

PD KAE 868

A.I.D. Project Number 538-0082

PROJECT

GRANT AGREEMENT

BETWEEN

THE GOVERNMENT OF ST. LUCIA

and the

UNITED STATES OF AMERICA

for

PRODUCTIVE INFRASTRUCTURE REHABILITATION

Dated: September 21, 1982

RECORD COPY

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Project Grant Agreement

Dated: September 21, 1982

Between

The Government of St. Lucia ("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 the rehabilitation of approximately 65 miles of feeder roads and primary roads throughout St. Lucia, and the provision of equipment and technical assistance. 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.

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 Five Million One Hundred Fifty Thousand United States ("U.S.") Dollars (\$5,150,000) ("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 entire Project as described in Annex I will be not less than the equivalent of U.S.\$800,000, including costs borne on an "in-kind" basis, administrative costs, and recurrent maintenance costs.

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SECTION 3.3. Project Assistance Completion Date.

(a) The "Project Assistance Completion Date" (PACD), which is September 30, 1985, 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. First Disbursement. Prior to the first disbursement under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee 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) An opinion of counsel acceptable to A.I.D. that this Agreement has been duly authorized and/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 all of its terms;

(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;

(c) Evidence that the grantee has executed a contract with Crown Agents for Oversea Governments and Administrations Ltd. for the management of construction and rehabilitation activities undertaken in the Project.

SECTION 4.2. Disbursement For Road Rehabilitaton. Prior to any disbursement, or to the issuance of any documentation pursuant to which disbursement will be made for the rehabilitation of any road, the Grantee shall, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D., an overall time-phased implementation plan covering road rehabilitation for the Project:

SECTION 4.3. Disbursement For Particular Road Segments. Prior to any disbursement, or to the issuance of any documentation pursuant to which

disbursement will be made for the rehabilitation of a particular road segment, the Grantee shall, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D. the following

- (a) Detailed cost estimate and construction schedule;
- (b) Economic analysis evidencing a rate of return of no less than 10%; and
- (c) Certification that the Grantee has obtained appropriate rights of way.

SECTION 4.4. Disbursement for Equipment. Prior to the issuance of any documentation pursuant to which disbursement will be made for the purchase of equipment, the Grantee shall, except as the Parties may otherwise agree in writing, furnish to AID in form and substance satisfactory to AID a list of proposed equipment with specifications.

SECTION 4.5 Notification. When A.I.D. has determined that the conditions precedent specified in Section 4.1., 4.2., 4.3. and 4.4. have been met, it will promptly notify the Grantee.

SECTION 4.6. Terminal Dates for Conditions Precedent.

- (a) If all of the conditions specified in Section 4.1. have 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 terminate this Agreement by written notice to Grantee.

Article 5: Special Covenants.

SECTION 5.1. The Grantee covenants to:

- (a) Make available Government owned land or "borrow areas" necessary to supply aggregate materials required for road reconstruction activities under the Project;
- (b) Provide a minimum of the average amount expended for road maintenance in fiscal years 1980-1981 and 1981-1982 for annual road maintenance operations each year during the life of the Project;
- (c) Execute and finance a contract with Crown Agents for Oversea Governments and Administration Ltd. for the purpose of managing construction and rehabilitation activities undertaken in this Project;
- (d) Use AID-financed equipment solely for project activities until all road rehabilitation is satisfactorily completed, after which time the equipment will be used on a priority basis for road maintenance and construction.
- (e) In addition to the Crown Agent Construction Unit, provide such professional staff as necessary to manage and supervise project activities.

SECTION 5.2. Project Evaluation. The Parties agree to establish an

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evaluation program which will include, during the implementation of the Project, submission of quarterly reports to AID evaluating progress toward attainment of Project objectives and identifying problem areas which may inhibit such attainment.

Article 6: Procurement Source.

SECTION 6.1. Foreign Exchange Costs. Disbursements 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 United States ("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. Disbursements 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 St. Lucia.

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 in 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 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 Grantee in connection with Letters of Commitment and Letters of Credit will be financed under the Grant unless 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.

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(b)The local currency needed for such disbursements may be obtained:

(1) by acquisition by A.I.D. with U.S. Dollars by purchase; or

(2) by A.I.D. (A) requesting the Grantee to make available the local currency for such costs, and (B) thereafter making available to the Grantee, through the opening or amendment by A.I.D. of Special Letters of Credit in favor of the Grantee or its designee, an amount of U.S. Dollars equivalent to the amount of local currency made available by the Grantee, which dollars will be utilized for procurement from the United States under appropriate procedures described in Project Implementation Letters.

