

PD ABI-286

**PROJECT GRANT AGREEMENT**

**BETWEEN**

**HIS MAJESTY'S GOVERNMENT OF NEPAL**

**AND THE**

**UNITED STATES OF AMERICA**

**FOR THE**

**DEMOCRATIC INSTITUTIONS STRENGTHENING PROJECT**

**(367-0163)**

**SEPTEMBER 24, 1992**

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Project Grant Agreement

Project No. 367-0163

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Democratic Institutions Strengthening Project  
A.I.D. Project No. 367-0163

Project Grant Agreement

Dated: September 24, 1992

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 ("Parties") with respect to the undertaking by HMG/N 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 will help achieve increased pluralism and well-established democratic values and processes in Nepal by strengthening the Parliament, Judiciary and District and Village Development Committees. Project inputs include training, commodities, technical assistance, studies, and local support costs. 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.

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 HMG/N, may specify in Project Implementation Letters (PILs) 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 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 an amount not to exceed Eight Hundred Eighty Thousand United States (U.S.) Dollars (\$880,000) "(Grant)". The total A.I.D. contribution to the project over the life-of-the Project is expected to be \$3,500,000, subject to the availability of funds to A.I.D. for this purpose and the A.I.D. budget process and to the mutual agreement of the Parties to proceed at the time of each increment. Grant funds obligated under this Agreement 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. HMG/N shall provide or cause to be provided for the Project all funds, in addition to the Grant, and all other resources that may be required to carry out effectively and in a timely manner those portions of the Project involving HMG/N participation.

SECTION 3.3. Project Assistance Completion Date

- (a) The "Project Assistance Completion Date" (PACD) is July 31, 1996, or such other date as the Parties may agree to in writing. It 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 HMG/N, 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: Condition 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, 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. statement of the name(s) of the person(s) holding or acting in the office of HMG/N 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 condition precedent specified in Section 4.1. has been met, it will promptly notify HMG/N.

SECTION 4.3. Terminal Dates for Condition Precedent. If the condition to the first disbursement specified in Section 4.1. has not been met within 180 days from the date of this Agreement, or such later dates 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.

Article 5: Special Covenants

SECTION 5.1. Project Evaluation. The parties agree to establish an evaluation plan as part of the Project. Except as the Parties otherwise agree in writing, the plan will include, during the implementation of the Project:

- (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 to allocate resources based on performance; and
- (d) evaluation of the overall development impact of the Project.

Plans for project evaluation are described more fully in Annex 1.

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, other countries within A.I.D.

Geographic 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"), and Nepal, except as A.I.D. may otherwise agree in writing, and except as provided in the 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, Nepal, or countries included in A.I.D. Geographic Code 941, 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 Nepal ("Local Currency Costs").

Article 7: Disbursement

SECTION 7.1. Disbursement for Foreign Exchange Costs. After satisfaction of condition precedent, HMG/N 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:

- (a) By submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (a) requests for reimbursement for such goods or services, or, (b) requests for A.I.D. to procure commodities or services on HMG/N's behalf for the Project; or
- (b) By requesting A.I.D. to issue Letters of Commitment for specified amounts directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers for such goods or services.
- (c) Banking charges incurred by HMG/N in connection with Letters of Commitment 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. Disbursement for Local Currency Costs

- (a) After satisfaction of condition precedent, HMG/N 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 disbursement may be obtained through 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 (a) above, 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 Nepal by A.I.D. or 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 the currency of Nepal at the highest rate of exchange which, at the time conversion is made, is not unlawful in Nepal.

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:

Secretary or  
Joint Secretary  
Foreign Aid Division  
Ministry of Finance  
His Majesty's Government  
Bagh Durbar  
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 all purposes relevant to this Agreement, HMG/N will be represented by the individual holding or acting in the office of Secretary or Joint Secretary, Ministry of Finance, and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID/Nepal, 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 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. A "Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

IN WITNESS WHEREOF, His Majesty's Government of Nepal 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:



Narayan Raj Tiwari

TITLE: Acting Secretary  
Ministry of Finance

ON BEHALF OF THE UNITED  
STATES OF AMERICA

BY:



Julia Chang Bloch

TITLE: Ambassador

BY:



Kelly C. Kammerer

TITLE: Director  
USAID/Nepal

## **ANNEX 1**

# **AMPLIFIED PROJECT DESCRIPTION**

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## AMPLIFIED PROJECT DESCRIPTION

### DEMOCRATIC INSTITUTIONS STRENGTHENING PROJECT (367-0163)

Elements of the following description may be changed by written agreement of the authorized representatives of the parties named in Section 8.2 of this Agreement without formal amendment of the agreement, provided that such changes are within the general scope of the project as set forth in the main text of the Agreement.

#### I. BACKGROUND

Since April 1990, significant steps have been made toward establishment of stable democracy in Nepal, including promulgation of a new constitution, formation of a government following free and fair elections, completion of three parliamentary sessions, and commencement of much-needed political and economic reforms. A newly-appointed judiciary is in place and local development committee elections took place in May 1992. Major challenges to continued democracy strengthening lie in popular expectations that democratic progress will be accompanied by rapid economic development. The Project can do much to strengthen democracy by improving the capabilities of democratic institutions and fostering democratic values throughout society. It will complement USAID efforts to achieve broad-based, sustainable development in Nepal.

#### II. PROJECT OVERVIEW

##### A. Goal and Purpose of Project

The goal of the Democratic Institutions Strengthening Project is to achieve increased pluralism and well-established democratic values and processes in Nepal. The Project purpose is to strengthen a group of institutions with greatest promise for achieving effectiveness and sustainability in supporting democracy and development.

