

No. 19919

**UNITED STATES OF AMERICA
and
NEPAL**

**Project Grant Agreement for rural development and resource conservation and utilization (with annexes).
Signed at Kathmandu on 31 August 1978**

Authentic text: English.

Registered by the United States of America on 10 June 1981.

**ÉTATS-UNIS D'AMÉRIQUE
et
NÉPAL**

Accord de don pour un projet de développement rural ainsi que de protection et d'utilisation des ressources (avec annexes). Signé à Katmandou le 31 août 1978

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 10 juin 1981.

PROJECT GRANT AGREEMENT¹ BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL AND THE UNITED STATES OF AMERICA FOR RAD/RCUP* DESIGN

Dated: August 31, 1978

A.I.D. Project Number 367-0133

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A.I.D. PROJECT No. 367-0133

PROJECT GRANT AGREEMENT dated August 31, 1978, 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.").

Article 1. THE AGREEMENT

The purpose of this Agreement is to set out the understandings of the Parties named above with respect to the undertaking by the Parties of the Project and with respect to the financing of the Project by the Parties.

* Rural Development Project/Resource Conservation and Utilization Project.

¹ Came into force on 31 August 1978 by signature.

Article 2. THE PROJECT

Section 2.1. DEFINITION OF PROJECT. The Project will provide necessary resources to carry out selected development or conservation activities as well as design activities for *a*) the Rural Development Project—Rapati Zone (RAD) and *b*) the Resource Conservation and Utilization (RCU) projects and *c*) to support the closely related second stage of the Nepalese A.S.I.P. (Agriculture Sector Implementation Project) after the A.I.D./Government Affairs Institute (hereinafter referred to as “GAI”) contract is completed. In design efforts, the Project will produce studies, detailed plans, trained personnel and pilot activities in the field necessary to proceed with the design and implementation of RAD and RCU projects. The element of the Project dealing with Agricultural Projects Services Centre (APROSC) staff and Facilities Development will aim at the further institutionalization of the A.S.I.P. in Nepal. This includes further staff and facilities development and purchase of equipment.

Section 2.2. ANNEX 1. Annex 1, attached, amplifies the above definition of the Project. Within the limits of the above definition of the Project, elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 8.2, without formal amendment of this Agreement.

Article 3. FINANCING

Section 3.1. THE GRANT. To assist HMG/N to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant HMG/N under the terms of this Agreement not to exceed two million nine hundred thousand United States (“U.S.”) Dollars (\$2,900,000) (“Grant”). The Grant may be used to finance foreign exchange costs, as defined in Section 6.1, and local currency costs, as defined in Section 6.2, of goods and services required for the Project.

Section 3.2. HMG/N RESOURCES FOR THE PROJECT. (*a*) HMG/N agrees to provide or cause to be provided for the Project, in addition to the Grant, the other resources required to carry out the Project effectively and in a timely manner.

(*b*) The total resources, including costs borne on an “in-kind” basis, provided by HMG/N shall not be less than the equivalent of U.S. \$100,000.

Section 3.3. PROJECT ASSISTANCE COMPLETION DATE. (*a*) The “Project Assistance Completion Date” (hereinafter referred to as “PACD”), which is August 15, 1980, or such other date as the Parties may agree to in writing, is the date by which the Parties expect that all services financed under the Grant will have been performed and all goods financed under the Grant will have been furnished for the Project as contemplated in this Agreement.

(*b*) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize release of the Grant for services performed subsequent to the PACD or for goods furnished for the project, as contemplated in this Agreement, subsequent to the PACD.

(*c*) Requests for release, accompanied by necessary supporting documentation prescribed in Project Implementation Letters are to be received by A.I.D. or any bank described in Section 7.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period,

A.I.D., after consultation with HMG/N, may at any time or times reduce the amount of the Grant by all or any part thereof for which requests for release, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

Article 4. CONDITIONS PRECEDENT TO RELEASE

Section 4.1. RELEASE. Prior to the release under the Grant, or to the issuance by A.I.D. of documentation pursuant to which a release will be made, HMG/N will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) A statement from the Ministry of Finance that this Agreement has been duly authorized and executed on behalf of HMG/N and that it constitutes a valid obligation of HMG/N;
- (b) A statement of the name of the person holding or acting in the office of HMG/N specified in Section 8.2 (a), and of any additional representatives, together with a specimen signature of each person specified in such statement; and
- (c) The time schedule for the evaluation program referred to in Section 5.1.