The U.S. Dollar equivalent of the local currency made available hereunder will be, in the case of subsection (b)(1) above, the amount of U.S. dollars required by A.I.D. to obtain the local currency, and in the case of subsection (b)(2) above, an amount calculated at the rate of exchange specified in the applicable Special Letter of Credit Implementation Memorandum hereunder as of the date of the opening or amendment of the applicable Special Letter of Credit.

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 St. Lucia 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 local currency at the highest rate of exchange which, at the time the conversion is made, is not unlawful.

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:

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To the Grantee:

Mail Address: Minister of Communications,  
Works and Labour  
Castries, St. Lucia

Cable Address: FORAFF, ST. LUCIA

To A.I.D.: MISSION DIRECTOR

Mail Address: Regional Development Office/  
Caribbean  
P.O. Box 302  
Bridgetown, Barbados

Cable Address: USEMBBGI 2259

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 Minister of Communications, Works, Labour and Transport and A.I.D. will be represented by the individual holding or acting in the office of Mission Director, 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 1. 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.

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IN WITNESS WHEREOF, the Grantee 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.

UNITED STATES OF AMERICA

By: Milan Bish  
Milan Bish

Title: \_\_\_\_\_  
Ambassador

By: William Wheeler  
William Wheeler

Title: \_\_\_\_\_  
Mission Director

ST. LUCIA

By: John Compton  
John Compton

Title: \_\_\_\_\_  
Prime Minister

AMPLIFIED PROJECT DESCRIPTION

Section 1: Project Purpose

The purpose of the project is to provide dependable transportation from St. Lucia's agricultural and industrial areas to major population centers and ports. This will be accompanied through a program which will restore and repair key primary and access roads in St. Lucia, and will upgrade its institutional capacity to maintain the national road network and develop comprehensive road programs consistent with economic development goals.

Section 2: Detailed Description

Section 2.1 Road Rehabilitation

The project will provide \$5,580,000 to finance the rehabilitation of approximately 65 miles of road, including segments of two primary and 16 feeder roads. The roads are as follows:

| <u>Feeder Roads</u>               | <u>Miles</u> |
|-----------------------------------|--------------|
| 1. Choc - Babonneau               | 3.7          |
| 2. Nagere - Boguis                | 2.7          |
| 3. La Croix - Odsan               | 3.0          |
| 4. Roseau - Vanard                | 2.3          |
| 5. Trois Freres                   | 1.6          |
| 6. La Borne                       | 1.5          |
| 7. Thomazo                        | 1.5          |
| 8. Belle Plain - Morne Bonin      | 1.8          |
| 9. La Resource - Dernier Riviere  | 1.0          |
| 10. Des Rameaux - Nagere Link     | 0.7          |
| 11. Mongiraud - Monchy            | 2.4          |
| 12. Volet - Mahaut                | 3.0          |
| 13. Savanne George - Delcer       | 3.2          |
| 14. Fond St. Jacques - Migny      | 3.3          |
| 15. Canaries Valley               | 2.0          |
| 16. Grand Riviere - Morne Panache | 2.0          |
| <br>                              |              |
| <u>Primary Roads</u>              | <u>Miles</u> |
| 1. Castnies - Dennery             | 9.0          |
| 2. Vieux Fort - Soufriere         | 21.0         |
| Total                             | 65.7         |

Prior to the financing of any one road segment, traffic counts and cost benefit analyses will be carried out. Only those road segments which show a real rate of return of at least 10% will be rehabilitated under the Project. An implementation plan will be drawn up which identifies all road segments, with cost estimates, that will be rehabilitated during each construction year of the project.

Rehabilitation activities will include some or all of the following depending on the particular condition of each road section: clearing and cleaning of the roadway shoulders and edges; excavation and grading;

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intensive patching; reinstatement of base course; addition of double bituminous surface dressing; cleaning, repair or installment of new drainage structures; and repair of some masonry wall. Cost of this work, including labor, material and equipment rental are eligible for financing under the grant.

