

UNCLASSIFIED
Department of State

INCOMING
TELEGRAM

PAGE 01 KATHMA 04557 01 OF 02 251105Z
ACTION AID-59

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KATHMA 04557 01 OF 02 251105Z

3670119 (3)

INFO OCT-01 NEA-07 EB-08 CIAE-00 DODE-00 /075 W
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FM AMEMBASSY KATHMANDU
TO SECSTATE WASHDC PRIORITY 7002

UNCLAS SECTION 1 OF 2 KATHMANDU 4557

AIDAC

E.O. 12065: N/A
SUBJECT: CN AND ACTIVITY DATA SHEET FOR TRAIL SUSPENSION
BRIDGES (PROJECT 367-0119)

REF: BUTTERFIELD/GEORGE TELCON OF 7/18/79

1. BEGIN TEXT FOR CN. QUOTE PROJECT TITLE: TRAIL SUSPENSION
BRIDGES. PRIOR CP REFERENCE: FY 1979 ASIA REGION BOOK, P. 492;
FY 1978 ASIA PROGRAMS BOOK, P. 86. APPROPRIATION CATEGORY:
FOOD AND NUTRITION. INTENDFD OBLIGATION: \$3,000,000.

2. QUOTE WE INTEND TO OBLIGATE FUNDS TO UPGRADE THE GOVERNMENT
OF NEPAL'S INSTITUTIONAL CAPACITY TO RATIONALLY IMPROVE THE
NATIONAL BRIDGE AND TRAIL NETWORK. TO ACHIEVE THIS PURPOSE,
FUNDS WILL BE USED TO ANALYZE AND RANK POTENTIAL BRIDGE SITES,
PROCURE BRIDGE MATERIALS, FABRICATE INDIVIDUAL BRIDGE COMPO-
NENTS, TRANSPORT MATERIALS TO CONSTRUCTION SITES, AND INSPECT
THE FINAL CONSTRUCTION OF BRIDGES COMPLETED. FUNDS WILL ALSO
BE USED TO FINANCE TRAINING AND TWO SMALL STUDIES RELATED TO
BRIDGE CONSTRUCTION ACTIVITIES, AND TO EVALUATE THE OVERALL
PROJECT. UNQUOTE.

3. BEGIN TEXT OF REVISED (FROM FY 1978 CP IN \$000) ACTIVITY
DATA SHEET: QUOTE. TITLE: TRAIL SUSPENSION BRIDGES. FUNDS:
FOOD AND NUTRITION. PROPOSED OBLIGATION: FY 79 -- 3,000;
LOP - 3,000. NUMBER: 367-0119. GRANT. NEW. PRIOR REFERENCE:
FY 1979 ASIA REGION BOOK, P. 492; FY 1978 ASIA PROGRAMS BOOK,
P 86. INITIAL OBLIGATION: FY 79. ESTIMATED FINAL OBLIGATION:
FY 79. ESTIMATED COMPLETION DATE OF PROJECT: FY 82.

4. QUOTE. PURPOSE: TO UPGRADE THE GOVERNMENT OF NEPAL'S
INSTITUTIONAL CAPACITY TO SELECT BRIDGE SITES, AND TO CONSTRUCT
AND MAINTAIN THESE BRIDGES.

