement. The names of the Authorised Signatories shall be provided by the Borrower to the Bank as set out in the Special Authorisation of the Borrower in the form of Exhibit "C" hereto.

"Business Day" shall mean a day (other than a Saturday or Sunday) on which dealings in Dollars deposits are carried on in the London Interbank Market and, if payment is required to be made on such day, on which banks are open for business in Dollars in London, Tel-Aviv, New York, and Nairobi.

"Buyer's Certificate" shall mean the certificate headed "Summary of Statement for Payment on Account" to be executed by, inter alia, the Seller and approved by the Buyer with regard to goods supplied and/or work performed, in the form of Exhibit "B" hereto.

"Buyer's Representative" shall mean the officers appointed, from time to time, by the Buyer, to sign in the name and on behalf of the Buyer for the purpose of approving and executing the Buyer's Certificate. The names of the officers shall be provided by the Borrower, on behalf of the Buyer, to the Bank as set out in the Certificate of Incumbency of the Buyer in the form of Exhibit "D" hereto.

"Change in Law" shall mean any change in any applicable law, regulation, order or provision (including, without limitation, those of Israel and the Republic of Kenya) or of the interpretation or changes in the interpretation of any such law, regulation, order or provision of or by any court, tribunal or any other authority (including, without limitation, those of Israel and the Republic of Kenya) which is charged with the implementation or maintenance of any such law, regulation, order or provision.

"Commitment Period" shall mean a period of 27 (twenty seven) months from the Effective Date of this Agreement.

"Default Interest" shall mean the interest payable under Clause 10 hereof;

"Disbursement" shall mean each advance made by the Bank to the Borrower on account of the Loan.

"Disbursement Date" shall mean each of the dates on which a Disbursement is advanced to the Borrower;

"Disbursement Documents" shall mean the Commercial Invoices(s) and other documents specified in Clause 3;

"Dollars"; "USD" and "\$" shall mean the lawful currency, for the time being, of the United States of America;

"Effective Date of this Agreement" shall mean the date on which this Agreement becomes effective as notified by the Bank to the Borrower and the Seller under the provisions of Clause 12.

"Event of Default" shall mean any of the events described in Clause 14.

"External Debt" shall mean any obligation, whether present or future, actual or contingent, secured or unsecured, as principal or surety, contingent or otherwise, to repay a loan, deposit advance or similar extension of credit or which is evidenced by a bill of exchange, promissory note or similar instrument, whether drawn, accepted or endorsed or is incurred under a guarantee or indemnity given in respect of the obligations of another, which is, or is capable at the option of any party thereto of being payable in any other currency other than Kenya Shillings, being the currency for the time being of the Republic of Kenya;

"First Repayment Date" shall mean the day falling 30 months from the Effective Date of this Agreement, provided always that if such date is not a Business Day the First Repayment Date shall fall on the next succeeding day which is a Business Day;

"Interest Payment Date" shall mean the last day of an Interest Period;

"Interest Period" shall mean, subject as hereinafter mentioned, a period of six (6) months. The first Interest Period shall commence on the Effective Date of this Agreement and end on the next Interest Payment Date and each successive Interest Period will commence on the Interest Payment Date for the preceding Interest Period.

Provided however;

- (a) if the Interest Payment Date falls on a day which is not a Business Day the relevant Interest Period will end on the next day which is a Business Day,
- (b) if such day shall fall in the following month, then the relevant Interest Period shall be abbreviated to end on the last Business Day of the preceding month, and
- (c) in no case shall any Interest Period end after the Final Repayment Date.

"Interest Rate" shall have the meaning set forth in Clause 5;

"LIBOR" means, in relation to any Disbursement:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for USD for the Interest Period of that Disbursement) the Reference Bank Rate, at or about 11:00 a.m. (London time) on the Quotation Day for USD and for a period comparable to the Interest Period of that Disbursement.

"LIBOR Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York.

"Loan" shall mean the Loan defined in the preamble to this Agreement, or the balance of the principal amount thereof outstanding, from time to time, whichever is the less.

"Margin" shall mean 2.30 % (two point three zero percent) per annum.

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

"Party" means a party to this Agreement.

"Process Agent" shall mean the person designated by the Borrower and the Bank to act as their respective agent for the service of process in accordance with Clause 15 (d) below;

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two LIBOR Business Days before the first day of that period.

"Reference Banks"- means the principal London offices of Barclays Bank plc, Deutsche Bank AG and Royal Bank of Scotland plc, or such other banks as shall be appointed by the Lender in consultation with the Borrower.

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to the nearest integral multiple of 1/16%) as supplied to the Lender at its request by the Reference Banks, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market, in Dollars, for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

"Request for Disbursement" means a written request to effect a Disbursement of the Loan, sent by the Borrower to the Bank, substantially in the form of Exhibit "E" hereto.

"Screen Rate" means, the London interbank offered rate administered by the ICE Benchmark Administration Limited (or any other organisation or entity which takes over the administration of that rate) for the USD for the relevant period (rounded upwards to the nearest integral multiple of 1/16%) displayed on the appropriate pages LIBOR01 (in respect of periods up to and including 12 months) or page ICAP1 (in respect of periods of over 12 months) of the Reuters screen (or any replacement Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Lender may specify another page or service displaying the appropriate rate after consultation with the Borrower.

"Taxes" shall mean and include all present and future taxes, levies, withholds, imposts, duties, deductions, fee or charges, of whatsoever nature, together with interest thereon, imposed, levied or made by or within the Republic of Kenya or any political subdivision or taxing authority thereof or therein or in the country from which any payment due under this Agreement is effected by the Borrower except for taxes which may be imposed in Israel or the USA on the overall net income of the Bank.

1.3 All headings are inserted for ease of reference only and shall be disregarded in the construction and interpretation of this Agreement.

1.4 In this Agreement, unless the context otherwise requires:

- (i) References to clauses and schedules are to be construed as references to clauses and schedules herein and hereto;

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- (ii) References to the Agreement or to any specified provision thereof, or any other document shall be construed as references to the Agreement, to the respective provision or to the respective document, as the case may be, as amended with the agreement of the relevant parties, and in force at any relevant time;
- (iii) Any references to a person shall be construed as references to an individual, firm, company, corporation, unincorporated body of persons, any state or any agency thereof;

2. The Loan

Subject to the terms and conditions of this Agreement, the Borrower hereby agrees to borrow from the Bank, and the Bank, relying (inter alia) upon the representations and warranties contained in this Agreement and subject to the fulfillment of all the other conditions precedent set forth in this Agreement to the full satisfaction of the Bank, hereby agrees to lend to the Borrower the Loan, which will be effected in Disbursements during the Commitment Period, up to the aggregate maximum amount of US\$ 71,408,014 (seventy one million four hundred and eight thousand and fourteen United States Dollars).

The Borrower shall apply all Disbursements of the Loan to finance:

- (a) 100% of ASHRA's Premium; and
- (b) The payment by the Buyer to the Seller pursuant to the Commercial contract of up to 100% of the gross amount of the relevant Commercial Invoice(s) relating to the supply of goods, or 90% of the gross amount of the relevant Commercial Invoice(s) relating to the provision of services and works.

