

**No. 16656**

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**UNITED STATES OF AMERICA, REPUBLIC  
OF THE PHILIPPINES and LOCAL WATER  
UTILITIES ADMINISTRATION**

**Loan Agreement (*Philippines: Local Water Development I*).  
Signed at Manila on 6 August 1976  
Agreement amending the above-mentioned Agreement.  
Signed at Manila on 7 February 1977**

*Authentic text: English.*

*Registered by the United States of America on 27 April 1978.*

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**ÉTATS-UNIS D'AMÉRIQUE, RÉPUBLIQUE DES  
PHILIPPINES et LOCAL WATER UTILITIES  
ADMINISTRATION**

**Accord de prêt (*Philippines : Développement des réseaux locaux d'adduction d'eau — Phase I*). Signé à Manille le  
6 août 1976  
Accord modifiant l'Accord susmentionné. Signé à Manille  
le 7 février 1977**

*Texte authentique : anglais.*

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

# LOAN AGREEMENT<sup>1</sup> (PHILIPPINES: LOCAL WATER DEVELOPMENT I) BETWEEN THE REPUBLIC OF THE PHILIPPINES, THE LOCAL WATER UTILITIES ADMINISTRATION AND UNITED STATES OF AMERICA

Date: August 6, 1976

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<sup>1</sup> Came into force on 6 August 1976 by signature.

## LOAN AGREEMENT

LOAN AGREEMENT, dated the 6th day of August 1976, between the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES ("Borrower"), the LOCAL WATER UTILITIES ADMINISTRATION ("LWUA") 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, for the use of the Local Water Utilities Administration (LWUA), pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed Ten Million United States Dollars (\$10,000,000) ("Loan") to assist the Borrower and LWUA in carrying out the Project referred to in Section 1.02 ("Project"). The Loan shall be used first to finance the foreign exchange costs of goods and services required for the project, and the balance remaining shall be used to reimburse the GOP for eligible local costs by means of a U.S. Special Letter of Credit referred to in Section 7.02. The aggregate amount of disbursements under the Loan is hereinafter referred to as "Principal".

*Section 1.02. THE PROJECT.* The Project shall consist of the improvement/construction of local waterworks systems; engineering and consulting services to LWUA; a laboratory and waterworks training facility; and specialized training in the U.S.

### 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 hereunder 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 (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 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.* Prior to the first disbursement or to the issuance of the first Letter of Commitment under the Loan, the Borrower or LWUA, 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 Borrower and LWUA that both Borrower and LWUA 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 and LWUA, and that this Loan Agreement is a valid and legally binding obligation of the Borrower and LWUA in accordance with its terms;
- (b) statements of the names of the persons holding or acting in the office of the Borrower and LWUA specified in Section 9.02 together with specimen signatures of each person specified in such statement;
- (c) an agreement providing for the relending of the loan proceeds from Borrower to LWUA, such relending to be on terms and conditions not less favorable than the terms and conditions of this Loan.

*Section 3.02. CONDITIONS PRECEDENT TO OPENING LETTERS OF COMMITMENT FOR PROCUREMENT OF MATERIALS OR REIMBURSEMENT FOR CONSTRUCTION OF EACH WATERWORKS SYSTEM.* Prior to the issuance of the Letters of Commitment for procurement of materials or for reimbursement for construction of each waterworks system, the Borrower or LWUA, 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 subproject report containing evidence that the subproject waterworks system is an independent water district under the requirements of LWUA, an analysis of the current situation of the waterworks, recommendations for immediate improvements and future needs, alternate solutions studied, costs data, and a financial/economic/technical feasibility analysis. The subproject report will be certified by the U.S. consultant as to its concurrence with the findings and recommendations.

*Section 3.03. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT.* (a) 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 and LWUA. Upon the giving of such notice, this Agreement and all obligations of the parties hereunder shall terminate.

(b) If all of the conditions specified in Section 3.02 shall not have been met by July 31, 1979, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may cancel the then undisbursed balance of the amount of the Loan and/or may terminate this Agreement by giving written notice to the Borrower and LWUA. In the event of a termination, upon the giving of notice, the Borrower shall immediately repay the Principal then outstanding and shall pay any accrued interest and, upon receipt of such payments in full, this Agreement and all obligations of the parties hereunder shall terminate.

*Section 3.04. 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 and, as the case may be, 3.02 and 3.03 have been met.

### *Article IV. GENERAL COVENANTS AND WARRANTIES*

*Section 4.01. EXECUTION OF THE PROJECT.* (a) The Borrower and LWUA shall carry out the Project with due diligence and efficiency, and in conformity with sound

engineering, financial, administrative and planning practices. In this connection, LWUA shall at all times employ or ensure that the local water districts employ suitable qualified and experienced consultants to be professionally responsible for the design and execution of the subproject and suitably qualified and competent construction contractors to carry out the subproject.

