

file
492-0421

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Robert Jordan, OCD

DATE: MAR 29 1989

FROM : Malcolm Butler *MB*
Director

SUBJECT : USAID Oversight of ESF-Financed Civic Action Program

Civic Action Program

The U.S. Department of Defense, acting through the Department of the Army (DA), agreed to make \$15 million in ESF available for the procurement and delivery of heavy engineering equipment on behalf of the GOP for use by the Armed Forces of the Philippines (AFP) in a program of civic action infrastructure projects (the "Civic Action Program"). The ESF was transferred to DA by AID in accordance with a Memorandum of Understanding dated September 28, 1987 and executed in Washington among DA, State and AID (Tab A). Although the funds transferred retain their character as ESF and are subject to the provisions of the Foreign Assistance Act pertaining to ESF, the expenditure and use of the funds are the responsibility of and under the control of DA. The MOU specifies certain reporting obligations of DA to AID/W regarding the expenditure of funds.

The MOU requires a written agreement between pertinent U.S. Government agencies in Manila regarding monitoring and accountability for the equipment while under the operational control of the AFP. This agreement is set forth in the Memorandum of Agreement dated October 9, 1987 between USAID/Manila and JUSMAG/Manila (Tab B). This MOA places full responsibility on JUSMAG (i) to inventory the equipment upon delivery, (ii) to monitor use of the equipment, (iii) to monitor compliance of the AFP and other GOP agencies with any agreements pertaining to the equipment, (iv) to make site visits, (v) to inventory equipment upon decommissioning and (vi) to exercise all appropriate remedies in the event of non-compliance by the AFP or any other GOP agency with any agreement pertaining to the equipment.

The USAID/JUSMAG MOA requires JUSMAG to enter into an agreement with the AFP and DPWH regarding the equipment and the civic action program. This agreement is set forth in a Memorandum of Agreement dated December 17, 1987 among JUSMAG, AFP, DPWH and NEDA (Tab C). This MOA, in effect, constitutes the project agreement for the civic action program, except that it does not obligate funds to the GOP. The ESF transferred to DA has been or will be obligated (on or before September 30, 1988) in contracts entered into by DA in procuring the equipment. These obligating instruments have not been and are not required to be reviewed by or provided to USAID/Manila.

Section 6(F) of the DA/State/AID MOU states that "JUSMAG will provide to USAID/Manila for transmittal to DA a complete list of required equipment and spare parts, information on how the shipment will be made, where it is to be shipped, and for whom it is to be marked." However, the responsibilities thereby placed upon USAID/Manila were devolved upon JUSMAG pursuant to Section 1.1 of the USAID/JUSMAG MOA; JUSMAG's responsibilities in this regard are further reflected in Section 1.1 of the JUSMAG/AFP/DPWH/NEDA MOA. Thus, all USG responsibilities involving the procurement of the equipment have been and will be handled by JUSMAG and DA.

Responsibilities of AID

1. Program Justification and Transfer of Funds

AID's initial responsibilities were (i) to provide the legal and program justification for the civic action program and to satisfy Congressional notification requirements (DA/State/AID MOU, Section 3) and (ii) to transfer \$15 million in ESF to DA (DA/State/AID MOU, Section 6(A)). AID/W was responsible for and has discharged these obligations.

2. Monitoring the Expenditure of Funds

DA is required to provide AID/M/FM/CAD a monthly report on Budget Execution (SF-133) (DA/State/AID MOU, Section 6(B)) and to return any funds not required for the program to AID (DA/State/AID MOU, Section 6(E)). AID/W is responsible for overseeing DA's compliance with these reporting and funds re-transfer requirements.

3. Monitoring of the Civic Action Program

JUSMAG has direct responsibility for monitoring the civic action program and the compliance of cognizant GOP agencies with agreements pertaining to the equipment and the conduct of the program. USAID's responsibility is to monitor JUSMAG's compliance with the USAID/JUSMAG MOA. The principal means of USAID oversight is the review of JUSMAG's periodic field reports of visits to project sites and maintenance facilities. JUSMAG is required to submit such reports to USAID pursuant to Article 3 of the USAID/JUSMAG MOA. In connection with each report, JUSMAG is required to certify that the use of the equipment is in compliance with all applicable agreements, or to note any exceptions and state what actions have been or will be taken by JUSMAG to remedy non-compliance. Pursuant to Article 4 of the USAID/JUSMAG MOA, JUSMAG is required to notify USAID of the status and progress of any actions taken to remedy non-compliance by the GOP with any agreement pertaining to the equipment and the program.

