

No. 16594

**UNITED STATES OF AMERICA
and
NEPAL**

**Grant Agreement relating to the construction of facilities at
Tribhuvan University Institute of Medicine (with annex).
Signed at Kathmandu on 4 February 1976**

Authentic text: English.

Registered by the United States of America on 27 April 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
NÉPAL**

**Accord de don relatif à la construction d'installations pour la
faculté de médecine de l'Université de Tribhuvan (avec
annexe). Signé à Katmandou le 4 février 1976**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 27 avril 1978.

GRANT AGREEMENT¹ BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL AND THE UNITED STATES OF AMERICA FOR TRIBHUVAN UNIVERSITY INSTITUTE OF MEDICINE

Dated: February 4, 1976

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GRANT AGREEMENT

GRANT AGREEMENT, dated February 4, 1976, between HIS MAJESTY'S GOVERNMENT OF NEPAL (hereinafter referred to as "HMG/N") and the UNITED STATES OF AMERICA acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT (hereinafter referred to as "A.I.D.").

¹ Came into force on 4 February 1976 by signature.

Article I. THE GRANT

Section 1.01. THE GRANT. A.I.D. hereby grants to HMG/N an amount (denominated in Nepalese rupees) not to exceed six million eight hundred thousand (6,800,000.00) Indian Rupees to assist the HMG/N in carrying out the Project referred to in Section 2.01. ("Project"). A.I.D. further agrees to grant in the future an additional six million nine hundred fifty thousand three hundred and sixty (6,950,360.00) Indian rupees for the Project, subject to the availability of Indian currency for use in Nepal pursuant to the terms and conditions of the agreement on P.L. 480 and other funds between the Government of the United States and the Government of India dated February 18, 1974,¹ and subject further to the condition that the A.I.D. contribution to the Project shall not exceed seventy five (75) percent of the total costs of goods and services required for the Project. The aggregate amount of the releases under this Agreement is hereinafter referred to as "the Grant". The Grant shall be used to finance a portion of the costs of goods and services required for the Project.

Section 1.02. HMG CONTRIBUTION. HMG/N agrees to contribute to the Project not less than 25% of the total Project cost, and will also provide, or cause to be provided, in timely fashion all funds, in addition to the A.I.D. assistance hereunder, and all other resources required for the punctual and effective carrying out of the Project.

Article II. THE PROJECT

Section 2.01. THE PROJECT. The Project shall consist of the design, construction and supervision of Auxiliary Health Workers Schools for Tribhuvan University, Institute of Medicine at Bharatpur and Pokhara, Nepal, and the design, construction or renovation and supervision of Integrated Demonstration Health Posts with housing facilities as described in Annex A attached hereto, which may from time to time be modified by the parties in writing.

Article III. TERMS OF FINANCING

Section 3.01. TERMS OF FINANCING. The A.I.D. assistance specified in Section 1.01 is provided as a grant for use in accordance with this Agreement. Any interest earned on funds disbursed to HMG/N pursuant to this Agreement shall be promptly returned to A.I.D.

Article IV. CONDITIONS PRECEDENT TO RELEASES

Section 4.01. CONDITIONS PRECEDENT FOR ARCHITECTURAL, ENGINEERING AND OTHER PROFESSIONAL SERVICES. Prior to the release of funds to finance the costs of architectural, engineering and other professional services under this Agreement, HMG/N shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) An opinion of the Secretary of the Ministry of Law and Justice of HMG/N, or of other counsel acceptable to A.I.D., that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, HMG/N and that it

¹ United Nations, *Treaty Series*, vol. 953, p. 65.

constitutes a valid and legally binding obligation of HMG/N in accordance with all of its terms;

- (b) The names of the persons holding or acting in the office of HMG/N specified in Section 8.02 and a specimen signature of each person specified in such statement;
- (c) A two-year curriculum approved by Tribhuvan University;
- (d) The appointment of a Project Manager to the staff of the Dean of the Institute of Medicine.

Section 4.02. CONDITIONS PRECEDENT FOR CONSTRUCTION OF AN ACADEMIC/ADMINISTRATIVE COMPLEX, STUDENT HOSTEL AND STAFF QUARTERS AT BHARATPUR. Prior to the release of funds to finance the cost of constructing an academic/administrative complex, student hostel and staff quarters at Bharatpur, HMG/N shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) Satisfactory evidence that sufficient land has been acquired, or permission granted to the Institute of Medicine to use government-owned land, for the construction of an academic/administrative complex, hostels, and staff quarters at Bharatpur;
- (b) A topographic survey of the project site in Bharatpur;
- (c) Designs, specifications and cost estimates for the construction of an academic/administrative complex, student hostel and staff quarters;
- (d) A list of construction materials which should be stockpiled to support proposed construction activities for the duration of the Project;
- (e) Campus and site development plans;
- (f) Invitation for bid documents for the construction and supply of materials for (c) and (d) above.

