

CONFORMED COPY  
Project No. A.I.D. 492-0395

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Loan and Grant Agreements  
No. 140 (IF Loan)  
1986-09-08  
✓ [Signature] Manila

PROJECT

GRANT AGREEMENT

between the

REPUBLIC OF THE PHILIPPINES

and the

UNITED STATES OF AMERICA

for the

ENTERPRISE IN COMMUNITY DEVELOPMENT PROJECT

Dated: September 8 , 1986

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ENTERPRISE IN COMMUNITY DEVELOPMENT PROJECT

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A.I.D. Project No. 492-0395

PROJECT GRANT AGREEMENT

Dated: September 8, 1986

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

Article 1: The Agreement.

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

Article 2: The Project.

Section 2.1. Definition of Project. The Project, which is further described in Annex I, will consist of activities to assist the development efforts of the Philippine private sector in areas outside of Metro Manila by fostering business and civic involvement in participatory community development activities. Project activities will include co-financing, training and technical assistance in support of community development projects to be carried out under subproject grant agreements between A.I.D. and participating enterprises and civic organizations ("Subproject Grantees"). Annex I to this Agreement amplifies the above definition of the Project.

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

Section 2.2. Incremental Nature of Project.

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

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

Article 3: Financing.

Section 3.1. The Grant. To assist the Grantee to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Grantee under the terms of this Agreement not to exceed Five Hundred Thousand United States ("U.S.") Dollars (\$500,000.00) ("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. 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) Resources of not less than the equivalent of U.S. \$3,160,000.00, including costs borne on an "in kind" basis, are expected to be provided by Subproject Grantees and beneficiaries in connection with community development projects and training activities.

Section 3.3. Project Assistance Completion Date.

(a) The "Project Assistance Completion Date" (PACD), which is August 31, 1992, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the Grant will have been performed and all goods financed under the Grant will have been furnished for the Project as contemplated in this Agreement.

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

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, contracts, subproject grant agreements or related agreements, 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, contracts, subproject grant agreements or related agreements, 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 shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

(a) an opinion of counsel acceptable to A.I.D. that this Agreement has been duly authorized 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; and

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

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

Section 4.3. Terminal Dates for Conditions Precedent.

If all of the conditions specified in Section 4.1 have not been met within 30 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 the Grantee.

Article 5: Special Covenants.

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

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

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

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

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

Section 5.2. Implementation of Project Activities. The Grantee agrees that Project activities may be implemented pursuant to contracts, subproject grant agreements and other agreements entered into directly by A.I.D. with contractors and Subproject Grantees.

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, with respect to goods, their source and origin, and, with respect to services, their nationality, in the United States (Code 000 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods or services) ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the Project Grant Standard Provisions Annex, Section C.1(b), with respect to marine insurance. Ocean transportation costs shall be financed under the Grant only on vessels under flag registry of the United States, except as A.I.D. may otherwise agree in writing.

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 the Republic of the Philippines ("Local Currency Costs").

Article 7: Disbursement.

Section 7.1. Disbursement for Foreign Exchange Costs.

(a) After satisfaction of conditions precedent, disbursements of funds under the Grant for the Foreign Exchange Costs of goods or services required for the Project may be made in accordance with the terms of this Agreement, by such of the following methods as may be mutually agreed upon by A.I.D. and any contractors or Subproject Grantees financed under the Project:

(1) by the contractor or Subproject Grantee submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, contracts, subproject grant agreements or related

agreements, (A) requests for reimbursement for such goods or services, or, (B) requests for A.I.D. to procure commodities or services for the Project; or,

(2) by the contractor or Subproject Grantee 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.

Section 7.2. Disbursement for Local Currency Costs.

(a) After satisfaction of conditions precedent, disbursements of funds under the Grant for Local Currency Costs required for the Project may be made in accordance with the terms of this Agreement, by the contractor or Subproject Grantee submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, contracts, subproject grant agreements or related agreements, requests to finance such costs.

(b) The local currency needed for such disbursements may be obtained by acquisition by A.I.D. with U.S. Dollars by purchase. The U.S. dollar equivalent of the local currency made available pursuant to this subsection shall be the amount of U.S. dollars required by A.I.D. to obtain the local currency.

Section 7.3. Other Forms of Disbursement. Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

Section 7.4. Rate of Exchange. Except as may be more specifically provided under Section 7.2, if funds provided under the Grant are introduced into the Republic of the Philippines by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into currency of the Republic of the Philippines at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the Republic of the Philippines.

Article 8: Miscellaneous.