Road rehabilitation activities will be managed by the Crown Agents under contract with the Ministry of Communications and Works. A Project Manager, financed by AID, will provide approximately 18 months of assistance over approximately a 30 month period. He will be responsible for general project supervision, certification of completed road work, and assisting the government in areas such as the reporting requirements identified by USAID. An Interim Project Manager will be financed also under the grant for eight weeks to assist in the period prior to the selection and arrival of the permanent Project Manager. Because the GFS does not have enough equipment to provide for the large scale of road rehabilitation proposed in this project, and at the same time carry out a routine maintenance program, AID will finance the following seven pieces of equipment to insure that road construction activities are completed on schedule:

- 1) 2 Asphalt Distributors
- 2) 1 Vibratory Roller
- 3) 1 Tractor-Loader
- 4) 1 Vibratory Roller, Single drum
- 5) 2 Self-propelled pedestrian vibratory rollers, fitted with breaker units and compressor.

The GOSL will make available on a priority basis equipment needed for road rehabilitation activities under the project.

#### Section 2.2. Maintenance Capacity

To assist the Government of St. Lucia in increasing its capacity to carry out road maintenance programs up to six months of short term expertise will be provided in various areas of transport planning. This will include assistance in conducting road surveys and inventories, road classification and traffic counts, and such techniques and data collection methods as needed to provide the information upon which long term national road planning decisions can be made. Assistance in road design, construction, inspection and maintenance standards will also be financed. In addition to the short term assistance, the Project Manager will be able to provide some on-the-job training in engineering skills to MCW staff as the project progresses.

Grant funds will also be provided for the purchase of a four-wheel drive vehicle, and laboratory equipment to test the suitability of aggregate and other materials used in road and bridge rehabilitation and to determine the acceptability of construction in terms of approved engineering standards.

At the completion of the project, the equipment purchased under this agreement will be turned over to the GFS, thus increasing the Ministry of Communication and Works' physical resource base and capability for maintaining St. Lucia's road network.

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**Section 3: Project Administration and Implementation**

In addition to the AID-financed Project Manager, and the Crown Agent Construction Unit financed by the Government of St. Lucia, the Ministry of Communications and Works will provide such additional technical personnel as may be required. This includes, a road supervisor, two foremen and two technicians to assist in carrying out road rehabilitation activities. Office space and in-country travel expenses will also be included in the Government contribution.

**Section 4: Summary Financial Plan**

**Summary Cost Estimate**

All Years (US\$000)

|                            | <u>AID</u>   | <u>GOSL</u> | <u>TOTAL</u> |
|----------------------------|--------------|-------------|--------------|
| 1. Rehabilitation          |              |             |              |
| a. Road Construction*      | 4,455        | -           | 4,455        |
| b. Equipment               | 345          | -           | 345          |
| c. Construction Management | 240          | 540         | 780          |
| Sub-total                  | 5,040        | 540         | 5,580        |
| 2. Short-term TA           | 66           | -           | 66           |
| Inflation                  | 5            | -           | 5            |
| 3. Operating Expenses      |              |             |              |
| a. Personnel               | -            | 85          | 85           |
| b. Overhead, Travel        | 24           | 175         | 199          |
| Sub-total                  | 24           | 260         | 284          |
| 4. Evaluation              | 15           | -           | 15           |
| Total                      | <u>5,150</u> | <u>800</u>  | <u>5,950</u> |

\* This includes labor, materials, other equipment, job-site overhead and inflation.

**Section 5: Project Evaluation**

The Grant will provide approximately \$15,000 to carry out a mid-project evaluation and a final evaluation at the close of project activities.

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Project Grant StandardProvisions 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

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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) All contractors and their employees financed under this Grant shall be exempt from income taxes, professional fees, work permit requirements and similar levies imposed under laws in effect in the territory of the Grantee. Long term contract technicians coming to reside for a period of more than one year shall be granted first entry duty free privileges for his household effect to include one personally owned motor vehicle. Any commodities purchased for use on the Project shall also be imported free of identifiable taxes and duties.

SECTION B.5. Reports, Records, Inspections, Audit.

The Grantee will:

(a) furnish to AID such information and reports relating to the Project and to this Agreement as AID 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 cause 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;

(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.

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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.

(e) The Grantee for purposes of travel and per diem shall utilize the rates and policies relating to the currently prescribed grantee policy which is applied to all of the grantees employees. This per diem shall in no extent exceed per country U.S. standardized government travel regulation rates. The grantees policy and applicable rates shall be supplied to USAID at the beginning of the grant and as periodically adjusted thereafter.

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;

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(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 (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

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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.

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 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 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. 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

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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 offloaded 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 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 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 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 with A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.

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