##### B. Summary Description

Project activities will be aimed at three key democratic institutions whose performance must be substantially and rapidly improved in order to live up to expectations of the general public. By developing the institutional capabilities of Parliament, the Judiciary, and District and Village Development Committees, the Project will increase their credibility and effectiveness, thus helping to develop well-established democratic values and processes in Nepal. As certain activities under the three components will be implemented through local non-governmental organizations (NGOs) and Tribhuvan University, the Project will support increased pluralism

as an integral part of democratic process. All components include elements designed to encourage active participation of women in democratic processes.

### III. PROJECT COMPONENTS

#### A. Parliamentary Development

Project activities under this component will improve the functioning of the legislative process by strengthening the capacity of Members of Parliament (MPs), Secretariat staff, and private support services. The Project will also support civic awareness programs concerning parliamentary process and policy issues, and establishment of improved management systems in Parliament. Activities will focus on developing human resources rather than providing computers and other equipment, which have been a major focus of The Asia Foundation (TAF) and USAID programs so far. In developing human resources, particular attention will be given to developing the leadership and technical skills of women MPs and professionals in the Parliament Secretariat with preference to female professionals.

##### 1. Strengthening Leadership Skills

Under the Project, leadership development initiatives will address both procedure and policy, in particular through in-country workshops and briefings which will largely be conducted through the mechanism of a "Speaker's Forum".

A Speaker's Forum: For the Speaker's Forum, the Parliament Secretariat will provide a politically neutral, administrative location for distinguished foreign experts to provide short-term advisory services to MPs, covering policy issues in a specialized field or issues of parliamentary procedure and practice. MPs will usually participate in fairly small groups. However, some seminars may be opened to a relatively wide audience of MPs and Secretariat staff. The core activity will generally be a daily seminar of two hours or so, continued over a week or more, so experts can tailor material presented to the needs of Nepal and the participating politicians.

At the same time, experts can serve as short-term consultants to Parliament, working in their area of expertise with individual MPs or small groups.

Study Tours to Other Asian Countries and New Democracies: Exposure to other countries at varying stages of democratic development can provide opportunities to learn and share experiences with leaders of new and advanced democracies. At the request of the Speaker, the Project will include an annual tour of parliaments in South Asia, in which about a dozen MPs and

Secretariat staff will observe committee structures, the budget process, political party operations in the legislative branch, bill drafting, and other key functions of legislatures.

There will also be a study and exchange program under which Nepalese MPs can observe different emerging democracies, especially in Eastern Europe and the former Soviet States, and meet with legislators there to discuss common problems and solutions.

## 2. Strengthening Secretariat Services

Only with access to accurate, timely information on key issues can MPs conduct informed debate and draft and review sound legislation. The Project will help develop the Secretariat research service, through further training in management and implementation of legislative information systems, policy research methodology, and preparation of briefing materials. Library resources will be increased by procurement of information storage equipment and instructional videos for MPs.

Library, Reference, and Research Service Development: The final phase of introducing a computerized legislative information system will be implemented, and training of staff in necessary skills will be continued. A half-time Nepalese computer consultant and periodic visits by a Management Information Systems Consultant will be the major sources of training. In addition, a specialized training course will be tailored for a core group of six Secretariat research staff. This course will focus on research methodology and preparation of basic, non-partisan issue briefs for MPs that lay out the background, provisions, and likely impact of measures under consideration.

The Project will also support development of a video library as a training and substantive issue resource for MPs. This will include acquisition of existing videotapes and production of new ones on such issues as legislative practice, policy analysis, and various policy issues. Nepali-language videos on local legislative practice will also be produced, and presentations in the Speaker's Forum will be videotaped and added to the collection.

Management Training: A recent needs assessment by TAF Management Information Systems staff identified various sections of the Secretariat in need of management attention, in particular the Table, Bill, and Question sections. TAF will continue to fund its Regional Legislative Systems Consultant, to assess management needs, conduct training and provide technical assistance (TA) on a periodic basis. Under the Project, administrative training for staff through in-country workshops will be conducted by Nepalese management consultants as well as US and Asian legislative consultants. As the Project progresses, attention will be paid to specific areas such as committee staff, protocol, financial

administration, and budgeting. Each year selected Secretariat staff will also be sent for internships in other legislatures in Asia.

### 3. Other Support Institutions

Critical Secretariat staff positions are not being filled due to a government hiring freeze; but once they are hired, new employees will require extensive training. In addition, MPs will need access to outside experts for advice and in-depth analysis on specific issues, as well as an in-house research capability. At the same time, Tribhuvan University needs to strengthen its ability to provide policy analysis of legislative issues. Establishing a competitive fellowship program for outstanding new graduates, and establishing a University staffed legislative resource unit to serve Parliament will promote linkages between Parliament and University and strengthen both institutions. Meanwhile, primary responsibility for final drafting of legislation for enactment into national law rests with the Ministry of Law, Justice and Parliamentary Affairs (MOLJPA). However, very few of its staff have received training in legislative drafting. Training in legislative drafting will enable the MOLJPA to more adequately fulfill its appointed role in the legislative process.

University Fellowships and Research Unit: Annual fellowships will be awarded to outstanding young graduates of Tribhuvan University, to work as Parliamentary Service Interns to assist the Secretariat with legislative research in support of MPs and committees.