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

To the Grantee:

Mail Address: National Economic and Development Authority  
P.O. Box 419, Greenhills, Metro Manila  
Philippines

Alternate address for cables: NEDAPHIL

To A.I.D.:

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

Alternate address for cables: USAID/AMEMB MANILA

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

Section 8.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of the Director-General, National Economic and Development Authority and A.I.D. will be represented by the individual holding or acting in the office of the Director, United States A.I.D. Mission to the Philippines, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1 to revise elements of the amplified description of the Project in Annex I. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

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

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

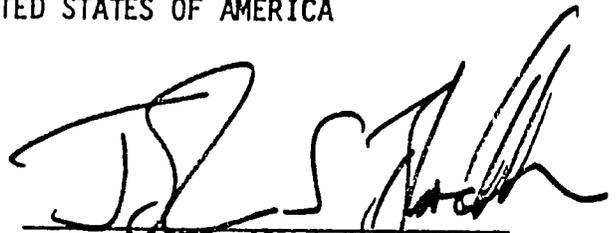
REPUBLIC OF THE PHILIPPINES

UNITED STATES OF AMERICA

By:

  
Solita Collas-Monsod

By:

  
John S. Blackton

Title: Director-General  
National Economic and  
Development Authority

Title: Acting Director  
U.S. Agency for International  
Development

I. General Project Description

The goal of the project is to improve living standards. Its purpose is to assist the development of the private sector in areas outside of Metro Manila and civic involvement in participatory community development activities. By providing grants to partially fund activities initiated by private sector entities and community groups, the project also serves to encourage private sector involvement in the delivery of development assistance. The project will complement the ongoing work of the USAID Private Sector (PVO) Co-Financing II Project by supporting community development activities sponsored by private sector groups, rather than by the government. The private sector is defined here as for-profit, non-governmental entities and their organizations.

The following outputs are expected to result from the project provided under this Project:

1. Community development activities such as public works, income generating activities, and technical assistance by the sponsoring firm and community groups.
2. Private sector personnel trained in private sector senior management and community development and the importance of other relevant private sector and community development skills relating to community organization.
3. The completion of small, worthwhile community development activities sponsored by civic groups and community groups through the Small Projects Set-aside.

Each of these is described in more detail below.

A. Community Development

Under the main component of this Project, community development activities will be co-financed by the private sector. Community development is defined as those activities relating to the development of local communities outside of Metro Manila whose principal beneficiaries are not employees of the sponsoring firm. This includes, but is not limited to

activities: small-scale infrastructure, public works, income-generating projects, agriculture, forestry and fishing projects, and health and nutrition improvement activities.

Structures built or physical property obtained under the project will be owned and maintained as public goods or property. The following types of activities will NOT be eligible for financing: activities aimed at political, spiritual or religious development; military and police activities; civic beautification projects; recreational or entertainment projects; activities which aim to promote the products or services of a sponsoring firm or otherwise result in direct financial gain for the sponsor (with the exception of tax deduction for corporate contributions); activities which have a net negative impact on the environment; and activities which are clearly the responsibility of the business to provide.

Both firms and proposals will be subject to screening by USAID for eligibility. Firms will be required to provide information to USAID on their management capability, legal and financial status, administrative structure and history of experience in community development. Subprojects will be evaluated by USAID on the basis of their ability to make a positive contribution to development. Criteria for selection developed by USAID include: financial and economic viability, social and environmental soundness, beneficiary group and type of activity.

#### B. Training

In order to improve the implementation of subprojects, subproject managers (i.e., employees of the sponsoring firm designated as the proposed activity's coordinator) will take a basic course in program management tools and AID procedures, unless USAID determines that such training is not required. Additional training will be conducted for private sector senior management, to encourage them to make maximum use of program resources for community development, and for community members, to develop their capacity to organize, design and manage community development projects. Such training will help ensure that the activities funded under the first component become self-sustaining.

#### C. Small Projects Set-aside

As a sub-activity under this project, up to \$50,000 per year will be set aside to respond to proposals of \$5,000 or less, administered separately by USAID as a Small Projects Set-aside. Grantees may include civic service organizations such as Rotary Clubs and private sector entities. Funding will be provided to co-finance up to 75% of the total costs of activities which promote the social and economic growth and development of the poor in areas outside of Metro Manila. The following types of activities will be excluded: activities aimed at political, spiritual or religious development; military and police activities; civic

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beautification projects; recreational or entertainment projects; activities which aim to promote the products or services of the sponsoring organization, or otherwise result in direct financial gain for the sponsor (with the exception of tax deduction for corporate contributions); activities which have a net negative impact on the environment; and activities which are clearly the responsibility of the organization to provide. Subprojects will be selected on the basis of anticipated impact, reasonableness of per beneficiary cost, and suitability of implementation plan. The sponsoring organization will be required to submit its charter and proof of legal status.

## II. Responsibilities of the Participants

A. The USAID Mission will be responsible for overall project management. USAID will contract for the services of an organization to assist in the staffwork functions of subproject design and implementation. The scope of work for this contract shall be reviewed and approved by the National Economic and Development Authority (NEDA) prior to award of the contract by USAID. Training and data-gathering for enterprise certification will also be performed by the contracted organization, but eligibility determinations will be made by USAID.