5. QUOTE. BACKGROUND: THE TRANSPORTATION SYSTEM IN NEPAL IS
LIMITED. IT CONSISTS OF A FEW MILES OF RAILWAY AND ROPEWAYS,
A MODEST CIVIL AVIATION SYSTEM, SOME 2,000 MILES OF ROAD AND A
5,000 MILE COMPLEX OF RUGGED FOOT TRAILS SPREAD THROUGHOUT
NEPAL THAT SERVES AS THE PRINCIPLE MEANS OF HUMAN AND ANIMAL
MOVEMENT IN THE HILLS AREAS. A 1969 STUDY ESTIMATED THAT OVER
ONE FIFTH OF THE TOTAL POPULATION SPENT MORE THAN TWO MONTHS
EACH YEAR ON THE MOUNTAIN TRAILS MOVING SUPPLIES TO AND FROM
REMOTE COMMUNITIES. DUE TO THE MANY RIVERS AND STREAMS THAT
CUT THROUGH THE MOUNTAIN AREAS, THE UTILITY OF TRAILS IN
HEAVILY DEPENDENT ON BRIDGES SPANNING THOSE WATER COURSES.
TRADITIONAL BRIDGES ARE OF INDIGENOUS MATERIALS SUCH AS
BAMBOO AND HEMP. THESE BRIDGES ARE PARTICULARLY SUSCEPTIBLE
TO DAMAGE AND DESTRUCTION DURING THE ANNUAL THREE MONTHS OF
MONSOON RAINS. IN SOME CASES WHERE DISCARDED ROPEWAY CABLE
WAS AVAILABLE, SOME RUDIMENTARY SUSPENSION OR SUSPENDED
BRIDGES HAVE BEEN CONSTRUCTED. A NUMBER OF HIGHER QUALITY
BRIDGES HAVE BEEN BUILT WITH HELP FROM EXTERNAL DONORS, BUT
SUCH BRIDGES ARE FEW AND MEET ONLY A SMALL PORTION OF THE
TOTAL REQUIREMENT. IN MANY PLACES, WHERE MATERIALS AND
EXPERTISE HAVE BEEN LACKING, PEOPLE WALK FOR AS MUCH AS SIX
TO EIGHT HOURS A DAY TO LOW WATER LEVEL POINTS IN THE RIVERS
IN ORDER TO FORD ACROSS. RELIABLE AND IMPROVED ACCESS TO
MOUNTAIN AREAS, WHERE TWO-THIRDS OF NEPAL'S POPULATION LIVE,

IS NEEDED TO FACILITATE THE COUNTRY'S DEVELOPMENT ACTIVITIES
BY REDUCING TRANSPORT TIME AND COSTS IN BOTH HUMAN AND
MONETARY TERMS. THE GOVERNMENT'S BRIDGE AND TRAIL IMPROVE-
MENT PROGRAM HAS BEEN ADVERSELY AFFECTED BY LACK OF FOREIGN
EXCHANGE NEEDED TO IMPORT BASIC MATERIALS FOR BRIDGE
FABRICATION AND BY LIMITED STAFF CAPABILITIES. THIS PROJECT
WILL STRENGTHEN THE PROGRAM BY PROVIDING FUNDS FOR PROCUREMENT,
FABRICATION AND TRANSPORT OF BRIDGE BUILDING MATERIALS AND FOR
SPECIAL STUDIES AND TRAINING.

PD- AAD - 044

6. QUOTE. HOST COUNTRY AND OTHER DONORS:

- HOST COUNTRY: CRECTION OF ALL BRIDGES IN THE PROJECT OF
\$1,079,000 (LOCAL CURRENCY EQUIVALENT).

Action
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UNITED STATES GOVERNMENT

Memorandum

3670119 (4)
PD-AAD-044

TO : Distribution

DATE: October 1, 1979

FROM : ASIA/PD/SA, ^{AK} Howard Sharlach

SUBJECT: Nepal - Trail Suspension Bridges (367-0119)
Project Grant Agreement

30 p.

Attached for your information and files is a copy of subject document.

Attachment: a/s

Distribution:

FM/LD:ASmith (original)

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ASIA/DP:RHalligan

DS/DIU/D:

COM/A:BViragh



A.I.D. Project Number 367-0119

PROJECT GRANT AGREEMENT

BETWEEN

HIS MAJESTY'S GOVERNMENT OF NEPAL

and the

UNITED STATES OF AMERICA

for

TRAIL SUSPENSION BRIDGES

Dated: August 31, 1979

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Project Grant Agreement

Dated: August 31, 1979

Between

His Majesty's Government of Nepal (hereinafter referred to as "HMG/N")

And

The United States of America, acting through the Agency for International Development (hereinafter referred to as "A.I.D. ").

Article 1: The Agreement

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

Article 2: The Project

SECTION 2.1 Definition of Project. The project will provide necessary resources to finance the costs for three distinct elements of the HMG/N bridge construction program. These elements shall include:

- a. Procurement and transport of steel cable, cement and other imported materials,
- b. The fabrication of steel components for specific bridges, and
- c. The transportation costs of delivering steel components and imported materials to specific bridge sites.

In addition the Project will provide resources necessary to finance training, a study of the tradesmen adversely effected by bridge construction and a map and classification system of the nation-wide trail network of Nepal.

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

Article 3: Financing

SECTION 3.1. The Grant. To assist HMG/N to meet the costs of carrying out the Project, A.I.D. pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant HMG/N under the terms of this Agreement not to exceed three million United States ("U.S.") Dollars (\$3,000,000) ("Grant"). The Grant may be used to finance foreign exchange costs, as defined in Section 6.1, and local currency costs, as defined in Section 6.2, of goods and services required for the Project.