In order to establish a pool of expert Nepalese consultants at Tribhuvan University, a survey of research resources inside and outside the University system will be undertaken. From this a list of local experts available to do in-depth research and analysis of issues for Parliament and committees will be drawn up. An agreement will be made with the University on procedures for staffing the unit and paying approved consultancies. Establishing a research unit responsive to the needs of Parliament will enhance the capabilities of the University as well as the Parliament; the unit could evolve into a Nepal Institute for Legislative Studies.

Ministry of Law, Justice and Parliamentary Affairs: Legal scholars will be brought from the United States to conduct a two-week workshop and help devise plans for upgrading legislative drafting capability and related legal skills of the MOLJPA. In addition, one MOLJPA staff member will be chosen each year to attend a one-semester course in legislative drafting in the US, and two staff members will be selected in different years to attend courses in treaty drafting.

#### 4. Civic Education Programs

General ignorance of the role of Parliament and MPs feeds unrealistic expectations in the public and hinders responsiveness by MPs to constituents. Efforts to strengthen the institutional capability of the Parliament must be accompanied by initiatives to expose citizens to Parliament's role in Nepalese government and society.

Proposals will be accepted from NGOs and policy research institutions for programs that offer creative approaches to civic education and public awareness of the legislature, its procedures and the role of MPs. Examples might be small newspapers or pamphlets targeted to newly-literate adults, which cover policy issues affecting local communities, advice on how to evaluate local representatives, etc. Activities under this sub-component will simultaneously promote greater diversity and professionalization in the media.

#### 5. Financial Sustainability

The US Mission is pursuing, as part of its policy dialogue agenda, reforms in budgeting and personnel management to give Parliament greater control over its own financial resources and support staff. USAID doesn't support extravagance in this public institution, but feels it is essential that sufficient staff be assigned to ensure smooth operation of the legislative process. By taking effective control of its own budget and personnel, Parliament can do much to ensure the sustainability of the democratic process.

##### B. Judicial Development

Judicial development activities under the Project will render the judiciary more independent, effective and credible by working with judges, judicial officers and lawyers to articulate the law more clearly and systematically, improve court procedure and management, and broaden professional and popular access to the law. In order to achieve equal access and legal standing for all groups in society, women and members of disadvantaged groups will be given special consideration in project activities, particularly in selecting participants in training programs and in setting up community mediation services. All sub-components will include significant elements of human resource development, but the major focus will be establishment and maintenance of systems of court management, and judicial procedures and research, with training and TA directed towards these ends. In addition to consultants working in support of particular sub-components, the judicial development component of the Project will be supported on a part-time basis by a TAF legal consultant. Activities under this component will work in particular to:

- o Develop improved systems of court administration and case management, and a new draft procedural code, and upgrade the management capabilities of judges and judicial officers;
- o Increase professional access to the law by establishing adequate systems of legal research, publication and dissemination of enacted and case law;
- o Provide community-level access to the law through establishment of pilot community mediation activities under a partially formalized system with the support of the legal/judicial community.

### 1. Court Procedure and Management

The Project will address problems such as development of a new draft procedural code, establishing adequate systems of case management, and providing training in court management.

Procedural code: Procedural law in Nepal is based on the traditional Hindu-based legal code, the Muluki Ain, in which many provisions are ambiguous. Following translation into English of the Muluki Ain (supported by TAF core funds), Project funds will support development of a new draft procedural code.

A 12 district survey will be conducted by a local organization of problems inherent in the current court system. Following completion of the survey, a US consultant will visit Nepal to advise selected judges, government officials, lawyers and academics, who together will then draft a model procedural code. A team of judges will review the draft code and prepare a final report for the Chief Justice setting forth specific proposals for new draft procedural rules.

Case Management: Specific problems stemming from lack of case management will be identified in the survey preceding development of a procedural code. Consultants, from the US or Asia, will be brought to Nepal to work with the Supreme Court on developing systems for docketing (recording) cases, maintaining and transferring case files, monitoring judicial caseloads, and avoiding backlogs. The consultants will also make recommendations on court revenue generation mechanisms for raising the salaries of judges and government attorneys.

Training in Court Management: Supreme Court judges and staff, and Appellate and District Court judges will be sent to judicial education programs on case management and administration in the US or Asia, and others will participate in study tours of the US or Asia. Funds under this activity will also provide for the Chief Justice to attend the biennial LAWASIA Chief Justices Conference.

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Training for the lower levels of the judicial profession will be provided by the Judicial Services Training Center, which receives support under a separate USAID grant to TAF. The professional development of judges will also be supported through small-scale seminars/workshops on issues of procedure and substance.

## 2. Legal Research Systems

To improve the formal legal research system existing in Nepal, one or more of the following research tools will be developed under the Project:

1. A new Nepal Digest to find judicial questions interpreting the Muluki Ain, statutes, rules, and the Constitution;
2. A new Nepal Kanoon Patrika to locate the full texts of cases digested in the Nepal Digest;
3. A Nepal Citator Service to check the continuing validity of reported opinions, and locate newer opinions which cite those opinions; and
4. An Index of Unpublished Opinions to find the latest unpublished opinions of the Supreme Court by subject matter.

Supreme Court officers will be made responsible for digesting Supreme Court decisions, which will be included in various publication and dissemination activities by the Supreme Court (see below). TAF will fund Tribhuvan University law students in preparation of an updated digest of Supreme Court opinions since 1979.

TAF will also entertain proposals from legal NGOs or Tribhuvan University law faculty to support private legal documentation systems. The Project will seek out the most promising proposals for developing research tools necessary for a complete and accessible research system.

