

No. 16454

**UNITED STATES OF AMERICA
and
PHILIPPINES**

**Loan Agreement relating to the Bicol Secondary and Feeder
Roads Project. Signed at Manila on 28 April 1976**

Authentic text: English.

Registered by the United States of America on 13 February 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
PHILIPPINES**

Accord de prêt relatif au Projet concernant les routes secondaires et les routes de desserte dans le bassin du Bicol. Signé à Manille le 28 avril 1976

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 13 février 1978.

LOAN AGREEMENT¹ (PHILIPPINES: BICOL SECONDARY AND FEEDER ROADS PROJECT) BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES OF AMERICA

Date: April 28, 1976

A.I.D. Loan No. 492-T-041

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¹ Came into force on 28 April 1976 by signature.

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LOAN AGREEMENT dated the 28th day of April 1976 between the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES ("Borrower"), acting through the NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY ("NEDA") with the DEPARTMENT OF PUBLIC HIGHWAYS ("DPH") as the implementing agency, the BICOL RIVER BASIN COUNCIL ("BRBC") as the coordinating agency 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. hereby agrees to lend to the Borrower for the use of the Department of Public Highways (DPH) in coordination with the Bicol River Basin Council (BRBC), pursuant to the Foreign Assistance Act of 1961, as amended, up to Ten Million United States Dollars (\$10,000,000) ("Loan") to assist in financing certain foreign exchange costs of goods and services plus an agreed upon portion of the local currency costs required for the project as defined in Section 1.02 hereof. Reimbursement procedures for goods and services financed hereunder are specified in Article VII. The aggregate amount of disbursement under the Loan is hereinafter referred to as "Principal".

Section 1.02. THE PROJECT. The Project shall consist of: (a) the construction, improvement and rehabilitation of secondary and tertiary (feeder) roads and bridges in the Bicol River Basin of Southern Luzon, Philippines, and (b) the strengthening of the road maintenance capability of the Camarines Sur and Albay Provincial Engineers' Offices and the two Chartered Cities of Naga and Iriga through the provision of maintenance equipment, technical assistance and training.

Article II. LOAN TERMS

Section 2.01. INTEREST. The Borrower shall pay to A.I.D. interest which shall accrue on the outstanding balance of the Principal and any due and unpaid interest at the rate of 2% per annum for 10 years following the date of the first disbursement hereunder and at the rate of 3% per annum thereafter. 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 semi-annually. 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 here-

under in sixty-one (61) approximately equal semi-annual installments of Principal and interest. The first installment of Principal shall be payable nine and one-half (9-1/2) 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 specify in writing, all such payments shall be made to the Controller, Agency for International Development, Washington, D.C., U.S.A., and shall be deemed made when received by the Office of the Controller.

Section 2.04. PREPAYMENT. Upon payment of all interest and refunds then due, the Borrower may prepay, without penalty, all or any part of the Principal. Any such prepayment shall be applied to the installments of Principal in the inverse order of their maturity.

Section 2.05. RENEGOTIATION OF THE TERMS OF THE LOAN. The Borrower agrees to negotiate with A.I.D., at such time or times as A.I.D. may request, an acceleration of the repayment of the Loan in the event that there is any significant improvement in the internal and external economic and financial position and prospects of the country of the Borrower.

Article III. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.01. CONDITIONS PRECEDENT TO OPENING LETTERS OF COMMITMENT FOR PROCUREMENT OF MATERIALS. Prior to the first disbursement or to the issuance of the first Letter of Commitment under the Loan, the Borrower, DPH, or BRBC, as appropriate, shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) an opinion of the Secretary of Justice of the Borrower on behalf of the Borrower, DPH and BRBC that the Borrower, DPH and BRBC possess full power and authority to carry out all obligations undertaken hereunder, that this Loan Agreement has been duly authorized or ratified by, and executed on behalf of, the Borrower, DPH and BRBC, and that this Loan Agreement is a valid and legally binding obligation of the Borrower, DPH and BRBC in accordance with its terms;
- (b) the names of the persons holding or acting in the office of the Borrower, DPH and BRBC specified in Section 9.02 and specimen signatures of each named person;
- (c) written assurance of the Borrower to include the Provincial Government of Albay as a member of the BRBC, and designating the geographic areas of Albay Province within the Bicol River Basin watershed as eligible for assistance under the BRBC program;
- (d) a copy of the appropriate document of the Borrower establishing a composite Project Management Office (PMO), with authorities and responsibilities, including necessary delegations of authority from DPH, to enable the PMO to effectively carry out assigned functions;