Notwithstanding the aforesaid, the Bank is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

3. Availability and Disbursement of the Loan

The Loan will be available during the Commitment Period and will be disbursed, subject to the fulfillment of all of the conditions precedent set out in Clause 12 below, to the full satisfaction of the Bank, as follows:

- (a) Within 7 (seven) Business Days from the date of receipt by the Bank for each Disbursement of all of the following original documents:
 - (i) A duly completed Request for Disbursement signed by the Borrower;
 - (ii) In relation to the first Disbursement, a copy of the invoice issued by ASHRA for the ASHRA's Premium (hereinafter: the "ASHRA Invoice");
 - (iii) In relation to any subsequent Disbursement, a commercial invoice issued by the Seller in USD (hereinafter "the Commercial Invoice"), covering one hundred percent of the

price of goods supplied and/or services rendered under the Commercial Contract), together with:

- (iv) A Buyer's Certificate with respect to such Commercial Invoice/s;

the Bank shall advance to the Borrower a Disbursement in an amount equal to 100% of the ASHRA Invoice, 100% of the gross amount of the relevant Commercial Invoice(s) relating to the supply of goods, or 90% of the gross amount of the relevant Commercial Invoice(s) relating to the provision of services and works.

- (b) Each such Disbursement as aforesaid shall be disbursed to the account of the Seller maintained with the Bank, except in the case of the first Disbursement, whose proceeds shall be paid to ASHRA.
- (c) The Bank shall notify the Borrower of the date and amount of each Disbursement by fax or by e-mail.
- (d) Disbursements can only be effected within the Commitment Period.
- (e) After each Disbursement, the Bank shall furnish to the Borrower a schedule of repayments and after termination of the Commitment Period the Bank shall furnish to the Borrower a consolidated schedule of repayments.
- (f) The Bank's responsibility with respect to the examination of documents presented to it under the provisions of sub-clause (a) above shall be limited to checking their apparent compliance as set out in the Uniform Customs and Practice for Documentary Credits No. 600 (2007 Revision). The Bank shall have no obligation whatsoever to examine compliance of the documents furnished by the Seller with the Commercial Contract, nor is the Bank under any obligation to comply with the payment terms contained in the Commercial Contract.

4. Repayment of Principal and Voluntary Prepayment

- (a) The Borrower undertakes to repay to the Bank the principal amount of the Loan in freely transferable Dollars by 16 (sixteen) equal consecutive six-monthly installments. The first such installment shall be repaid by the Borrower on the First Repayment Date and the succeeding 15 (fifteen) installments shall be repaid on the following Interest Payment Dates, provided that the final repayment of the Loan shall be made by no later than 120 (one hundred and twenty) months from the Effective Date of this Agreement.
- (b) Subject to all amounts then due from the Borrower under this Agreement having been paid by the Borrower to the Bank, and subject to receipt of the prior written consent of the Bank, the Borrower may voluntarily prepay the Loan in whole or in part (in multiples of \$1,000,000) provided that (i) prepayment will be made on an Interest Payment Date, (ii) the Bank shall have received from the Borrower not less than 30 (thirty) days prior irrevocable written notice of its intention to make such voluntary prepayment, (iii) the voluntary prepayment may not be made prior to the end of the Commitment Period, and (iv) the Borrower shall pay the Bank breakage costs on the prepayment amount, as customary by the Lender in accordance with its procedures, together with a prepayment fee of 1% of the prepayment amount. Any amount so prepaid shall be applied to the

outstanding installments of principal in the inverse order to the dates prescribed for payment of each installment. Any such amount so prepaid shall not be available for redrawing.

5. Interest

The Borrower shall pay to the Bank on each Interest Payment Date interest in Dollars as calculated by the Bank on the principal amount of the Loan at a rate which shall be the sum of the Margin and the LIBOR (the "Interest Rate"). The Interest Rate with respect to the principal amount of the Loan shall be determined by the Bank by reference to the LIBOR and shall be calculated on the daily balance of the Loan during each Interest Period.

In accordance with the provisions of the Interest Period definition, the Interest Period beginning immediately prior to the First Repayment Date shall end on the First Repayment Date. Consequently, as of the First Repayment Date, the Interest Payment Dates shall coincide, as to dates and the number of payments, with the Repayment Dates set forth in Clause 4 (a) hereof.

Interest shall accrue and shall be computed on the basis of a 360 day-year and for the actual number of days elapsed. Interest shall accrue from and include the first day of an Interest Period but excluding the last day of such Interest Period.

The rate of interest on the Loan determined, from time to time, by the Bank in accordance with the provisions of this Agreement shall be notified by the Bank to the Borrower, within 7 (seven) Business Days after its determination.

6. Substitute Basis for the Loan and events affecting ability to determine the Interest Rate

In the event that the Bank shall at any time determine (each of which determinations shall be binding upon the Borrower) that -

- (i) by reason of changes affecting the London Interbank Market the Bank does not have adequate means to determine in a reasonable manner the LIBOR; or
- (ii) there exists no possibility for the Bank to advance a Disbursement to the Borrower or, if the Loan shall already have been advanced to the Borrower, there exists no possibility for the Bank to continue to maintain the Loan to the Borrower, as a result of the occurrence of either of the following events, namely:-
 - (a) any event which has a material adverse effect on the London Interbank Market; or
 - (b) any changes in the laws, regulations, orders or provisions of the countries from which the Bank is now or shall hereafter be accustomed to borrow Dollars or of or by the governmental, monetary or other competent authorities of such countries or of or by a significant number thereof or by reason of the interpretation of, or changes in the interpretation of, any such laws, regulations, orders or provisions as aforesaid of or by the courts, tribunals or other competent authorities of such countries or of a significant number of them -

then (namely, upon a determination by the Bank of the occurrence of any of the events mentioned in paragraphs (i) or (ii) above) the Bank shall notify the Borrower thereof, and during a period of up to 30 (thirty) days next following the giving of such notice (such period

hereinafter called "the negotiating period") the Bank and the Borrower shall negotiate in good faith with a view to reaching a written agreement, which will, in the Bank's and the Borrower's opinion, from a financial standpoint, be a suitable substitute for the Loan.

If the Bank and the Borrower shall, during the negotiating period, have entered into a written agreement providing for a substitute basis for the Loan hereunder as aforesaid, the validity thereof shall be retroactive to, and effective from, the first day of the negotiating period.

So long as the Bank and the Borrower shall not reach an agreement as aforesaid and if by the end of the negotiating period the Bank and the Borrower shall have failed to enter into a written agreement as aforesaid, then the Bank shall be entitled to refuse to advance any Disbursement to the Borrower; and if the Loan shall already have been advanced to the Borrower and the Bank and the Borrower shall have failed to enter into a written agreement as aforesaid by the end of the negotiating period, then the Borrower shall pay to the Bank at the end of the negotiating period, upon demand from the Bank, the Loan provided that if any date for the payment of interest on the Loan, as mentioned in Clause 4 of this Agreement, shall fall within the negotiating period, then the Borrower shall pay to the Bank, for that part of the negotiating period as falls after such date for the payment of interest on the Loan aforesaid, in lieu of interest, such sum as shall compensate the Bank for continuing to maintain the Loan for such part of the negotiating period as aforesaid, the amount thereof, as far as reasonably possible, to be documented by the Bank.

Whenever any amount on account of the Loan and the amount of such compensation as aforesaid shall not be paid by the Borrower to the Bank on its due date as aforesaid, then the Borrower shall pay to the Bank thereon such amount as in the Bank's opinion shall compensate the Bank for the period of such non-payment and in addition thereto, interest at the rate of 1.0% (one percent) per annum on such amount of compensation as aforesaid.

