



America or any officer, agent or representative thereof to induce METCALF & EDDY to enter into this Consent and Undertaking.

4. The defendant METCALF & EDDY further represents that it has already implemented and consents and agrees that it hereafter will maintain a compliance and ethics program designed to detect and prevent violations of the Foreign Corrupt Practices Act and of other applicable foreign bribery laws. It will provide a copy of all corporate resolutions and other documents describing and implementing such compliance and ethics program to the United States within sixty days of the entry of the Final Judgment of Permanent Injunction in this matter.

The defendant METCALF & EDDY's program shall include, *at a minimum*, the following components:

- a. A clearly articulated corporate policy against violations of the Foreign Corrupt Practices Act and the establishment of compliance standards and procedures to be followed by its employees, consultants, and agents that are reasonably capable of reducing the prospect of violative conduct;
- b. The assignment to one or more senior METCALF & EDDY corporate officials of responsibility for oversight of compliance with policies, standards, and procedures established pursuant to paragraph 4 of this Consent and Undertaking. Such officials shall have the authority and responsibility to implement and utilize monitoring and auditing systems reasonably designed to detect criminal conduct by the company's employees and other agents, including, where appropriate, the retention of outside counsel and independent auditors to conduct investigations and audits. In addition, such officials shall be charged with making any necessary modifications to the

compliance program to respond to detected violations and to prevent further similar violations;

- c. The establishment and maintenance of a committee to review (i) the retention of any agent, consultant, or other representative for purposes of business development in a foreign jurisdiction, and (ii) all contracts related thereto. The committee also will review the suitability of all prospective joint venture partners for purposes of compliance with the Foreign Corrupt Practices Act, as well as the adequacy of the due diligence performed in connection with the selection of the joint venture partner, any subsequent due diligence relating to the continued suitability of such joint venture partner, and any due diligence in connection with approvals of the retention of sub-agents and consultants by the joint venture for purpose of business development in a jurisdiction other than the United States. The majority of the committee shall be comprised of persons who are not subordinate to the most senior officer of the department or unit responsible for the relevant transaction.
- d. Clearly articulated corporate procedures to ensure that METCALF & EDDY exercises due care to assure that substantial discretionary authority is not delegated to individuals whom the defendant knows, or should know through the exercise of due diligence, have a propensity to engage in illegal activities.
- e. Clearly articulated corporate procedures to assure that all necessary and prudent precautions are taken to ensure that METCALF & EDDY has formed business relationships with reputable and qualified agents, consultants and other representatives for purposes of business development in foreign jurisdictions. Such

policy shall require that evidence of such a “due diligence” inquiry be maintained in METCALF & EDDY’s files;

- f. The effective communication to all officers, employees, agents, consultants, and other representatives of corporate policies, standards, and procedures regarding the Foreign Corrupt Practices Act by requiring regular training concerning the requirements of the Foreign Corrupt Practices Act and of other applicable foreign bribery laws on a periodic basis to its officers and employees involved in foreign projects. With respect to the training of agents, consultants, or other representatives retained in connection with foreign business, such training shall be given as soon as practicable following their retention and periodically thereafter;
- g. The implementation of appropriate disciplinary mechanisms, including as appropriate, discipline of individuals responsible for the failure to detect a violation of the law or of compliance policies, standards, and procedures.
- h. The establishment of a reporting system by which officers, employees, agents, consultants, and other representatives may report suspected criminal conduct without fear of retribution or going through the chain of command or reporting the same to the employee’s, agent’s, or representative’s immediate managers;
- i. The inclusion in all contracts and contract renewals entered into subsequent to the date of this Consent Decree with agents, consultants, and other representatives for purposes of business development in a foreign jurisdiction of a representation and undertaking by each prospective agent, consultant, and representative that no payments of money or anything of value will be offered, promised or paid, directly