Section 4.2. RELEASES—ACTIVITY C. Prior to release under the Grant, or to issuance by A.I.D. of documentation pursuant to which release will be made for any costs associated with the APROSC Facilities Development under Activity C, HMG/N will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D. detailed design plans, specification and a plan for construction and acquisition of required equipment for the Center.

Section 4.3. RELEASES FOR DISCRETE SUB-ACTIVITIES. Prior to release under the Grant for any costs for discrete sub-activities, other than that mentioned in Section 4.2 above, HMG/N will furnish to A.I.D. in form and substance satisfactory to A.I.D. evidence that it has satisfied the engineering, financial, including, if practical, cost benefit analyses, and other criteria specified in Implementation Letter for each discrete sub-activities.

Section 4.4. NOTIFICATION. When A.I.D. has determined that the conditions precedent specified in Section 4.1, 4.2 and 4.3 have been met, it will promptly notify HMG/N.

Section 4.5. TERMINAL DATES FOR CONDITIONS PRECEDENT. (a) If all of the conditions specified in Section 4.1 have not been met within 60 days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by written notice to HMG/N.

(b) If the condition specified in Section 4.2 has not been met within 90 days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may cancel the then unreleased balance of the Grant, to the extent not irrevocably committed to third parties, and may terminate this Agreement by written notice to HMG/N.

Article 5. PROJECT EVALUATION AND REPORTS

Section 5.1. PROJECT EVALUATION. The Parties agree to establish an evaluation program as part of the Project.

Section 5.2. QUARTERLY REPORTS. HMG/N agrees to prepare quarterly activity, financial and procurement reports for submission to A.I.D. Upon completion of all work performed under the design, the Project will be reviewed for overall accomplishment of Project purpose.

Article 6. PROCUREMENT SOURCE

Section 6.1. FOREIGN EXCHANGE COSTS. Releases pursuant to Section 7.1 will be used exclusively to finance the costs of goods and services required for the Project having their source and origin in the countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods or services ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the Project Grant Standard Provisions Annex, Section C.1(b) with respect to marine insurance.

Section 6.2. LOCAL CURRENCY COSTS. Releases pursuant to Section 7.2 will be used exclusively to finance the costs of goods and services required for the Project having their source and, except as A.I.D. may otherwise agree in writing, their origin in Nepal ("Local Currency Costs"). To the extent provided for under this Agreement, "Local Currency Costs" may also include the provision of local currency resources required for the Project.

Article 7. RELEASE

Section 7.1. RELEASE FOR FOREIGN EXCHANGE COSTS. (a) After satisfaction of conditions precedent, HMG/N may obtain releases of funds under the Grant for the Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of this Agreement, by such of the following methods as may be mutually agreed upon:

- (1) By submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (A) requests for reimbursement for such goods or services, or, (B) requests for A.I.D. to procure commodities or services in HMG/N's behalf for the Project; or
- (2) By requesting A.I.D. to issue Letters of Commitment for specified amounts (A) to one or more U.S. banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, or (B) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers for such goods or services.

(b) Banking charges incurred by HMG/N in connection with Letters of Commitment and Letters of Credit will be financed under the Grant unless HMG/N instructs A.I.D. to the contrary. Such other charges as the Parties may agree to may also be financed under the Grant.

Section 7.2. RELEASE FOR LOCAL CURRENCY COSTS. (a) After satisfaction of conditions precedent, HMG/N may obtain releases of funds under the Grant for Local Currency Costs required for the Project in accordance with the terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, requests to finance such costs.

(b) The local currency needed for such releases may be obtained by acquisition by A.I.D. with U.S. Dollars by purchase.

The U.S. dollar equivalent of the local currency made available hereunder will be, in the case of subsection (b) above, the amount of U.S. dollars required by A.I.D. to obtain the local currency.

Section 7.3. OTHER FORMS OF RELEASE. Releases of the Grant may also be made through such other means as the Parties may agree to in writing.

Section 7.4. RATE OF EXCHANGE. Except as may be more specifically provided under Section 7.2, if funds provided under the Grant are introduced into Nepal by A.I.D. or on behalf of A.I.D. by any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, HMG/N will make such arrangements as may be necessary so that such funds may be converted into currency of Nepal at the official rate of exchange at the time the conversion is made.