7. Increase in Costs

- (a) Where at any time as a result of any Change in Law or as a result of the compliance with any directive or requirement imposed upon, or with any request made or addressed to, the Bank by any central bank or any monetary or other competent authority or of the fulfillment of any obligation or undertaking by the Bank towards any such central bank or any such monetary or other competent authority as aforesaid, whether the compliance with any such directive, requirement or request or the fulfillment of any such obligation or undertaking derives from any Change in Law or from any agreement made or to be made from time to time between the Bank and any such central bank or such monetary or other competent authority as aforesaid, or as the result of the implementation in any jurisdiction of the proposals made by the Basle Committee on Banking Regulations and Supervisory Practices for the international convergence of capital measurements and capital standards whether promulgated or made before or on or after the date hereof (whether or not having the force of law but being of compulsory compliance) the effect of which is to -
- (i) oblige the Bank to hold or to deposit with others non-Israeli currency or liquid assets in non-Israeli currency or to increase the amount of non-Israeli currency or the total of liquid assets in non-Israeli currency to be held by the Bank; or
 - (ii) limit or reduce the volume of credits in non-Israeli currency which may be granted or maintained or the amount of deposits in non-Israeli currency which the Bank is

entitled to deposit with others; or

- (iii) impose or apply any requirements (or apply a change in any requirements which in the Bank's opinion, so far as the Bank is concerned, renders such requirements more onerous) as to ratios between reserves and capital of the Bank on the one hand and credits in non-Israeli currency which the Bank may grant or maintain or on non-Israeli assets or deposits in non-Israeli currency which the Bank is entitled to hold or accept on the other hand; or
- (iv) impose or apply to the Bank any conditions or restrictions (or apply any change which, in the Bank's opinion, so far as the Bank is concerned, renders any conditions or restrictions more onerous) with respect to the London Interbank Market, to its dealings or its activities therein or to this Agreement; or
- (v) impose upon, apply to or require from the Bank, the payment of any interest, penalties, imposts, levies, fees, charges or payments of whatsoever kind (or apply any change, which, in the Bank's opinion, so far as the Bank is concerned, renders such requirements for payment more onerous) -

and the Bank shall determine that the result thereof (namely, of the effects set out in paragraphs (i) to (v) above inclusive or any of them), is to increase the cost to the Bank of advancing a Disbursement to the Borrower or of continuing to maintain the Loan or to reduce the amount of principal, interest or any other sum which the Bank is entitled to receive in connection with the Loan, then (namely, where the result of any of the effects set out in paragraphs (i) to (v) above inclusive, is as hereinbefore mentioned) the Bank shall immediately notify the Borrower of that fact, with detailed documentation, and the Bank shall be entitled to refuse to advance any Disbursement to the Borrower (in the event that the Loan shall not already have been fully advanced) and in the event that the Bank shall have fully advanced the Loan to the Borrower, then the Borrower will pay to the Bank, from time to time, each time upon the Bank's first written demand, accompanied by a certificate from the Bank specifying the amount of compensation claimed and setting out a calculation of the amount in reasonable detail, such amount which in the Bank's reasonable opinion shall compensate the Bank for such increase in cost to the Bank in connection with the Loan or for such reduction in principal, interest or any other sum as aforesaid and the amount from time to time determined by the Bank, by which the Borrower is required to compensate the Bank as aforesaid, shall be binding upon the Borrower. Nothing in this clause shall oblige the Bank to disclose any confidential information relating to the organization of its affairs.

- (b) In the event that the Borrower is required to compensate the Bank pursuant to the provisions of the preceding sub-clause, the Borrower shall be entitled to repay to the Bank the whole of the outstanding balance of the Loan subject to compliance by the Borrower with the conditions, mutatis mutandis, set out in Clause 4 (b) hereof and further, subject to payment by the Borrower to the Bank of the amount by which the Bank is entitled to be compensated for continuing to advance or maintain the Loan from the date of the Bank's demand (pursuant to the provisions of the preceding sub-clause) until payment in full of the outstanding balance of the Loan.
- (c) The Bank shall endeavor to take such steps as may be necessary to minimize the amount demanded under Clause 7 (a).

8. Illegality and Required Prepayment

If the Bank shall at any time determine (which determination shall be binding upon the Borrower) as a result of any Change in Law, that it shall have become unlawful or impossible for the Bank to advance any Disbursement to the Borrower or (to the extent that the Loan shall already have been advanced to the Borrower) it shall have become unlawful or impossible for the Bank to continue to maintain the Loan, then (namely, upon any such determination by the Bank), the Bank shall be entitled to refuse to grant the Loan to the Borrower or (to the extent that the Loan shall already have been advanced to the Borrower) to demand immediate payment by the Borrower of the outstanding balance of the Loan and interest accrued thereon and the Borrower hereby undertakes to pay to the Bank such outstanding balance of the Loan and interest accrued thereon within 60 (sixty) days of the Bank's first written demand therefor, unless such Change in Law requires a shorter period, provided always that such demand shall contain a statement to the effect that the demand is based upon the provisions of this clause and shall specify in reasonable detail the relevant Change in Law.

9. Payments

- (a) All payments to be made by the Borrower under this Agreement shall be made on a Business Day, in freely transferable US Dollars, in full, without set-off or counterclaim whatsoever, free and clear of any deduction or withholding, in Dollars on the due date to the account of the Bank, Principal Branch, Tel-Aviv, account number 001-1-431244 at JP Morgan Chase New York or at such other place as the Bank may have notified to the Borrower in advance, under fax/email advice to the Bank - quoting "Government of Kenya - Green Arava".
- (b) If at any time any applicable law, regulation or regulatory requirement or any governmental authority, monetary agency or central banking in the country from which any payment due under this Agreement for account of the Bank is made or any country to whose taxation laws the Borrower is for the time being subject, requires the Borrower to make any deduction or withholding in respect of Taxes from any payment due under this Agreement for the account of the Bank, the sum due from the Borrower in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Bank receives on the due date for such payment a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made and the Borrower shall indemnify the Bank against any losses or costs actually incurred by it by reason of any failure of the Borrower to make any such deduction or withholding or by reason of any increased payment not being made on the due date for such payment.
- (c) When any payment under this Agreement would otherwise be due on a day which is not a Business Day, the due date for payment shall be extended to the next following Business Day unless such Business Day falls in the next calendar month in which case payment shall be made on the immediately preceding Business Day.
- (d) Unless otherwise instructed by ASHRA, all payments received by the Bank from the Borrower under this Agreement shall be applied in the following manner:
 - (i) in or towards payment to the Bank of all costs, charges or expenses, inter alia, incurred by the Bank in enforcing its rights hereunder;

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- (ii) in or towards payment of the Commitment Fee and Management Fee as per Clauses 16 and 17 of this Agreement;
- (iii) in or towards payment of Default Interest;
- (iv) in or towards payment of interest at the Interest Rate;
- (v) in or towards repayment of the principal amount of the Loan.