or indirectly, to any foreign officials, foreign political parties, party officials, or candidates for foreign public or political party office to influence the acts of such officials, political parties, party officials, or candidates in their official capacity, to induce them to use their influence with a foreign government or an instrumentality thereof, or to obtain an improper advantage in connection with any business venture or contract in which METCALF & EDDY is a participant. In addition, all such contracts shall contain an agreement by each prospective agent, consultant, and representative for business development in a foreign jurisdiction that it shall not retain any sub-agent or representative without the prior written consent of a senior officer of METCALF & EDDY. All such contracts shall further provide for termination of said contract as a result of any breach of such undertakings, representations, and agreements.

5. The defendant METCALF & EDDY further consents and agrees to implement financial and accounting procedures to be certified to by the company's chief financial officer. Such procedures shall be designed to ensure that METCALF & EDDY:
  - a. makes and keeps books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company;
  - b. devises and maintains a system of internal accounting controls sufficient to provide reasonable assurances that:
    - i. transactions are executed in accordance with management's general or specific authorization;

- ii. transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
  - iii. access to assets is permitted only in accordance with management's general or specific authorization; and
  - iv. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.
6. The defendant METCALF & EDDY hereby consents and agrees to promptly investigate and/or report any alleged violations by METCALF & EDDY, its officers, employees, agents, consultants, or other representatives, and any joint venture in which METCALF & EDDY is a participant, of the Foreign Corrupt Practices Act or any violations of other applicable foreign bribery laws to the Department of Justice.
7. Where the work contemplated by a joint venture will be performed in a foreign jurisdiction, the defendant METCALF & EDDY further consents and agrees to include in all of its joint venture agreements entered into or modified after the date of this Consent and Undertaking a representation and undertaking by each joint venture partner, with periodic certifications made to METCALF & EDDY, that no payments of money or anything of value will be or has been offered, promised or paid, directly or indirectly, to any foreign officials, foreign political parties, party officials, or candidates for foreign public or political party office to influence the acts of such officials, political parties, party officials, or candidates in their

official capacity, to induce them to use their influence with a foreign government or an instrumentality thereof, or to obtain an improper advantage in connection with any business venture or contract in which METCALF & EDDY is a participant. In addition, all such agreements shall contain an agreement by each prospective joint venture partner that it shall not retain any sub-agent or representative without the prior written consent, after the exercise of due diligence, of a senior officer of METCALF & EDDY. All such contracts shall further provide for termination of said contract as a result of any breach of such undertakings, representations, and agreements.

8. The defendant METCALF & EDDY further consents and agrees that it shall provide on an annual basis for the next five years certifications of compliance with the Foreign Corrupt Practices Act to the United States Agency for International Development (USAID), any other Federal agencies for which METCALF & EDDY has overseas programs and/or contracts, and the Department of Justice. Such certifications shall be based upon audits conducted by an independent outside auditor. The defendant METCALF & EDDY agrees, upon request, to provide copies of the results of such audits and will use reasonable efforts to make the auditors available to the USAID, any other applicable Federal agency, and the Department of Justice for follow-up questions and clarifications. For purposes of this paragraph, "reasonable efforts" shall include, but not be limited to, including in retention agreements clauses requiring such auditors to cooperate with the United States.
9. The defendant METCALF & EDDY further agrees to conduct a periodic review, not less than once every five years, of its corporate policies and compliance programs regarding the Foreign Corrupt Practices Act and the anti-bribery provisions of each foreign jurisdiction to

which the defendant, its officers, employees, agents, and subsidiaries may be subject. Such periodic reviews will be conducted by independent legal and auditing firms retained for such purpose by the Board of Directors of METCALF & EDDY or its successors.

