

**UNITED STATES OF AMERICA
and
COLOMBIA**

Guarantee Agreement relating to the Loan Agreement of 12 March 1976 between the Agency for International Development and the Colombian Fondo Nacional de Caminos Vecinales—*Small farmer market access* (with related Loan Agreement of 12 March 1976). Signed at Bogotá on 22 April 1976

Authentic text: English.

Registered by the United States of America on 27 January 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
COLOMBIE**

Accord de garantie relatif à l'Accord de prêt du 12 mars 1976 entre l'Agence pour le développement international et le Fondo Nacional de Caminos Vecinales colombien — *Projet tendant à faciliter l'accès aux marchés des petites entreprises agricoles de Colombie* (avec l'Accord de prêt connexe du 12 mars 1976). Signé à Bogotá le 22 avril 1976

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 27 janvier 1978.

GUARANTEE AGREEMENT¹

AGREEMENT, dated this 22nd day of April 1976, between the REPUBLIC OF COLOMBIA ("Guarantor") and the UNITED STATES OF AMERICA acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

WHEREAS by Loan Agreement between Fondo Nacional de Caminos Vecinales ("Borrower"), authorized by Executive Resolution No. 054, dated March 12, 1976, and AID Loan No. 514-T-079 ("Loan"), AID has agreed to loan to Borrower five million dollars on the terms and conditions set forth in said Loan Agreement, but only on the condition that the Guarantor agrees to guaranty the obligations of the Borrower in respect of such Loan as hereinafter provided; and

WHEREAS, the Guarantor in consideration of AID's entering in said Loan Agreement with the Borrower, has agreed so to guaranty such obligation of the Borrower;

NOW, THEREFORE, the Parties hereto hereby agree as follows:

Article I. GUARANTY

Section 1.01. Guarantor unconditionally and irrevocably guarantees as primary obligor the full and prompt payment of the principal of, and credit fees and special charges on, any and all disbursements under the Loan Agreement, and any notes issued pursuant to such agreement when due in accordance with the terms of the Loan Agreement, notwithstanding any assertion, claim, judgment, decree, or order that any term or provision of the execution thereof is invalid, unperformed, or defective with respect to Borrower.

Section 1.02. AID may enforce the obligations of Guarantor without in any way first pursuing or exhausting any other rights or remedies which it may have against Borrower or any other person, firm, business, corporation, or governmental authority.

Section 1.03. Guarantor (Ministry of Finance and Public Credit) will be notified prior to any change in the Loan implementation.

Section 1.04. Any change in the amount or conditions of the Borrower's payment obligations under the Loan must receive Guarantor's prior approval.

Section 1.05. No delay on the part of the Parties in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights and no notice to or demand on any of the Parties shall be deemed a waiver of such Parties' obligations or of the right of such Party to take further action without notice or demand as provided herein.

Section 1.06. Guarantor represents and warrants that this Agreement has been duly authorized, executed, and delivered by Guarantor; all applicable requirements for the registration or recording of this Agreement have been complied with in such place or places and in such manner as are required within Colombia to protect and preserve the rights of AID hereunder; the execution and delivery of this Agreement and the performance and compliance with all of its terms does not, and will not conflict with or result in any violation of any term of any present Agreement,

¹ Came into force on 22 April 1976 by signature, in accordance with section 2.03.

judgment, decree order, statute, ordinance, governmental rule, or regulation applicable to Guarantor; and this Agreement constitutes a valid and legally binding joint and several obligation of the Guarantor enforceable under any applicable laws in effect within Colombia, in accordance with its terms.

Section 1.07. The Guarantor covenants that both interest and principal and all charges of the Loan will be paid without deduction or restrictions, free from all taxes, levies, rights, or charges that are established or will be established by the laws in force in Colombia, and that both this Guaranty Agreement as well as the Loan Agreement will be exempt from all taxes, levies, rights or charges applicable to the entrance into, registration and execution of such documents.

Section 1.08. In the event that any notes are issued pursuant to the Loan Agreement, Guarantor shall endorse thereon its guaranty of payment in terms conforming to the terms of this Agreement in such form as AID may reasonably request.

Section 1.09. This Agreement shall inure to the benefit of the AID, its successors, and assigns and shall be binding upon the successors and assigns of Guarantor.

Article II. REPRESENTATIVES AND NOTICE

Section 2.01. The Guarantor hereby designates the Minister of Finance and Public Credit as its representative with authority to designate in writing other representatives in its dealing with A.I.D. A.I.D. shall be represented by the Director or the person acting in the position of Director, USAID Mission to Colombia.

Section 2.02. Any notice, request or communication given, made or sent by Guarantor or AID pursuant to this Agreement shall be in writing and shall be deemed to have been duly given, made or sent to the Party to which it is addressed when it shall be delivered by hand or by mail, telegram, cable, or radiogram to such other Party at the following address:

To Guarantor:

Mail address

Ministerio de Hacienda y Crédito Público
Bogotá, Colombia

Cable address

MINHACIENDA
Bogotá, Colombia

To AID:

Mail address

U.S. AID Mission to Colombia
American Embassy
Bogotá, Colombia

Cable address

AMEMBASSY
Bogotá, Colombia

Other addresses may be substituted for the above upon giving of notice as provided herein.