## 3. Publication and Dissemination

No adequate mechanism exists for transmitting Supreme Court decisions and opinions to lower courts. Therefore, the Project will support the Supreme Court in development of a systematic publication, dissemination and research system, as well as publication of hitherto unpublished decisions and much-needed procedural bench books.

Publications: The Project will provide the Supreme Court with TA and financial assistance to publish a limited number of its most important decisions predating the 1990 Constitution, and assist the

Court to establish systems for regular timely publication of all full bench decisions since then. TA and financial support will also be provided for production, publication, and distribution of easy-to-use bench books for judges on civil procedure, criminal procedure, and rules of evidence. TA and financial support will also be given for frequent publication and wide dissemination of a Supreme Court Digest, to be taken on by the Research and Planning Cell of the Supreme Court.

Dissemination: The Project will support increased desktop publishing capability for the Supreme Court, by providing additional computer hardware and appropriate software to facilitate publication of Court opinions. In addition, the Court will receive TA in devising a system for timely dissemination of its decisions to the lower courts, lawyers and the public.

Improved Judicial Research Skills: Training will be provided to strengthen the research capabilities of Supreme and Appellate Court staff.

#### 4. Community Mediation

Establishment of pilot community mediation work will be approached in stages, starting with a study to determine the feasibility of community mediation systems. This will involve research into current dispute resolution practices in a few case study areas, focusing on the period since the Village Panchayat Act was abrogated and village judicial councils disbanded in 1990. At the same time, locations will be identified for establishing pilot mediation projects as pilot models for strengthening village mediation.

An action research team of Nepalese professionals will be constituted from key institutions, ideally including representatives from at least the Joint Secretary level from the MOLJPA and Ministry of Local Development (MLD) and a representative of the Nepal Bar Association. An observation tour will be organized to expose team members to working Asian community mediation systems. The team will then review the status of current legislation bearing on community mediation, determine necessary amendments and additions, and draft new legislation accordingly. The Project will provide a consultant to the group.

In the second year of the Project, pilot mediation activities will be established in two or three locations, following guidelines provided in the new legislation. This work will be continued on an experimental basis for two years, after which time a comprehensive evaluation will be conducted, to include recommendations on next steps.

## 5. Financial Sustainability

The Project Manager will ensure that consultants working with the Supreme Court to set up court management and record systems also assist in establishing adequate annual budgets for system operation. TAF plans to work with legal NGOs on production of the various digests and indexes described above. While publication of these items will be subsidized initially, the organizations will be required to charge for subscriptions before the end of the Project. Strengthening community mediation processes will lessen the case and financial burden on the formal court system, and implementors will explore options for making mediation services (staffed by volunteers) self-financing.

### C. District and Village Development Committee Strengthening

#### 1. General

The Project will support District and Village Development Committee (DDC and VDC) strengthening by working through a US organization, firmly committed to this type of work. USAID will also facilitate a relationship between the US organization and a local NGO to provide additional TA and training. The selected US organization ("Cooperating Agency") will elicit expressions of interest from DDCs and VDCs, between two and four DDCs and with two VDCs in each selected district. The Cooperating Agency and its Nepalese sub-contractor will be expected to implement this Project component as a major training exercise. The Cooperating Agency will provide TA and training to new local politicians, employees of DDCs, VDCs and central ministries, and local groups including user groups, and matching funds to DDCs and VDCs that perform well. MLD will act as primary liaison Ministry, receiving and disseminating project information.

The possibility of posting Peace Corps Volunteers and International Executive Service Corps Volunteers in selected areas to work with the Cooperating Agency will be explored during the early stages of the Project.

DDCs and VDCs will be selected on the basis of their commitment to performing well, and on the basis of plans for local development they have produced without outside assistance. DDCs and VDCs will demonstrate their commitment by responding to a request for proposals (circulated by the Cooperating Agency) with a detailed plan for increasing local revenues and improving accountability and equity in DDC and VDC processes. The Cooperating Agency will rank order applications, and recommend final selections. MLD will make the final selection with prior consultation of USAID.

## 2. Management Training

Cooperating Agency personnel will develop training plans, mostly on-the-job, for local elected officials, for their bureaucratic counterparts, for locally-hired employees of new DDCs and VDCs, and for local residents, who must be encouraged to take more active roles in local planning and implementation. Since women have little access to decision-making institutions at the local level, and virtually no women were elected in recent local elections, project activities (training, TA) will need to take particular account of the needs of women. Women's participation in local level advisory boards and committees will be strongly encouraged.

Project advisors will work with elected officials, involving them from the earliest stages in assessing revenue opportunities, setting development priorities, and establishing management systems. One of the first tasks for the DDCs and VDCs, with assistance from project advisors, will be to prepare the district and village profiles.

## 3. Local Revenue Generation

The purpose of this sub-component is to assist and encourage selected DDCs and VDCs to generate local revenues.

The Cooperating Agency will provide TA to selected DDCs and VDCs, assisting initially with surveys and financial analyses, to identify promising revenue resources within current statutory authorities of DDCs and VDCs. For districts, revenue generating authorities are significant. For most districts, the taxing authority with greatest potential is the local development land tax. Also significant is the decision of drafters of the District Development Council Act to provide an open ended authority for Districts to identify new taxes, fees, and duties and, with central government permission, to begin collecting them. Other potentially-significant sets of revenues are natural resource-based and infrastructure-based.