- (e) a plan for the implementation of the Project prepared by the PMO and approved by the DPH and BRBC including a projection of funds that will be made available to finance the various elements of the Project;
- (f) a plan for socio-economic and construction evaluation of the Project, the former by BRBC contract, the latter involving periodic review of the Project by an evaluation team consisting of, *inter alia*, one representative of BRBC, NEDA, and A.I.D., and an undertaking by the Borrower that it will make every effort to implement recommendations of the project evaluation team in a timely and effective manner;
- (g) written assurance from the Borrower that all roads and bridges improved or constructed under this Project that are classified as Provincial Roads and City Roads will be eligible for annual maintenance funds as specified in Presidential Decrees 17 and 320 and that such funds will be provided in accordance with such Presidential Decrees;
- (h) written assurance from the Borrower that the roads and bridges improved or constructed under this Project within the boundaries of the Chartered Cities of Naga and Iriga will be properly maintained and that the required financial contribution shall be made by the cities, respectively, for this maintenance.

Section 3.02. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT. If all of the conditions specified in Section 3.01 shall not have been met within 120 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, DPH and BRBC. Upon the giving of such notice, this Agreement and all obligations of the parties hereunder shall terminate.

Section 3.03. NOTIFICATION OF MEETING OF CONDITIONS PRECEDENT TO DISBURSEMENT. A.I.D. shall notify the Borrower upon determination by A.I.D. that the conditions precedent to disbursement specified in Section 3.01 have been met.

Article IV. GENERAL COVENANTS AND WARRANTIES

Section 4.01. EXECUTION OF THE PROJECT. (a) The Borrower, DPH and BRBC shall carry out the Project with due diligence and efficiency, and in conformity with sound engineering, financial, administrative and planning practices.

(b) The Borrower, DPH and BRBC shall cause the Project to be carried out in conformity with all of the plans, specifications, contracts, schedules, and other arrangements, and with all modifications therein, concurred in by A.I.D. pursuant to this Agreement.

Section 4.02. FUNDS AND OTHER RESOURCES TO BE PROVIDED BY BORROWER. 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 timely and effective carrying out of the Project, on the further condition that these contributions by the Borrower shall constitute at least 25% of the costs of the entire Project.

Section 4.03. CONTINUING CONSULTATION. The Borrower, DPH, BRBC and A.I.D. shall cooperate fully to assure that the purpose of the Loan will

be accomplished. To this end, the Borrower, DPH, BRBC 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 of consultants, contractors, and suppliers engaged on the Project, and other matters relating to the Project.

Section 4.04. MANAGEMENT. Borrower, DPH and BRBC shall provide qualified and experienced management for the Project, and DPH and BRBC shall train such staff as may be appropriate for the maintenance and operation of the Project.

Section 4.05. 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 be usefully employed for the Project, the Borrower, DPH and BRBC 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 4.06. 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 (a) any contractor, including any consulting firm, any personnel of such contractor financed hereunder, and any property or transactions relating to such contracts, and (b) 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 under the Loan.

Section 4.07. OPERATION AND MAINTENANCE. The Borrower, DPH and BRBC shall ensure that DPH and the Provincial Engineers' Offices of Albay and Camarines Sur operate, maintain and repair the Project components financed under this Loan in conformity with sound engineering, financial and administrative practices and in such manner as to insure the continuing and successful achievement of the purposes of the Project.

Section 4.08. DISCLOSURE OF MATERIAL FACTS AND CIRCUMSTANCES. The Borrower, DPH and BRBC represent and warrant 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 that they have disclosed to A.I.D., accurately and completely, all facts and circumstances that might materially affect the Project and the discharge of their obligations under this Agreement. The Borrower, DPH and BRBC shall promptly inform A.I.D. of any facts and circumstances that might materially affect the Project and the discharge of their obligations under this Agreement. The Borrower, DPH and BRBC shall promptly inform A.I.D. of any facts and circumstances that may hereinafter

arise that might materially affect, or that it is reasonable to believe might materially affect, the Project or the discharge of the Borrower's, DPH's or BRBC's obligations under this Agreement.

