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A.I.D. Project No. 492-0428

PROJECT
GRANT AGREEMENT
BETWEEN THE
REPUBLIC OF THE PHILIPPINES
AND THE
UNITED STATES OF AMERICA
FOR THE
PRIVATIZATION PROJECT

Date: June 16, 1988

Loan and Grant Agreements

FM/LMD (if Loan)

FM/PAFD

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GC/ANE

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PROJECT GRANT AGREEMENT

Dated: June 16, 1988

Between the Republic of the Philippines ("Grantee") and the United States of America, acting through the Agency for International Development ("A.I.D.").

Article 1: The Agreement.

The purpose of this Agreement is to set out the understandings of the parties named above ("Parties") with respect to the undertaking by the Grantee of the Project described below, and with respect to the financing of the Project by the Parties.

Article 2: The Project.

Section 2.1. Definition of Project. The Project, which is further described in Annex I, will consist of support for the Grantee's program for privatizing acquired assets and government owned and controlled corporations. Annex I, 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 I may be changed by written agreement of the authorized representatives of the Parties named in Section 8.2, without formal amendment of this Agreement.

Section 2.2. Incremental Nature of Project.

(a) A.I.D.'s contribution to the Project will be provided in increments, the initial one being made available in accordance with Section 3.1 of this Agreement. Subsequent increments will be subject to availability of funds to A.I.D. for this purpose, and to the mutual agreement of the Parties, at the time of a subsequent increment, to proceed.

(b) Within the overall Project Assistance Completion Date stated in this Agreement, A.I.D., based upon consultation with the Grantee, may specify in Project Implementation Letters appropriate time periods for the utilization of funds granted by A.I.D. under an individual increment of assistance.

Article 3: Financing.

Section 3.1. The Grant. To assist the Grantee 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 the Grantee under the terms of this Agreement not to exceed Two Million Five Hundred Twenty-Seven Thousand United States ("U.S.") Dollars (\$2,527,000) ("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. Grantee Resources for the Project.

(a) The Grantee agrees to provide or cause to be provided for the Project all funds, in addition to the Grant, and all other resources required to carry out the Project effectively and in a timely manner.

(b) The resources provided by Grantee for the Project will be not less than the equivalent of U.S. \$4,780,000, including costs borne on an "in-kind" basis.

Section 3.3. Project Assistance Completion Date.

(a) The "Project Assistance Completion Date" (PACD), which is December 31, 1992, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate 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 disbursement 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 disbursement, 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., giving notice in writing to the Grantee, may at any time or times reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

Article 4: Conditions Precedent to Disbursement.

Section 4.1. Conditions Precedent to First Disbursement.

Prior to the first disbursement under the Grant, or to the issuance of documentation pursuant to which disbursement will be made, the Grantee 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 counsel acceptable to A.I.D. that this Agreement has been duly authorized or ratified by, and executed on behalf of, the Grantee and that it constitutes a valid and legally binding obligation of the Grantee in accordance with its terms; and

(b) a statement of the name of the person holding or acting in the office of the Grantee specified in Section 8.2, and of any additional representatives, together with a specimen signature of each person specified in such statement.

Section 4.2. Condition Precedent to Disbursement for Technical Assistance for Government Owned and Controlled Corporations.

Prior to disbursement under the Grant, or to the issuance of documentation pursuant to which disbursement will be made for technical assistance for the privatization of a Government Owned and Controlled Corporation (GOCC), other than technical assistance in connection with the preparation of a work plan for the privatization of the GOCC, the Grantee 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., with respect to the GOCC for which such technical assistance will be provided, a work plan for the GOCC, which shall include a specification of the technical assistance required by said GOCC to execute its privatization responsibilities under the work plan.

Section 4.3. Conditions Precedent to Disbursement for Equipment. Prior to disbursement under the Grant, or to the issuance of documentation pursuant to which disbursement will be made for the procurement of equipment for The Asset Privatization Trust ("APT"), the Grantee's Committee on Privatization ("COP"), or for the Grantee's Department of Finance ("DOF") for use in connection with the privatization of a GOCC, the Grantee 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) with respect to equipment to be procured outside of the Philippines, approval in writing by the duly authorized representative of DOF for the Project of an A.I.D. Project Implementation Order authorizing A.I.D. to procure under an A.I.D. direct contract financed under the Grant a procurement services agent to procure such equipment for purposes of the Project; and

(b) with respect to equipment to be procured for APT, COP or for DOF for use in connection with the privatization of a GOCC, an equipment procurement plan for APT, COP or for the privatization of the GOCC, as the case may be, specifying the need, specifications and reasonable cost estimate for the equipment.