In the event that the civic action program is terminated or any equipment is decommissioned from AFP use, USAID and DPWH are required to enter into an agreement providing for USAID monitoring and approval of the use of the decommissioned equipment (USAID/JUSMAG MOA, Section 2.4).

4. Assignment of USAID Responsibilities

A. Office of Capital Development

The responsibilities outlined below are assigned to OCD/EIED. The Chief of OCD shall formally designate the responsible USDH Officer (and alternate) by memorandum. Upon rotation or during extended absences, these delegations will be amended or revised by the Chief as necessary. OCD is responsible for:

- Maintaining the official USAID files on all matters pertaining to the civic action program.
- Establishing and maintaining liaison with cognizant JUSMAG officers. Liaison with the AFP, DPWH, NEDA or other GOP agencies in connection with the program is the responsibility of JUSMAG and should not be undertaken by OCD, except as noted below in the case of decommissioning of equipment.
- Obtaining JUSMAG's field reports. No regular reporting schedule is provided in the USAID/JUSMAG MOA, since JUSMAG field reports are to be prepared in connection with intermittently scheduled site visits. However, OCD should request JUSMAG to advise USAID of planned site visits in order to monitor JUSMAG's compliance with this reporting requirement. USAID is not responsible for direct monitoring and oversight of the program; therefore, USAID Officers should not accompany JUSMAG officers on site visits, attend meetings with GOP officials, or review reports submitted to JUSMAG by the GOP in connection with the program without the express authorization of OD.
- Reviewing JUSMAG's field reports. OCD should ensure that field reports are responsive to the requirements of Article 3 of the USAID/JUSMAG MOA, including the certification requirements.
- Obtaining written reports from JUSMAG on the status and progress of any remedial actions taken by JUSMAG in cases of non-compliance by the GOP with agreements pertaining to the program.
- Establishing liaison with appropriate officials of DPWH in the event of decommissioning of equipment from AFP use; preparing (with drafting assistance of the RLA) the necessary agreements regarding non-civic action use of decommissioned equipment; and administering any agreements entered into in this regard.

B. Regional Legal Advisor

The Regional Legal Advisor is responsible for:

- Providing legal advice and general counsel to USAID regarding the program and the agreements pertaining to it.
- Drafting any agreements pertaining to the non-civic action use of the equipment upon decommissioning.
- Clearing any written communication issued by USAID concerning the obligations of any party under an agreement, law or regulation, or regarding the exercise of remedies by JUSIAG.

5. Issues Reserved for the Ambassador

Pursuant to Section 1.2 of the USAID/JUSIAG MOA, the JUSIAG/AFP/DPIH/NEDA MOA may not be amended without the prior written approval of the Chief of Mission (Ambassador or Charge d'Affaires).

Clearance:

OD:JSBlackton



bcc: ANE/DP
ANE/PD
ANE/EA
ANE/EC

RLA: [Signature] :fml:09/22/88
Doc. No. 1440L

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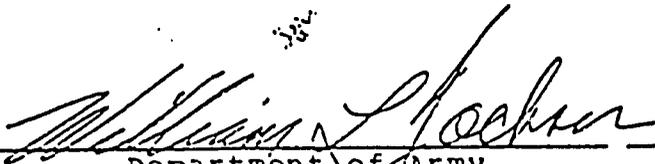
5. Arrangements for monitoring and accountability while the equipment is under the operational control of the AFP will be consummated in written agreement between the pertinent U.S. Government agencies in Manila.