Section 4.03. CONDITIONS PRECEDENT FOR CONSTRUCTION OF AN ACADEMIC/ADMINISTRATIVE COMPLEX, STUDENT HOSTEL AND STAFF QUARTERS AT POKHARA. Prior to the release of funds to finance the costs of constructing an academic/administrative complex, student hostel and staff quarters at Pokhara, HMG/N shall, except as A.I.D. may otherwise agree in writing, furnish A.I.D. in form and substance satisfactory to A.I.D.:

- (a) Satisfactory evidence that sufficient land has been acquired, or permission granted to the Institute of Medicine to use government-owned land, for the construction of an academic/administrative complex, hostels, and staff quarters at Pokhara;
- (b) A topographic survey of the project site in Pokhara;
- (c) Designs, specifications and cost estimates for construction of an academic/administrative complex, student hostel and staff quarters;
- (d) A list of construction materials which should be stockpiled to support proposed construction activities for the duration of the Project;
- (e) Campus and site development plan;
- (f) Invitation for bid documents for the construction and supply of materials for (c) and (d).

Section 4.04. CONDITIONS PRECEDENT FOR THE CONSTRUCTION OR RENOVATION OR INTEGRATED DEMONSTRATION HEALTH POSTS AND STAFF QUARTERS. Prior to the release of funds to finance the costs of constructing or renovating Integrated Demonstration Health Posts and staff quarters, HMG/N shall, except as A.I.D. may otherwise agree in writing, furnish A.I.D. in form and substance satisfactory to A.I.D. designs, specifications, cost estimates and invitation for bid documents for construction or renovation of Integrated Demonstration Health Posts with housing facilities in the vicinity of the Auxiliary Health Worker schools at Bharatpur and Pokhara.

Section 4.05. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT. If all of the conditions specified in Sections 4.01 above shall not have been met within sixty (60) days, conditions specified in Section 4.02 and 4.03 within one hundred and eighty (180) days, and conditions specified in Section 4.04 within three hundred and sixty (360) days from the date of this Agreement, or such later dates as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by giving prior written notice to HMG/N.

Section 4.06. NOTIFICATION OF MEETING OF CONDITIONS PRECEDENT. A.I.D. shall notify HMG/N in writing upon determination by A.I.D. that the conditions precedent to release of currency specified in Section 4.01, 4.02, 4.03 and 4.04 have been met.

Article V. COVENANTS AND WARRANTIES

Section 5.01. SPECIAL ACCOUNT. The Institute of Medicine shall establish an account in the Rastra Bank which shall be maintained throughout the life of this Agreement and funds deposited therein shall be made available exclusively for carrying out of the Project (hereinafter referred to as the "Special Project Account").

Section 5.02. INTEGRATED DEMONSTRATION HEALTH POSTS. HMG/N agrees (a) the Integrated Demonstration Health Posts constructed at locations as specified by Ministry of Health, HMG/N with funds provided under the Agreement will be turned over to the Ministry of Health upon completion, (b) the Ministry of Health will provide qualified and experienced staff for the Integrated Demonstration Health Posts, and (c) the Integrated Demonstration Health Posts will be made available to the Institute of Medicine for purposes of training students attending the Auxiliary Health Schools.

Section 5.03. EXECUTION OF PROJECT. HMG/N and A.I.D. will cooperate to assure that the purposes of this Agreement will be accomplished.

To this end:

- (a) HMG/N and A.I.D. shall from time to time, at the request of either party, exchange views through their representatives with regard to the progress of the Project, the performance by HMG/N and A.I.D. of their respective obligations under this Agreement, the performance of the consultants, contractors, and suppliers engaged on the Project, and other matters relating to the Project.
- (b) HMG/N will:
 - (i) Carry out the Project or cause it to be carried out:
 - (A) With due diligence and efficiency, and in conformity with sound technical, financial, and management practices, and

- (B) In conformity with all plans, specifications, contracts, schedules or other arrangements, and with all modifications therein, mutually approved pursuant to this Agreement; and
- (ii) Provide qualified and experienced administrative and professional staff for the Project and allocate such resources to cause the Project to be operated and maintained in such manner as to insure the continuing and successful achievement of the purposes of the Project.