10. Default Interest and Indemnity

- (a) Notwithstanding anything contained in this Agreement, each amount not paid by the Borrower to the Bank on its due date for payment hereunder (whether due by scheduled maturity, by acceleration, by demand or otherwise) shall, for the period commencing from its due date for payment until the date of actual payment thereof by the Borrower, to the extent permitted by law, bear interest at the rate of 2.0% (two per cent) per annum above the Interest Rate. A certificate by any employee of the Bank as to the rate of interest payable under the provisions of this clause shall (in the absence of manifest error) be binding upon the Borrower.
- (b) If the Bank receives or recovers any part of the Loan, including principal, interest or default interest, otherwise than on an Interest Payment Date (whether on scheduled maturity, acceleration, demand or otherwise) then the Borrower shall indemnify the Bank against any loss and expenses which the Bank shall certify as sustained or incurred by it in liquidating or re-employing deposits acquired to effect or maintain such amount or any part thereof.
- (c) The Borrower shall indemnify the Bank upon the Bank's first demand against any loss or liability which the Bank sustains or incurs as a consequence of:
 - (i) the occurrence of an Event of Default;
 - (ii) acting or relying on any notice which the Bank believes to be genuine, correct and authorized.

11. Representations and Warranties

The Borrower represents and warrants to the Bank (which representations and warranties shall be deemed to be repeated on the drawdown of each part of the Loan and until full payment of all amounts due from the Borrower to the Bank under the terms of this Agreement) as follows:

- (a) The Borrower has full legal power and authority under the laws of the Republic of Kenya to sue and be sued, and has full legal power and authority to execute, deliver and perform this Agreement and all other documents required or permitted to be executed and delivered by it in connection with this Agreement, inter alia, to obtain the Loan in USD and to effect, in USD, all payments required to be made under this Agreement and/or any other documents contemplated hereby or referred to herein. All legislative, administrative and other governmental action required to authorise the transactions contemplated hereby and the execution, delivery and performance of this Agreement by the Borrower have been duly taken and are in full force and effect.

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- (b) All necessary consents, licenses, approvals, authorisations, declarations, filings, registrations or recordings required to be obtained by the Borrower and/or necessary for the valid execution and delivery of the Agreement and all other documents to be furnished from time to time by the Borrower thereunder and/or for the consummation of the transactions contemplated thereby and/or for the payments required to be made by the Borrower under the Agreement, have been obtained and are in full force and effect, including the Special Authorisation of the Borrower, in the form appearing in Exhibit C hereto.

None of the above documents, contain any restriction, limitation, provision, condition precedent to be fulfilled, or any other requirement which may in any manner affect the ability of the Borrower to perform each and all of its obligations under the Agreement and/or which may in any way prejudice the Bank's ability to enforce against the Borrower any of the terms of the Agreement

- (c) The execution and delivery of this Agreement and the consummation of any of the transactions herein contemplated, and compliance by the Borrower with the terms and provisions thereof, do not and would not (i) violate, contravene or conflict with the constitution of the Republic of Kenya and/or any provision of law, statute, regulation, ordinance or similar enactment that applies to the Borrower, or (ii) violate any judgment, tribunal decision, order or permit applicable to the Borrower or (iii) violate or contravene any treaty, agreement or other instrument to which the Republic of Kenya is a party;
- (d) The Agreement has been duly executed and delivered by the Borrower and constitutes legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with its terms and is in proper legal form for enforcement in the Republic of Kenya. The obligations of the Borrower under the Loan and this Agreement, constitute direct, unconditional, unsecured and general obligations of the Borrower, ranking at least pari passu in priority of payment with all other unsecured obligations of the Borrower from time to time outstanding; and the execution of the Agreement and the performance by the Borrower of its obligations hereunder will not result in the existence of, or obligate the Borrower to create, any encumbrance over any of its existing or future assets ;
- (e) The execution, delivery and performance of this Agreement, and the performance of its obligations hereunder and thereunder constitute private and commercial acts rather than public and governmental acts;
- (f) The Borrower is subject to civil and commercial law with respect to its obligations under the Loan and this Agreement;
- (g) Neither the Borrower nor any of its revenues, property or assets enjoys, under the constitution and/or the laws of the Republic of Kenya, any right of immunity from jurisdiction of courts, suit, execution upon a judgement, attachment prior to judgement or in aid of execution upon a judgement, set-off or any other legal proceeding with respect to the Borrower's obligations under this Agreement or in connection with the enforcement of any judgement or order arising therefrom, under any law or in any jurisdiction where an action may be brought under or relating to the Agreement. The waivers by the Borrower of any right of immunity contained in this Agreement, are irrevocably binding on the Borrower;

- (h) There is no tax, levy, impost, deduction, charge or withholding imposed, levied or made by the Republic of Kenya or any political subdivision or taxing authority thereof or therein either (i) on or by virtue of the execution or delivery of this Agreement or (ii) on any payment of principal, interest, fees, or other payment to be made by the Borrower pursuant to this Agreement. All payments of principal and interest pursuant to this Agreement will be made free and clear of all taxes, and no such payment in the hand of the Bank is subject to any tax, levy, impost, deduction, charge or withholding imposed by the Republic of Kenya or any political subdivision or taxing authority thereof.

No stamp taxes or similar taxes are now due or will become due in connection with the execution, delivery, performance and enforcement of this Agreement.

- (i) The obligations of the Borrower to make payments hereunder and to observe and perform all of its other obligations under the Loan and this Agreement are unconditional and irrevocable obligations and may not be discharged by reason of any matter affecting the Commercial Contract including without limitation the performance, frustration or validity of any of same or the destruction, non-completion or non-functioning of works to be executed, or goods or services to be supplied thereunder or the insolvency or dissolution of the Seller;
- (j) The Bank is not and nor will it be deemed to be resident, domiciled, carrying on business or subject to taxation in the Republic of Kenya, by reason only of the execution, delivery, performance or enforcement of this Agreement, or receipt of any payment from the Borrower under this Agreement;
- (k) No event of default as set out in Clause 14 hereof has occurred nor has any event occurred, which with the giving of notice and/or lapse of time, would constitute such an event of default under this Agreement;
- (l) The choice by the Borrower of the laws of England to govern this Agreement and the submission by the Borrower to the jurisdiction of the courts of England are valid and binding on the Borrower and do not, in any manner, contravene the constitution and/or any law of the Republic of Kenya. Any judgment obtained in the courts of England will be recognised and be given effect to in the courts of Republic of Kenya;
- (m) Each and all information, reports, documents and other details furnished by the Borrower to the Bank in connection with the negotiation, preparation, execution or delivery of this Agreement are true and accurate when made in all material respects and not misleading, do not omit material facts and all reasonable inquiries have been made by the Borrower to verify the facts contained therein;
- (n) It is not necessary, under the laws of the Republic of Kenya: (i) in order to enable the Bank to enforce its rights under this Agreement or (ii) by reason of the execution, delivery and performance of this Agreement by the Bank, or the receipt of any payment from the Borrower under the Agreement, that the Bank should be licensed, qualified or otherwise entitled to carry on business in the Republic of Kenya;
- (o) Each of the Authorised Signatories executing this Agreement is at the time of such execution duly appointed Authorised Signatories of the Borrower, and any other document in the framework of this Agreement has been executed by duly appointed Authorised Signatories;

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- (p) No litigation, arbitration or administrative proceeding is pending against the Borrower and/or the Central Bank of the Republic of Kenya (i) in which there is a reasonable possibility of an adverse decision which would materially affect the Borrower's ability to perform its payment obligations under this Agreement and/or (ii) which questions the legality, validity or binding effect of any material provision of this Agreement;
- (q) Under the laws of the Republic of Kenya, in order to ensure the legality, validity, enforceability and admissibility in evidence of this Agreement in the Republic of Kenya, it is not necessary that this Agreement or any other documents be filed or recorded with any court or other authority in the Republic of Kenya, or that any stamp or any Taxes of the Republic of Kenya be paid in connection or in respect of this Agreement;
- (r) There is no fact that the Borrower has not disclosed to the Bank, which could have an adverse effect whatsoever on the validity, performance or enforceability of this Agreement, or on the financial condition of the Borrower.