Section 4.09. COMMISSIONS, FEES AND OTHER PAYMENTS. (a) The Borrower, DPH and BRBC warrant and covenant that, in connection with obtaining the Loan, 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, DPH's or BRBC's full-time officers and employees or as compensation for bona fide professional, technical or comparable services. The Borrower, DPH and BRBC shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical or comparable services to which it is a party or of which it has 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, DPH and BRBC warrant and covenant that no payments have been or will be received by the Borrower, DPH or BRBC, any official of the Borrower, DPH or BRBC, in connection with the procurement of goods and services hereunder, except fees, taxes or similar payments legally established in the Philippines.

Section 4.10. MAINTENANCE AND AUDIT OF RECORDS. The Borrower, DPH and BRBC shall maintain, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and its components and to this Agreement as A.I.D. shall subsequently set forth in Implementation Letters.

Such books and records 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. Such books and records shall be regularly audited, in accordance with sound auditing procedures, for such period and at such intervals as A.I.D. may require.

Section 4.11. REPORTS. The Borrower, DPH and BRBC 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 representatives of A.I.D. shall have the right at all reasonable times to inspect the Project and its components, the utilization of all goods and services financed under the Loan, and the Borrower's, DPH's and BRBC's books, records and other documents relating to the Project and the Loan. The Borrower, DPH and BRBC shall cooperate with A.I.D. to facilitate the visit by representatives of A.I.D. to any part of the Republic of the Philippines for any purpose relating to the Loan provided for herein.

Article V. SPECIAL COVENANTS AND WARRANTIES

Section 5.01. BORROWER'S COVENANTS. (a) The Borrower, through the Department of Agrarian Reform (DAR) will, within twenty-four months from the signing of the Loan Agreement, issue all Land Transfer Certificates and secure

written Registered Leasehold Contracts for eighty percent (80%) of the farmers eligible in the Bicol Basin under Republic Act 3844, Presidential Decree 27 and subsequent implementing instructions (rice and corn land only). Minimum DAR performance for issuance of Land Transfer Certificates is 60 and 100 percent and Registered Leasehold Contracts is 25 and 80 percent, respectively, within 12 and 24 months.

(b) The Borrower, through the Department of Agrarian Reform, will assure that Barrio Committees on Land Production (BCLP) determine, as of October 21, 1972, and DAR approve land production levels for all land to be affected by the land transfer within the project area, and that the land production levels so determined will serve as the basis for calculating landlord compensation. Minimum rate of BCLP performance is 30% of land area within 12 months, and 100% within 24 months.

(c) The Borrower shall assure that sufficient funds are made available to assure timely and orderly implementation of the project.

(d) The Borrower shall ensure that the Provincial Governments of Albay and Camarines Sur and the Chartered City Governments of Naga and Iriga introduce the necessary policy and management reforms to effectively expand their equipment pool operations to adequately maintain all Provincial and City roads.

(e) The Borrower shall ensure that the Provincial Governments of Albay and Camarines Sur, as well as the Chartered City Governments of Naga and Iriga, allocate adequate budgets to meet their respective shares of annual road maintenance costs.

(f) BRBC shall assure that project evaluation procedures in form and substance satisfactory to A.I.D. are implemented.

(g) The Borrower shall regulate and enforce appropriate transport rates for commercial vehicles in the Bicol River Basin area to enable equitable benefits from road improvements to flow to the rural poor and assure that vehicle maximum load regulations are enforced to reduce road deterioration and minimize maintenance costs.

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 subsection 6.07 (d) 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 having their source and origin in the Philippines or 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 goods and services. Goods and services procured pursuant to this Section shall be referred to as "Selected Free World Goods" and "Selected Free World Services" respectively. 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. 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 6.03. 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 6.04. IMPLEMENTATION OF PROCUREMENT REQUIREMENTS. The definitions applicable to the eligibility requirements of Sections 6.01 and 6.03 will be set forth in detail in Implementation Letters.

Section 6.05. CONTRACTS. Except as A.I.D. may otherwise agree in writing:

- (a) all bid documents and documents relating to the solicitation of proposals for goods and services financed under Section 7.01 of the Loan shall be approved by A.I.D. in writing prior to their issuance;
- (b) the Borrower shall assure that all other contracts, and all firms selected to perform such contracts, are, prior to execution, submitted to A.I.D. for written approval, if such contracts are for goods or services for a subproject and the agreed amount for such subproject is the peso equivalent of in excess of \$100,000 or such subproject is one of a group of subprojects which are so interrelated that, upon completion, such subprojects result in a specific, self-contained undertaking and the aggregate agreed amount for such group of subprojects is the peso equivalent of in excess of \$100,000.

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, as more fully described in Implementation Letters, and:

- (a) items financed under Section 7.01 shall be procured on a fair and, except for professional services, on a competitive basis;
- (b) no more than reasonable prices will be used in determining estimated subproject costs for any goods or services financed on a fixed amount reimbursable basis, in whole or in part, under the Loan. Such items shall be procured on a fair and, except for professional contract services, on a cost competitive basis wherever practicable.

Section 6.07. SHIPPING AND INSURANCE. (a) Selected Free World Goods Financed under the Loan shall be transported to the country of the Borrower only on flag carriers of a country included in Code 935 of the *A.I.D. Geographic Code Book* as in effect at the time of shipment.

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

- (i) *Gross tonnage.* At least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed under the Loan which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, and
- (ii) *Revenue.* At least fifty percent (50%) of the gross freight revenue generated by all shipments financed under the Loan and transported to the Philippines on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels.

- (iii) *Compliance.* Compliance with the requirements of (i) and (ii) above must be achieved with respect to both cargo transported from U.S. ports and cargo transported from non-U.S. ports, computed separately.
- (iv) *Reporting.* Within ninety (90) days following the end of each calendar quarter, or such other period as A.I.D. may specify in writing, Borrower, DPH or BRBC shall furnish A.I.D. with a statement, in form and substance satisfactory to A.I.D., reporting on compliance with the requirements of this Section.

(c) 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.

(d) 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 the Philippines 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 the currency in which such goods were financed or in any freely convertible currency. If the government of the Borrower, 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 cooperating country financed under the Loan shall be insured against marine risks and such insurance shall 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 of America.

(e) 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 and shall insure the full value of the goods. 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 6.08. PORT CHARGES. With respect to ocean freight costs which qualify as eligible for financing under the Loan, A.I.D. will finance ninety percent (90%) of all ocean freight costs of each shipment, and ninety-eight percent (98%) of such costs on any shipment under free-out terms. The remaining ten percent (10%), or two percent (2%) of free-out shipments, represent port charges in the Philippines and Borrower covenants that it shall make available foreign exchange in accordance with procedures which may be prescribed by A.I.D. in Implementation Letters.

Section 6.09. NOTIFICATION TO POTENTIAL SUPPLIERS. In order that all United States firms shall have the opportunity to participate in furnishing goods and services to be financed under Section 7.01 of this Loan, the Borrower,

DPH or BRBC shall furnish to A.I.D. 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. DPH and BRBC will utilize, with respect to goods financed under the Loan to which the DPH or BRBC takes title at the time of procurement, such recon-ditioned United States Government-owned Excess Property as may be feasible to and consistent with the requirements of the Project and as may be available within a reasonable period of time. DPH and BRBC will seek assistance from A.I.D. and A.I.D. will assist the DPH or BRBC in ascertaining the availability of and in obtaining such Excess Property. A.I.D. will make arrangements for any necessary inspection and of acquisition, and all charges incident to the transfer to the DPH or BRBC of such Excess Property, may be financed under the Loan.

Section 6.11. INFORMATION AND MARKING. Borrower, DPH and BRBC shall give publicity to the Loan and the Project as a program of United States aid, identify the Project sites and provide other markings or publicity as prescribed in Implementation Letters.

Article VII. DISBURSEMENTS

Section 7.01. DISBURSEMENT—LETTERS OF COMMITMENT TO UNITED STATES BANKS. Upon satisfaction by the Borrower, DPH and BRBC 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 Letters of Credit or otherwise, for costs of goods and services 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. REIMBURSEMENT FOR LOCAL CURRENCY COSTS. (a) After acceptance by A.I.D. for work satisfactorily completed in accordance with provisions set forth in Implementation Letters, the Borrower may obtain periodic reimbursement by A.I.D. for such accepted work whenever reimbursable amounts of such completed work aggregate not less than \$250,000 but not more often than once a month by submitting requests to A.I.D. for the issuance of Irrevocable Special Letters of Credit ("SLC"), by one or more banks in the United States designated by the Borrower and satisfactory to A.I.D., to the Borrower or any designee of the Borrower pursuant to such documentation requirements as A.I.D. may prescribe in the SLC's and Implementation Letters. Such documentation shall include, among other things, evidence of Philippine general commodity imports from the United States of equal value to the dollars requested for disbursement excluding freight charges on all but U.S.-flag vessels. Banking charges incurred pursuant to this Section in connection with commitment documents and disbursements shall be for the account of the Borrower and, if requested, may be financed hereunder.