10. The defendant METCALF & EDDY agrees to provide to each officer and manager of the company and all subsidiaries thereof, a copy of the complaint, undertaking, and order of permanent injunction in this proceeding. The defendant shall obtain from each such officer and manager a certification as to the receipt of these documents. Where an officer or manager fails to certify receipt of these documents, METCALF & EDDY shall retransmit them via a nationally recognized over-night courier and maintain proof of transmittal in its files. These certifications and documentation shall be made available to the U.S. Department of Justice upon request.
11. The defendant METCALF & EDDY agrees to cooperate truthfully and completely with the United States in its investigation of possible violations of federal law arising out of this investigation of METCALF & EDDY and any of its present and former officers and employees and in any trial or other proceedings arising out of this investigation of M&E International and METCALF & EDDY and any of its present and former officers and employees.
  - a. METCALF & EDDY understands and agrees that its cooperation obligations will require it, among other things, to do the following:
    - i. provide full disclosure of all information known to METCALF & EDDY as of the date of execution of this agreement by the parties concerning the

payments of money or anything of value to government officials beginning in 1994;

- ii. provide full disclosure of all information known to METCALF & EDDY as of the date of execution of this agreement by the parties concerning any payments by METCALF & EDDY or any of its subsidiary entities made directly or indirectly to any foreign officials for the purpose of influencing such officials;
- iii. provide full disclosure of all instances known to METCALF & EDDY as of the date of execution of this agreement by the parties of improper accounting for payments or expenses associated with United States government-funded projects;
- iv. provide access to copies of original documents and records relating to the above;
- v. require that, upon request and reasonable notice by the Department of Justice, METCALF & EDDY's directors, officers and employees make themselves available for interviews by law enforcement agents and for attendance at legal and judicial proceedings, including grand jury sessions, trials and other court hearings relating to the above;
- vi. take all reasonable measures to ensure that METCALF & EDDY's directors, officers and employees cooperate fully and truthfully with the United States and disclose all information with respect to their activities and those of others

relating to violations of federal laws, including the Foreign Corrupt Practices Act relating to the above.

- b. In return for METCALF & EDDY's full and truthful cooperation, the United States agrees not to use any information provided by METCALF & EDDY pursuant to this agreement (or any information directly or indirectly derived therefrom) against METCALF & EDDY or its subsidiaries in any criminal case except: in a prosecution for perjury or obstruction of justice; in a prosecution for making a false statement after the date of this agreement; or in a prosecution or other proceeding relating to any crime of violence; in a prosecution or other proceeding relating to a violation of any provision of Title 26 of United States Code.
  - c. If the United States determines that METCALF & EDDY has breached this agreement by knowingly making any false, incomplete or misleading statement, or by knowingly providing any false, incomplete or misleading information, to any law enforcement personnel, grand jury or court, the United States may terminate this agreement and may prosecute METCALF & EDDY for any and all offenses that could be charged against it including, but not limited to, false statements and perjury.
12. The defendant METCALF & EDDY further agrees to reimburse the United States of America for the costs of its investigation in this matter. The defendant METCALF & EDDY agrees to pay by check or money order, within ten days after judgment is entered by the Court in this matter, a civil fine in the amount of \$400,000 and reimbursement for the costs of investigation in the amount of \$50,000.

13. The defendant METCALF & EDDY further consents and agrees that this Consent and Undertaking shall be incorporated by reference in the Final Judgment of Permanent Injunction, in the form attached hereto as Exhibit A, to be entered by the Court in this action, and further agrees that this court shall retain jurisdiction in this matter for all purposes.

By: \_\_\_\_\_

By: \_\_\_\_\_

On this \_\_\_\_\_ day of December, 1999, before me personally comes \_\_\_\_\_, who executed the foregoing Consent and Undertaking on behalf of Metcalf & Eddy, Inc., and he being duly sworn did depose and say he is the \_\_\_\_\_ of \_\_\_\_\_ and has been duly and properly authorized and empowered to take, execute and deliver the foregoing consent and undertaking on behalf of METCALF & EDDY.

\_\_\_\_\_  
Notary Public  
My Commission Expires: