

भाग ५

श्री ५ को सरकार

कानून तथा न्याय मन्त्रालयको सूचना

श्री ५ को सरकार, नेपाल र संयुक्त राज्य अमेरिका सरकारबीच सम्पन्न भएको Reforestation Project सम्बन्धी सम्झौता सर्वसाधारणको जानकारीको लागि प्रकाशित गरिएको छ ।

Dated: February 11, 1987

AGREEMENT

BETWEEN

HIS MAJESTY'S GOVERNMENT OF NEPAL

AND

THE UNITED STATES OF AMERICA

FOR

REFORESTATION PROJECT

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 ("A.I.D.").

Whereas, A.I.D. and HMG/N ("The Parties") have agreed in principle to a project to promote reforestation activities in Nepal;

Whereas, in consequence of that agreement A.I.D. has obligated grant funds to finance the project through a separate Participating Agency Service Agreement ("PASA") with Argonne National Laboratory ("Argonne"), a division of the U. S. Department of Energy ("D. O.E.");

Whereas, Argonne pursuant to the PASA will implement and manage the project;

Whereas, the Parties now wish to confirm their understandings with regard to the project and provide for its implementation;

The Parties hereto agree as follows:

Article 1: The Agreement

The purpose of this agreement is to confirm the understandings

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of the Parties referred to above and provide for the implementation of the project.

Article 2: The Project

SECTION 2.1. Definition of Project. The purpose of the project is to promote a balanced approach to reforestation in Nepal that will help meet Nepal's needs for fuel and fodder production, soil and water resource conservation and, where appropriate, commercialization of wood products. The project will have research, demonstration and training components. The description of the project is amplified in the project description prepared by Argonne in consultation with HMG/N. The amplified project description is incorporated into this agreement as Annex 1.

SECTION 2.2. Modification or Amendment of Project. If HMG/N and Argonne propose any substantive deviation from the amplified project description, such deviation is subject to prior notice to and concurrence by A.I.D. A.I.D. concurrence may be obtained by written agreement of the authorized representatives of the Parties named in Section 8.2., without formal amendment of this agreement.

Article 3: Financing

SECTION 3.1. Amount. A.I.D. will provide up to Two Million Two Hundred Eighty Thousand United States (U.S.) Dollars (2, 280,000) in grant funds to finance the foreign exchange and local currency costs of the project. The Grant amount includes amounts expended prior to the signing of this agreement in connection with initial assessment visits to Nepal, development of the work plan and other project activities.

SECTION 3.2. Project Assistance Completion Date. The activities financed under the project will be completed over a four year period, ending on June 30, 1990, unless the completion date is extended by the Parties in writing.

Article 4: Special Covenants

SECTION 4.1. Trainees. HMG/N will provide appropriate persons for training to support project activities. HMG/N will also provide for roundtrip travel costs for all HMG/N participants to the

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point nearest to the place of training to which Royal Nepal Airlines Corporation (RNAC) flies. HMG/N will take reasonable steps to ensure that after the completion of training each trainee's skills will be properly utilized in Nepal reforestation activities.

SECTION 4.2. Land Sites. HMG/N will provide appropriate land sites to conduct project activities.

SECTION 4.3. Project Evaluation. A.I.D. will receive copies of all reports prepared pursuant to the evaluation plan set forth in the amplified project description. If A.I.D. determines at its discretion to conduct an independent evaluation of the project, HMG/N will cause its officers and employees to give full cooperation and assistance to A.I.D. in connection therewith. Any such evaluation by A.I.D. will be financed with project funds.

SECTION 4.4. Exemption From Contract Tax. Contract funds provided for project activities pursuant to the A.I.D. Grant are exempt from the assessment, withholding, collection or payment of the Nepal contract tax under Standard Provision B.4 of the Standard Provisions Annex to this Agreement. HMG/N will not assess, withhold, collect or require payment of contract tax on contracts funded under this agreement. HMG/N will include a clause in procurement documents and contracts executed or administered by HMG/N Ministries and agencies for all contracts funded hereunder that the contract is exempt from the withholding, assessment, collection and payment of contract tax and that contractors' bids and vouchers shall not include amounts for the contract tax.