12. Conditions Precedent and Entry into Force of this Agreement

The obligations of the Bank hereunder, and particularly the obligation of the Bank to disburse the Loan as provided herein, are subject to and conditional upon the following conditions having been met to the full satisfaction of the Bank not later than ninety (90) days after the date of this Agreement, which date shall be the Effective Date of this Agreement, after which the Bank shall have the right to declare in writing that all such obligations shall be considered null and void; the Bank shall notify the Borrower and the Seller the Effective Date of the Agreement and thereafter the Borrower may draw down the Loan in the manner set out in Clause 3 above:

- (a) the Bank shall have received:
 - (i) copies of the documents referred to in Clause 11 (b) above certified by the Borrower;
 - (ii) a legal opinion issued by the Attorney General on behalf of the Borrower addressed to the Lender and to ASHRA in the text of Exhibit "A" hereto;
 - (iii) a legal opinion, issued at the cost of the Lender, addressed to the Lender and to ASHRA from an independent English legal counsel chosen by the Bank and a legal opinion, issued at the cost of the Lender, addressed to the Lender and to ASHRA from an independent Republic of Kenya legal counsel, as to such matters relating to this Agreement as the Bank or ASHRA may specify.

The Borrower shall furnish such English and/or Kenyan legal counsel with each and all documents, consents, approvals, favorable opinions and/or other information, as shall be deemed necessary by the legal counsel in order to render his legal opinion.

 - (iv) evidence that the Process Agent referred to in Clause 15 (d) below has been appointed by the Borrower and that such Process Agent has accepted such appointment;
 - (v) a copy of the Commercial Contract duly signed by the Seller and the Buyer, together with a written notification from the Buyer through the Borrower and the

Seller that the Commercial Contract is in full force and effect, together with an amendment or side-letter signed by the Seller and the Buyer, clarifying that the "Bill of Quantities" in respect of the Commercial Contract as referred to therein, and the Commercial Invoices financed by the Bank shall be in USD;

- (vi) ASHRA's Policy in favour of the Bank, in form and substance satisfactory to the Bank, in full force and effect;
 - (vii) such additional documentation and undertakings that the Bank may require from the Seller;
 - (viii) payment due to the Lender on account of the Commitment Fee as per Clause 16 of this Agreement (if due), the Management Fee as per Clause 17 of this Agreement and the submission of a Request for Disbursement of ASHRA premium as per Clause 18 of this Agreement, and all other costs and expenses due in accordance with this Agreement;
 - (ix) The Bank shall have received from the Buyer a Certificate of Incumbency of the Buyer in the form of Exhibit "D" hereto;
 - (x) The Bank shall have received a Special Authorization of the Borrower in the form of Exhibit "C" hereto together with a Certified Copy of each Authorised Signatories' passport and a Certified Copy of another identification certificate acceptable to the Lender.
 - (xi) The Borrower not being in breach of any of its obligations under any agreement or instrument with any lender covered by ASHRA.
 - (xii) The Borrower providing such other information, documents and/or certificates as the Bank and/or ASHRA may reasonably require from it, in order to clarify, substantiate, verify or otherwise enlighten any of the issues, legal aspects and/or other matters arising or resulting from the documents furnished by the Borrower in accordance with this Agreement.
- (b) The representations and warranties of the Borrower contained in this Agreement shall continue to be true and correct;
 - (c) That no Event of Default or an event which, but for the giving of a notice or the lapse of time or both, shall constitute an Event of Default, has occurred and is continuing.
 - (d) There has not occurred any event that in the opinion of the Bank and/or ASHRA constitutes a material adverse change of circumstances in connection directly or indirectly to this Agreement or of the conditions, capabilities or prospects of the Borrower to comply with its obligations under this Agreement, or which, in the opinion of the Bank and/or ASHRA, may jeopardize the performance of the Commercial Contract.
 - (e) The Commercial Contract will be in force and/or and the Bank has not received notice of breach of the Commercial Contract from the Seller and/or the Borrower;
 - (f) The ASHRA's Policy remains in full force and effect;

- (g) There being no legal or other impediment, in the opinion of the Bank, that may affect or otherwise prejudice the automatic and complete transfer of the proceeds of the Loan from being paid.

Conditions (b) to (g) above, and the payment of current installment of the Commitment Fee set forth in Clause 16 will continue to be conditions precedent in respect of each Disbursement.

13. Borrower's Undertakings

The Borrower hereby undertakes with the Bank that so long as any sums remain due to the Bank under the terms of this Agreement:

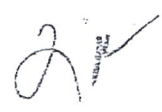
- (a) to furnish the Bank, with the new specimen signature of each Authorised Signatory, if and when such person(s) is/are so appointed and such signatures shall be notified by the Borrower to the Bank in accordance with the provisions of this Agreement;
- (b) to inform the Bank as soon as possible if any of the representations and warranties contained in this Agreement cease to be true or correct;
- (c) to obtain and promptly renew (if necessary) all consents, licenses, approvals and authorizations as may be required under any applicable law or regulation to enable the Borrower to perform any of its obligations under this Agreement and to comply with the terms of any such consents, licenses, approvals and authorizations;
- (d) to cause its payment obligations under this Agreement to rank at all times at least *pari passu* in priority of payment with all other unsecured External Debt of the Borrower.

14. Events of Default and/or Acceleration

Upon the occurrence of any of the events detailed hereunder the Bank may, at its option, (a) terminate with immediate effect its obligation to make further Disbursements and/or (b) declare the Loan, or any part thereof and all interest accrued and unpaid thereon and all other amounts payable under this Agreement or any part thereof to be forthwith due and payable, and/or (c) without the necessity of any notice to the Borrower pursue and enforce any of the Bank's rights and remedies whereupon the same shall be immediately due and payable, without presentment, demand, protest or further notice of any kind.

- (a) If the Borrower fails to pay when due any amount of principal of, or any interest on the Loan, or fails to pay any other amounts payable under this Agreement, unless its failure to pay is caused by administrative or technical error and payment is made within three Business Days of its due date;
- (b) If the Borrower fails to perform or duly observe any other term, covenant or agreement contained in this Agreement and such failure continues for a period of 7 (seven) days after notice thereof shall have been given by the Bank to the Borrower;
- (c) If it transpires that any representation or warranty made or deemed to have been made by the Borrower under or in connection with this Agreement or any document to be delivered hereunder, is incorrect, incomplete or misleading in any material respect when made or deemed to have been made;