Section 5.04. AMENDMENTS. Except as A.I.D. may otherwise agree in writing, HMG/N shall obtain A.I.D. concurrence prior to any material modification of:

- (a) Designs, specifications, materials list, invitation for bid documents, campus and site development plans submitted to A.I.D. pursuant to Section 4.02 and 4.03;
- (b) Designs and specifications and invitation for bid documents submitted to A.I.D. pursuant to Section 4.04.

Section 5.05. REPORTS. HMG/N shall furnish to A.I.D. such information and reports relating to the Grant and to the Project as A.I.D. may request.

Section 5.06. UTILIZATION OF GOODS AND SERVICES. Except as A.I.D. may otherwise agree in writing, (1) goods and services financed under the Grant shall be used exclusively for the Project and shall not be used to promote or assist any foreign aid project or activity associated with or financed by any country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use and, (2) upon completion of the Project, or at such time as goods financed under the Grant can no longer usefully be employed for the Project, HMG/N may use or dispose of such goods in such manner as HMG/N may deem reasonable.

Section 5.07. TAXATION. This Agreement shall be free from any identifiable taxes, tariffs, duties, fees and other levies imposed under the laws in effect within Nepal. To the extent that (a) any expatriate contractor, including any consulting firm, any personnel of such contractor financed hereunder (other than citizens and permanent residents of Nepal), and any property or transactions relating to such contracts, and (b) any commodity procurement transaction financed hereunder, are not exempt from identifiable taxes, tariffs, duties, fees and other levies imposed under laws in effect in Nepal, HMG/N shall pay or reimburse the same under Section 1.02 of this Agreement with funds other than those provided under the Grant.

Section 5.08. RATE OF EXCHANGE. The exchange rate to be applied in the event of release of Nepalese rupees for purposes of crediting as Indian Rupee equivalent against the total amount of the Grant, shall be the highest available lawful rate at which Nepalese rupees may be bought with Indian rupees in Nepal on the date Indian rupees are converted and deposited in the United States Disbursing Officer's account in Nepal.

Section 5.09. RECORDS, INSPECTIONS, AUDIT. HMG/N will:

- (a) Cause to be maintained, in accordance with sound accounting principles and practices, books and records relating to the Project and to this Agreement, adequate to show, without limitations:
 - (1) The receipt and use of goods and services acquired under the Grant;
 - (2) The nature and extent of solicitations of prospective suppliers of goods and services acquired;

- (3) The basis of award of contracts and orders, and
- (4) The progress of the Project;

Such books and records shall be audited by the Office of the Auditor General of Nepal at such intervals as may be mutually agreed upon by A.I.D. and HMG/N, but not less frequently than annually during the construction period, and copies of HMG/N's audit shall be made available to A.I.D. Such books and records shall also be subject to audit by A.I.D. and shall be maintained by HMG/N for three years after the date of the last release of funds by A.I.D.

- (b) Afford the authorized representatives of A.I.D. the opportunity at all reasonable times to inspect the Project, the utilization of all goods and services financed under the Grant, and HMG/N's books, records and other documents relating to the Project and the Grant. HMG/N shall cooperate with A.I.D. to facilitate such inspections and shall assist A.I.D. representatives with visits within Nepal for purposes related to the Grant.

Section 5.10. DISCLOSURE. HMG/N confirms:

- (a) That all facts and circumstances that it has disclosed, or caused to be disclosed, to A.I.D. in the course of obtaining A.I.D. financing are accurate and complete, and that they include all facts and circumstances that might materially affect the Project and the discharge of its obligations under this Agreement, and
- (b) That it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Project or the discharge of its responsibilities under this Agreement.

Article VI. PROCUREMENT

Section 6.01. PROCUREMENT FROM THE UNITED STATES AND OTHER CODE 935 COUNTRIES. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Section 7.01 of this Agreement shall be used exclusively to finance the procurement for the Project of goods and services having their source in the United States of America or other countries specified in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such procurement.

Section 6.02. ELIGIBILITY DATE. Except as the parties may otherwise agree in writing, no goods or services may be financed under the Grant which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement.