Article 8. MISCELLANEOUS

Section 8.1. 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 or cable, and will be deemed duly given or sent when delivered to such Party at the following addresses:

To HMG/N:

Mail and cable address:

For Ministry of Finance

Joint Secretary
Foreign Aid and Programming Division
Ministry of Finance
His Majesty's Government
Babar Mahal
Kathmandu, Nepal

For RAD

Joint Secretary
Ministry of Home-Panchayat
His Majesty's Government
Singha Durbar
Kathmandu, Nepal

For RCU

Director General
Department of Soil and Water Conservation
Ministry of Forests
His Majesty's Government
Babar Mahal
Kathmandu, Nepal

For APROSC

Executive Director
APROSC
Lazimpat
Kathmandu, Nepal

To A.I.D.:

Mail and cable address:

Director
U.S. Agency for International Development
c/o American Embassy
Kathmandu, Nepal

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

Section 8.2. REPRESENTATIVES. (a) For purposes of implementing this Agreement, HMG/N will be represented by the Secretary, Ministry of Finance and A.I.D. will be represented by the Director, USAID/Nepal, 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 any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

(b) The Secretary, Ministry of Finance will furnish a statement naming the HMG/N representative for each activity A, B, and C. Since each activity stands alone, representatives are to be individually designated.

Section 8.3. STANDARD PROVISIONS ANNEX 2. A Project Grant Standard Provisions Annex 2 is attached to and forms part of this Agreement.

IN WITNESS WHEREOF, HMG/N 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 | On Behalf of |
| His Majesty's Government of Nepal: | the United States of America: |
| By: [Signed — Signé] ¹ | By: [Signed — Signé] ² |
| Title: Acting Secretary, Ministry of Finance | Title: Director, USAID/Nepal |

A N N E X I

AMPLIFIED DESCRIPTION OF PROJECT

The RAD/RCUP Design Project consists of three activities, namely a) Rural Development Project—Rapati Zone: Project Design Project, Activity A, b) Resource Conservation and Utilization: Project Design Project, Activity B, and c) APROSC Staff and Facilities Development project, Activity C, which are described below:

RURAL DEVELOPMENT PROJECT—RAPATI ZONE: PROJECT DESIGN PROJECT—ACTIVITY A

I. Activity A Description

The Rural Development Project—Rapati Zone portion of the Project Design Project represents a collaborative effort between HMG/N and A.I.D. to develop an Integrated Rural Development project to increase the income, productivity and quality of life of the rural people living in the Rapati Zone. Achievement of this purpose will be based on a process emphasizing self-reliance and participation. The activity is envisioned as the first phase of a series of projects in the Rapati Zone and is funded for two years, although

¹ Signed by Devendra R. Panday — Signé par Devendra R. Panday.

² Signed by Samuel H. Butterfield — Signé par Samuel H. Butterfield.

major design work is expected to be accomplished within nine months. A.I.D. funds totalling up to \$1,373,000 will be applied to a variety of field operations, training and design activities which are briefly described below. More detailed plans for each component will be developed in the Letters of Implementation with the relevant agencies and offices of HMG/N. HMG/N inputs which will include but not be limited to, technical and field personnel, administrative support, and operation and maintenance of vehicles, where appropriate, will be deliberated in the separate Letter of Implementation.

II. *Activity A Components*

A. *Activity A Field Operations*

This Grant provides up to \$400,000 for support of selected field operations in the Rapati Zone which have a direct impact on the lower-income groups, particularly in the hills. Activities to be supported with these funds include: 1) Small Rural Works, currently limited to gravity flow drinking water systems, small bridges and trails, particularly in the hills, which have a substantial benefit for the lower-income groups in the community; additional field operations as mutually agreed between HMG/N and A.I.D. may be supported within the limit of funds provided for this category; 2) Plant Nurseries, limited to planting stock for fruit, fodder, firewood and windbreak uses which will directly benefit the local community while contributing to erosion control and future wood supplies; and 3) Cottage Industries, including the establishment (construction) of a Branch Office of the Department of Cottage and Village Industries in the Zone as well as establishment (rental) of sub-centers, and training to selected Zone residents in handicrafts, as well as assisting them in obtaining raw materials, needed tools and equipment and in marketing their products. Letters of Implementation developed jointly between A.I.D. and the designated HMG/N representative or designee for Activity A will specify all technical, financial and engineering plans for the above activities, including but not limited to site selection criteria, relation of the activity to the overall purpose of the Rapati Zone program, and any specific problems envisioned.