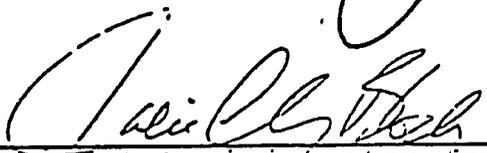
6. Terms and conditions. Except as A.I.D. and the Department of Defense may otherwise agree in writing, the allocation of funds is subject to the following terms and conditions.

- A. DA shall receive the allocation of A.I.D. funds as a Treasury Department non-expenditure transfer authorization (SF-1151). DA shall assure that A.I.D. funds are accounted for separately within DA accounts. The DA shall keep full and complete records and accounts with respect to the A.I.D. funds and make those records and accounts available to A.I.D. upon request. Total cost for procurement and delivery of the equipment and spare parts, including a 3% administrative surcharge, shall not exceed the \$15,000,000 allocation described herein.
- B. DA will provide the A.I.D. Office of Financial Management a monthly report on Budget Execution (SF-133). The report will be sent to the following address:

Agency for International Development
M/FM/CAD, Room 517, State Annex 12
Washington, D.C. 20523
- C. DA will keep the Chief of Diplomatic Mission in Manila informed on the status of procurement and shipment of the equipment and spare parts related to this assistance, as may be required.
- D. Any funds covered hereunder not obligated by 30 September 1987, will be available for obligation until 30 September 1988 once DA is notified in writing by A.I.D. that the funds have been apportioned by OMB for FY 1988.
- E. Funds not required for this assistance will be returned to A.I.D. on a SF-1151.

F. JUSMAG will provide to USAID/Manila for transmittal to DA a complete list of required equipment and spare parts, information on how the shipment will be made, where it is to be shipped, and for whom it is to be marked. Title of the equipment and spare parts will pass to the GOP F.O.B. point of origin.

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|  Department of Army for the Department of Defense <u>28 SEP 1987</u> Date |  Department of State <u>July 2, 1987</u> Date |
|--|--|


Assistant Administrator for
Asia and Near East
July 2, 1987
Date

MEMORANDUM OF AGREEMENT

CONFIRMED COPY

By this Memorandum of Agreement made and entered into on the 9th day of October, 1987, the Joint United States Military Assistance Group ("JUSMAG") and the United States Agency for International Development ("USAID"), hereby agree as follows:

WITNESSETH THAT:

WHEREAS, the Agency for International Development ("AID"), the Department of State ("State") and the Department of Defense, acting through the Department of the Army ("DA") have entered into a Memorandum of Understanding on September 28, 1987 (the "Section 632(a) Agreement") providing for the transfer of an allocation of \$15,000,000 in Economic Support Fund ("ESF") appropriations from AID to DA pursuant to Section 632(a) of the Foreign Assistance Act of 1961, as amended (the "FAA"); and

WHEREAS, the Section 632(a) Agreement provides that DA will utilize the ESF allocation so transferred for the purpose of procuring heavy engineering equipment (the "Equipment") on behalf of the Government of the Republic of the Philippines ("GOP") for use by the Armed Forces of the Philippines ("AFP") in a program of civic action infrastructure projects (the "Civic Action Program"); and

WHEREAS, the Section 632(a) Agreement requires agencies of the United States Government in the Philippines to agree on arrangements for monitoring of and accountability for the Equipment while it is under the operational control of the AFP.

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NOW, THEREFORE, JUSMAG and USAID (the "Parties") hereby agree as follows:

ARTICLE 1: GENERAL UNDERSTANDINGS

Section 1.1. Civic Action Agreement. The Parties understand and agree that JUSMAG, the AFP and the Philippine Department of Public Works and Highways ("DPWH") will enter into a Memorandum of Agreement on Civic Action (the "Civic Action Agreement") setting forth, inter alia, the rights and obligations of the parties thereto with respect to the procurement of the Equipment by DA on behalf of the GOP for use by the AFP in the Civic Action Program, ownership and custody of the Equipment, preparation and approval of periodic plans for the deployment and use of the Equipment, restrictions on use of the Equipment, maintenance of the Equipment, monitoring and reporting on use of the Equipment, and remedies in the event of non-compliance with the terms of the Civic Action Agreement.