Technical advisors from the Cooperating Agency, and its Nepalese sub-contractor, will assist with design and establishment of systems for assessment and collection of taxes, administration of licensing and fee systems, for leasing of public facilities, for establishment of fee-for-service facilities, etc. that are selected as most promising in particular localities. They will also advise on organizing public relations/education campaigns for new revenue sources, help to set up complaint and appeals systems and advise on systems of fines and other sanctions for those who refuse to pay. There will be intensive training programs: for local politicians, who must understand what is being done, and why, and must be able to explain and justify these programs to local residents; for

revenue officials who need instruction in efficient, equitable collection methods; and taxpayers, who must understand how and why they are being required to pay. To ensure effective use of new local revenues, DDCs and VDCs will also be assisted in setting up formal accounting and budgeting procedures.

Modest financial support can also be extended to cooperating DDCs and VDCs. Matching grants will also be made available to them to reinforce initial efforts in revenue generation. Small grants may also be provided by the Cooperating Agency to enable cooperating DDCs and VDCs to employ local revenue officials, or for other costs associated with establishment of effective revenue systems, or fee-for-service facilities. DDCs and VDCs will also be advised and assisted in establishing self-financing services, such as clinics, suspension bridges, lending libraries, drinking water systems, mini-hydroelectric systems.

4. District and Village Development Committee Accountability

DDCs and VDCs willing to work toward increased local revenues will also be required to meet high standards for accountability to voters and taxpayers. TA will be provided for setting up a variety of accountability systems, such as regular publication of meeting minutes and budgets, opening meetings to the public, transparent procurement procedures, setting up informational signboards at construction sites, and regular public hearings and forums. There will also be training for politicians, locally-assigned employees of central government agencies, DDC and VDC employees, and citizens on accountability systems, their purpose, and how they can be used in political and administrative processes.

5. Equitable, Responsive District and Village Development Committees

It is also appropriate to encourage new DDCs and VDCs to work collaboratively with local groups--NGOs, user groups, cooperatives, etc. and to actively seek the political participation of disadvantaged groups. This will be an integral part of assistance to cooperating DDCs and VDCs, and a condition for receiving assistance with revenue generation. Cooperating DDCs and VDCs will be assisted in setting up collaborative mechanisms, in particular through ensuring access of local groups and the disadvantaged to DDCs and VDCs planning and decision-making processes through co-optation of public representatives to various ad hoc and advisory committees, and mechanisms to ensure broad participation in planning processes.

## 6. Achieving Broader Political Competence

Political competence for DDCs and VDCs is compounded of a number of elements, many requiring alliances and influence beyond local boundaries. DDCs and VDCs must deal for instance, with adjacent or nearby DDCs and VDCs on a co-equal basis. As an example, several VDCs may wish to cooperate in upgrading a major trail, making the bed wide and level enough for mules, and providing bridges at key points.

In other cases, a VDC needs to exert influence at the district level, or a DDC will benefit from political action at the national level.

The call for broader political effectiveness will arise immediately from the need to link local development committees to the national political structure and to government administration. The way in which these institutional relationships are established will be crucial to the process of decentralization and to the delivery of resources from the center to the districts. Needs and opportunities will vary, and the Project Manager, Cooperating Agency employees, and Project Advisors must be alert to them.

It will become crucial for local leaders to establish channels for influencing national policy, and elected officials from cooperating DDCs and VDCs are likely to take leading positions in this process. While a foreign donor probably can't exert undue influence in this explicitly political process, it may be appropriate to provide modest financial and advisory support for national associations and communication networks. For example, the Project might support establishment and initial work of a national association of District Chairmen, and regional association of Village Chairmen, or a district association of user groups. Groups can provide valuable member services - training, newsletter, analysis of new legislation - and undertake political action - through lobbying, policy analysis, etc. Most of these activities will require little or no financial support. However, modest funding (\$40,000) will be provided at the outset, to ensure resources are available when needed.

One activity that will be funded from the beginning is a DDC and VDC Advisory Council. Sympathetic, professionally-committed representatives of MLD, National Planning Commission, Prime Minister's Office, majority and opposition parties in Parliament, and local NGOs will be invited to join the Council. Council members will receive reports and publications, will attend semi-annual meetings which will rotate through the Cooperating Districts, and will advise the Cooperating Agency and Cooperating DDCs and VDCs on their work. Formation of an advisory council will be one way of ensuring that experiences of Project model villages can be systematically related to democratic development nationwide.

This will also be achieved by USAID keeping the MLD, as primary liaison Ministry for the project, regularly informed of the progress of project activities.

#### 7. Research, Analysis, and Dissemination

The Project will support DDC and VDC strengthening through a modest pilot project. It is administratively impractical to work simultaneously with 75 District Development Committees and 4,000 Village Development Committees under any circumstances, and far beyond the financial capacity of this modest Project. However, with careful attention to documentation of experiences with between two and four DDCs and between four and eight VDCs much can be learned which will be of value to other DDCs and VDCs. Thus, substantial resources under this component will be reserved for research, analysis, and dissemination. The US Cooperating Agency will staff a small, but full-time unit that will regularly: produce documentation (of the work of DDCs and VDCs); focus group and individual interviews with local residents and elected leaders; review crucial documents (budget minutes, contracts, financial accounts); and prepare documents and reports which describe, analyze, and disseminate the experiences of cooperating DDCs and VDCs.

The primary audience for prepared materials will be elected local officials. One approach will be through introduction of training materials into the curricula of the Local Development Training Institute (see below). As successes in cooperating DDCs and VDCs begin to accumulate, these DDCs and VDCs can expect frequent visits by outsiders--other elected officials, NGO leaders, donor representatives, central government administrators. The Project can assist by offsetting some of the costs of visitors, can assist in preparation of briefing materials, and can provide guidance in setting up local tours, etc. Other channels for communicating with this group, such as a newsletter, will also be sought. Other audiences will be national politicians and senior bureaucratic policy makers.