SECTION 3.2. HMG/N Resources for the Project

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

(b) The resources for the total program, including costs borne on an "in-kind" basis, provided by HMG/N shall be the equivalent of approximately U.S. (\$1,079,000).

SECTION 3.3. Project Assistance Completion Date

(a) The "Project Assistance Completion Date" (hereinafter referred to as "PACD"), which is June 30, 1982, or such other date as the Parties may agree to in writing, is the date by which the Parties expect that all services financed under the Grant will have been performed and all goods financed under the Grant will have been furnished for the Project as contemplated in this Agreement.

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

(c) Requests for release, accompanied by necessary supporting documentation prescribed in Project Implementation Letters are to be received by A.I.D. or any bank described in Section 7.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., after consultation with HMG/N, may at any time or times reduce the amount of the Grant by all or any part thereof for which requests for release, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

Article 4: Conditions Precedent to Initial Release

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

(a) A statement from the Ministry of Finance that this Agreement has been duly authorized and executed on behalf of HMG/N and that it constitutes a valid obligation of HMG/N;

(b) A statement of the name of the person holding or acting in the office of HMG/N specified in Section 8.2, and of any additional representative, together with a specimen signature of each person specified in such statement; and

SECTION 4.2. Project Implementation: Prior to release under the Grant, or to issuance by AID of documentation pursuant to which release will be made for costs associated with the Project, HMG/N will, except as the parties may otherwise agree in writing, furnish to AID in form and substance satisfactory to AID, the name and signature of the designated Project Manager. The Project Manager will call a quarterly meeting of all parties involved in the project to review the management and coordination of the project as outlined in the Project Paper.

SECTION 4.3. Releases based on use of Criteria of Selection: Prior to release under the Grant or to the issuance by AID of documentation pursuant to which such release will be made for any costs for bridges to be financed by AID, HMG/N will furnish to AID in form and substance satisfactory to AID, documentation that the socio-economic ranking of HMG/N proposed bridge sites will be taken into consideration in the selection of bridges to be financed by the Grant and that a plan has been developed to incorporate the use of these criteria during all subsequent HMG/N surveying of potential bridge sites to be considered for AID financing under the Grant.

SECTION 4.4. Releases of Funds for Training: Prior to release under the Grant, or to issuance by AID of documentation pursuant to which releases will be made for costs associated with training, HMG/N and AID will mutually agree about the type of training to be provided and HMG/N will provide AID in form and substance satisfactory to AID, documentation that the type of training to be provided is acceptable to HMG/N, that candidates selected by HMG/N fulfill the minimum requirements of qualification for training, and that upon successful completion of training, such participants will be assigned to positions in the DOR which will encompass responsibilities for field work that utilizes the knowledge and skills acquired during their trainings and that sufficient numbers of these participants will be assigned to positions upon completion of training whose responsibilities will encompass work related to the Suspension Bridge Project of the Department of Roads.

SECTION 4.5. Releases of Funds for Reimbursement of Local Currency Costs: Prior to the release under the Grant or to issuance by AID of documentation pursuant to which releases will be made for Local Currency Costs associated with the AID financed bridges, HMG/N will provide AID in form and substance satisfactory to AID, evidence that contracting and tendering procedures acceptable to AID have been followed.

SECTION 4.6. Notification: When A.I.D. has determined that the conditions precedent specified in Section 4.1, 4.2, 4.3, 4.4 and 4.5 have been met, it will promptly notify HMG/N.

SECTION 4.7. Terminal Dates for Conditions Precedent

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

(b) If the conditions specified in Section 4.2, 4.3 have not been met within 120 days from the date of this Agreement, or such later date as AID may agree to in writing, AID, at its option, may cancel the then unreleased balance of the Grant, to the extent not irrevocably committed to third parties, and may terminate this Agreement by written notice to HMG/N.

Article 5: Project Evaluation and Reports

SECTION 5.1. Project Evaluation. The two parties, HMG/N and AID, agree to conduct an evaluation of the Project every six months after signing this agreement until the completion of the Project.

Article 6: Procurement Source

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

insurance. Ocean transportation costs will be financed under the Grant only on vessels under flag registry of the United States of America or Nepal except as AID may otherwise agree in writing. For purposes of this Grant Nepal is included as a 941 country.