Section 1.2. Approvals. The Parties agree that the Civic Action Agreement shall be in form and substance satisfactory to the Chief of the U.S. Diplomatic Mission to the Philippines ("Chief of Mission"), and shall not be executed or amended without the prior written approval of the Chief of Mission. The Civic Action Agreement shall provide, inter alia, that any subsidiary agreements or sub-agreements entered into by DPWH, the AFP or any other agency or instrumentality, pertaining to the Equipment, shall be in form and substance satisfactory to JUSMAG and shall not be executed or amended, and that no waivers, approvals or

permissions, the issuance of which is reserved to DPWH, the AFP or such other agency or instrumentality, shall be exercised, without the prior written approval of JUSMAG.

Section 1.3. No Military Use. The Parties understand and agree that in accordance with Section 531(e) of the FAA, the Equipment may not be used for military or paramilitary purposes. JUSMAG shall take the necessary measures, including, without limitation, the performance of its obligations under this Agreement and the administration of the Civic Action Agreement, to ensure that the Equipment is used in conformity with the requirements of Section 531(e) of the FAA.

ARTICLE 2: MONITORING

Section 2.1. General. JUSMAG agrees to monitor, during any period in which the Equipment is in the custody of the AFP or is available for use by the AFP, (i) the care and use of the Equipment and (ii) compliance by the parties with the terms of the Civic Action Agreement and any other agreement or sub-agreement pertaining to the Equipment.

Section 2.2. Initial Inventory. Representatives of JUSMAG, together with representatives of DPWH and the AFP, shall inventory the Equipment upon its arrival in the Philippines, and shall certify receipt by identifying with respect to each item of the Equipment (i) the manufacturer's serial number, (ii) nomenclature, (iii) model, (iv) attachments, (v) rated power, (vi) spare parts, (vii) conformity to specifications and freight waybill identification and (viii) any other pertinent identifying characteristics.

Section 2.3. Project Site Visits and Maintenance Facility Visits. Representatives of JUSMAG shall periodically visit (i) selected project sites under the Civic Action Program to observe the Equipment and the uses to which it has been or is being put and (ii) maintenance facilities for the Equipment to determine compliance with maintenance plans contained in or approved pursuant to the Civic Action Agreement. JUSMAG shall exercise its best judgment in selecting project sites and maintenance facilities for visitation and in determining the frequency of such visits, giving due consideration to its general monitoring responsibilities as stated in Section 2.1 and its reporting responsibilities as stated in Article 3 of this Agreement.

Section 2.4. Inventory upon Decommissioning or Termination of the Civic Action Program. Representatives of JUSMAG, together with representatives of DPWH and the AFP, shall inventory (i) any item of the Equipment upon its decommissioning from use by the AFP and (ii) all items of the Equipment in the custody of the AFP at the time the Civic Action Program is terminated. All items of the Equipment so inventoried shall be delivered to the custody of DPWH for salvage or rehabilitation and recommissioning for use by DPWH. The Civic Action Agreement shall provide that the use of the Equipment upon such decommissioning or termination of the Civic Action Program shall be subject to approval and monitoring by USAID pursuant to a written agreement to be entered into by and between USAID and DPWH, which shall remain in force and effect until September 30, 1992.

ARTICLE 3. REPORTING

JUSMAG shall provide USAID with a copy of all field reports which describe the Equipment, its use or movement and summarize in report form each project site visit and maintenance facility visit. The periodic field reports shall describe the adequacy of maintenance of the Equipment and the current status of the Equipment and shall certify, to the best of the knowledge and belief of the representative of JUSMAG so certifying, after due inquiry, that the use of the Equipment is in compliance with all applicable agreements pertaining thereto, or noting any exceptions to compliance and stating what actions have and will be taken by JUSMAG to remedy such non-compliance.

ARTICLE 4. EXERCISE OF REMEDIES

The Civic Action Agreement shall provide remedies to JUSMAG in the event of non-compliance with the Civic Action Agreement or any other agreement or sub-agreement pertaining to the Equipment. If any event of non-compliance shall occur, JUSMAG shall diligently pursue such remedies and notify USAID of the status and progress of such remedial actions.