B. *Activity A Training*

Approximately \$150,000 are provided under the terms of this Grant for local and participant training related to the overall project goals. For local training, preference will be given to residents of the Rapati Zone. Participant training will be funded for employees of HMG/N and non-governmental development agencies who will, together with their employers, assure in writing that except under unforeseen circumstances, they will work in or on development activities for a minimum period of 2 years so that the skills acquired as a result of the training may be fully utilized to achieve the project goals. Costs of temporary replacements for persons undertaking participant training will also be allowed under this agreement.

C. *Activity A Design and Development*

Activity A will provide up to \$475,000 to cover the costs of design and development work for the first phase of a full Integrated Rural Development project for the Rapati Zone. The funding will cover, but not be limited to, the costs of APROSC and other consultants for field work, workshops and seminars, local transportation, data processing, and APROSC overhead. Funds will also be used for the costs of contracting for up to 36 person months of expatriate consultants.

With the prior approval of HMG/N, detailed terms of reference for design and development of the project will from time to time be developed jointly by A.I.D. and APROSC. The Letters of Implementation containing these terms will also specify the release procedures to be used.

D. *Activity A Design and Development Support*

Activity A will provide \$298,000 under this Agreement for support functions to be managed by A.I.D., related to the carrying out of this project. This funding is for local

transportation costs not otherwise provided, and for short and long term technical advisory and administrative services during the life of this project to assist A.I.D. in various aspects of development of the project paper for the next phase of the Rapati Zone program.

E. *Activity A Contingency*

Activity A will provide up to \$50,000 for contingencies for training and design to be described in Letters of Implementation.

III. *Activity A Administration*

HMG/N is responsible to see that the counterpart officials for this project are appointed at the earliest possible date. Line agencies of HMG/N are responsible for implementing or supporting the implementation of project activities. APROSC is responsible for project planning and carrying out analyses and studies required for project development. The District is the primary unit of project implementation, following the District Administration Plan.

RESOURCE CONSERVATION AND UTILIZATION: PROJECT DESIGN PROJECT—ACTIVITY B

[I]. *Activity B Description*

The purpose of Activity B is to carry out design and related initial implementation activities for A.I.D. assisted Resource Conservation and Utilization project (RCU) beginning October 1, 1979 (FY 1980). While the RCU project action plan is scheduled for implementation in October 1979, certain training components are carried out for the life of this agreement of 2 years.

The Department of Soil and Water Conservation will have primary responsibility to coordinate Activity B. The Department of Soil and Water Conservation in consultation with APROSC will assign an appropriate departmental personnel who will serve as the Nepalese project team leader.

Inputs will be required from a number of HMG/N agencies such as the Department of Agriculture and Ministry of Home and Panchayat.

[II]. *Activity B Components*

I. *Activity B Design* which will include the detailed strategy plans, analyses and physical activities to be undertaken by the RCU project. The Design Team will be contracted under A.I.D. Title XII agreement. This team will include a minimum of 48 person months of time, including a combination of expatriate and in-country professionals, headed by a team leader.

II. *Activity B Training* will include three different kinds: (a) out-country one and two year degree levels, (b) observation trips to other countries and (c) in-country short courses and seminars.

III. *Activity B Field Operations* in areas to be selected which may include nursery establishment, rehabilitation of degraded areas, construction and equipping monitoring sites and improvement of field office facilities.

A fund of up to \$1,227,000 is made available under this agreement to carry out Activity B to support personnel (\$470,000); training (\$361,000); local transport (\$156,000); baseline studies (\$26,000); field operation (\$100,000); APROSC overhead (\$49,000); and miscellaneous (\$65,000).

[III]. *Activity B Administration*

APROSC is responsible for preparation of the Design Activity. Line agencies will be responsible for carrying out the various Field Operation activities. The training activity is

a joint responsibility of APROSC, the Department of Soil and Water Conservation and A.I.D.

APROSC STAFF AND FACILITIES DEVELOPMENT—ACTIVITY C

[I]. *Activity C Description*

The purpose of Activity C is to support the further institutionalization of the Nepalese Agriculture Sector Implementation Project (ASIP) after the A.I.D./Government Affairs Institute (GAI) contract is completed. Limited continued support is needed to help maintain the high standard introduced under the project and to develop a program of continuing education for their graduates. There will be a direct benefit to RCU/RAD.

[II]. *Activity C Components*

The stated purpose will be met by (1) making transport available, (2) assisting in printing copies of manuals, (3) providing periodic consultants over the 2 year period, (4) exchanging training with similar groups in other countries, (5) conducting a course for senior officials, and (6) providing assistance in the construction of the APROSC training complex.