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- (d) If this Agreement ceases to be legal, valid and binding upon and enforceable against the Borrower or if its terms and conditions or binding effect or enforceability is contested by the Borrower and/or if this Agreement be, in any manner, terminated or becomes or be declared ineffective and/or if the Borrower shall repudiate this Agreement;
- (e) If any approval, authorisation or consent which is necessary for the fulfillment of any obligation under this Agreement is revoked, withdrawn or withheld or otherwise fails to remain valid and subsisting in full force and effect (including, without limitation, any of the specific approvals stipulated in clause 11 (b) and/or if the Borrower denies its liability under this Agreement and/or any part thereof whether by a general suspension of payments or by declaring a general moratorium in the payment of External Debt, or if any law, decree, directive, regulation or policy of or in the Republic of Kenya shall be enacted, issued or adopted which shall have the effect of rendering any provision of this Agreement void or unenforceable and which should impair the ability or right of the Borrower to perform its payment obligations hereunder;
- (f) If an event of default has been declared with respect to External Debt which results in the acceleration of the maturity of any of the External Debts of the Borrower;
- (g) If the Borrower fails to fulfill any payment or other obligation under any other agreement made between the Borrower and any financial institution, whether such agreement exists on the date of this Agreement or at any time thereafter, provided that such failure is considered an event of default under such agreement or in respect of such obligation;
- (h) If the Bank or ASHRA determines that an occurrence has taken place which is liable to materially and adversely affect the Borrower's financial ability to comply with all or any of the obligations of the Borrower under this Agreement;
- (i) If it becomes unlawful at any time for the Borrower to perform all or any of its obligations under this Agreement;
- (j) If the ASHRA's Policy is cancelled or ceases to be in full force and effect at any time.
- (k) If any attachment is imposed on all or a material part of the Borrower's assets outside the Republic of Kenya or any other measure having materially the same effect.
- (l) If the Republic of Kenya shall cease to be or is suspended as a member of the International Monetary Fund (IMF).
- (m) The Commercial Contract shall be cancelled or ceases to be in full force and effect at any time
- (n) If any moratorium, standstill or deferral, whether de facto or de jure, is proposed, declared or imposed, with respect to any External Debt of the Borrower
- (o) There shall occur any deterioration in the assets and/or financial condition of the Borrower, as a result of which the Bank shall be of the opinion that this would adversely affect the ability of the Borrower to meet its obligations under this Agreement.
- (p) If a judgement shall be made against the Borrower in such amount which, in the opinion

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Form of Opinion of the Attorney General on behalf of the Borrower

Date: _____, 2015

Bank Leumi le-Israel B.M.

Gentlemen,

This legal opinion is furnished to you pursuant to Clause 12 (a) (ii) of the Buyers Credit Loan Agreement dated August ____, 2015 (the "Agreement") between THE GOVERNMENT OF THE REPUBLIC OF KENYA REPRESENTED BY THE NATIONAL TREASURY (the "Borrower") and Bank Leumi le-Israel B.M. (the "Bank"). Terms used in this opinion which are defined in the Agreement shall have the meanings ascribed to them under the Agreement unless otherwise defined herein.

I am a lawyer and hold a valid license to practice law in the Republic of Kenya, and am qualified to render the legal opinion set forth below.

For the purpose of rendering this legal opinion, I have examined original or certified copies of the following documents:

- (i) the Agreement;
- (ii) the Constitution of the Republic of Kenya (the "Constitution");
- (iii) the Special Authorisation of the Borrower, in the form appearing in Exhibit C to the Agreement.
- (iv) those other documents, agreements and instruments, and such treaties, laws, rules, regulations, orders, writs, judgments, awards, injunctions, and the like, as I have deemed necessary as a basis for the opinions hereinafter expressed.

The opinions expressed herein are limited to questions arising under the actual laws of the Republic of Kenya and I do not purport to express any opinion on any question arising under the laws of any other jurisdiction.

Based upon the foregoing, and having regard for legal considerations which I deem relevant, I am of the opinion that:

1. The Borrower has full legal power and authority under the laws of the Republic of Kenya to sue and be sued, and has full legal power and authority to execute, deliver and perform the Agreement and all other documents required or permitted to be executed and delivered by it in connection with the Agreement, inter alia, to obtain the Loan in US\$ and to effect, in US\$, all payments required to be made under the Agreement and/or any other documents contemplated hereby or referred to therein. All legislative, administrative and other governmental action required to authorise the transactions contemplated thereby and the execution, delivery and performance of the Agreement by the Borrower have been duly taken and are in full force and effect.



2. The Agreement has been duly executed and delivered by the Borrower and constitutes legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with its terms, and is in proper legal form for enforcement in the Republic of Kenya.

The Honourable Mr Henry K. Rotich Cabinet Secretary responsible for finance of the Government of the Republic of Kenya, has been duly and fully authorized and empowered to sign, execute and deliver the Agreement, on behalf and in the name of the Borrower.

3. All necessary consents, licenses, approvals, authorisations, declarations, filings, registrations or recordings which are required to be obtained by the Borrower and/or are necessary for the valid execution and delivery of the Agreement and all other documents to be furnished from time to time by the Borrower thereunder and/or for the consummation of the transactions contemplated thereby and/or for the payments required to be made by the Borrower under the Agreement, have been obtained and are in full force and effect.

None of the aforesaid documents, contain any restriction, limitation, provision, condition precedent to be fulfilled, or any other requirement which may in any manner affect the ability of the Borrower to perform each and all of its obligations under the Agreement and/or which may in any way prejudice the Bank's ability to enforce against the Borrower any of the terms of the Agreement.

4. The execution and delivery of the Agreement and the consummation of any of the transactions therein contemplated, and compliance by the Borrower with the terms and provisions thereof, do not and would not (i) violate, contravene or conflict with the Constitution of the Republic of Kenya and/or any provision of law, statute, regulation, ordinance or similar enactment that applies to the Borrower, or (ii) violate any judgment, tribunal decision, order or permit applicable to the Borrower or (iii) violate or contravene any treaty, agreement or other instrument to which the Republic of Kenya is a party.;
5. The execution, delivery and performance of the Agreement, and the performance of its obligations thereunder constitute private and commercial acts rather than public and governmental acts;
6. The Borrower is subject to civil and commercial law with respect to its obligations under the Loan and the Agreement;
7. There is no tax, levy, impost, deduction, charge or withholding imposed, levied or made by the Republic of Kenya or any political subdivision or taxing authority thereof or therein either (i) on or by virtue of the execution or delivery of the Agreement or (ii) on any payment of principal, interest, fees, or other payment to be made by the Borrower pursuant to the Agreement. All payments of principal and interest pursuant to the Agreement will be made free and clear of all taxes, and no such payment in the hand of the Bank is subject to any tax, levy, impost, deduction, charge or withholding imposed by the Republic of Kenya or any political subdivision or taxing authority thereof.
8. No stamp taxes or similar taxes are now due or will become due in connection with the execution, delivery, performance and enforcement of the Agreement.
9. Neither the Borrower nor any of its assets, revenues or property enjoys, under the Constitution

and/or the laws of the Republic of Kenya, any right of immunity from jurisdiction of courts, suit, execution upon a judgment, attachment prior to judgment, or in aid of execution upon a judgment, set off or any other legal proceeding with respect to the Borrower's obligations under the Agreement or in connection with the enforcement of any judgment or order arising therefrom, under any law or in any jurisdiction where an action may be brought under or relating to the Agreement,