#### 8. Incorporation of Lessons Learned into Training Programs

HMG/N already has a set of training institutions for bureaucrats and politicians working in local development committees. The DDC and VDC component of the Project can contribute to ongoing training work of the Institutes by feeding experiences in cooperating DDCs and VDCs into training curricula. Cooperating Agency employees can assist with: pamphlets that explain "Lessons Learned" about local revenue generation, accountability, and equity, tapes and slides, teaching cases and games, and arranging for trainees to visit cooperating DDCs and VDCs to learn from their successes and failures. The Cooperative

Agency will coordinate with MLD to ensure that training programs and activities address the needs of local development in Nepal.

#### 9. Financial and Institutional Sustainability

Sustainability is a major focus. DDCs and VDCs will be sustainable and autonomous to the extent they can raise significant own-account revenues, so revenue generation is the primary theme.

#### IV. EXPECTED ACHIEVEMENTS

After four years the Project should achieve significant impacts in three activity areas:

Parliament: There will be a formal and effective committee system capable of reviewing proposed legislation, soliciting public input as appropriate, and making effective use of supporting research and analysis. The library, research section, and training unit of the Secretariat will be working effectively in support of parliamentary committees and the legislative work of the lower house, carrying out research and analysis which MPs find useful and which directly impacts on legislation. A policy research and resource unit will be established at Tribhuvan University, which will supply consultants to the Parliament for specific research and analysis on a regular basis. Functioning of the Parliament will be further enhanced by the support of graduate interns.

Judiciary: A new draft Code of Procedure will be developed, and court management will be improved, so all registered cases reach an initial judgement in a reasonable time. There will be an effective system of recording, publishing, and disseminating judicial decisions, and a legal research system which ensures that decisions are based on valid precedent. A set of non-formal adjudicative processes--e.g. mediation, arbitration, village courts, referral services--will be in place in selected areas to reduce formal system caseloads and provide ordinary men and women with timely, affordable, convenient justice. The judicial corps will be widely known to be competent, knowledgeable about the law, and independent.

District and Village Development Committees: Selected DDCs and VDCs will achieve greater autonomy and effectiveness through raising and effectively using local revenues, and will set a positive example for other DDCs and VDCs. Formal accountability systems, such as publication of meeting minutes and budget documents, and regular public meetings, will be in place. Local politicians, and bureaucrats they work with, will be increasingly effective in strategic planning and program implementation. DDCs and VDCs will establish effective working relationships with local user groups, NGOs, cooperatives, etc., ensuring all interest groups, particularly those representing the concerns of women and

disadvantaged groups, find an effective role in planning and implementation processes. Associations of local units such as DDCs and VDCs and user groups will effectively represent local concerns at the national level.

## V. ADMINISTRATION

### A. Project Implementation

Recent experience suggests it will be possible to find appropriate candidates among expatriates and newly returned Nepalese with extensive professional experience in the US or another democratic country. The Project will be managed within the Program and Project Development Office, and the Personal Services Contract (PSC) Project Manager will report to the Supervisory Program Officer or Supervisory Project Development Officer.

The Project Manager will monitor the work of one major grantee (TAF), one US Cooperating Agency, will coordinate the semi-annual visits of the Project's Democracy Advisors, will oversee the annual Democracy Poll, and will organize the periodic updating of the policy dialogue agenda and ensure that Mission professionals are familiar with it. In addition, he or she will have close involvement in other democracy-strengthening activities within the Mission which complement the Project, but are not formally part of it.

Significant work with Parliament and the Judiciary has already been initiated by TAF, and after careful review during Project Identification Document (PID) preparation, USAID asked TAF officials to develop detailed plans to continue that work over the four years of the Project. A formal grant proposal was submitted in April, and has been revised in light of detailed discussions between TAF and USAID employees. It includes the activities described above as part of the Parliament and Judiciary components, all of which will be carried out by TAF. TAF will hire long-term and short-term personnel, award sub-grants, and enter into contracts, as necessary, to carry out this work. Based on past performance in Nepal and elsewhere in Asia, USAID is confident TAF can satisfactorily complete this work, and we expect to sign a grant agreement with TAF in October 1992.

A number of organizations in the US may be appropriate partners for work in strengthening DDCs and VDCs. USAID will award a Cooperative Agreement or contract for this work, as appropriate. We will seek an organization with strong commitment to working in rural areas with all members of local society, including women and disadvantaged groups, and with sufficient experience to work with local residents in a manner which is both supportive and tough-minded. The Cooperating Agency will require considerable expertise to implement the project activities, for example in planning

training programs for newly-elected officials, surveying local revenue generation opportunities, setting up revenue assessment procedures, establishing accountability systems, etc. USAID will seek this expertise in Historically Black Colleges and Universities and 8(a) firms, and will assist the selected Cooperating Agency in negotiating a sub-contract with a Nepalese NGO. The Nepalese NGO will assist by supplying local assistance for training and advisory services. Every effort will be made to select Cooperating DDCs and VDCs which are genuinely committed to significant financial self-sufficiency and genuine autonomy. The Cooperating Agency, in conjunction with its Nepalese sub-contractor, will deploy a dozen or more field workers of both sexes and from a variety of social groups, in rural areas, and provide sufficient training, field support, and supervision to ensure they can carry out their difficult but exciting jobs.