Section 6.03. PLANS, SPECIFICATIONS AND CONTRACTS. (a) Except as A.I.D. may otherwise agree in writing and as long as this agreement remains in effect:

- (1) HMG/N will furnish to A.I.D. upon preparation, any plans, specifications, construction schedules, bid documents and contracts relating to the Project, and any modifications therein, whether or not the goods and services to which they relate are financed under the Grant;
- (2) All of the plans, specifications and construction schedules furnished pursuant to subsection (1) above shall be approved by A.I.D. in writing;
- (3) Any bid documents and documents related to the solicitation of proposals for goods and services financed under the Grant shall be approved by A.I.D. in

writing prior to their issuance, and any plans, specifications and other documents relating to goods and services financed under the Grant shall be in terms of international standards and measurements;

- (4) The following contracts, if any, financed under the Grant shall be approved by A.I.D. in writing prior to their execution:
- a. Contracts for engineering and other professional services,
 - b. Contracts for construction services,
 - c. Contracts for such other services as A.I.D. may specify, and
 - d. Contracts for such equipment and materials as A.I.D. may specify.

In the case of any of the above contracts for services, the parties hereto will also mutually approve in writing the contractor and such contractor personnel as either party may specify. Material modifications in any of such contracts and changes in any of such personnel shall also be mutually approved by the parties hereto in writing prior to their becoming effective.

(b) Consulting firms or construction contractors, if any, used by HMG/N for the Project, but not financed under the Grant, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify shall be mutually acceptable to the parties hereto.

Section 6.04. REASONABLE PRICE. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Grant, as more fully described in Implementation Letters. Such items will be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures identified in Implementation Letters.

Section 6.05. INSURANCE. HMG/N shall insure, or cause to be insured, all goods procured under the Grant against risks incident to their transit to the point of their use in the Project. Such insurance shall be issued upon terms and conditions consistent with sound commercial practice, shall insure the full value of the goods and shall be payable in the currency in which such goods were financed. Any indemnification received by HMG/N under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse HMG/N for the replacement or repair of such goods. Any such replacement shall be of United States or other Code 935 source and origin and otherwise subject to the provisions of this Agreement.

Section 6.06. INFORMATION AND MARKING. HMG/N shall give publicity to the Grant and the Project and identify the Project as a joint program of HMG/N and USAID.

Article VII. RELEASES

Section 7.01. RELEASE OF FUNDS. Releases by A.I.D. under the Grant shall be made available to the Ministry of Finance of HMG/N for immediate deposit in the Special Project Account. HMG/N's Authorized Representative, as set forth in Section 8.02 of the Agreement, shall have authority to disburse from the account as needed to carry out the Project.

- (a) Upon satisfaction of conditions precedent under Section 4.01 HMG/N may, under procedures established in Implementation Letters, request release of

Nepalese rupees for deposit in the Special Project Account established by Section 5.01 to pay for the cost of architectural, engineering and other professional services procured for the Project in accordance with terms and conditions of this Agreement by submitting to A.I.D. such supporting documentation as A.I.D. may prescribe in Implementation Letters.

- (b) Upon satisfaction of conditions precedent under Section 4.02, HMG/N may, under procedures established in Implementation Letters, request release of funds for deposit in the Special Project Account established by Section 5.01 to pay for the cost of construction of an academic/administrative complex, student hostel and staff quarters at Bharatpur.
- (c) Upon satisfaction of conditions precedent under Section 4.03, HMG/N may, under procedures established in Implementation Letters, request release of funds for deposit in the Special Project Account established by Section 5.01 to pay for the cost of construction [of] an academic/administration complex, student hostel and staff quarters at Pokhara.
- (d) Upon satisfaction of conditions precedent under Section 4.04, HMG/N may, under procedures established in Implementation Letters, request release of the remaining grant funds for deposit in the Special Project Account established by Section 5.01 to pay for the cost of construction or renovation of Integrated Demonstration Health Posts with housing facilities at Bharatpur and Pokhara.
- (e) Unless A.I.D. otherwise agrees, at no time may the actual amount of releases by A.I.D. of currency exceed 75% of the total costs of goods and services required for the Project.

Section 7.02. OTHER FORMS OF RELEASES. Releases of the Grant may also be made through such other means as HMG/N and A.I.D. may agree to in writing.

Section 7.03. TERMINAL DATE FOR RELEASES. Except as A.I.D. may otherwise agree in writing, no release of currency shall be made in response to requests received by A.I.D. after the Terminal Date for Requests of October 31, 1978, and no release shall be made against documentation received by A.I.D. after the Terminal Release Date of December 31, 1978; after the latter date, A.I.D., at its option, may reduce the Grant by all or any part thereof for which documentation was not received by such date.