Section 4.4. Condition Precedent to Disbursement for Training and Seminars. Prior to disbursement under the Grant, or to the issuance of documentation pursuant to which disbursement will be made for training activities to be implemented by the COP Secretariat or for the holding of or participation in seminars to be implemented by the COP Secretariat, the Grantee 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., an annual plan specifying the training activities and seminars to be undertaken and providing detailed cost estimates therefor.

Section 4.5. Notification. When A.I.D. has determined that the conditions precedent specified in Section 4.1 through 4.4 have been met, it will promptly notify the Grantee.

Section 4.6. Terminal Dates for Conditions Precedent. If (i) all of the conditions specified in Section 4.1 have not been met on or before July 15, 1988; or if (ii) all of the conditions specified in Section 4.3(b) (in the case of APT and COP) have not been met on or before October 31, 1988; or if (iii) all of the conditions specified in Section 4.4 have not been met on or before October 31, 1988 (with respect to the first year of Project activities) and on or before September 30 of each succeeding year during the life of the Project (with respect to each such year); or (iv) in each such case, at such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement or the activity thereunder to which such condition relates and, to the extent not irrevocably committed to third parties, may cancel the then undisbursed balance of the Grant, or such undisbursed balance of the Grant made available for the activity to which such condition relates.

Article 5: Special Covenants.

Section 5.1. Project Evaluation. The Parties agree to establish an evaluation program as part of the Project. Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter:

(a) evaluation of progress toward attainment of the objectives of the Project; and

(b) identification and evaluation of problem areas or constraints which may inhibit such attainment; and

(c) assessment of how such information may be used to help overcome such problems; and

(d) evaluation, to the degree feasible, of the overall development impact of the Project.

Article 6: Procurement Source.

Section 6.1. Foreign Exchange Costs. Disbursement pursuant to Section 7.1 will be used exclusively to finance the costs of goods and services required for the Project having, with respect to goods, their source and origin and, with respect to services, their nationality, in the United States (Code 000 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. Ocean transportation costs shall be financed under the Grant only on vessels under flag registry of the United States.

Section 6.2. Local Currency Costs. Disbursements pursuant to Section 7.2 will be used exclusively to finance the costs of goods and services required for the Project having, with respect to services, their nationality and, with respect to goods, their source and, except as A.I.D. may otherwise agree in writing, their origin in the Republic of the Philippines ("Local Currency Costs").

Article 7: Disbursement.

Section 7.1. Disbursement for Foreign Exchange Costs.

(a) After satisfaction of conditions precedent, the Grantee may obtain disbursements 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 on the Grantee'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 (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 the Grantee in connection with Letters of Commitment and Letters of Credit will be financed under the Grant unless the Grantee 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. Disbursement for Local Currency Costs.

(a) After satisfaction of conditions precedent, the Grantee may obtain disbursements 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 disbursements 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 the amount of U.S. Dollars required by A.I.D. to obtain the local currency.

Section 7.3. Other Forms of Disbursement. Disbursements 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 the Republic of the Philippines by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into currency of the Republic of the Philippines at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the Republic of the Philippines.

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 the Grantee:

Mail Address: Department of Finance
Central Bank Building
Ermita, Manila, Philippines

Alternate address for cables: 40268 CBCONFPM

To A.I.D.:

Mail Address: United States Agency for International
Development
c/o The Embassy of the United States
of America
Manila, Philippines

Alternate address for cables: USAID/AMEMB MANILA

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. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of the Secretary of Finance and A.I.D. will be represented by the individual holding or acting in the office of the Director, United States A.I.D. Mission to the Philippines, each of whom, by written notice, may designate additional representatives for all

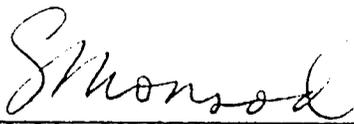
purposes other than exercising the power under Section 2.1 to revise elements of the amplified description in Annex I. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

Section 8.3. Standard Provisions Annex. A "Project Grant Standard Provisions Annex" (Annex II) is attached to and forms part of this Agreement.