The agreement with the Cooperating Agency will largely cover personnel costs (salaries, benefits, travel, field expenses), but the budget will also incorporate a substantial fund to be used to buttress the revenue generating efforts of DDCs and VDCs through matching grants (e.g., to match returns from a totally new revenue resource during the first year or two). USAID will finalize an agreement by December. Since this component will give strong emphasis to equity in DDC and VDC operations, it is particularly appropriate that the employees of the Nepalese NGO sub-contractor represent a broad cross-section of the population. In addition to other technical criteria, preference will be given to NGOs which offer and field a professional team which has a cross-section of social groups, and also includes a significant number of women.

The Project Advisors, probably two or three U.S.-based scholars of the democratic process, will be engaged to visit Nepal in a regular basis, to assist the Mission through assessment of ongoing Project activities, and advise on possible future activities. Project Advisors will be engaged as Personal Services Contractors or under a buy-in to an existing contract. The contract for the annual Democracy Poll will be competed among local organizations; since individuals from several organizations will be trained in polling during Fall 1992, through collaboration between USIS and USAID, we are confident a suitable organization can be located. Subject to satisfactory completion of the first Poll (June 1993), the contracted organization will carry out subsequent polls through 1996.

#### B. Monitoring, Evaluation, and Impact Measurement

Progress in democracy strengthening is not easily measured. Positive results can be identified with relative ease, but are not readily quantified or rank ordered. Another difficulty is identifying direct causal relationships between Project activities and changes (desirable and undesirable) that take place.

Nevertheless, USAID plans to adopt two major approaches to monitoring, evaluation, and impact measurement: First, we will commission an annual Democracy Poll, to be carried out by a local organization. It will take a sounding of public opinion regarding progress in strengthening Parliament, the judiciary, and DDCs and VDCs, where possible eliciting specific examples of "impacts achieved". This poll will be used generally to track progress in democratic development of Nepal, and specifically for monitoring and measuring Project results. Assistance in drafting the Scope of Work for the initial poll will be sought from professional polling experts in the Research Bureau of the United States Information Agency in Washington. Polling data will be gender-disaggregated.

Additional small polls on topics related to Nepalese democracy may be carried out occasionally, as needed. In addition to their value in guiding Project implementation, polls will also strengthen democratic processes by providing Parliament, the judiciary, DDCs and VDCs, and NGOs with feedback on their performance.

Second, we will engage two or three Project Advisors to visit Nepal to assess Project activities periodically (at least six times during the Project, twice annually for the first two years) and prepare brief overviews of successes and failures, rate Project progress, and advise the Mission and grantees and contractors on the future course of the Project.

USAID has set up a system of impact indicators under our program performance measurement (PRISM) system, which are directly relevant in establishing Scopes of Work for annual Democracy Polls and Project Advisor visits. Annual Democracy Polls and certain other evaluative activities (e.g., annual assessments of conduct of court cases) will serve a dual purpose. They will support project monitoring and, when published, provide a basis for Nepalese assessment of their democratic processes. With the poll, advisors, and other annual assessments in place, a formal evaluation may not be necessary; however, the budget provides funding for a separate evaluation.

#### VI. PROJECT BUDGET (\$000)

Parliament	948
Judiciary	642
District and Village Development Committees	1,011
Support Services	302
Audit	50
Project Manager	200
Contingency/Inflation	<u>347</u>
Total	3,500

## VII. FINANCIAL PLAN

Program inputs are represented in the table below:

<u>Project Expenditure (\$ 000)</u>					
<u>Activity/Component</u>	<u>FY93</u>	<u>FY94</u>	<u>FY95</u>	<u>FY96</u>	<u>Total</u>
1. Parliament	263	283	219	183	948
2. Judiciary	155	175	186	126	642
3. DDCs and VDCs	292	322	210	187	1,011
4. Support Services	77	77	99	49	302
5. Audit	5	5	35	5	50
6. Project Manager	50	50	50	50	200
7. Contingency/ Inflation	-	73	128	146	347
	842	985	927	746	3,500

The level of effort represented by each component/line-item sub-total is described below:

### 1. Parliament

The total of \$948,000 over the life of the Project represents roughly: 27 person months of short-term foreign advisory services; 26 person months of short-term regional advisory services; 212 person months of Nepalese advisory services; 126 person months of regional training; 309 person months of local training; 6 person months of US training; 264 months of institutional support; roughly 14 workshops; commodities (computer equipment, microfiche); and preliminary studies.

### 2. Judiciary

The total of \$642,000 over the life of the Project represents roughly: 4 and 1/2 person months of short-term foreign advisory services; 3 person months of short-term regional advisory services; 7 person months of regional training; 24 person months of local training; 7 person months of US training; 231 months of institutional support; commodities (computer equipment); and preliminary studies.

### 3. District and Village Development Committees

The total of \$1,011,000 over the life of the Project represents roughly: 35 person months of long-term foreign advisory services; 180 person months of Nepalese advisory services; roughly 10 local training courses and 20 small workshops; 48 months of institutional support, including field travel; commodities (1

vehicle and 5 to 10 motorcycles); publications; grants; and support for local-national linkage.

4. Support Services

The total of \$302,000 over the life of the Project represents roughly: 16 person months of foreign advisory services; 4 Annual Democracy Polls; and special and evaluation studies.

5. Audit

The total of \$50,000 over the life of the Project represents 3 annual audits by a local firm and one regional audit.

6. Project Manager

The total of \$200,000 over the life of the Project will cover the cost of a Project Manager for 48 months.

7. Contingency/Inflation

These sub-totals represent interest compounded at approximately 8% starting in FY94.

HMG/N is not required to make any contribution, beyond that which it currently provides in the form of institutional support for the beneficiary institutions (Parliament, the Supreme Court, District and Village Development Committees).