Section 2.03. This Agreement shall enter into effect as of the day and year first above mentioned.

Republic of Colombia:	United States of America:
<i>By:</i> RODRIGO BOTERO	<i>By:</i> JAMES MEGELLAS
<i>Title:</i> Minister of Finance and Public Credit	<i>Title:</i> Director USAID Mission in Colombia

Approved by the President of the Republic April 22, 1976.

ALLIANCE FOR PROGRESS LOAN AGREEMENT (COLOMBIA — SMALL FARMER MARKET ACCESS) BETWEEN THE FONDO NACIONAL DE CAMINOS VECINALES AND THE UNITED STATES OF AMERICA

Dated: March 12, 1976

AID Loan No. 514-T-079

LOAN AGREEMENT dated the 12th day of March, 1976, between the FONDO NACIONAL DE CAMINOS VECINALES ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

Article I. THE LOAN

Section 1.01. *The Loan.* A.I.D. agrees to lend to the Borrower in furtherance of the Alliance for Progress and pursuant to section 1.03 of the Foreign Assistance Act of 1961, as amended, an amount not to exceed five million dollars (\$5,000,000) ("Loan") to assist the Borrower in carrying out the program referred to in section 1.02 ("Project"). The Loan shall be used to finance the local currency costs ("Local Currency Costs") and dollar costs ("Dollar Costs") of goods and services required for the Project. The aggregate amount of disbursements under the Loan is hereinafter referred to as "Principal".

Section 1.02. *The Project.* Loan funds will be used to shift the focus of the Borrower's *pico y pala* activity from feeder road construction as an employment-generating mechanism to feeder road construction as a key factor in promoting increased agricultural productivity. Priority will be given to areas where related inputs and services are assured and where considerable production potential exists for the nine crops given priority under the GOC's Nutrition Plan.

The technical assistance and training components of the proposed Project will be used to institutionalize key factors necessary for the long-term effectiveness of *pico y pala*.

To ensure continued benefit from Project-financed roads (and previously AID-financed roads) \$1,000,000 of the Government of Colombia funds, given during the Loan disbursement period, will be used to provide for adequate maintenance.

The Project is more fully described in Annex I, attached hereto, which Annex may be modified by mutual agreement of the Parties in writing. The procedures for securing goods and services to be financed under the Loan shall be described in the Implementation Letters referred to in section 9.03 ("Implementation Letters").

Article II. LOAN TERMS

Section 2.01. *Interest.* The Borrower shall pay to A.I.D. interest which shall accrue at the rate of two percent (2%) per annum for ten years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement (as such date is defined in section 7.04) and shall be computed on the basis of a 365-day year. Interest shall be payable semiannually. The first payment of interest shall be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by A.I.D.

Section 2.02. *Repayment.* The Borrower shall repay to A.I.D. the Principal within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semiannual installments of Principal and interest. The first installment of Principal shall be payable nine and one-half (9½) years after the date on which the first interest payment is due in accordance with section 2.01. A.I.D. shall provide the Borrower with an amortization schedule in accordance with this section after the final disbursement under the Loan.

Section 2.03. *Application, currency, and place of payment.* All payments of interest and Principal hereunder shall be made in United States dollars and shall be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise agree in writing, all such payments shall be made to the Controller, Agency for International Development, Washington, D.C. 20523, and shall be deemed made when received by A.I.D. at this address.

Section 2.04. *Prepayment.* Upon payment of all interest and refunds then due, the Borrower may prepay, without penalty, on any date on which interest is due, all or any part of the Principal. Any such prepayment shall be applied in the order prescribed in section 2.03 and, to the extent applied to Principal, shall be applied *pro rata* to the remaining installments thereof.

Article III. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.01. *Conditions precedent to initial disbursement of Loan funds.* Prior to any disbursement or to the issuance of the first Letter of Commitment under the Loan, the Borrower shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) an opinion or opinions of the Legal Advisor of the Borrower, or such other counsel as A.I.D. may agree to, demonstrating that this Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, Borrower, and constitutes a valid binding obligation of Borrower in accordance with its terms;
- (b) evidence of the authority of the person or persons who will act as representative or representatives of Borrower, pursuant to section 9.02 together with a specimen signature of each such person duly certified as to its authenticity;
- (c) evidence that the Government of Colombia (Guarantor) has issued a valid and legally binding full faith and credit guaranty of repayment with respect to this Loan;
- (d) Borrower, with A.I.D. approval, will have contracted for, or already received technical assistance in the preparation of a subproject selection methodology; and
- (e) evidence that the Borrower has established a selection and evaluation office which will use the selection and evaluation methodologies developed for the achievement of the Project objectives.