(b) The rate of exchange that shall be used in determining the amount of dollars to be made available shall be the selling rate for U.S. dollars set by the Central Bank of the Philippines on the date of acknowledgment of receipt by USAID/Manila of an application for reimbursement, by the Borrower. Taxes, fees, commissions, and similar charges, if any, are not included in determining the appropriate exchange rate.

Section 7.03. OTHER FORMS OF DISBURSEMENT. Disbursement 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, in the case of disbursements pursuant to:

- (a) Section 7.01, on the date on which A.I.D. makes disbursement to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment.
- (b) Section 7.02, on the date on which A.I.D. opens or amends the SLC.

Section 7.05. TERMINAL DATE FOR DISBURSEMENT. Except as A.I.D. may otherwise agree in writing, no Letter of Commitment, Irrevocable Special Letter of Credit 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. forty-eight (48) months after signing of this loan agreement and no disbursement shall be made against documentation received by A.I.D., or any bank described in Sections 7.01 and 7.02 sixty (60) months after signing of this loan agreement; however, an SLC will remain available for drawdown for up to three years following the last upward adjustment in its face amount. At any time or times after aforementioned terminal disbursement dates, A.I.D. may at its option reduce the Loan by all or any part thereof for which documentation was not received by such date and apply any realized funds to a reduction in the outstanding Principal.

Article VIII. CANCELLATION AND SUSPENSION

Section 8.01. CANCELLATION BY THE BORROWER. The Borrower may, with the prior written consent of A.I.D., 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 Letters 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, DPH or BRBC shall have failed to comply with any other provisions 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;

- (d) any action by any governmental authority shall be instituted to dissolve or disestablish DPH or BRBC or to suspend their operations, or a substantial part thereof;
- (e) any right, privilege, or other legal authority necessary for the conduct of DPH or BRBC operations for the completion of the Project, or for carrying out of the terms of this Loan Agreement, is revoked, cancelled, or denied in such manner as to make it improbable that DPH or BRBC will be able to perform their obligations under this Loan Agreement or that the Loan provided for herein will substantially fulfill the purposes for which it has been established,

then A.I.D. may, at its option, give to the Borrower, DPH or BRBC 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 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, DPH or BRBC will be able to perform their obligations under this Agreement;
- (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 A.I.D. or any of its predecessor agencies,

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 thereafter;
- (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 offloaded in ports of entry of the country of the Borrower, in which event A.I.D.

shall give notification to the Borrower promptly thereafter. 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 or repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of 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 the 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, DPH, BRBC 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 to which it is addressed when it shall be delivered to such party by hand or by mail, telegram, cable or radiogram at the following address:

To Borrower:

Mail Address: National Economic and Development Authority
P.O. Box 1116
Manila, Philippines

Cable Address: NEDAPHIL

To DPH:

Mail Address: Department of Public Highways
2nd Street, Port Area
Manila, Philippines

Cable Address:

To BRBC:

Mail Address: Bicol River Basin Council
Marsman Building, Port Area
Manila, Philippines

Cable Address: Secretary, Department of Public Works, Transportation
and Communications

To A.I.D.:

Mail Address: United States Agency for International Development
c/o American Embassy
Manila, Philippines

Cable Address: USAID/AMEMB MANILA

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 the English language, 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 Director-General, National Economic and Development Authority; DPH will be represented by the individual holding or acting in the office of Secretary, DPH; BRBC will be represented by the individual holding or acting in the office of Chairman, BRBC; and A.I.D. will be represented by the individual holding or acting in the office of the Director of the United States A.I.D. Mission to the Philippines. Such individuals shall have the authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, Borrower, DPH or BRBC 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 or revocation of the authority of any of the duly authorized representatives of the Borrower, DPH or BRBC 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 duly 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.

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 reasonably request.

Section 9.05. TERMINATION UPON FULL PAYMENT. Upon payment in full of the principal and of any accrued interest, this Agreement and all obligations of the Borrower, DPH, BRBC and A.I.D. under this Loan Agreement shall terminate.

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

Republic of the Philippines:

By: [Signed]

FERDINAND E. MARCOS

*Title: President,
Republic of the Philippines*

By: [Signed]

GERARDO P. SICAT

*Title: Secretary of Economic Planning
(Director-General)
National Economic and Development
Authority*

United States of America:

By: [Signed]

WILLIAM H. SULLIVAN

*Title: Ambassador to the Republic
of the Philippines*

By: [Signed]

GARNETT A. ZIMMERLY

Title: Director, USAID/Philippines