The financial disbursement and management processes and procedures will be established, according to prescribed USAID procedure, under the grants, cooperative agreements and contracts made by USAID with selected implementing agencies. USAID's Office of Financial Management will review all project accounts on a periodic basis.

**ANNEX 2**

**PROJECT GRANT AGREEMENT**

**STANDARD PROVISIONS**

PROJECT GRANT AGREEMENT

Standard Provisions - Annex 2

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## Project Grant Agreement

### Standard Provisions - Annex 2

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 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.

SECTION B.2. Execution of Project. The Grantee will:

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

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

### **SECTION B.3. Utilization of Goods and Services**

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

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

### **SECTION B.4. Taxation**

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

(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Grant, and any property or 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 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, Accounting Records, Inspections, Audits.**

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

(b) The Grantee shall maintain accounting books, records, documents, and other evidence relating to the Project and to this Agreement, adequate to show, without limitation, all costs incurred under the Grant, the receipt and use of goods and services acquired under the Grant, the costs of the Project supplied from other sources, 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 ("Project Books and Records"). At the Grantee's option, with approval by A.I.D., Project Books and Records shall be maintained, in accordance with one of the following methods: (1) generally accepted accounting principles prevailing in the United States, (2) generally accepted accounting principles prevailing in the country of the Grantee, (3) accounting principles prescribed by

the International Accounting Standards Committee (an affiliate of the International Federation of Accountants), or (4) such other accounting principles as the Parties may agree to in writing. Project Books and Records shall be maintained for at least three years after the date of last disbursement by A.I.D.

(c) If \$25,000 or more is disbursed directly to the Grantee in any one calendar year under the Grant, the Grantee, except as the Parties may otherwise agree in writing, shall have financial audits made of the funds disbursed to the Grantee under the Grant in accordance with the following terms:

(1) The Grantee shall select an independent auditor in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the A.I.D. Inspector General ("Guidelines"), and the audits shall be performed in accordance with the "Guidelines".

(2) An Audit of the funds provided under the Grant shall be conducted for each fiscal year of the Grantee. The audit shall determine whether the receipt and expenditures of the funds provided under the Grant are presented in accordance with generally accepted accounting principles agreed to in Section (b) above and whether the Grantee has complied with the terms of the Agreement. Each audit shall be completed no later than one year after the close of the Grantee's fiscal year.

(d) The Grantee shall submit an audit report to A.I.D. within 30 days after completion of each audit arranged for by the Grantee in accordance with this Section. The A.I.D. Inspector General will review each report to determine whether it complies with the audit requirements of this Agreement. Subject to A.I.D. approval, costs of audits performed in accordance with the terms of this Section may be charged to the Grant. In cases of continued inability or unwillingness to have an audit performed in accordance with the terms of this Section, A.I.D. will consider appropriate sanctions which include suspension of all or a portion of disbursements until the audit is satisfactorily completed or A.I.D. performs its own audit.

(e) The Grantee shall submit to A.I.D., in form and substance satisfactory to A.I.D. a plan by which the Grantee will ensure that funds made available to subrecipients that receive \$25,000 or more in any one calendar year under the Grant are audited in accordance with this Agreement. The plan should describe the methodology to be used by the Grantee to satisfy its audit responsibilities with respect to any subrecipient to which this Section applies. Such audit responsibilities with respect to subrecipients may be satisfied by relying on independent audits of the subrecipients or on appropriate procedures performed by the internal audit or program staff of the Grantee, by expanding the scope of the

independent financial audit of the Grantee to encompass testing of subrecipients' accounts, or by a combination of these procedures. The plan should identify the funds made available to subrecipients that will be covered by audits conducted in accordance with other audit provisions that would satisfy the Grantee's audit responsibilities (a non-profit organization organized in the United States is required to arrange for its own audits; a for-profit contractor organized in the United States that has a direct contract with A.I.D. is audited by the cognizant U.S. Government agency; a private voluntary organization organized outside the United States with a direct grant from A.I.D. is required to arrange for its own audits; and a host-country contractor should be audited by the cognizant Grantee contracting agency). The Grantee shall ensure that appropriate corrective actions are taken on the recommendations contained in the subrecipients' audit reports; consider whether subrecipients' audits necessitate adjustment of its own records; and require each subrecipient to permit independent auditors to have access to records and financial statements as necessary.

(f) A.I.D. may, at its discretion, perform the audits required under the Agreement on behalf of the Grantee by utilizing funds under the Grant or other resources available to A.I.D. for this purpose. The Grantee shall afford authorized representatives of A.I.D. the opportunity at all reasonable times to audit or inspect the project, the utilization of goods and services financed by A.I.D., 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; 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. The 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 of marine insurance placed in the territory of the Grantee will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C.7(a).

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

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

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

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

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

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

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

(b) Except as A.I.D. may otherwise agree in writing, the Grantee will insure, or cause to be insured, goods financed under the Grant imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Grantee under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Grantee for the replacement or repair of such goods. Any such replacement will be of source and origin of countries listed in A.I.D. Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

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

Article D: Termination, Remedies

SECTION D.1. Termination. Either Party may terminate this Agreement by giving the other Party 30 days written notice. Termination of this Agreement will terminate any obligations of the Parties to provide financial or other resources to the Project pursuant to this Agreement, except for payment which they are committed to make pursuant to noncancellable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at A.I.D.'s expense, direct that title to goods financed under the Grant be transferred to A.I.D. if the goods are from a source outside Grantee's country, are in a deliverable state and have not been 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 (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 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.