ARTICLE 5. MISCELLANEOUS

Section 5.1. Amendments. This Agreement may not be amended except by means of a written instrument signed by both of the Parties.

Section 5.2. Termination. Except as USAID may otherwise agree in writing, JUSMAG's obligations under this Agreement shall continue until the earlier to occur of (i) such time as all items of the Equipment have been decommissioned from use by the AFP and inventoried

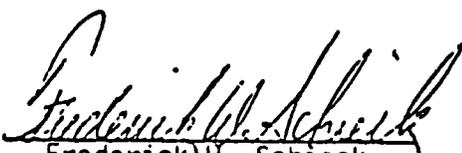
and delivered to DPWH in accordance with Section 2.4 of this Agreement or (ii) such time as the Civic Action Program is terminated and all items of the Equipment have been inventoried and delivered to DPWH in accordance with said Section 2.4; provided, however, that except as USAID may otherwise agree in writing, JUSMAG's obligations under Article 4 to exercise remedies shall remain in full force and effect with respect to any claim which matured prior to such decommissioning or termination until all such claims have been settled in form and substance satisfactory to USAID.

IN WITNESS WHEREOF, the Joint United States Military Assistance Group and the United States Agency for International Development, each acting through its duly authorized representatives, have caused this Memorandum of Agreement to be signed in their names and delivered as of the day and year first above written.

JOINT UNITED STATES
MILITARY ASSISTANCE GROUP

UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT

By: 
Charles E. Teeter

By: 
Frederick W. Schieck

Title: Major General

Title: Director

NOTE

April 6, 1988

TO : Mr. Frederick W. Schieck, Director

FROM : Keith E. Brown, Chief, OCD



SUBJECT: Civic Action

Please find attached for your review and information a copy of the Civic Action Memorandum of Agreement (MOA) between NEDA and JUSMAG, although DPWH Secretary Ferrer and AFP Chief of Staff General De Villa also signed the MOA. Please note the introductory paragraph which states that the MOA was made and entered into on December 17, 1987. This is contrary to my discussion Monday with Southworth who told me February 8-10, 1988. I surmise that they did not change the date of the MOA to reflect when the last signature was obtained.

cc: OD:JSBlackton
PRO:WTOliver
RLA:BMiller
OCD:MDeMetre



MEMORANDUM OF AGREEMENT

By this Memorandum of Agreement made and entered into on this 17th day of December, 1987, the Republic of the Philippines, acting through the National Economic and Development Authority ("NEDA") and the United States of America, acting through the Joint United States Military Assistance Group ("JUSMAG"), hereby agree as follows:

WITNESSETH THAT:

WHEREAS, the United States of America, acting through the Department of Defense ("DOD"), has agreed to utilize not more than \$15,000,000 in Economic Support Funds for the purpose of procuring engineering equipment for use by the AFP in a program of civic action infrastructure projects; and

WHEREAS, the NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA), the Philippine Government Agency designated and mandated by law to handle all ESF transactions, by authority of the Director-General or, in case of her absence, the Official designated to act in or take place, hereby designates the duly authorized representatives of the Department of Public Works and Highways (DPWH) and the Armed Forces of the Philippines (AFP) as additional representatives of the Republic of the Philippines, pursuant to Section 5.6 hereof.

WHEREAS, NEDA, DPWH, the AFP and JUSMAG (the "Parties") wish to set forth their mutual understanding regarding the use, monitoring and other matters pertaining to such engineering equipment.

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I: THE EQUIPMENT.

Section 1.1. Procurement of the Equipment. The AFP and JUSMAG shall mutually agree on a list specifying items of engineering equipment and spare parts with respect to which procurement by DOD utilizing Economic Support Funds is requested by the Republic of the Philippines. JUSMAG shall endorse the agreed upon list of items, and any modifications thereof mutually agreed by the AFP and JUSMAG, to DOD for the purpose of undertaking procurement of the items therein described. DOD shall undertake the procurement of said items in accordance with standard DOD procurement practices and procedures, subject to any modifications thereof or understanding with respect thereto mutually agreed upon in writing by the AFP and JUSMAG after coordination with the U.S. Department of Defense and the U.S. Department of State. The Parties understand and agree that no obligation of funds by the United States of America shall occur with respect to said procurement unless and until contracts for the acquisition of

___ said items have been awarded by DOD or its agencies or instrumentalities. The Parties further understand and agree that the United States of America shall not obligate an amount in excess of \$15,000,000 for the purpose of acquiring said items and any ancillary services, including ocean transportation, and that no funds shall be obligated after September 30, 1988.