10. The waivers by the Borrower contained in the Agreement of any right or immunity are irrevocably binding on the Borrower.
11. The appointment by the Borrower of the process agent and consent of the Borrower to the jurisdiction of courts of England with respect to matters arising from the Agreement, as contained in Clause 15 of the Agreement, are binding and enforceable against it and do not, in any manner, contravene the constitution and / or any law of the Republic of Kenya. Based upon existing case law it is my opinion that there are no rights or obligations under the Agreement, the accomplishment or enforcement of which by either party thereto would be deemed contrary to public policy of the Republic of Kenya and that in any action or proceeding relating to the Agreement in any court of the Republic of Kenya, such court would recognize and give effect to the provisions of clause 15 of the Agreement..
12. No event has occurred and is continuing which constitutes, or which, with the giving of notice or the lapse of time or both, would constitute, an Event of Default, according to Clause 14 of the Agreement.
13. The obligations of the Borrower under the Loan and the Agreement constitute direct, unconditional, unsecured and general obligations of the Borrower, ranking at least pari passu in priority of payment with all other unsecured obligations of the Borrower from time to time outstanding; and the execution of the Agreement and the performance by the Borrower of its obligations thereunder will not result in the existence of, or obligate the Borrower to create, any encumbrance over any of its existing or future assets.
14. Each and all information, reports, documents and other details furnished by the Borrower to the Bank in connection with the negotiation, preparation, execution or delivery of the Agreement are true and accurate when made in all material respects and not misleading, do not omit material facts and all reasonable inquiries have been made by the Borrower to verify the facts contained therein.
15. Each of the officers or representatives of the Borrower who has executed or delivered the Agreement and any other documents to be executed or delivered by the Borrower in connection with the Agreement, is duly and properly in office and fully authorized to execute or deliver the Agreement or such other documents, as the case may be, on behalf of the Borrower.
16. The provision that the law of England shall govern the interpretation and execution of the Agreement, as contained in Clause 15(a) of the Agreement, is binding and enforceable against the Borrower.
17. The obligations of the Borrower under the Agreement may be enforced (by judgment and levy) in the courts of the Republic of Kenya and a final judgment against the Borrower for the payment of money obtained in the courts of England, pursuant to service of process in the manner specified in the Agreement would be recognized, conclusive and enforceable in the courts of the Republic of Kenya.

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19. The obligation of the Borrower to make payments and to observe and perform all of its other obligations under the Agreement are unconditional and irrevocable obligations and may not be discharged by reason of any matter affecting the Commercial Contract including, without limitation, the performance, frustration, or validity of any of same or the destruction, non-completion or non-functioning of works to be executed or goods or services to be supplied thereunder or the insolvency or dissolution of the Seller.
20. To ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in the Republic of Kenya, it is not necessary that the Agreement or any other documents be filed or recorded with any court or other authority in the Republic of Kenya, [excepting those specified in paragraph 3 of this opinion].
21. It is not necessary under the laws of the Republic of Kenya (i) in order to enable the Bank to enforce its rights under the Agreement or (ii) by reason of the execution, delivery or performance of the Agreement or the receipt of any payment from the Borrower under the Agreement, that the Bank should be licensed, qualified or entitled to carry on business in the Republic of Kenya .
22. The Bank is not and will not be deemed to be resident, domiciled, carrying on business or subject to taxation in the Republic of Kenya by reason only of the execution, delivery, performance or enforcement of the Agreement or the receipt of any payment from the Borrower under the Agreement.
23. No litigation, arbitration or administrative proceeding is pending against the Borrower and/or the Central Bank of the Republic of Kenya (i) in which there is a reasonable possibility of an adverse decision which would materially affect the Borrower's ability to perform its payment obligations under the Agreement and/or (ii) which questions the legality, validity or binding effect of any material provision of the Agreement.
24. Any Assignment effected by the Bank of its rights and/or obligations under the Agreement (whether partially or in whole) (hereinafter: an "Assignment") which shall be made by the Bank in favour of any third party, (the "Assignee") or by each such Assignee thereafter, irrespective of whether made prior to the entry into force of the Agreement or thereafter and/or prior to the occurrence of an Event of Default or thereafter, shall:
 - (a) be recognized as legally binding upon the Borrower; and
 - (b) grant the Assignee a valid and enforceable rights pursuant to the terms of the Agreement, as if the Assignee were the original lending party under the Agreement.

The Bank and ASHRA may rely on this opinion on each Disbursement on account of the Loan, as if this opinion were dated on and as of the date on which each part of the Loan is disbursed, unless I give the Bank prior written notice before said date of any such change in this opinion.

I am aware of the fact that the Bank and ASHRA are relying and shall rely on this opinion for the purpose of granting the Loan under the Agreement and for the issue of ASHRA's Policy.

Very truly yours,

SAMPLE

SUMMARY OF STATEMENT FOR PAYMENT ON ACCOUNT

CONTRACT NAME: CONSTRUCTION WORKS OF THE 10,000 ACRE MODEL FARM FOR THE GALANA/KULALU FOOD SECURITY PROJECT, TANA RIVER AND KILIFI COUNTIES, REPUBLIC OF KENYA		
CONTRACT NO: NIB/T/003/2014-2015		CERTIFICATE No.
CONTRACTOR: GREEN ARAVA LIMITED		
VALUATION AS AT _____		
i. Original Contract Price:		
ii Revised Contract:		
	Summary Sheet	
Item	Description	
1	Previous Gross work done	
2	Present Gross work done	
3	Cumulative Gross work done (1+2)	
4	Materials on site	
5	Dayworks	
6	Variation Orders	
7	Extra works	
8	Sub Total (3 to 7)	
9	Previous Retention amount at 10%	
10	Present Retention amount at 10%	
11	Cumulative Retention amount at 10% (9+10)	
12	Sub Total (8-11)	
13	interest on late payment	
14	Claims	
15	Price Adjustment a) in foreign indices	
	b) in local indices	
16	Sub Total (12 to 15)	
17	Amount of Advance Payment	
18	Previous Recovery of Advance Payment	
19	Present Recovery of Advance Payment	
20	Cumulative Net advance (18 + 19)	
21	Balance of Advance Payment (17-20)	
22	Cumulative Net due to Contractor	

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	(16 - 20)	
	23 Previous Payments	
	24 Net Due to Contractor (22 - 23)	
Submitted by:		Date
Contractor		
Checked By:		Date
Resident Engineer		
Recommended for Payment by:		Date
Deputy General Manage. ES		
Approved By:		Date
General Manager-NIB		

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THE PUBLIC FINANCIAL MANAGEMENT ACT 2012

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA REPRESENTED BY THE
NATIONAL TREASURY AND BANK LEUMI LE-ISRAEL B.M.

CONCERNING

CONSTRUCTION WORKS OF THE GALANA/KULALU FOOD SECURITY PROJECT

BUYERS CREDIT LOAN AGREEMENT FOR US\$ 71,408,014.00

SPECIAL AUTHORIZATION

In accordance with the provisions of the Public Financial Management Act 2012, I
Cabinet Secretary for the time being responsible for the National Treasury in the Government
of the Republic of Kenya, do hereby authorize, Director, Resources Mobilization
Department;, In-charge of Israel Desk and, Chief Accountant, all officers
of the Resources Mobilization Department, National Treasury and whose names and specimen
signatures appear here under to sign on behalf of the Government of the Republic of Kenya,
withdrawal applications, forwarding disbursement letters related to the projects financed by
the Government of the Republic of Kenya and to execute individually all matters arising with
the implementation of the above-mentioned Loan Agreement.

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CABINET SECRETARY/THE NATIONAL TREASURY

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Exhibit "D"

Certificate of Incumbency of Buyer

To: Bank Leumi le-Israel B.M.