A fund of up to \$300,000 is being made available under this Agreement to meet the objectives in training (\$135,000), ASIP operational support (\$65,000), and facilities construction (\$100,000).

[III]. *Activity C Administration*

APROSC is responsible for carrying out this activity.

A N N E X 2

PROJECT GRANT AGREEMENT BETWEEN A.I.D. AND THE MINISTRY OF FINANCE, AN AGENCY OF HIS MAJESTY'S GOVERNMENT OF NEPAL

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PROJECT GRANT STANDARD PROVISIONS ANNEX

Definitions. As used in this Annex, the "Agreement" refers to the Project Grant Agreement. Terms used in this Annex have the same meaning or reference as in the Agreement.

Article A. PROJECT IMPLEMENTATION LETTERS

To assist HMG/N in the Implementation of the Project, A.I.D., from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The Parties may also use jointly agreed-upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in Annex 1.

Article B. GENERAL COVENANTS

Section B.1. CONSULTATION. The Parties will cooperate to assure that the purpose of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on the progress of the Project, the performance of obligations under this Agreement, the performance of any consultants, contractors, or suppliers engaged on the Project, and other matters relating to the Project.

Section B.2. EXECUTION OF PROJECT. HMG/N will:

- (a) Carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans specifications, contracts, schedules or other arrangements, and with any modifications therein, mutually approved by the Parties pursuant to this Agreement; and
- (b) Provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

Section B.3. UTILIZATION OF GOODS AND SERVICES. (a) Any resources financed under the Grant will, unless otherwise agreed in writing by A.I.D., be devoted to the Project until the completion of the Project, and thereafter will be used so as to further the objectives sought in carrying out the Project.

(b) Goods or services financed under the Grant, except as A.I.D. may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section B.4. TAXATION. (a) This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in the territory of HMG/N.

(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Grant, and any property or transaction relating to such contracts and (2) any commodity procurement transaction financed under the Grant, are not exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in the territory of HMG/N, HMG/N will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Grant.

Section B.5. REPORTS, RECORDS, INSPECTIONS, AUDIT. HMG/N will:

- (a) Furnish A.I.D. such information and reports relating to the Project and to this Agreement as A.I.D. may reasonably request;
- (b) Maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show, the receipt and use of goods and services acquired under the Grant. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after

the date of last release of funds by A.I.D.; such books and records will also be adequate to show the basis of solicitation and award of contracts and orders, and the overall progress of the Project toward completion; and

- (c) Afford authorized representatives of a Party the opportunity at all reasonable times to inspect the Project, the utilization of goods and services financed by such Party, and books, records, and other documents relating to the Project and the Grant.

Section B.6. COMPLETENESS OF INFORMATION. HMG/N confirms:

- (a) That the facts and circumstances of which it has informed A.I.D., in the course of reaching agreement with A.I.D. on the Grant, are accurate and complete, and include all facts and circumstances that might materially affect the Project and the discharge of responsibilities under this Agreement;
- (b) That it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect the Project or the discharge of responsibilities under this Agreement.

Section B.7. OTHER PAYMENTS. HMG/N affirms that no payments have been or will be received by any official of HMG/N in connection with the procurement of goods or services financed under the Grant, except fees, taxes, or similar payments legally established in the country of HMG/N.

Section B.8. INFORMATION. HMG/N will bring out information concerning the Project and identify the Project site and Project commodities as part of a program jointly financed by HMG/N and A.I.D., as described in Project Implementation Letters.

Article C. PROCUREMENT PROVISIONS

Section C.1. SPECIAL RULES. (a) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(b) Premiums for marine insurance placed in the territory of HMG/N will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C.7(a).

(c) Any motor vehicles financed under the Grant will be of United States manufacture, except as A.I.D. may otherwise agree in writing.

(d) Transportation by air, financed under the Grant, of property or persons, will be on carriers holding United States certification, to the extent service by such carriers is available or on other carriers as mutually agreed. Details on this requirement will be described in a Project Implementation Letter.

Section C.2. ELIGIBILITY DATE. Goods or services procured pursuant to orders or contracts entered into subsequent to the authorization date of this Project may be financed under this Grant.