The final selection of subprojects to receive funding will be made by USAID from among subproject proposals endorsed by Regional Development Councils, as described in paragraph (B) below. USAID will provide the Regional Development Councils with USAID's criteria for subproject selection and will notify the concerned Regional Development Councils of subproject grants awarded by USAID. Funds obligated under the Project Agreement will be made available to subproject grantees directly through grant agreements entered into by A.I.D. and the individual subproject grantees.

In the case of subprojects funded under the Small Projects Set-aside, USAID will promptly notify the appropriate Regional Development Council upon receipt by USAID of a request for assistance from the subproject proponent. In selecting subprojects for funding under the Small Projects Set-Aside, USAID will take into consideration existing regional and provincial development plans. USAID will notify the appropriate Regional Development Councils of grants awarded under the Small Projects Set-Aside.

B. The Government of the Philippines (GOP), through the appropriate Regional Development Councils, will be responsible for reviewing and endorsing the community development subproject proposals, other than those under the Small Projects Set-Aside. This review will ensure consistency with regional and provincial development plans. Endorsement of a subproject proposal by the Regional Development Council will be communicated directly to USAID by the Regional Development Council, after which the decision to award a subproject grant and the terms and conditions upon which such a grant is made shall be solely in the discretion of USAID.

C. Sponsoring firms and civic organizations will be responsible for developing subproject ideas, submitting required data, providing counterpart contributions (together with the beneficiaries), implementing and monitoring subprojects in accordance with the terms of their subproject grant agreements with AID, and participating in training activities.

D. Beneficiary communities will be responsible for initiating and/or participating in subproject development implementation, providing counterpart contributions (together with the sponsoring firms), and participating in training activities.

### III. Illustrative Financial Plan

The following financial plan is illustrative and changes may be made by representatives of the parties named in the Agreement without formal amendment to the Agreement if such changes do not result in (i) A.I.D.'s contribution exceeding the amount specified in the text of the Agreement, or (ii) the counterpart contribution being less than the amount specified in the text of the Agreement. A.I.D. obligations in addition to funds obligated under the Agreement or any Amendments thereto are subject to the availability of funds.

Project Financial Plan  
Project No. 492-0395

Illustrative

(\$000)

<u>Project Inputs</u>	<u>FY 1986 Obligations</u>		<u>Anticipated Future Years</u>		<u>TOTAL</u>	
	<u>AID</u>	<u>Counterpart</u>	<u>AID</u>	<u>Counterpart</u>	<u>AID</u>	<u>Counterpart</u>
1. Co-financing of development activities	200	0	\$2,800	\$3,000	\$3,000	\$3,000
2. Training	0	0	230	75	230	75
3. Small projects set-aside	0	0	250	85	250	85
4. Technical assistance & information dissemination	250	0	250	0	500	0
5. PSC project coordinator	50	0	200	0	250	0
6. Project evaluation	0	0	150	0	150	0
7. Miscellaneous & contingency	0	0	120	0	120	0
Total	<u>500</u>	<u>0</u>	<u>4,000</u>	<u>3,160</u>	<u>4,500</u>	<u>3,160</u>

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IV. Financing Methods

All Project elements will be implemented through contracts, subproject grant agreements or other agreements between A.I.D. and contractors or subproject grantees. Payments pursuant to these contracts and agreements will be made directly by A.I.D. to the contractors and subproject grantees. The anticipated methods of financing for the various Project elements are as follows:

<u>Project Element</u>	<u>Method of Financing</u>	<u>Estimated Amount (by \$000)</u>
Joint Public Works/Community Development - Grantee	Advance or direct reimbursement	\$3,000
Small Projects Set-aside - Grantee	Advance or direct reimbursement	250
Technical Assistance - AID Direct Contract	Direct payment to contractor	500
Training - AID Direct Contract	Direct payment to contractor	230
Project Coordinator - AID Direct Contract	Direct payment to the contractor	250
Project Evaluation, Miscellaneous and Contingency - AID Direct Contract	AID direct payment to the contractor for evaluation	<u>270</u>
Total AID Grant		<u>\$4,500</u>

V. Evaluation

A. Project Level Evaluations: Two external evaluations are planned through the life of the Project. The first evaluation will be conducted by AID approximately two years from Project start. This process evaluation will identify and assess implementation problems, and make recommendations for solving them. Examples of questions which may be addressed by this evaluation are: is the administrative structure appropriate as initially designed? what are the implications of the selection criteria on the kinds and number of firms which qualify? have technical standards been met?