Date: _____

With refence to the Buyers Credit Loan Agreement signed between Bank Leumi le-Israel B.M. and The Government of The Republic of Kenya represented by The National Treasury as Borrower dated August ____, 2015 (the "Loan Agreement") we the undersigned hereby certify that the following are the names, offices and true specimen signatures of the officers each of whom will, and shall continue to be (until you receive authorised written notice from us that they or any of them no longer continue to be) the Buyer's Representative for the purpose of approving and executing the Acceptance Certificate.

We hereby undertake to inform you should any other officers or Representative be appointed in addition to or in place of the officers named hereunder.

Name	Office	Specimen Signature
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Yours faithfully,

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EXHIBIT "E" - Request for Disbursement

From: The Government of The Republic of Kenya represented by The National Treasury

To: Bank Leumi le-Israel B.M.

Date: _____

Dear Sirs,

Re: The Government of The Republic of Kenya represented by The National Treasury
US\$ 71,408,014.00 Buyers Credit Loan Agreement dated August , 2015
(the "Agreement")

1. We refer to the Agreement. This is a Request for Disbursement. Terms defined in the Agreement have the same meaning in this Request unless given a different meaning in this Request.

2. We wish to borrow a Loan on the following terms:

Proposed Disbursement Date: [] (or, if that is not a Business Day, the next Business Day)

Amount: USD _____

3. We confirm that each condition specified in Clause 12 (Conditions Precedent) is satisfied on the date of this Request.

4. [We hereby confirm that this Request is in connection with amounts which are due and payable under the Commercial Invoice/s No. _____.]

[We hereby confirm that this Request is in connection with amounts which are due and payable to ASHRA in respect of ASHRA'S Premium].

5. This Request is irrevocable.

Yours faithfully

.....
authorised signatory for

The Government of The Republic of Kenya represented by The National Treasury,

COPY OF ADDENDUM TO THE
CONTRACT BETWEEN
GOVERNMENT OF KENYA AND
GREEN ARAVA LTD ON 10,000
ACRES MODEL FARM

**AMENDMENT TO THE CONTRACT FOR THE CONSTRUCTION WORKS OF THE 10,000
ACRE MODEL FARM FOR THE GALANA /KULALU FOOD SECURITY PROJECT, TANA
RIVER AND KILIFI COUNTIES , REPUBLIC OF KENYA**

1. This amendment (the "Amendment") is made on the 27th day of JANUARY 2016, is entered into by and between the National Irrigation Board of P.O. BOX 30372-00100 Nairobi, whose registered office is situated at Unyunyizi House, Lenana Road, Nairobi, Kenya (hereinafter called "The Employer") and Green Arava Ltd of Moshav Zofard Arava Zip Code 86830, Israel whose registered office is situated at Muhoya Avenue House No. 53 Lavington (hereinafter called 'the Contractor').

WHEREAS, Contractor and Employer entered into a Construction of works Agreement dated November August 20, 2014 (the "Agreement"); and

WHEREAS, Contractor and Employer entered into a Memorandum of Understanding to negotiate and justify the variation of works dated January 13, 2016 ("MOU"); and

WHEREAS the parties acknowledge that the Agreement is an Admeasurement Contract in which the Employer can introduce variations; and

WHEREAS, Contractor and Employer desire to amend the Agreement to reflect certain changed conditions and the new understanding between the parties as set forth below;

I. Scope of the works

- a) Clause 60.3(ii) The Agreement is hereby amended to reflect the following:
The scope of the work is as per the scope and terms in Annex A.
- b) The employer may re-activate the implementation of any item hereby deferred by issuing a 14 days notice to the contractor subject to written confirmation by the contractor.
- c) The parties agree that the execution of the deferred works shall only be carried out during the subsistence of the Agreement.

II. Performance security

Clause 10.1 this is amended as follows;
The performance security is reduced to Kshs. 97,967,863

III. Contract period

Clause 43.1 as stated in the appendix to form of tender. The contract period shall be reviewed as guided by the conditions of Contract 44.1 and 44.3.

ANNEX A

THE GALANA/KULALU FOOD SECURITY PROJECT, TANA RIVER AND KILIFI COUNTIES, REPUBLIC OF KENYA								
CONTRACT NO: NIB/003/2014-2015								
CONTRACTOR: GREEN ARAVA LIMITED								
Bill No.1 Irrigation systems								
NO	TITLE	DESCRIPTION	AREA (acres)	CONTRACT Ks/Is	AGREED EXPENSE	DEFERRED AMOUNT	REMARKS	
1	Pipe line 1	CP 1,2,3	500	123,965,583.68	115,455,182.00	8,510,401.68	The deferred amount was	
2	Pipe line 2	CP 4,5,6	500	113,040,582.08	103,962,476.00	9,078,106.08	meant to cover some	
3	Pipe line 3	CP 8,9,10	500	99,939,428.08	92,298,136.00	7,641,292.08	accessories that might be	
4	Pipe line 4	CP 12,13,14	500	89,977,627.38	83,415,834.00	6,561,793.38	fabricated on-site. This will be	
5	Pipe line 5	CP 7,11,15	500	66,791,175.18	62,782,530.00	4,008,645.18	covered under contingencies	
6	Pipe line 6	CP 16,17,18	500	77,686,330.86	71,842,308.00	5,844,022.86		
7	Pipe line 7	CP 20,21,22	500	83,484,948.78	77,640,654.00	5,844,294.78		
8	Pipe line 8	CP 19,23,24	500	70,479,265.23	66,144,447.00	4,334,818.23		
	TOTAL CENTRE PIVOT		4,000	725,364,941.27	673,541,567.00	51,823,374.27		
9	Block A	Meant for Vegetables (Replaced with Maize)	900	459,989,607.95	409,332,987.50	50,656,620.45	Since the spacing for maize is more than that of vegetables, some driplines will be deferred	
10	Block B	Maize drip irrigation	1,450	467,833,135.74	437,019,441.50	30,813,694.24	The deferred amount was	
11	Block C	Maize drip irrigation	1,350	306,936,655.09	286,598,732.00	20,337,923.09	meant to cover some	
12	Block D	Maize drip irrigation	1,000	347,138,893.51	322,518,131.50	24,620,762.01	accessories that might be	
13	Block E	Maize drip irrigation	1,300	266,270,196.04	250,190,219.50	16,079,976.54	fabricated on-site. This will be	
	TOTAL DRIP IRRIGATION		6,000	1,848,168,488.33	1,705,659,512.00	142,508,976.33	covered under contingencies	
	TOTAL IRRIGATION		10,000	2,573,533,429.60	2,379,201,079.00	194,332,350.60		
	Pumping station 1			248,866,348.48	222,157,994.00	26,708,354.48	The deferred amount was	
	Intake 1			100,890,000.00	100,890,000.00	-	meant to cover some	
	Pumping station 2			391,441,491.28	361,714,851.20	29,726,640.08	accessories that might be	
	Intake 2			128,300,000.00	128,300,000.00	-	fabricated on-site. This will be	
	PUMPING STATION			869,497,839.76	813,062,845.20	56,434,994.56	covered under contingencies	
	Bill No.3 Logistics centre and Agricultural Machinery							
	Garage, officeblock, clean water supply and power generation, maize store and drier			3,328,356,810.00	819,973,120.00	2,508,383,690.00	maize mill, petrol station, greenhouses, vegetable packing houses deferred	

The farmer needs some help to control the animals and assistance since his crops has been destroyed.



Fredrick.G.Kimwere

Ward Agric Ext Officer

IGOJI WEST WARD