Section 3.02. *Condition precedent for disbursement for road construction.* Prior to any disbursement or the issuance of any commitment documents under the Loan for road construction, the Borrower will submit to A.I.D., for approval, detailed subproject criteria and the methodology of subproject analysis which will be utilized in the selection of all *pico y pala* roads in this Project.

Section 3.03. *Terminal dates for meeting conditions precedent to disbursement.*

(a) If all of the conditions specified in section 3.01 shall not have been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by giving written notice to the Borrower. Upon the giving of such notice, this Agreement and all obligations of the Parties hereunder shall terminate.

(b) If the condition specified in section 3.02 has not been met within [one] hundred and twenty (120) days from the date of this Agreement A.I.D., at its option, may cancel the then undisbursed balance of the Loan and may terminate this Agreement. In the event of such termination, the Borrower will repay immediately the Principal then outstanding and any accrued interest; on receipt of such payment in full this Agreement and all obligations of the Parties will terminate.

Section 3.04. *Notification of meeting of conditions precedent.* A.I.D. shall notify the Borrower promptly upon receipt of documents submitted in satisfaction of section 3.01 and section 3.02 whether A.I.D. has determined that the conditions precedent to disbursement have been met.

Article IV. GENERAL COVENANTS AND WARRANTIES

Section 4.01. *Execution of the Project.* The Borrower shall carry out the Project with due diligence and efficiency, and in conformity with sound engineering, construction, financial, administrative practices and also in accordance with all of the related plans, specifications, contracts, schedules, and other arrangements, including all modifications therein.

In this connection, the Borrower shall at all times employ suitably qualified and competent construction contractors to carry out construction subprojects and shall employ suitably qualified and experienced consultants, where appropriate, in connection with the Project set forth in Annex I, to be professionally responsible for the planning and execution of the Project.

A.I.D. reserves the right to review such plans, specifications, contracts, schedules, and other documents related to the Project, as may be appropriate.

Section 4.02. *Funds and other resources to be provided by Borrower.* Except as A.I.D. may otherwise agree in writing, the Borrower shall provide or cause to be provided promptly as needed all funds, in addition to the Loan, and all other resources required for the punctual and effective carrying out of the Project. In cases where *force majeure* affects the original scope of the Project, the Borrower may request consultation with A.I.D.

Section 4.03. *Continuing consultation.* The Borrower and A.I.D. shall cooperate fully to assure that the purpose of the Loan will be accomplished. To this end, the Borrower and A.I.D. shall from time to time, at the request of either Party, exchange views through their representatives with regard to the progress of the Project, the performance by the Borrower of its obligations under this Agreement, the performance of the consultants, contractors, and suppliers engaged on the Project, and other matters relating to the Project.

Section 4.04. *Management.* The Borrower shall provide qualified and experienced management for the Project and shall train such staff as may be appropriate for the organization, development, maintenance and operation of the Project.

Section 4.05. *Operation and maintenance.* The Borrower shall operate, maintain, and repair the facilities constructed and equipment procured under the Project in conformity with sound engineering, financial, administrative, and mechanical practices, and in such manner as to insure the continuing and successful achievement of the purpose of the Project.

Section 4.06. *Taxation.* This Agreement, the Loan and any evidence of indebtedness issued in connection herewith shall be free from, and the Principal and interest shall be paid without deduction for and free from, any taxation or fees imposed under the laws in effect within the country of the Borrower. To the extent that any contractor, including any consulting firm, any personnel of such contractor financed hereunder and any property or transactions relating to such contracts and any commodity procurement transaction financed hereunder are not exempt from identifiable taxes, tariffs, duties, and other levies imposed under laws in effect in the country of the Borrower, the Borrower shall, as and to the extent prescribed in and pursuant to Implementation Letters, pay or reimburse the same under section 4.02 of this Agreement with funds other than those provided by Borrower under the Loan.

Section 4.07. *Utilization of goods and services.* (a) Goods and services financed under the Loan shall be used exclusively for the Project, except as A.I.D. may otherwise agree in writing. Upon completion of the Project, or at such other time as goods financed under the Loan can no longer usefully be employed for the Project, the Borrower may use or dispose of such goods in such manner as A.I.D. may agree to in writing prior to such use or disposition.

(b) Except as A.I.D. may otherwise agree in writing, no goods or services financed under the Loan shall be used to promote or assist any foreign aid project or activity associated with or financed by any country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section 4.08. *Disclosure of material facts and circumstances.* The Borrower represents and warrants that all facts and circumstances that they have disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Loan are accurate and complete, and includes all facts and circumstances that might materially affect the Project and the discharge of their obligations under this Agreement. The Borrower will promptly inform A.I.D. of any facts and circumstances that might materially affect, or that it is reasonable to believe might materially affect, the Project or the discharge of the Borrower's obligations under this Agreement.