Section 7.04. SUSPENSION OF RELEASES. In the event that at any time:

- (a) HMG/N shall have failed to comply with any provision of this Agreement, including but without limitation, the obligation to carry out the Project with due diligence and efficiency; or
- (b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Grant will be attained or that HMG/N will be able to perform its obligations under this Agreement; or
- (c) Any release by A.I.D. would be in violation of the legislation governing A.I.D., then A.I.D. may, at its option, decline to make further releases.

Section 7.05. CANCELLATION. Following any suspension of releases pursuant to Section 7.04, if the cause or causes for such suspension of releases shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the

Grant that has not been released and request a refund of any funds which have been released by A.I.D. but which have not been disbursed or irrevocably committed by HMG/N to third parties. HMG/N may, upon 30 days' written notice to A.I.D., cancel any part of the Grant which has not been disbursed or irrevocably committed to third parties to be disbursed.

Section 7.06. CONTINUED EFFECTIVENESS OF AGREEMENT. Notwithstanding any suspension of releases by A.I.D., the provisions of this Agreement shall continue in full force and effect.

Section 7.07. REFUNDS. (a) In the case of any release not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement by HMG/N from the Special Project Account not made or used in accordance with the terms of this Agreement, A.I.D., notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement, may require HMG/N to refund such amount to A.I.D. in Indian rupees or, at the option of A.I.D., in Nepalese rupees within thirty days after receipt of a request therefore. Notwithstanding any other provisions in this Agreement, A.I.D.'s right to require a refund with respect to any release or disbursement under the Grant shall continue for three years following the date of such release or disbursement.

(b) In the event that HMG/N receives a refund from any contractor, supplier or banking institution, or from any other third party connected with the Grant with respect to goods or services financed under the Grant, and such refund relates to an unreasonable price for goods or services, or to goods that did not conform to specifications or to services that were inadequate, HMG/N shall deposit any such funds received into the Special Project Account.

Section 7.08. NONWAIVER OF REMEDIES. No delay in exercising or omitting to exercise any right, power or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any of such right, power, or remedy.

Section 7.09. IMPLEMENTATION LETTERS. From time to time, for the information and guidance of both parties, A.I.D. will issue Implementation Letters that will identify the procedures and provide information applicable to the implementation of this Agreement.

Article VIII. MISCELLANEOUS

Section 8.01. COMMUNICATIONS. Any notice, request, document or other communication submitted by either party to the other under this Agreement will be in writing or by telegram, cable or radiogram, and will be deemed duly given or sent when delivered to such party at the following addresses:

To HMG/N: Dean
Tribhuvan University
Institute of Medicine
Lazimpat
Kathmandu, Nepal

To AID: Director
Agency for International Development, Mission to Nepal
Rabi Bhawan
Kathmandu, Nepal

All such communications will be in English, unless the parties hereto otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

Section 8.02. REPRESENTATIVES. For all purposes relative to this Agreement, HMG/N will be represented by the individual holding or acting in the office of Dean, Institute of Medicine, and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID, each of whom, by written notice, may designate additional representatives. The names of the representatives of HMG/N, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized their signature on any instrument in implementation of this Agreement, until receipt of written notice of revocation of their authority.

IN WITNESS WHEREOF, His Majesty's Government of Nepal and the United States of America, each acting through its duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

On Behalf of His Majesty's Government of Nepal:

By: [Signed — Signé]¹

Title: Secretary

On Behalf of United States of America:

By: [Signed — Signé]²

Title: Ambassador

ANNEX A

The physical facilities to be constructed for the Tribhuvan University Institute of Medicine at Bharatpur and Pokhara are expected to include but not be limited to the following:

1. Construct two academic complexes to consist of lecture halls, classrooms, laboratories, library and teacher's studies — total area estimated to be approximately 16,000 square feet each.
2. Construct two Administrative complexes to consist of offices, conference rooms and storage facilities — total area estimated to be approximately 3,400 square feet each.
3. Construct two hostels with dining, kitchen, common room, utility room, etc., to accommodate approximately 150 students for each hostel — total area estimated to be approximately 25,000 square feet each.
4. Construct approximately 32 staff housing units consisting of bedrooms, living rooms, kitchen, and bath — total area estimated to be approximately 665 square feet each.
5. Construct or renovate six or more Integrated Demonstration Health Posts within the funds provided under the Agreement which shall consist of consulting rooms, treatment rooms, dispensary, toilet facilities with staff quarters consisting of bedrooms, living rooms, kitchen and bath — total area estimated to be approximately 6,842 square feet each.

¹ Signed by B. B. Pradham — Signé par B. B. Pradham.

² Signed by William I. Cargo — Signé par William I. Cargo.