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

Article 7: Release

SECTION 7.1. Release for Foreign Exchange Costs

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

(1) by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (a) request for reimbursement for such goods or services, (b) requests for cash advances for such ~~goods~~ goods and services, or, (c) requests for A.I.D. to procure commodities or services on HMG/N's behalf for the Project; or,

(2) by requesting A.I.D. to issue Letters of Commitment for specified amounts (a) to one or more U.S. banks, satisfactory to A.I.D.,

committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, or (b) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers for such goods or services.

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

SECTION 7.2. Release for Local Currency Costs

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

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

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

(c) Releases for Local Currency Costs of Fabrication contracts can be made only for items produced from steel procured from countries on AID Geographic Code 935.

SECTION 7.3. Other Forms of Release. Releases of the Grant may also be made through such other means as the Parties may agree to in writing.

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

Article 8: Miscellaneous

SECTION 8.1. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such Party at the following addresses:

To HMG/N:

Mail and Cable Address:

For Ministry of Finance

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

For Department of Roads

Chief Engineer
Department of Roads
Ministry of Works & Transport
His Majesty's Government
Babar Mahal, Kathmandu, Nepal

To A.I.D.:

Mail and Cable Address:

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

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

SECTION 8.2. Representatives

For purposes of implementing this Agreement, HMG/N will be represented by the Secretary, Ministry of Finance and A.I.D. will be represented by the Director, USAID/Nepal, each of whom, by written notice, may designate additional representatives. The names of the representatives of HMG/N, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

SECTION 8.3. Standard Provisions Annex 2. A Project Grant Standard Provisions Annex 2 is attached to and forms part of this Agreement.

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

On Behalf of His Majesty's Government
of Nepal

BY: Durga R. Bhandari

TITLE: Secretary
Ministry of Finance

On Behalf of The United States
of America

BY: Samuel H. Butterfield

TITLE: Director
USAID/Nepal

Amplified Description of Project

Trail Suspension Bridges Project

Description: The Trail Suspension Bridges Project represents a collaborative effort between HMG/N and AID to upgrade the HMG/N's institutional capacity to rationally improve the national bridge and trail network. Achievement of this purpose will be based on a process of surveying and ranking of potential bridge sites prior to final selection, design and construction of bridges by the Department of Roads. The initial design of this ranking and surveying procedure are outlined in the Project Paper. It is this initial design that will be utilized by the Department of Roads, during the analysis of potential bridges which are to be financed by AID. Such a procedure, it is understood, will be further refined and developed during the life of the project with the aim of incorporating them eventually into the standard operational procedure of the Department of Roads.

As of result of the use of such a process AID will fund, over a three year period, certain elements of the Department of Roads. AID funds totalling upto \$2,600,000 will be applied to costs associated with the following:

- a. Procurement of steel cable, cement and other imported material,
- b. Fabrication of steel components used in the construction of AID financed bridges, and
- c. Transportation of materials to construction sites.

The detailed procedure for financing each of these components, will be developed in Project Implementation Letters. HMG/N inputs, which will include but not be limited to, the costs of erection contracts for AID financed bridges, the technical and field personnel, and administrative support, operational and maintenance support. Where appropriate such inputs will be detailed in separate Project Implementation Letters.

The Project Manager will meet quarterly with an AID representative to insure that procurement, contracting, and disbursement of funds for goods and services essential to the implementation of the project is accomplished in a timely and expeditious manner. The Project Manager will take into consideration all relevant HMG/N and AID requirements and procedures that are cited in the Grant Agreement. The Project Manager and an AID representative will meet at least once each quarter.

The Grant will also provide funding for a number of distinct sub-projects. These sub-projects include:

- A. Upto \$10,000 for a study of the tradesmen that are displaced by the construction of Bridges. A Plan of Action for such a Study is provided in the Project Paper Annex. A detailed Scope of Work and method of financing will be developed in appropriate Project Implementation Letters.
- B. Upto \$250,000 for a Map and Classification System of the nationwide Trail network of Nepal. An outline of such a map

and study is provided in the Project Paper Annex. A detailed Scope of Work and method of financing will be developed in appropriate Project Implementation Letters.

- C. Upto \$65,000 for costs associated with training. Such Training and the selection of candidates is outlined in Section 4.4 of the Grant Agreement and
- D. AID will provide upto \$20,000 for costs associated with the procurement of imported cable and cement to be assigned to local bridges which have been designed and surveyed by HMG/N personnel in collaboration with American Peace Corps Volunteers. Such funding will be in-kind and will be provided through the Department of Roads as part of a program to support the district level programs of Local Bridge construction. Procedures for requesting such support will be detailed in appropriate Project Implementation Letters.