Section 4.09. *Commissions, fees and other payments.* (a) The Borrower warrants and covenants that in connection with obtaining the Loan, or taking any action under or with respect to this Agreement, they have not paid, and will not pay or agree to pay, nor to the best of their knowledge has there been paid nor will there be paid or agreed to be paid by any other person or entity, commissions, fees, or other payments of any kind, except as regular compensation to the Borrower's full-time officers and employees or as compensation for bona fide professional, technical, or comparable services. The Borrower shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical or comparable services to which they are Parties or of which they have knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable by A.I.D. the same shall be adjusted in a manner satisfactory to A.I.D.

(b) The Borrower warrants and covenants that no payments have been or will be received by the Borrower or any official of the Borrower, in connection with the procurement of goods and services financed hereunder, except commissions, fees, taxes, or similar payments legally established in the country of the Borrower.

Section 4.10. *Maintenance and audit of records.* The Borrower shall maintain, or cause to be maintained in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and to this Agreement. Such books and records shall, without limitation, be adequate to show:

- (a) disbursement of Borrower's contribution in accordance with the provision of Annex I;
- (b) disbursements of funds made available under the Loan to the Borrower in accordance with the provisions of Annex I;
- (c) disbursements made by the Borrower of the funds received in accordance with the Project;
- (d) the receipt and use made of goods and services acquired with funds disbursed pursuant to this Agreement;
- (e) the nature and extent of solicitations of prospective suppliers of goods and services acquired;
- (f) the basis of the award of contracts and orders to successful bidders; and

(g) the progress, both fiscal and qualitative, of the Project, in sufficient detail (as shall hereafter be specified in Implementation Letters) to enable A.I.D. to review requests for releases of Loan funds.

Such books and records shall be regularly audited in accordance with sound auditing standards, for such period and at such interval as A.I.D. may require, and shall be maintained for five years after the date of the last disbursement by A.I.D. or until all sums due A.I.D. under this Agreement have been paid, whichever date shall first occur.

Section 4.11. *Reports.* The Borrower shall furnish to A.I.D. such information and reports relating to the Loan and to the Project as A.I.D. may request.

Section 4.12. *Inspections.* The authorized representative of A.I.D. shall have the right at all reasonable times to inspect the Project, the utilization of all goods, facilities and services financed by Loan funds or by Borrower's contribution, and the Borrower's books, records, and other documents relating to the Project and the Loan. The Borrower shall cooperate with A.I.D. to facilitate such inspections and shall permit representatives of A.I.D. to visit any part of the country of the Borrower for any purpose relating to the Loan. Prior to undertaking any inspections pursuant to the provisions of this section, however, A.I.D. hereby undertakes to advise the Borrower of its intent to exercise its rights hereunder. The Borrower shall: (a) upon request extend to A.I.D. the right to inspect the books, records and other documents relating to the Project; and (b) insert, or cause to be inserted, in all contracts with private entities, whether financed directly or through an intermediary under the Loan, a clause extending to A.I.D. the right to make inspections in accordance with this section.

Article V. SPECIAL COVENANTS AND WARRANTIES

Section 5.01. *Borrower's contribution.* Borrower covenants that its contribution to the Project, as described in Annex I hereof, shall be provided in a timely manner, and in accordance with the provisions set forth therein.

Section 5.02. Borrower covenants to take such necessary actions to implement institutional improvements as indicated in Annex I hereof.

Section 5.03. Borrower covenants to give consideration to the environmental impact of this Project and to foster appropriate environmental practices in carrying out this Project.

Section 5.04. Borrower covenants to provide funds to complete the construction of all roads jointly financed under this Project before committing any funds to the construction of new roads financed exclusively by the Borrower's contribution to the Project.

Section 5.05. Borrower covenants to provide funds, as indicated in Annex I hereof, for the post-road-construction maintenance program. This program includes previous AID-financed *pico y pala* roads.

Article VI. PROCUREMENT

Section 6.01. *Procurement from selected free world countries.* Except as A.I.D. may otherwise agree in writing, and except as provided in section 6.08(c) hereof with respect to marine insurance, disbursements made pursuant to section 7.01

shall be used exclusively to finance the procurement for the Project of goods and services, except motor vehicles, having both their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time the orders are placed or contracts are entered into for such goods and services ("Selected Free World Goods and Services"). Notwithstanding any other provisions herein, motor vehicles to be provided with Loan funds must be manufactured in the United States. All ocean shipping financed under the Loan shall have both its source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

Section 6.02. *Procurement from Colombia.* Disbursements made pursuant to section 7.02 shall be used exclusively to finance the procurement for the Project of goods and services having both their source and origin in Colombia.

Section 6.03. *Eligibility date.* Except as A.I.D. may otherwise agree in writing, no goods or services may be financed under the Loan which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement.

Section 6.04. *Implementation of procurement requirements.* The definitions applicable to the eligibility requirements of section 6.01 will be set forth in detail in Implementation Letters.

Section 6.05. *Plans, specifications, and contracts.* The Borrower shall furnish or cause to be furnished to A.I.D. upon request, all plans, specifications, construction schedules, bid documents, and contracts relating to the Project, and any modifications therein, relating to goods and services to be financed under the Loan.