Article 5 : Procurement Source

Commodities financed by A.I.D. under the project shall have their source and origin in Nepal or in countries included in A.I.D. Geographic Code 941 except as A.I.D. may otherwise agree in writing, and except as provided in the Standard Provisions Annex (Annex 2 to this Agreement) with respect to marine insurance. The suppliers of commodities or services shall have Nepal or countries included in A.I.D. Geographic Code 941 as their place of nationality, except as A.I.D. may otherwise agree in writing. Ocean shipping financed by A.I.D. under the project shall, except as A.I.D. may otherwise agree

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in writing, be financed only on flag vessels of Nepal or Code 941 countries.

Article 6. Procurement

Procurement of goods and services required for project activities, including the rules governing competition and notification of suppliers, shall be subject to the normal procurement rules of D.O.E. and/or Argonne as they may be modified by separate agreement between Argonne and HMG/N, and as specified in the Standard Provisions Annex to this Agreement.

Article 7: Disbursement

Disbursement of Grant funds in support of project activities will be made by A.I.D. to Argonne pursuant to the A.I.D. Argonne PASA, or in such other manner as the Parties may agree.

Article 8: Miscellaneous

SECTION 8.1. **Communication.** 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: Additional Secretary
Foreign Aid Coordination 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.

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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 Additional 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 2.2 to revise elements of the amplified project description in Annex 1. HMG/N hereby designates *ex officio* both the Secretary of the Ministry of Forest and Soil Conservation and the Chief Conservator, Department of Forest, as additional representatives of HMG/N for this project, who may by written notice designate other additional representatives. The names of the representatives of HMG/N, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of thier authority.

SECTION 8.3. Standard Provisions Annex. A "Project Grant Standard Provisions Annex," as amended (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

On behalf of The United States
of America

BY: Lok Bahadur Shrestha

BY: David M. Wilson

TITLE: Secretary
Ministry of Finance

TITLE: Director
USAID/Nepal

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Annex 1

Nepal: Reforestation Project

A.I.D. Project No. 367-0156

AMPLIFIED DESCRIPTION OF PROJECT

PURPOSE AND OBJECTIVES

The purpose of this four year research/demonstration project is to introduce into Nepal more efficient methods of producing fuelwood, fodder and other tree products by establishing a program on coppice forestry production systems using fast-growing, multipurpose trees. The long-term goal is to increase the standard of living for the rural poor. The project will focus on the mid-hills region of the country.

SCOPE/APPROACH

The project consists of three major components:

1. A permanent, multipurpose tree nursery primarily for the production of planting stock, but also as a facility for conducting applied experimental work on plant propagation, nutrient and water requirements, nursery practices, outplanting techniques and on species, provenance, and clone trials. In addition, the nursery will be used to transfer appropriate technology through the training of Nepali technicians, farmers, and Students.
2. A research and demonstration program that will evaluate and demonstrate several high-yield production systems for tree products, methods for the maintenance and management of these systems, and their economics and cost-effectiveness.
3. A program of technology transfer and technical assistance that will be aimed at increasing employment and income in the forestry sector through the training of technicians, farmers, and students in the use and management of multipurpose tree production systems.

Costs and levels of the technical assistance involved in the proposed Reforestation project will be reviewed jointly by representatives of the Argonne National Laboratory, USAID/N, The Ministry of Forests and Soil Conservation and The Ministry of Finance. The details of timing and method for carrying out this review will be set down in an implementation letter within sixty (60) days of the signing of the project agreement.

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The purpose of the review will be to ascertain the appropriate levels of technical assistance required for prudent management of the project, while at the same time respecting His Majesty's Government's overall policy to reduce the technical assistance components and increase the operational components of all donor-aided projects.