IN WITNESS WHEREOF, the Grantee and the United States of America, each acting through its duly authorized representatives, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

REPUBLIC OF THE PHILIPPINES

UNITED STATES OF AMERICA

By: 
Solita-Collas Monsod

By: 
Nicholas Platt

Title: Director-General
National Economic and
Development Authority

Title: Ambassador
Embassy of the United States
of America

ANNEX I
PRIVATIZATION PROJECT
PROJECT DESCRIPTION

I. PROJECT GOAL AND PURPOSE

The goal of the Privatization Project (the "Project") is to increase employment and incomes.

The purpose of the Project is to reinforce the Government of the Philippines' (GOP) privatization policy by supporting the GOP's divestiture of selected government owned and controlled corporations (GOCC) and acquired assets thereby improving the GOP's budget situation.

II. PROJECT DESCRIPTION

The Project will support the Government of the Philippines (the "Grantee") in the implementation of its ongoing privatization program as described in detail below:

The Grantee's privatization program involves the privatization of acquired assets of Government Financial Institutions (GFIs), sequestered companies and Government Owned and Controlled Corporations (GOCCs). The Asset Privatization Trust (APT) will concentrate on privatizing the acquired assets of the GFIs. The privatization of GOCCs will be undertaken by parent agencies and instrumentalities of the Grantee directly or through Asset Disposal Units ("ADU") to the extent they are capable and willing to do so, or through the agency of APT in other cases.

The Project will finance technical assistance, commodities, studies, training and seminars as described below.

A. Asset Privatization Trust

1. Technical Assistance

The Project will finance short- and long-term expatriate and local specialized services and advisory consultancies in the following areas:

(a) Information and Data Management

Technical assistance will be provided to APT to catalogue, audit and store files and data on acquired assets and GOCCs and to train APT personnel in the use of computer hardware and relevant software applications required for information and data management.

(b) Valuation and Marketing Services

The Project will finance valuation and marketing services required by APT in the disposal of selected acquired assets and GOCCs. The assistance to be provided may include valuation, prospectus preparation, identification of prospective investors, information dissemination, public offering of securities or private share placement, investment proposal evaluation, bid development or negotiations with prospective investors, and fairness statement or opinion.

(c) Studies

The Project will also finance studies to guide the APT in decisions ranging from rehabilitation versus liquidation and spin-offs/mergers to best use studies and corporate strategy development.

2. Commodities

Project financing will be provided for the procurement of computer hardware, software and related office equipment to support the information and data management effort described above for APT. Prior

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approval by A.I.D. of an equipment procurement plan is required in accordance with Section 4.3(b) of the Project Agreement.

B. Government Owned and Controlled Corporations (GOCCs)

1. Technical Assistance

The Project will provide financing for short- and long-term specialized services and advisory consultancies for the parent agencies or instrumentalities of selected GOCCs. Such services may be provided to assist in the establishment of an ADU or in furtherance of the ADU's privatization activities.

Services may include management planning, investment banking, accounting/auditing, valuation and specialized engineering services.

In those instances where it does not make sense to establish an ADU, consulting services will be procured to develop and execute an appropriate privatization program.

2. Commodities

Project financing will be provided for the procurement of computer hardware, software and related office equipment to support the information and data management requirements identified by the technical assistance provided above in connection with the privatization of a GOCC. Such commodities will be procured for, and title shall be vested in, DOF. The office of the Undersecretary of Finance who chairs the Grantee's Technical Committee on Privatization shall assign the equipment to the pertinent GOCC or to the parent agency or ADU for such GOCC for use in connection with privatization of the GOCC. After equipment so assigned is no longer needed in connection with privatization activities

for the GOCC, possession of the equipment shall revert to DOF for use in connection with the privatization of other GOCCs. Prior approval by A.I.D. of an equipment procurement plan is required in accordance with Section 4.3(b) of the Project Agreement.

C. Committee on Privatization Secretariat

1. Training/Seminars

The Project will finance in-country workshops and attendance at seminars abroad for selected DOF, GOCC and APT personnel directly involved in privatization activities. Prior approval by A.I.D. of annual training plans is required in accordance with Section 4.4 of the Project Agreement. The COP Secretariat will prepare the training plan.