Section 6.06. *Reasonable price.* No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the Loan. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with established procedures.

Section 6.07. *Goods and services not financed under Loan.* Goods and services procured for the Project, but not financed under the Loan, shall have their source and origin in countries included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

Section 6.08. *Shipping and insurance.* (a) Selected Free World Goods financed under the Loan shall be transported to Colombia on flag carriers of any country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of shipment. No such goods may be transported on any ocean vessel (or aircraft): (i) which A.I.D. in a notice to the Borrower has designated as ineligible to carry A.I.D.-financed goods or (ii) which has been chartered for the carriage of A.I.D.-financed goods unless such charter has been approved by A.I.D.

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

- (i) at least fifty percent (50%) of the gross tonnage of Selected Free World Goods financed under the Loan and transported on ocean vessels from United States ports (computed separately for dry bulk carriers, dry cargo liners and tankers) shall be transported on privately owned United States-flag commercial vessels; and at least fifty percent (50%) of the gross freight revenue generated by ocean shipment of Selected Free World Goods financed under the Loan and

transported on dry cargo liners from United States ports shall be paid to or for the benefit of privately owned United States-flag commercial vessels;

- (ii) at least fifty percent (50%) of the gross tonnage of all Selected Free World Goods financed under the Loan and transported on ocean vessels from non-United States ports (computed separately for dry bulk carriers, dry cargo liners and tankers) shall be transported on privately owned United States-flag commercial vessels; and at least fifty percent (50%) of the gross freight revenue generated by ocean shipments of Selected Free World Goods financed under the Loan and transported on dry cargo liners from non-United States ports shall be paid to or for the benefit of privately owned United States-flag commercial vessels.

(c) Marine insurance on Selected Free World Goods may be financed under the Loan with disbursements made pursuant to section 7.01, provided (i) such insurance is placed at the lowest available competitive rate in Colombia or in a country included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of placement, and (ii) claims thereunder are payable in freely convertible currency. If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, the country of the Borrower, by statute, decree, rule or regulation, favors any marine insurance company of any country over any marine insurance company authorized to do business in any state of the United States of America, Selected Free World Goods financed under the Loan shall during the continuance of such discrimination be insured against marine risk in the United States of America with a company or companies authorized to do a marine insurance business in any state of the United States of America.

(d) The Borrower shall insure, or cause to be insured, all Selected Free World Goods financed under the Loan against risks incident to their transit to the point of their use in the Project. Such insurance shall be issued upon terms and conditions consistent with sound commercial practice, shall insure the full value of the goods, and shall be payable in the currency in which such goods were financed or in any freely convertible currency. Any indemnification received by the Borrower under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse the Borrower for the replacement or repair of such goods. Any such replacements shall have their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into for such replacements, and shall be otherwise subject to the provisions of this Agreement.

Section 6.09. *Notification to potential suppliers.* In order that all United States firms shall have the opportunity to participate in furnishing procurement to be financed under the Loan pursuant to section 7.01, the Borrower shall furnish to AID such information with regard thereto, and at such times, as A.I.D. may request in Implementation Letters.

Section 6.10. *United States Government-owned excess property.* The Borrower shall utilize, with respect to goods financed under the Loan to which the Borrower takes title at the time of procurement, such reconditioned United States Government-owned excess property as may be consistent with the requirements of the Project and as may be available within a reasonable period of time. The Borrower shall seek assistance from A.I.D. and A.I.D. will assist the Borrower in ascertaining the

availability of and in obtaining such excess property. A.I.D. will make arrangements for any necessary inspection of such property by the Borrower or its representative. The cost of inspection and of acquisition, and all charges incident to the transfer to the Borrower of such Excess Property, may be financed under the Loan.

Article VII. DISBURSEMENTS

Section 7.01. *Disbursement for United States dollar costs — Letter of Commitment to United States banks.* Upon satisfaction of conditions precedent, the Borrower may, from time to time, request A.I.D. to issue Letters of Commitment for specified amounts to one or more United States banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, through the use of Letter of Credit or otherwise, for dollar costs of goods procured for the Project in accordance with the terms and conditions of this Agreement. Payment by a bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as A.I.D. may prescribe in Letters of Commitment and Implementation Letters.

Banking charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Borrower and may be financed under the Loan.

Section 7.02. *Disbursements for local currency costs.* Upon satisfaction of conditions precedent, the Borrower may, from time to time, request disbursement by A.I.D. of Colombian pesos for local currency costs of goods and services procured or to be procured for the Project in accordance with the terms and conditions of this Agreement by submitting to A.I.D. such supporting documents as A.I.D. may prescribe in Implementation Letters. A.I.D. shall make such disbursements from pesos owned by the United States Government and obtained by A.I.D. with U.S. dollars. The U.S. dollar equivalent of the pesos made available hereunder will be the amount of U.S. dollars required by A.I.D. to obtain the pesos.

Section 7.03. *Other forms of disbursement.* Disbursements of the Loan may also be made through such other means as the Borrower and A.I.D. may agree to in writing.