The production systems to be evaluated are:

1. Alley Cropping—A subset of agroforestry in which parallel rows of trees are planted along contours of hilly terrain or in straight rows on level areas. The "alleys" between rows, 2 to 6 m. wide, are planted with agricultural crops, medicinal plants or shade-tolerant grasses for livestock. Due to frequent coppicing of the trees, the "alleys" would be useable and productive most of the time.
2. Contour Hedgerow—A form of alley cropping but restricted to hilly terrain. Contour "hedges" (two to three rows of trees per hedge) are coppiced frequently. The material is either used for fuel or fodder or is left in place to form barriers to downslope soil movement. The areas between hedges are reserved for permanent agriculture.
3. Ultra-Short Rotation—Plantations of closely spaced plants that are coppiced at six-month or one-year intervals, with plant spacings on the order of 15 to 30 cm.
4. Short Rotation—Plantations of high-yield tree species that are harvested for tree products at 2-6 year intervals. This system also allows for concurrent use of harvest methods such as pollarding, lopping, and hedging. Coppicing species when harvested at short intervals does not require replanting after each harvest.

The project will consist of eight primary tasks.

TASK 1: SITE SELECTION

The objective of this task is to select appropriate field sites for the project. Site-specific factors such as climate, topography, soil, physical and chemical characteristics, and local needs and preferences for tree products will determine the tree species, propagation methods, and management techniques to be studied.

Demonstration sites and the necessary nursery facilities to service the sites will be established in Sindhuli and Ramechhap districts during

the project period. Assuming technical feasibility, these two districts will be the locations for any future plantation effort that may arise from the project should funding become available.

A nursery/research facility and adjacent research demonstration site will be selected on the basis of the technical criteria (availability of water, suitable soils and easy accessibility to the project office in Kathmandu) as specified in the Project Paper and in consultation with the Department of Forest.

TASK 2: SOCIAL FACTORS

The objective of this task is to determine the social factors that would affect the success of adopting new high-yield coppice production systems. To do this, the social soundness of the project will be determined. The social factors to be evaluated include:

- (A) Area of private and community owned land.
- (B) Economic surplus of individual farms.
- (C) Social structure of the community.
- (D) Role and importance of trees and roles of men and women in the agricultural production system.
- (E) Past experience of the community in adopting innovations. Differential acceptance of innovation by social class and gender.
- (F) Existing social cleavages.
- (G) Extent of animal ownership and importance of animals.
- (H) Requirements and preferences of the community for forage, fuelwood, and other tree products.

Baseline social data will be collected after site selection. Social analyses will be performed throughout the project period.

TASK 3: SPECIES SELECTION.

The objective of this task is to perform a preliminary screening of species from a prepared list of 91 potential candidates. Species from the initial screening will be field tested. A final selection of species to be used in the production systems will be based on field trials and will take into account the variability in local preferences among rural people in the mid-hills.

The Department of Forest and ANL have mutually agreed upon 15 species to include in the preliminary screening. The primary criterion considered was adaptability to the mid-hills region and to an elevation range of 1200 to 1800 meters. The species chosen are:

Native Species

Alnus Nepalensis
Artocarpus lokoocha
Ficus roxburghii
Ficus remoralis
Ficus cunia
Ficus lacur
Ficus clavata
Melia azedarach
Prunus cerasoides

Exotic Species

Salix species
Populus deltoides
Populus hybrids
Eucalyptus comaldulensis
Robinia pseudoacacia
Platanus occidentalis

Additional species may be included for field trials depending upon unique site characteristics and/or local preferences that may occur in the specific areas selected for the project.

TASK 4 : NURSERY/RESEARCH FACILITY

The objective of this task is to establish a permanent tree nursery facility with provision for conducting species-screening studies and other applied research. Other temporary nurseries may be established, if necessary.