Section C.3. PLANS, SPECIFICATIONS, AND CONTRACTS. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

- (a) HMG/N will furnish to A.I.D. upon request and upon preparation, including material modification:

- (1) Any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Grant, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals;
- (2) Such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services, which, though not financed under the Grant, are deemed by A.I.D. to be of major importance to the Project. Aspects of the Project

involving matters under this subsection (a) (2) will be identified in Project Implementation Letters;

- (b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Grant will be approved by HMG/N with prior agreement of A.I.D., prior to their issuance, and where applicable, their terms will include United States standards and measurements;
- (c) Contracts and contractors financed under the Grant for engineering and other professional services, for construction services, and for such other services, equipment or materials as may be specified in Project Implementation Letters, will be approved by HMG/N with prior agreement of A.I.D., prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution; and
- (d) Consulting firms 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, and construction contractors used by HMG/N for the Project but not financed under the Grant, shall be acceptable to A.I.D.

Section C.4. REASONABLE PRICE. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Grant. Such items will be procured on a fair and, to the maximum extent practicable, on a competitive basis.

Section C.5. NOTIFICATION TO POTENTIAL SUPPLIERS. To permit United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Grant, HMG/N will furnish A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Project Implementation Letters.

Section C.6. SHIPPING. (a) Goods which are to be transported to the territory of HMG/N may not be financed under the Grant if transported either: (1) on an ocean vessel or aircraft under the flag of a country which is not included in A.I.D. geographic code 935 as in effect at the time of shipment, or (2) on an ocean vessel which A.I.D., by written notice to HMG/N has designated as ineligible; or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Grant, if such goods or persons are carried: (1) on an ocean vessel under the flag of a country not, at the time of shipment, identified under the paragraph of the Agreement entitled "Procurement Source: Foreign Exchange Costs," without prior written A.I.D. approval; or (2) on an ocean vessel which A.I.D., by written notice to HMG/N, has designated as ineligible; or (3) under an ocean vessel or air charter which has not received prior A.I.D. approval.

(c) Unless A.I.D. determines that privately owned United States-flag commercial ocean vessel are not available at fair and reasonable rates for such vessels, (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels, and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported to the territory of HMG/N on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

Section C.7. INSURANCE. (a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of HMG/N may be financed as a Foreign Exchange Cost under this Agreement provided (1) such insurance is placed at the lowest available competitive rate, and (2) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If HMG/N, by statute, decree,

rule, regulation, or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of HMG/N financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(b) Except as A.I.D. may otherwise agree in writing, HMG/N will insure, or cause to be insured, goods financed under the Grant imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by HMG/N under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse HMG/N for the replacement or repair of such goods. Any such replacements will be of source and origin of countries listed in A.I.D. geographic code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

Section C.8. U.S. GOVERNMENT-OWNED EXCESS PROPERTY. Wherever practicable, United States Government-owned excess property, in lieu of new items financed under the Grant, should be utilized. Funds under the Grant may be used to finance the costs of obtaining such property for the Project.

Article D. TERMINATION; REMEDIES

Section D.1. TERMINATION. Either Party may terminate this Agreement by giving the other Party 30 days written notice. Termination of this Agreement will terminate any obligations of the Parties to provide financial or other resources to the Project pursuant to this Agreement, except for payment which they are committed to make pursuant to non-cancellable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at A.I.D.'s expense, direct that title to goods financed under the Grant be transferred to A.I.D. if the goods are from a source outside Nepal, are in a deliverable state and have not been offloaded in ports of entry of Nepal.

Section D.2. REFUNDS. (a) In the case of any release which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies under this Agreement, may require HMG/N to refund the amount of such release in U.S. Dollars to A.I.D. within sixty (60) days after receipt of a request therefor.

(b) If the failure of HMG/N to comply with any of its obligations under this Agreement has the result that goods or services financed under the Grant are not used effectively in accordance with this Agreement, A.I.D. may require HMG/N to refund all or any part of the amount of the releases under this Agreement for such goods or services in U.S. Dollars to A.I.D. within sixty days after receipt of a request therefor.

(c) The right under subsection (a) or (b) to require a refund of a release will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last release under this Agreement.

(d) (1) Any refund under subsection (a) or (b) or (2) Any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Grant, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the cost of goods and services required for the Project, to the extent justified, and (B) the remainder, if any, will be applied to reduce the amount of the Grant.

(e) Any interest or other earnings on Grant funds released by A.I.D. to HMG/N under this Agreement prior to the authorized use of such funds for the Project will be returned to A.I.D. in U.S. Dollars by HMG/N.

Section D.3. NONWAIVER OF REMEDIES. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.

Section D.4. POWER OF ATTORNEY. HMG/N agrees, upon request, to execute a power of attorney to A.I.D. of any cause of action which may accrue to HMG/N in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. Dollar contract with A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.