Section 7.04. *Date of disbursement.* Disbursements by A.I.D. shall be deemed to occur: (a) in the case of disbursements pursuant to section 7.01, on the date on which A.I.D. makes a disbursement to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment, and (b) in the case of disbursement pursuant to section 7.02 on the date on which A.I.D. disburses the local currency to the Borrower or to its designee.

Section 7.05. *Terminal date of disbursement.* Except as A.I.D. may otherwise agree in writing, no Letter of Commitment, or other commitment documents which may be called for by another form of disbursement under section 7.03 or amendment thereto, shall be issued in response to requests received by A.I.D. more than thirty (30) months after meeting the initial conditions precedent and no disbursement shall be made against documentation received by A.I.D., or any bank described in section 7.01 more than thirty-six (36) months after such date. A.I.D., at its option, may at any time or times after such date reduce the Loan by all or any part thereof for which documentation was not received by such date.

Article VIII. CANCELLATION AND SUSPENSION

Section 8.01. *Cancellation by the Borrower.* The Borrower may, with the prior written consent of A.I.D. and by written notice to A.I.D., cancel any part of the Loan (i) which, prior to the giving of such notice, A.I.D. has not disbursed or committed itself to disburse, or (ii) which has not then been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letter of Credit.

Section 8.02. *Events of default; acceleration.* If any one or more of the following events ("Events of Default") shall occur:

- (a) the Borrower shall have failed to pay when due any interest or installment of Principal required under this Agreement;
- (b) the Borrower shall have failed to comply with any other provision of this Agreement, including, but without limitation, the obligation to carry out the Project with due diligence and efficiency;
- (c) the Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other Loan Agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and A.I.D. or any of its predecessor agencies;

then A.I.D. may, at its option, give the Borrower notice that all or any part of the unrepaid Principal shall be due and payable sixty (60) days thereafter, and, unless the Event of Default is cured within such sixty (60) days:

- (i) such unrepaid Principal and any accrued interest hereunder shall be due and payable immediately; and
- (ii) the amount of any further disbursements made under the then outstanding irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

Section 8.03. *Suspension of disbursement.* In the event that at any time:

- (a) an event of default has occurred;
- (b) an event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement; or
- (c) any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.;
- (d) the Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies;
- (e) satisfactory progress is not being made in carrying out all or any part of the Project in accordance with the terms of this Agreement;

then A.I.D. may, at its option:

- (i) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit, in which event A.I.D. shall give notice to the Borrower promptly;

- (ii) decline to make disbursements other than under outstanding commitment documents;
- (iii) decline to issue additional commitment documents;
- (iv) at A.I.D.'s expense, direct that title to goods financed under the Loan shall be transferred to A.I.D. if the goods are from a source outside the country of the Borrower, are in a deliverable state and have not been off-loaded in ports of entry of Colombia.

Any disbursement made or to be made under the Loan with respect to such transferred goods shall be deducted from Principal.

Section 8.04. *Cancellation by A.I.D.* Following any suspension of disbursements pursuant to section 8.03, if the cause or causes for such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to irrevocable Letters of Credit.

Section 8.05. *Continued effectiveness of Agreement.* Notwithstanding any cancellation, suspension of disbursement, or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full or all Principal and any accrued interest hereunder.

Section 8.06. *Refunds.* (a) In the case of any disbursement not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement not made or used in accordance with the terms of this Agreement, A.I.D., notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement, may require the Borrower to refund such amount in United States dollars to A.I.D. within thirty (30) days after receipt of a request therefor. Such amount shall be made available first for the cost of goods and services procured for the Project hereunder, to the extent justified; the remainder, if any, shall be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursement under the Loan shall continue for five years following the date of such disbursement.

(b) In the event that A.I.D. receives a refund from any contractor, supplier, or banking institution, or from any other third Party connected with the Loan, with respect to goods or services financed under the Loan, and such refund relates to an unreasonable price for goods or services, or to goods that did not conform to specifications, or to services that were inadequate, A.I.D. shall first make such refund available for the cost of goods and services procured for the Project hereunder, to the extent justified, the remainder to be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder.

Section 8.07. *Expenses of collection.* All reasonable costs incurred by A.I.D. other than salaries of its staff, in connection with the collection of any refund or in connection with amounts due A.I.D. by reason of occurrence of any of the events specified in section 8.02 may be charged to the Borrower and reimbursed to A.I.D. in such manner as A.I.D. may specify.

Section 8.08. *Nonwaiver of remedies.* No delay in exercising or omission to exercise any right, power, or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any such rights, powers or remedies.

Article IX. MISCELLANEOUS

Section 9.01. *Communications.* Any notice, request, document, or other communication given, made or sent by the Borrower or A.I.D. pursuant to this Agreement shall be in writing or by telegram, cable or radiogram and shall be deemed to have been duly given, made or sent to the Party by hand or by mail, telegram, cable or radiogram at the following addresses:

To the Borrower:

Mail address

Avenida Caracas No. 63-57 — Piso 4o.