The facility will include (1) a small greenhouse; (2) a head-house for storage, soil analyses, seed preparation, germination tests, etc. ; (3) a shadehouse and an open area for growing nursery stock; (4) seedbeds for the production of planting stock; (5) a cultivated area for screening promising species and clones; (6) a simple meteorological station for measuring precipitation, evaporation, temperature, and humidity; (7) an office; (8) a small classroom; and (9) an area for future expansion. The facility will require an area of 4 to 5 hectares and will be designed for an initial production capacity of 100,000 seedlings and cuttings per year; this capacity will eventually be expanded.

TASK 5 : RESEARCH/DEMONSTRATION FACILITY

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Subtask 1: Research Plots

The objectives of this task are to (1) determine species-site interactions, (2) evaluate management methods for different production systems, (3) determine fuelwood and fodder yields as related to species and silviculture, (4) analyze economics of production systems, (5) analyze social implications of adopting high-yield tree production systems, and (6) analyze environmental effects.

This facility is expected to be located on or adjacent to the permanent nursery site. It will be used to evaluate and demonstrate promising production systems for selected species. The production systems studied will reflect the methods most likely to be used by farmers, private landowners, and local panchayats.

Subtask 2 : Demonstration Facility

The demonstration component of this task will establish a community coppice production system to evaluate social acceptance and the impacts and benefits for a typical mid-hills community.

This effort includes (1) social surveys and analyses, (2) project design and organization, (3) initiation of community contracts, (4) procurement of materials, (5) preparation of planting areas, (6) planting, (7) supplemental planting as needed, (8) monitoring, (9) data analysis, and (10) report preparation.

TASK 6 : APPLIED RESEARCH STUDIES AND MONITORING

The objective of this task is to conduct applied research on coppice culture and short rotation production systems at each of the field sites. Data will be generated that is appropriate for, and can be used in, the technology transfer component of the project. The research will include areas such as species evaluation and spacings appropriate for various production systems. Harvesting frequency, harvest methods, and site fertility will also be studied.

TASK 7 : TRAINING AND TECHNOLOGY TRANSFER

The objectives of this task are to (1) conduct training courses on high-yield coppice production systems at the technical and professional level and (2) arrange training visits to the U.S. and/or other countries to study such systems. Three, two-week short course workshops will be given in Nepal. The instructors will be Nepalese professionals and teachers supplemented by experts from the region and

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U.S. professionals. The participants will be professional and technical foresters/agricultural scientists, extension workers, and administrators. Topics to be covered include :

- (A) Biology and ecology of high-yield species and multipurpose production systems.
- (B) Species selection.
- (C) Plant propagation and nursery practices.
- (D) Plantation establishment, management and maintenance.
- (E) Tree product utilization.
- (F) Social aspects of high-yield production systems.
- (G) Soil and water conservation relationships.
- (H) Worldwide case studies.
- (I) Field demonstrations.

Approximately five, short-term training visits to the United States and other countries by selected personnel will be arranged by ANL in consultation with HMG. Selection will be made among those who will contribute to increasing production of tree products through short-rotation and coppice tree culture. The visits will include tours of sites where such culture is practiced and of institutions that develop and manage these systems.

TASK 8 : EVALUATION

All components of the project will be evaluated by comparing goals with accomplishments. Evaluation efforts will be rigorous and will focus on the following :

- (A) Evaluate the survival, growth, and production of plantings and potential costs under normal (nonresearch) operations.
- (B) Determine social preference of selected species and production systems within the project districts.
- (C) Establish coppice production systems in terms of Nepalese needs and preferences.
- (D) Analyze alternative methods of propagation and evaluate future costs of these methods.
- (E) Establish cost of producing planting stock.
- (F) Determine effectiveness of the training program in terms of number of trainees participating, evaluation of courses by trainees and observers.

- (G) Determine level of interest shown by local farmers and panchayats in acquiring planting stock from the project nursery.
- (H) Evaluate participation by private farmers in the use of fodder produced by the project. Evaluation parameters will include level of interest in the results of feeding trials and assistance in data gathering.
- (I) Evaluate quality of fodder in terms of general effects on health, weight of livestock, and milk production by those animals lactating during the feeding trails.