(b) The Borrower and LWUA 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, approved by A.I.D. pursuant to this Agreement.

*Section 4.02. FUNDS AND OTHER RESOURCES TO BE PROVIDED BY BORROWER.* The Borrower shall provide promptly, as needed, all funds, in addition to the Loan, and all other resources required for the timely and effective execution, maintenance, repair and operation 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, LWUA and A.I.D. shall cooperate fully to assure that the purpose of the Loan will be accomplished. To this end, the Borrower, LWUA 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 and LWUA of their 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.* Borrower and LWUA shall provide qualified and experienced management for the Project, and LWUA 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 and LWUA 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. The proceeds of the Loan shall not be used for the payment of taxes, tariffs, duties and other levies in effect in the country of the Borrower with respect to (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. To the extent that persons or entities in (a) and (b) immediately above 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 and LWUA shall ensure the operation, maintenance and repair of the waterworks systems improved/constructed under the Project 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 and LWUA 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 and LWUA shall promptly inform A.I.D. of any facts and circumstances that may hereafter arise that might materially affect, or that it is reasonable to believe might materially affect, the Project or the discharge of the Borrower's or LWUA's obligations under this Agreement.

*Section 4.09. COMMISSIONS, FEES AND OTHER PAYMENTS.* (a) Borrower and LWUA 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 or LWUA's fulltime officers and employees or as compensation for bona fide professional, technical, or comparable services. The Borrower and LWUA 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 and LWUA warrant and covenant that no payments have been or will be received by the Borrower or LWUA or any official of the Borrower or LWUA, 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 and LWUA shall maintain, and cause local water districts to maintain, 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) the receipt and use made of goods and services acquired with funds disbursed pursuant to this Agreement;
- (b) the nature and extent of solicitations of prospective suppliers of goods and services acquired;
- (c) the basis of the award of contracts and orders to successful bidders; and
- (d) the progress of the Project.

Such books and records shall be regularly audited, in accordance with sound auditing standards, for such period and at such intervals 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 and LWUA 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, the utilization of all goods and services financed under the Loan, and the Borrower's and LWUA's books, records, and other documents relating to the Project and the Loan. The Borrower and LWUA 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.

### Article V. SPECIAL COVENANTS AND WARRANTIES

**Section 5.01. BORROWER'S COVENANTS.** Pursuant to Section 4.02 and except as A.I.D. may otherwise agree in writing, the Borrower covenants and agrees to make available to LWUA on a timely basis:

- (a) peso funds required for implementation and completion of the Project;
- (b) any foreign exchange necessary to complete the Project if Loan proceeds are not sufficient; and
- (c) assistance to carry out the Project or cause the Project to be carried out with due diligence and efficiency in conformance with sound engineering, construction, financial and management practices and any plans, specifications, contracts, schedules or other arrangements approved by A.I.D.

**Section 5.02. LWUA'S COVENANTS.** Except as A.I.D. may otherwise agree in writing, LWUA covenants and agrees:

- (a) to carry out the Project, or cause the Project to be carried out, with due diligence and efficiency, and in conformity with sound engineering, financial, administrative and management practices and in accordance with the plans required by Section 3.02 herein and any contracts and procurement arrangements, and modifications therein, approved by A.I.D. pursuant to this Agreement;
- (b) that within ninety (90) days from the execution of this Agreement to provide A.I.D. with the names of the LWUA personnel assigned full time to the twenty positions designated as counterpart personnel in Appendix D of the contract executed between LWUA and James M. Montgomery on July 15, 1974, and amended by Amendment No. 1 on January 1, 1976;
- (c) to perform a performance evaluation on all subprojects financed by the Loan approximately two years after completion of the subproject construction. The performance evaluation will specifically list in detail the improvements made to the system under the Project, the current status of those improvements, and recommendations made by LWUA on any deficiencies found;
- (d) to have the accounts and financial statements (balance sheet, statement of income and expenses, and selected statements) of LWUA audited annually, in accordance with sound and consistently applied auditing principles, by independent auditors and shall, promptly after their preparation and in any event not later than six months after the close of the fiscal year to which they relate, furnish to A.I.D. (a) certified copies of such audited financial statements, and (b) the report of the auditors related thereto. LWUA shall furnish A.I.D. such further information concerning such accounts and financial statements and the audit thereof as A.I.D. shall from time to time reasonably request.

### Article VI. PROCUREMENT

**Section 6.01. PROCUREMENT SOURCE AND ORIGIN.** Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Sections 7.01, 7.02 and 7.03 shall be used exclusively to finance the procurement for the Project of goods and services having both their source and origin in the Republic of 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 for such goods and services. All ocean shipping and marine insurance financed under the Loan shall have both their source and origin in Code 941 countries.

**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 Section 6.01 and 6.03 will be set forth in detail in Implementation Letters.