Bogotá, Colombia

Cable address

To A.I.D.:

Mail address

USAID Mission to Colombia

American Embassy

Bogotá, Colombia

Cable address

AMEMBASSY

Bogotá, Colombia

Other addresses may be substituted for the above upon the giving [of] notice. All notices, requests, communications, and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

Section 9.02. *Representatives.* For all purposes relative to this Agreement, the Borrower will be represented by the individual holding or acting in the office of the General Manager of Caminos Vecinales and A.I.D. will be represented by the individual holding or acting in the Office of Mission Director, USAID Mission to Colombia. Such individuals shall have authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, Borrower shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. Until receipt by A.I.D. of written notice of revocation of the authority of any of the duly authorized representatives of the Borrower, designated pursuant to this section, it may accept the signature of any such representative or representatives on any instrument as conclusive evidence that any action effected by such instrument is fully authorized.

Section 9.03. *Implementation Letters.* A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Agreement. Nothing set forth in such Letter of Implementation shall either modify or alter the terms of this Agreement.

Section 9.04. *Promissory notes.* At such time or times as A.I.D. may request, the Borrower shall issue promissory notes or such other evidences of indebtedness with

respect to the Loan, in such form, containing such terms and supported by such legal opinions as A.I.D. may reasonable request.

Section 9.05. *Successors to rights of A.I.D.* If by operation of any law of the United States, or by virtue of assignment, any corporate or other agency of the United States Government succeeds to the rights and obligations of A.I.D. under this Agreement, such agency shall be deemed to be A.I.D. for purposes of this Agreement.

Section 9.06. *Effective date of Agreement.* This Agreement shall enter into effect on the day and year first above written.

Section 9.07. *Termination upon full payment.* Upon payment in full of the Principal and of any accrued interest, this Agreement and all obligations of the Borrower and A.I.D. under this Loan Agreement shall terminate.

IN WITNESS WHEREOF, Borrower, 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.

Fondo Nacional
de Caminos Vecinales:

JAIME ALBERTO GARCÍA R.
Title: Director General

United States of America:

VIRON P. VAKY
Title: Ambassador of the United States
of America to Colombia

JAMES MEGELLAS
Title: Director
USAID Mission to Colombia

ANNEX I

DESCRIPTION OF PROJECT

The Project will stimulate increased agricultural production among small, heretofore isolated farmers, principally by improving their access to markets and reducing transport costs. In addition, the Project will open isolated areas to government and private sector institutions and services, particularly agriculture, education and health. The Project will be implemented through the Caminos Vecinales *pico y pala* road construction activity, an institutional development activity and a maintenance activity.

I. ROAD CONSTRUCTION ACTIVITY

The road construction funds under the Project will be used for the *pico y pala* program carried out by Caminos Vecinales ("CV"). An activity total of \$10.7 million dollars will be invested as indicated in Table 1. Approximately 890 km of labor-intensive feeder roads are to be constructed. Based on an estimated 9 km length per feeder road and average cost of \$12,000 dollars per km, it is expected that approximately 110 feeder roads are to be initiated and approximately 89 feeder roads are to be completed during the life of the Project. Emphasis will be placed on completion of individual subprojects in the time-frame of the Project.

The individual roads to be included in the Project will be selected on the basis of having a considerable socio-economic payoff, primarily measured by agricultural productivity and economic internal rate of return calculations. The *pico y pala* road construction activity will complement, although not be necessarily limited to, road construction in those areas within the GOC's Integrated Rural Development (DRI) Plan. Project funds will give equal priority to areas where related inputs and services are assured and where considerable production potential exists for the nine crops given priority under the GOC's Nutrition Plan. Feeder roads in predominantly coffee-growing areas will not be included in the Project. A specific selection methodology will be developed as described below in the institutional development activity.

AID's financial share of the road construction activity is 44% (US\$4.7 million) as indicated in Table 1. The specific contribution of AID to individual subprojects will be on the basis of a fixed cost per kilometer established before construction starts by mutual agreement between the Borrower and AID.

2. INSTITUTIONAL DEVELOPMENT ACTIVITY

The proposed road construction activity implies an improvement in Caminos Vecinales methods in selecting, implementing, and constructing *pico y pala* roads. The following institutional improvements will increase the beneficial impact of the Project.

a. *Subproject selection.* As mentioned above, the roads included in the Project will be selected on the basis of meeting a set of selection criteria. The criteria will be developed by CV with the help of loan-financed technical consultants. The consultants will help to prepare an overall selection methodology and refine the project selection criteria. They will return at intervals to review and revise the methodology and its use. It is estimated that the assistance will cost US\$25,000 as shown in Table 1. It is expected that the methodology could be used in the other road construction programs carried out by CV.

b. *Subproject evaluation.* Assistance is to be provided in establishing and implementing an ongoing system for evaluating the impact of *pico y pala* roads. Collection of baseline data will be made in areas where roads are planned and in several areas where roads are not to be provided so as to provide reference cases. The data will describe the agricultural development stage of the areas of influence, approximate fallow and potential agricultural land, number of affected inhabitants, levels and sources of income, marketing practice, cropping patterns, educational and health levels, and community centers. The baseline and analytic data will be considerably more detailed than is required in the normal project selection process, in that the evaluation study would not just be an estimate of benefits but would, in fact, prove what benefits had been achieved in an area where roads had been constructed and where other inputs were to be provided. A carefully designed and executed impact study will bring to light interesting phenomena that will be of value to all future agricultural programs.