ADMINISTRATION, COORDINATION, AND REVIEW

The Department of Forest is responsible for overall guidance to ensure maximum benefit from the project in accordance with national planning and in particular with the Master Plan of the Forestry Sector. The Department of Forest is also responsible for carrying out, with technical assistance from ANL, training sessions for professional and technicians on coppice forestry. ANL is responsible for implementing and managing the project under a Participating Agency Service Agreement (PASA) between AID and the U.S. Department of Energy.

A Project Coordinating Committee comprised of representatives from HMG/N, AID, Department of Forest, and ANL will be the central point for administrative coordination and key decisions on project directions and priorities. The committee will meet annually.

The project will also be coordinated on a day-to-day basis between the Department of Forest and ANL by the in-country ANL project manager. Quarterly reviews of the project components will be held between the Department of Forest and ANL. Both organizations will make presentations at the annual project coordination and policy direction meeting.

In each November of the project (prior to the project coordination annual meeting), a joint review team comprised of a representative each from the U.S. and Nepal will conduct an in-depth field review of the project. Data generated from the project monitoring and evaluation system will be made available to assess project performance. This evaluation will also consider the question of additional donor

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funding to support high priority national reforestation efforts. ANL will work closely with the Department of Forest in actively seeking the additional funding for this effort.

BUDGET SUMMARY

Category	U.S. Dollars	
	Foreign Exchange	Local Currency
Personnel		
Professional/Technical	—	117,200
Nontechnical/labor	—	212,490
Technical Assistance		
Salaries	426,020	—
Fringe	117,000	—
Capital		
Vehicles, Equipment, etc.	66,500	5,100
Furnishing	—	5,000
Structures	—	40,000
Rental	—	17,500
Training	123,000	48,560
Materials and Supplies		
Supplies	—	22,000
Planting Stock	5,000	100,000
Utilities and Operation	—	30,000
Travel		
International	90,000	—
Local	15,000	19,500
Per diem	182,000	44,500
Project Evaluation	—	10,000
Management Overhead	238,000	—
Contingency	106,000	82,630
TOTAL*	1,368,520	754,480

* Budget Total for project implementation plus dollar 157,000 project development cost totals dollar 2,280,000 Life of Project Funding.

Annex 2

(A. I. D. Project No. 367-0156)

**Project Grant Standard
Provisions Annex (Amended)**

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

(a) Carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules or other

arrangements, and with any modifications therein, 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 Nepal.

(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 Nepal, HMG/N will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Grant.

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

HMG/N will:

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

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(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. HMG/N 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;

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

SECTION B.8. Information and Marking. HMG/N 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 Nepal will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C.4 (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. Shipping.

(a) Goods which are to be transported to the territory of Nepal 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 Corde 935 as in effect at the time of shipment, or (2) on an ocean vessel which A.I.D., by written notice to HMG/N, has designated as ineligible; or (3) under an ocean 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

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

(c) Unless D.O.E. and/or Argonne determine 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 Nepal 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.4. Insurance.

(a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of Nepal 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 HMG/N by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D. financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of Nepal financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(b) Except as A.I.D. may otherwise agree in writing, HMG/N will insure, or cause to be insured, goods financed under the Grant

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

SECTION C.5. U.S. Government-Owned Excess Property. HMG/N 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 payments which they are committed to make pursuant to non-cancellable 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 goods are from a source outside Nepal, are in a deliverable state and have not been off loaded in ports of entry of Nepal.

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

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

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

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

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

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

आज्ञाले,
उदय नेपाली श्रेष्ठ
उपसचिव

(२४)

श्री ५ को सरकारको छापाखाना, सिंहदरबार, काठमाडौंमा मुद्रित ।

आधिकारिकता मुद्रण विभागबाट प्रमाणित गरिएपछि मात्र लागु हुनेछ।