Section 1.2. Shipment and Consignment of the Equipment.

DOD or its agencies or instrumentalities shall arrange for the shipment of all items of engineering equipment procured pursuant to Section 1.1 (the "Equipment"), in accordance with shipping instructions mutually agreed upon by the AFP and JUSMAG after coordination with the U.S. Department of Defense and the U.S. Department of State. Shipping of the equipment may follow the 50%-50% cargo sharing arrangement between RP-US flag vessels. This can be the subject of an agreement to be appended. DOD or its agencies or its instrumentalities shall consign the Equipment to DPWH and shall ensure that shipping documents are prepared accordingly. JUSMAG shall advise the AFP of shipping schedule for the Equipment and the AFP shall in turn so advise DPWH.

Section 1.3. Initial Inventory of the Equipment.

Upon the initial arrival of any item or items of the Equipment in the Republic of the Philippines, duly authorized representatives of the AFP, DPWH and JUSMAG shall jointly inventory said item or items and shall jointly certify receipt by identifying with respect to each such item (i) the manufacturer's serial number, (ii) nomenclature, (iii) model, (iv) attachments, (v) rated power, (vi) spare parts, (vii) conformity to specifications and freight waybill identification and (viii) any other pertinent identifying characteristics.

Section 1.4. Title and possession of the Equipment.

Legal title to the Equipment under the laws of the Republic of the Philippines shall be vested in and retained by DPWH. Promptly upon arrival of any item or items of the Equipment in the Republic of the Philippines, DPWH shall effect the transfer of possession and control of such item or items to the AFP, subject to the terms and conditions of this Agreement, or as otherwise agreed upon in writing by the Parties. Thereafter, the representative of the AFP shall take physical possession and sign invoice and Memorandum Receipts in favor of DPWH. DPWH shall journalize said equipment into Equipment Accounting to establish ownership on the basis of the Memorandum of Agreement, Consular Invoice, Bill of Lading, Purchase Order and Suppliers Certificate. JUSMAG will be provided copies of such documents.

ARTICLE II. DEPLOYMENT AND USE OF THE EQUIPMENT.

Section 2.1. Civic Action Program: No Military Use.

The AFP agrees that all times during which it has actual possession and control of any item or items of the Equipment, such item or items shall be used exclusively for the purpose of carrying out a program of civic action infrastructure project such as construction and rehabilitation of roads, schools or other small-scale infrastructure projects devoted to and in furtherance of civilian purposes (the "Civic Action Program"). The

parties understand and agree that, in accordance with Section 531(e) of the U.S. Foreign Assistance Act of 1961, as amended, the Equipment may not be used for military or paramilitary purposes.

Section 2.2. Deployment of the Equipment. The AFP shall deploy the Equipment to engineering battalions of one or more of its military branches involved in projects under the Civic Action Program in accordance with the Civic Action Program. The AFP shall promptly deploy the Equipment to its assigned units and inform JUSMAG and DPWH in writing of the engineering battalion to which each item of the Equipment has been assigned, and of any modifications of such assignments, identifying each such item of the Equipment by serial number and other identifying characteristics.

Section 2.3. Transportation Support. Upon receipt of notification from the AFP of the engineering battalion to which an item of the Equipment has been assigned, DPWH shall so inform its regional office in the vicinity of such location. If required, and upon the request of the AFP, DPWH shall provide or arrange for inland transportation of each item of the Equipment to such location upon arrival of the Equipment at Philippine outports. DPWH, through its regional offices, shall further provide or arrange for inland transportation from time to time if required and upon the request of the AFP of items of the Equipment to and from construction sites and storage and maintenance facilities. Transportation expenses must be borne by the AFP.