The estimated cost of the study is US\$100,000 as shown in Table 1.

c. *Design and construction capacity.* Caminos Vecinales in its *pico y pala* program will improve its design and construction methods to optimize the construction of access roads. It is expected that Caminos Vecinales will have the capability to perform well such activities as low-cost and simple soil studies, surface and subsurface water control, erosion control, landslide area detection, and route localization assisted by aerial photo methods. Expert assistance is to be Project financed to examine present road design and construction practices and address the design, environmental, and maintenance problems.

Also, with the help of outside experts, in-country training seminars and sessions are planned to be included in the Project. Their purpose will be to introduce the new project selection criteria and to explain the design, environmental and maintenance considerations to the regional personnel who supervise road construction.

The Project will attempt to develop an interchange between Colombia and several other Latin American countries which are implementing rural roads programs. Staff and personnel from other countries will be invited to Colombia to visit the national and regional offices of the Colombian *pico y pala* program, as well as actual construction sites (proposed, under way and completed), to facilitate the transfer of technologies and administrative methodologies among the various country programs. In addition, Colombian personnel will be able to visit other countries to evaluate other experiences. The total estimated cost of the above activities to improve design and construction capacity is US\$98,000 as indicated in Table 1.

d. *Environmental effects.* The problems of erosion, landslides, sedimentation and flooding are destroying a considerable amount of Colombia's agriculture potential. Access roads construction contributes to such adverse effects. The Project will finance a full environmental assessment. The assessment will go beyond simple identification of impact but would address such topics as recommended actions for mitigation of adverse effects, and identification of alternatives that would result in the best-quality development.

From the assessment Caminos Vecinales will be made aware of adverse environmental effects of *pico y pala* road construction and will be provided with expedient methods to deal with such effects. Approximately US\$60,000 will be made available for these purposes. The specific personnel and technical requirements will be determined by Caminos Vecinales.

e. *Cash flow, budgetary and cost accounting functions.* Caminos Vecinales is to have an improved system to account for expenditures and costs in order to improve its planning and executing capacity. Improvements are also to be made in the cash flow process from national sources to Caminos Vecinales and to field payment offices. The proposed Project includes a study of the flow of National funds to Caminos Vecinales and to the field offices, and recommendations to improve the cash flow process, along with a study to improve the expenditure and cost accounting system.

The study will cost approximately US\$12,000.

f. *Evaluation and maintenance capacity.* Local studies are to be financed by the Project to investigate the capacity and arrangements for maintenance to be contracted possibly with Department Highway Offices, National Highway Offices, private contractors, or community groups. The studies will be formulated with the aim to attract community participation in the maintenance service as much as possible. A consultant will study the financial, equipment, personnel and organizational factors, determine problems and constraints, and formulate recommendations. Project funds in the amount of approximately US\$15,000 will be used for studies of this purpose.

3. MAINTENANCE ACTIVITY

With the aim to resolve the maintenance problems and with National Government approval, Caminos Vecinales will assume the responsibility for after-construction maintenance of *pico y pala* roads. Caminos Vecinales will prepare the mechanisms to effect such maintenance. Caminos Vecinales will subcontract the maintenance to capable Departmental Highway Offices, National Highway Offices, which have willingness and excess capacity to assume feeder secondary road maintenance, private contractors, or community groups. Caminos Vecinales and AID are particularly interested in developing a sound mechanism that would allow community groups to participate in the maintenance of their own community roads. Acceptable maintenance mechanisms and means to allow community groups to participate will be determined by Caminos Vecinales.

Caminos Vecinales will finance the maintenance activity with a total of one million dollars, shown in Table 1.

*Table 1. SOURCE OF FUNDS
(US\$000)*

	<i>A.I.D.</i>			<i>G.O.C.</i>		
	1976	1977	1978	1976	1977	1978
1. Road construction	175	2,700	1,825	1,500	2,000	2,500
2. Institutional improvements	107	104	89			
<i>a.</i> Selection study	14	5	6			
<i>b.</i> Evaluation study	41	29	30			
<i>c.</i> Design and construction capacity study	10	40	38			
<i>d.</i> Environmental effects study	15	30	15			
<i>e.</i> Cash flow, budgetary and cost accounting study	12					
<i>f.</i> Evaluation of maintenance capacity study	15					
3. Maintenance				233	333	434
TOTALS	282	2,804	1,914	1,733	2,333	2,934
		5,000			7,000	