The second evaluation, an impact and strategic evaluation, will be conducted by AID towards the end of the project. It will assess the broad impact of the project and determine whether goals and purposes have been achieved. It will also identify subproject impact on beneficiary communities, assess subproject sustainability and investigate whether negative consequences have occurred. Benefits and costs for representative sample subprojects will be assessed. The review will also determine the validity of the project approach as a tool for promoting community development.

Project Reviews involving USAID and NEDA will be undertaken annually to assess project progress and the relevance of subproject selection criteria and procedures.

B. Subproject Level Evaluations: Subproject grant agreements will require each subproject grantee to evaluate its respective subproject. The subproject grantees will be required to develop baseline information of their prospective beneficiaries early in the subproject, against which impact will be measured. Data for quantifying and evaluating the benefits and costs of the subproject should be included. The subproject grantees will also be responsible for filing a completion report three months after the completion date of the grant.

ANNEX II  
PROJECT GRANT STANDARD PROVISIONS ANNEX

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

Article A: Project Implementation Letters.

To assist 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 agrees that Subproject Grantees will be required to:

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

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

Section B.3. Utilization of Goods and Services.

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

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

Section B.4. Taxation.

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

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

Section B.5. Reports, Records, Inspections, Audit. The Grantee will:

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

(b) Maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show, without limitation, the receipt and use of goods and services acquired under the Grant. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and

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

Section B.6. Completeness of Information. The Grantee confirms:

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

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

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

Section B.8. Information and Marking. The Grantee will give appropriate publicity to the Grant and the Project as a program to which the United States has contributed, identify the Project site, and mark goods financed by A.I.D., as described in Project Implementation Letters.

Article C: Procurement Provisions.

Section C.1. Special Rules.

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

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

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

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

Section C.2. Eligibility Date. No goods or services may be financed under the Grant which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as A.I.D. may otherwise agree in writing.

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Section C.3. Plans, Specifications and Contracts. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

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

(1) any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Grant, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished A.I.D. on preparation; and

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

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

(c) Contracts and contractors financed under the Grant for engineering and other professional services, for construction services, and for such other services, equipment, or materials as may be specified in Project Implementation Letters, will be approved by A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution; and

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

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

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

Section C.6. Shipping.

(a) Goods which are to be transported to the territory of the Grantee may not be financed under the Grant if transported either:

(1) on an ocean vessel or aircraft under the flag of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment; or

(2) on an ocean vessel which A.I.D., by written notice to the Grantee has designated as ineligible; or

(3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Grant, if such goods or persons are carried:

(1) on an ocean vessel under the flag of a country not, at the time of shipment, identified under the paragraph of the Agreement entitled "Procurement Source: Foreign Exchange Costs," without prior written A.I.D. approval or on a non-U.S. flag air carrier if a U.S. flag carrier is available (in accordance with criteria which may be contained in Project Implementation Letters) without prior written approval of A.I.D.; or

(2) on an ocean vessel which A.I.D., by written notice to the Grantee, has designated as ineligible; or

(3) under an ocean vessel or air charter which has not received prior A.I.D. approval.

(c) Unless A.I.D. determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels:

(1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels; and

(2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported to the territory of the Grantee on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to any cargo transported from U.S. ports and also any cargo transported from non-U.S. ports, computed separately.

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Section C.7. Insurance.

(a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Grantee may be financed as a Foreign Exchange Cost under this Agreement provided:

(1) such insurance is placed at the lowest available competitive rate; and

(2) claims thereunder are payable in U.S. dollars or, as A.I.D. may agree in writing, in the currency in which such goods were financed or in any freely convertible currency. If the Grantee (or government of Grantee), by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Grantee financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(b) Except as A.I.D. may otherwise agree in writing, goods financed under the Grant imported for the Project will be insured 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 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 for the replacement or repair of such goods. Any such replacement will be of source and origin of countries listed in A.I.D. Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

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

Article D: Termination; Remedies.

Section D.1. Termination. Either Party may terminate this Agreement by giving the other Party 30 days written notice. Termination of this Agreement will terminate any obligations of the Parties to provide financial or other resources to the Project pursuant to this Agreement, except for payment which they are committed to make pursuant

to noncancellable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at A.I.D.'s expense, direct that title to goods financed under the Grant be transferred to A.I.D. if the goods are from a source outside Grantee's country, are in a deliverable state and have not been off-loaded in ports of entry of Grantee's country.

Section D.2. Refunds.

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

(b) If the failure of Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed under the Grant are not used effectively in accordance with this Agreement, A.I.D. may require the Grantee to refund all or any part of the amount of the disbursements under this Agreement for such goods or services in U.S. Dollars to A.I.D. within sixty (60) days after receipt of a request therefor.

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

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

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

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

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Annex II

Section D.4. Assignment. The Grantee execute an assignment to A.I.D. of any cause to the Grantee in connection with or arising out of performance or breach of performance by a party to a contract which A.I.D. financed in whole or in part by A.I.D. under this Agreement.