2. Commodities

The Project will finance the procurement of computer hardware, software and related office equipment to support the COP's information and data management systems. Prior approval by A.I.D. of an equipment procurement plan is required in accordance with Section 4.3(b) of the Project Agreement.

III. IMPLEMENTATION ARRANGEMENTS

A. Implementing Entities

Primary oversight for the Project will be the responsibility of the Department of Finance (DOF). The Undersecretary of Finance who chairs the Technical Committee on Privatization will manage Project assistance to APT and the COP Secretariat and Project assistance provided to or on behalf of a GOCC in connection with privatization activities. The Undersecretary will coordinate Project activities, obtain proposals

from Project beneficiary organizations and endorse selected proposals to A.I.D. for review, approval and the earmarking and commitment of funds.

B. Contracting Arrangements

Contracting will be under either host country contracts or A.I.D direct contracts. Host country contracts shall be awarded in accordance with A.I.D. Handbook 11 and applicable USAID procedures as from time to time in effect and specified in Project Implementation Letters.

1. Local Technical Services

Indefinite Quantity Contracts (IQCs) will be entered into by or on behalf of the DOF for the local services needs of both APT and the GOCCs. It is expected that at least four local firms will need to be retained under IQCs in order to provide the full range of privatization services, including services necessary to perform valuation and marketing of the assets to be privatized, such as management planning, investment banking, accounting and auditing, and specialized engineering services. IQCs may be either host country contracts or AID direct contracts. A.I.D. will exercise the following approval rights relative to the IQC itself and the subsequent work orders to be issued against the IQCs: A.I.D. will approve the terms-of-reference, evaluation criteria, evaluation, selection of and contracts with each IQC contractor for each category of services. The DOF will issue work orders against the IQCs based on the submission by the APT or GOCC of a detailed scope-of-work and budget for services. A.I.D. will also approve each such scope-of-work and budget for services requested, and the ensuing work order before its execution.

2. Expatriate Services

A.I.D. direct contracts with suitable firms will be used to procure expatriate services required by both the APT and GOCCs. Such services will be utilized primarily for those privatization transactions involving a sectoral grouping of large value assets requiring solicitations of foreign investment and/or having technology transfer requirements, and may also be utilized in situations involving the privatization of the management and operation of government corporations that perform public services. These services will also be available for the smaller, less complex sectoral groupings of assets, if desired by the APT and GOCCs.

C. Training/Seminars

In-country workshops or participation in seminars abroad will be implemented by the DOF pursuant to A.I.D. concurrence in annual training plans by Project Implementation Letters.

D. Commodity Procurement

The procurement services agent required by Section 4.3(a) of the Project Agreement will be utilized to procure commodities from the U.S. In appropriate circumstances, computer equipment may be procured from local firms, to ensure the availability of maintenance, spare parts and warranty service. In such cases, the Grantee shall obtain from the supplier a certification that the equipment does not infringe U.S. patents or otherwise violate laws protecting proprietary material.

E. Monitoring

The Office of the Undersecretary of Finance will be responsible for monitoring Project progress. That office will submit quarterly reports to A.I.D. in a format mutually agreed to by the Undersecretary of Finance and A.I.D.

F. Financing Mechanisms and Disbursements

1. U.S. Dollar Payment

A.I.D. will make U.S. Dollar payments directly to contractors and suppliers for U.S. dollar-denominated procurement.

2. Philippine Peso Payment

(a) The GOP will make Philippine Peso payments by (i) using its own appropriated funds subject to reimbursement by A.I.D. or (ii) A.I.D. will advance funds to the GOP for local costs based on its cash requirements for 30-90 days. Advances will be subject to periodic liquidation.

(b) At the request of the GOP, USAID may make direct Philippine peso payments to contractors and/or suppliers.

IV. EVALUATION AND AUDIT

A. Process Evaluation

A process evaluation will evaluate progress toward attainment of Project objectives. The evaluation will investigate whether the services and institutions are in place and performing as expected. It will look at the interactions between and among all institutions involved in implementation and assess the adequacy or inadequacy of support

provided. A.I.D. staff and external consultants, Grantee personnel and private sector representatives will conduct the evaluation.