Section 2.4. Annual Work Plans. DPWH and the AFP shall agree in writing on an annual work plan for the Civic Action Program. The AFP shall provide JUSMAG with a copy of such annual work plans not later than 30 January of each year. The AFP shall promptly notify DPWH and JUSMAG of any material modification of an annual work plan.

ARTICLE III. OPERATIONS AND MAINTENANCE.

Section 3.1. General. The AFP shall maintain and operate the Equipment so as to carry out the Civic Action Program effectively at all times and shall allocate resources or otherwise obtain sufficient operations and maintenance funds therefor.

Section 3.2. Maintenance Plan. The AFP and DPWE agree to carry out a program of preventive and rehabilitative maintenance and repair to ensure that the Equipment is in a high state of operational readiness at all times. The DPWH PM system (or AFP PM System) shall be adopted for this purpose and shall form part of this agreement. Service of DPWH Workshops may be made available chargeable against AFP on "At Cost" basis. Parts shall be supplied by AFP.

ARTICLE IV. MONITORING AND REPORTING.

Section 4.1. Monitoring by JUSMAG. The AFP and DPWE recognize that agencies of the United States Government are required by the laws of the United States of America to monitor the use of property

financed with funds provided by the United States Government, including Economic Support Funds (ESF), Military Assistance (MAP) and Foreign Military Sales (FMS). Upon notice to the AFP, JUSMAG shall have the right to monitor, any item of the equipment in the possession and control of the AFP or otherwise available for use by the AFP of (i) the care and use of the equipment and (ii) compliance with the terms of this Agreement and any other agreement or sub-agreement pertaining to the Equipment. Such monitoring by representatives of JUSMAG shall be made with the Joint Monitoring Center of DPWH and/or the Chief of Engineers, AFP. Site visits by representatives of JUSMAG may be arranged by the AFP in accordance with AFP procedures and restrictions as from time to time in effect.

Section 4.2. Reports.

(a) Regular Reports. The AFP shall provide DPWH and JUSMAG with an interim progress report within 30 calendar days following June 30 in each year and an end - of - year final report within 45 calendar days following December in each year. Such reports shall provide the following information:

(i) Deployment of Equipment. The interim and consolidated reports shall include the distribution and deployment of the Equipment as of each June 30 and December 31, respectively. Such reports shall indicate the engineering battalions to which each item of the Equipment is then assigned, the location of the storage facility from which each item is deployed, and the state of operational readiness of each item. Such reports shall further note any modification in such deployment from the deployment agreed upon pursuant to Section 2.2 hereof or subsequently reported upon pursuant to this subsection, together with an explanation of such modifications. Such reports shall identify each item of Equipment by serial number and such other identifying characteristics as may be necessary to permit independent confirmation of the matters reported.

(ii) Use and Maintenance of the Equipment. The interim and final reports shall include the project uses of the Equipment and maintenance performed on the Equipment during the six months ending June 30 and the twelve months ending December 31, respectively. Such reports shall specify the projects completed or underway using the Equipment during the reporting period and shall compare such activities to the activities planned for the reporting period as indicated in the annual work plans submitted pursuant to Section 2.4 hereof, together with an explanation of differences between planned and actual use. Such reports shall further specify maintenance procedures performed during the reporting period.

Section 5.1. Markings. All equipment shall be marked/painted in accordance with DPWH markings and/or paintings/colors.

Section 5.2. Other Agreements. The AFP and DPWH agree that no subsidiary agreements, sub-agreements, other documents and understandings entered into by DPWH, the AFP or any other agency or

instrumentality, pertaining to the Equipment, "shall be executed without prior consultation with JUSMAG and shall not be executed or amended, and no waivers, approvals or permissions, the issuance of which is reserved to DPWH, the AFP or such other agency or instrumentality shall be exercised, without mutual agreement between and among the Parties.