The budget figures cited above are those provided in the attached Project Paper budget and are to be viewed as illustrative only. Any or all of these figures may be altered as appropriate by Project Implementation Letter.

Project Budget

Project Inputs	USAID		HMG/N		Total
	FX	LC	FX	LC	
1. Bridge Construction	1400	1200		740	3340
(a) Imported Items	(1400)				(1400)
(b) Fabricated bridge Parts		(365)			(365)
(c) Transportation Contracts		(835)			(835)
(d) Erection Contracts				(740)	(740)
2. Trail Map	220	30			250
3. Displaced Tradesmen Study		10			10
4. Training	65				65
5. Evaluation	30	25			55
6. Imports for Local Bridge Program	20				20
7. Surveys				167	167
8. DCR Overhead Costs*				172	172
(a) Maintenance				(110)	(110)
(b) Salaries, reorganization etc.				(62)	(62)
9. TOTALS	1735	1265		1079	4079

*All HMG/N costs are prorated for project.

ANNEX 2

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

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Project Grant Standard

Provisions Annex

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

Article A. Project Implementation Letters

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

Article B. General Covenants

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

- 2 -

SECTION B. 2. Execution of Project. HMG/N will:

(a) carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans specifications, contracts, schedules or other arrangements, and with any modifications therein, mutually approved by the Parties pursuant to this Agreement; and

(b) provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

SECTION B. 3. Utilization of Goods and Services

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

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

SECTION B. 4. Taxation

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

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

SECTION B. 5. Reports, Records, Inspections, Audit. HMG/N will:

(a) furnish A.I.D. such information and reports relating to the Project and to this Agreement as A.I.D. may reasonably request;

(b) maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show, the receipt and use of goods and services acquired under the Grant. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last release of funds by A.I.D.; such books and records will also be adequate to show the basis of solicitation and award of contracts and orders, and

the overall progress of the Project toward completion; and

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

SECTION B. 6. Completeness of Information. HMG/N confirms:

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

(b) that it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect the Project or the discharge of responsibilities under this Agreement.

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

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

Article C. Procurement Provisions

SECTION C. 1. Special Rules

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

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

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

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

SECTION C. 2. Eligibility Date. 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. Plans, Specifications, and Contracts. In order for there to be mutual agreement on the following matters, and except

as the Parties may otherwise agree in writing:

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

(1) any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Grant, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals.

(2) such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services, which, though not financed under the Grant, are deemed by A.I.D. to be of major importance to the Project. Aspects of the Project involving matters under this subsection (a) (2) will be identified in Project Implementation Letters;

(b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Grant will be approved by HMG/N with prior agreement of A.I.D., prior to their issuance, and where applicable, their terms will include United States standards and measurements;

(c) Contracts and contractors financed under the Grant for engineering and other professional services, for construction services, and for such other services, equipment or materials as may be specified in Project Implementation Letters, will be approved by HMG/N with

prior agreement of A.I.D., prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution; and

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

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

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

SECTION C. 6. Shipping

(a) Goods which are to be transported to the territory of HMG/N may not be financed under the Grant if transported either: (1) on an ocean vessel or aircraft under the flag of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment, or (2) on an ocean vessel which A.I.D., by written notice

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to HMG/N has designated as ineligible; or (3) under an ocean or air charter which has not received prior A.I.D. approval.

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

(c) Unless A.I.D. determines that privately owned United States-flag commercial ocean 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 HMG/N on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both any cargo

transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

SECTION C. 7. Insurance

(a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of HMG/N may be financed as a Foreign Exchange Cost under this Agreement provided (1) such insurance is placed at the lowest available competitive rate, and (2) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If HMG/N, by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of HMG/N financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

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

HMG/N for the replacement or repair of such goods. Any such replacements will be of source and origin of countries listed in A.I.D. Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

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

Article D. Termination; Remedies

SECTION D. 1. Termination. Either Party may terminate this Agreement by giving the other Party 30 days written notice. Termination of this Agreement will terminate any obligations of the Parties to provide financial or other resources to the Project pursuant to this Agreement, except for payment which they are committed to make pursuant to 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 Nepal, are in a deliverable state and have not been offloaded in ports of entry of Nepal.

SECTION D. 2. Refunds

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

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

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

(d) (1) Any refund under subsection (a) or (b); or

(2) Any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under

the Grant, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the cost of goods and services required for the Project, to the extent justified, and (B) the remainder, if any, will be applied to reduce the amount of the Grant.

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

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

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