B. Impact Evaluation

The final evaluation will include an assessment of all components. It will determine if each component has had effects on its respective beneficiaries, direct and indirect. External consultants as well as A.I.D. staff may participate in the evaluation.

C. Audit

Primary responsibility for audits of A.I.D.-funded projects lies with the A.I.D. Regional Inspector General's Office. However, in the event that the Regional Inspector General is unable to carry out the audit activities, an external auditing firm may be contracted for audit purposes and financed under the Project.

V. SUMMARY COST ESTIMATES AND FINANCIAL PLAN (ALL YEARS)

(US \$000)

	<u>ELEMENT</u>	<u>AID GRANT</u>	<u>GOP</u>	<u>TOTAL</u>	<u>FY 1988 AID OBLIGATION</u>
1.	Technical Assistance	3,042	0	3,042	2,027
2.	Privatization Units and COP Staff, Equipment and Facilities	470	4,000	4,470	470
3.	Training/Seminars	30	0	30	30
4.	Policy/Operational Studies	535	0	535	
5.	Evaluation and Audit	<u>250</u>	<u>0</u>	<u>250</u>	
	Sub-Total	4,327	4,000	8,327	
	Inflation	268	392	660	
	Contingency	<u>405</u>	<u>388</u>	<u>793</u>	<u> </u>
	TOTAL	<u>5,000</u>	<u>4,780</u>	<u>9,780</u>	<u>2,527</u>

ANNEX II
PROJECT GRANT STANDARD PROVISIONS ANNEX

Definitions: As used in this Annex, the "Agreement" refers to the Project Grant Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

Article A: Project Implementation Letters.

To assist Grantee 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 I.

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. The Grantee 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, approved by A.I.D. 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 the Grantee.

(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 transactions 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 the Grantee, the Grantee 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. The Grantee 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, without limitation, 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 disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and services acquired, the basis of 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. The Grantee confirms:

(a) That the facts and circumstances of which it has informed A.I.D., or caused A.I.D. to be informed, 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; 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 responsibilities under this Agreement.

Section B.7. Other Payments. Grantee affirms that no payments have been or will be received by any official of the Grantee 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 the Grantee.

Section B.8. Information and Marking. The Grantee will give appropriate publicity to the Grant and the Project as a program to which the United States has contributed, identify the Project site, and mark goods financed by 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 the Grantee 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. Details on this requirement will be described in a Project Implementation Letter.

Section C.2. Eligibility Date. 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, except as the Parties may otherwise agree in writing.

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) The Grantee will furnish to A.I.D. upon preparation:

(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. Material modifications in such documentation will likewise be furnished A.I.D. on preparation; and

(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 A.I.D. in writing prior to their issuance, and 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 A.I.D. in writing 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 the Grantee 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 the Grantee 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 all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Grant, the Grantee 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 the Grantee 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 the Grantee 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 on a non-U.S. flag air carrier if a U.S. flag carrier is available (in accordance with criteria which may be contained in Project Implementation Letters) without prior written approval of A.I.D.; or

(2) on an ocean vessel which A.I.D., by written notice to the Grantee, 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 vessels 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 the Grantee 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.

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Section C.7. Insurance.

(a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Grantee 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 U. S. dollars or, as A.I.D. may agree in writing, in the currency in which such goods were financed or in any freely convertible currency. If the Grantee (or government of Grantee), 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 the Grantee 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, the Grantee 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 the Grantee 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 the Grantee for the replacement or repair of such goods. Any such replacement 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. The Grantee agrees that wherever practicable United States Government-owned excess personal 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 noncancellable 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 Grantee's country, are in a deliverable state and have not been off-loaded in ports of entry of Grantee's country.

Section D.2. Refunds.

(a) In the case of any disbursement 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 the Grantee to refund the amount of such disbursement in U.S. Dollars to A.I.D. within sixty (60) days after receipt of a request therefor.

(b) If the failure of Grantee 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 the Grantee to refund all or any part of the amount of the disbursements under this Agreement for such goods or services in U.S. Dollars to A.I.D. within sixty (60) days after receipt of a request therefor.

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

(d) (1) Any refunds 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 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 disbursed by A.I.D. to the Grantee 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 the Grantee.

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. Assignment. The Grantee agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. Dollar contract which A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.