Section 5.3. Reports, Records Inspections and Audit. The AFP and DPWH whenever applicable agree to:

(a) Furnish JUSMAG such information and reports relating to the Equipment and to this Agreement as JUSMAG may reasonably request;

(b) Maintenance or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Equipment and to this Agreement, adequate to show, without limitation, the receipt and use of the Equipment. Such books and records shall be audited regularly, in accordance with generally accepted auditing standards, and shall be maintained for three years following the date at which all items of the Equipment have been decommissioned from use by the AFP as provided in Section 5.5. hereof.

Section 5.4. Remedies. With respect to any failure by any party to comply with the terms of this Agreement or to perform any of their respective obligations hereunder, including, without limitation, with respect to maintenance of the Equipment, the provision of logistical and operational support, and the use of the equipment, the concerned party shall promptly take or cause to be taken (i) such actions as may be necessary to remedy such compliance or non-performance and (ii) such further actions, if any, as may be necessary to remedy such non-compliance or non-performance or to prevent further events of non-compliance or non-performance. The materiality of any event of non-compliance or non-performance and the actions taken or proposed with respect thereto shall be done in joint consultation with parties concerned.

Section 5.5. Decommissioning of Equipment or Termination of Civic Action Program. Representatives of the AFP, DPWH and JUSMAG shall inventory (i) any item of the Equipment upon its decommissioning from use by the AFP and (ii) all items of the Equipment in possession and control of the AFP at the time the Civic Action Program is terminated. All items of the Equipment so inventoried which are still economically reparable shall be delivered to the custody of DPWH for salvage or rehabilitation and recommissioning for use by DPWH. The AFP shall be accountable for missing major components of said equipment. For disposable units, the AFP will turn over said units to Regional DPWH offices for proper disposal to be disposed of "as is" "where is" bases. Upon return to DPWH normal USAID procedures on disposal and monitoring of ESF Equipment will be followed.

See [signature] [signature]
1991 Available Document

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Section 5.6. Representative Notices. For all purposes of this Agreement, each of the parties shall be represented by the person holding or acting in the office specified below, each of whom may designate additional representatives for all purposes other than amending this Agreement, and shall be delivered to such representatives at the addresses indicated below:

For the Armed Forces of the Philippines:

The Chief Engineers, AFP

For the Department of Public Works and Highways:

Director, Bureau of Equipment

For the Joint U.S. Military Assistance Group:

Chief, Joint U.S. Military Assistance Group

All notices and communications provided under this Agreement shall be in English.

IN WITNESS WHEREOF, the Republic of the Philippines, acting through the duly authorized representative of the National Economic and Development Authority and the designated representatives of the Armed Forces of the Philippines and of the Department of Public Works and Highways, and the United States of America, acting through the duly authorized representative of the Joint United States Military Assistance Group, have caused this Memorandum of Agreement to be signed in their names and delivered as of the day and year first above written.

REPUBLIC OF THE PHILIPPINES:

NATIONAL ECONOMIC AND DEVELOPMENT
AUTHORITY



SOLITA COLLAS-MONSOD
Director-General

UNITED STATES OF AMERICA:

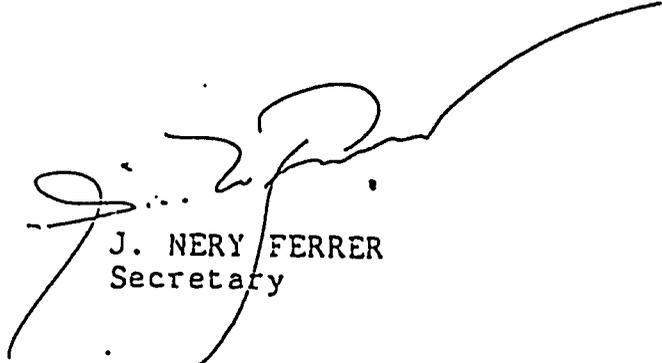
JOINT U.S. MILITARY ASSISTANCE
GROUP



CHARLES E. TEETER
Major General, USA
Chief, JUSMAG

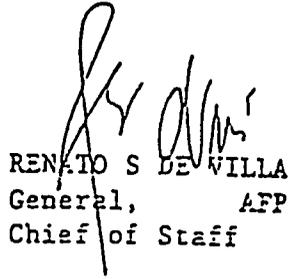
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