**Section 6.05. PLANS, SPECIFICATIONS AND CONTRACTS.** (a) Except as A.I.D. may otherwise agree in writing, the Borrower and LWUA shall furnish to A.I.D., promptly upon preparation, all plans, specifications, time schedules, cost estimates, bid documents and contracts relating to the Project and any modifications therein, whether or not the goods and services to which they relate are financed under the Loan.

(b) Except as A.I.D. may otherwise agree in writing, all of the plans, specifications and construction schedules furnished pursuant to subsection (a) above shall be approved by A.I.D. in writing.

(c) All bid documents and documents relating to the solicitation of proposals for goods and services financed under the Loan shall be approved by A.I.D. in writing prior to their issuance. All plans, specifications, and other documents relating to goods and services financed under the Loan shall be in terms of metric standards and measurements, except as A.I.D. may otherwise agree in writing.

(d) All contracts financed under this Loan shall be approved by A.I.D. in writing prior to their execution. A.I.D. shall also approve in writing the selection of the contractor and such contractor personnel as A.I.D. may specify. Material modifications in any of such contracts and changes in any of such personnel shall also be approved by A.I.D. in writing prior to their becoming effective.

(e) Consulting firms used by the Borrower, LWUA and the local water districts for the Project but not financed under the Loan, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Borrower, LWUA and the local water districts for the Project but not financed under the Loan shall be acceptable to A.I.D.

**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. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures therefore prescribed in Implementation Letters.

**Section 6.07. EMPLOYMENT OF THIRD-COUNTRY NATIONALS UNDER CONSTRUCTION CONTRACTS.** The employment of personnel to perform services under construction contracts financed under the Loan shall be subject to requirements with respect to third-country nationals prescribed in Implementation Letters.

**Section 6.08. SHIPPING AND INSURANCE.** (a) Goods financed under the Loan shall be transported to the country of the Borrower 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.

(b) (i) *Gross tonnage.* At least fifty percent (50%) of the gross tonnage of all commodities (computed separately for dry bulk carriers, dry cargo liners and tankers) financed hereunder which may be transported on ocean vessels shall be transported on privately-owned United States-flag commercial vessels.

(ii) *Revenue.* Additionally, at least fifty percent (50%) of the gross freight revenue generated by all shipments financed hereunder and transported to Manila 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 cargo transported from U.S. ports and also to 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 or LWUA 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) 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, goods procured from the United States and 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.

(e) The borrower or LWUA shall insure, or cause to be insured, all 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. 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 or LWUA for the replacement or repair of such goods. Any such replacements shall have both their source and origin in countries included in Code 941 of the *A.I.D. Geographic Code Book* and shall be otherwise subject to the provisions of this Agreement.

**Section 6.09. 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 6.10. 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 the Loan, the Borrower and LWUA 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 6.11. UNITED STATES GOVERNMENT-OWNED EXCESS PROPERTY.** LWUA shall utilize, with respect to goods financed under the Loan to which the LWUA 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. LWUA shall seek assistance from A.I.D. and A.I.D. will assist the LWUA in ascertaining the availability of and in obtaining such Excess Property. A.I.D. will make arrangements for any necessary inspection of and acquisition, and all charges incident to the transfer to the LWUA of such Excess Property may be financed under the Loan. Prior to the procurement of any goods, other than Excess Property, financed under the Loan and after having sought such A.I.D. assistance,

LWUA shall indicate to A.I.D. in writing, on the basis of information then available to it, either that such goods cannot be made available from reconditioned United States Government-owned Excess Property on a timely basis or that the goods that can be made available are not technically suitable for use in the Project.

*Section 6.12. INFORMATION AND MARKING.* Borrower shall give publicity to the Loan and the Project as a program of United States aid, identify the waterworks systems construction site 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 and LWUA of conditions precedent, the Borrower or LWUA 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—SPECIAL LETTERS OF CREDIT.* (a) Reimbursement for local currency costs. A.I.D. will reimburse the Borrower for eligible local currency costs incurred in the construction of, and related procurement of commodities for, the local water systems. Procedures for establishing eligible local cost expenditures under this provision will be set forth in Implementation Letters.

(b) Requests for Commitment Documents. To obtain reimbursement for local cost expenditures, Borrower may submit requests to A.I.D. for the issuance of commitment documents to one or more banks in the United States designated by Borrower and satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made, through irrevocable Special Letters of Credit ("SLC") or otherwise, to Borrower or any designee of Borrower pursuant to such documentation requirements as A.I.D. may prescribe in Implementation Letters. Banking charges incurred pursuant to this Section in connection with commitment documents and disbursements shall be for the account of Borrower and may be financed hereunder. Disbursements hereunder shall be deemed to occur on the date the U.S. bank, as instructed by A.I.D., issues a Special Letter of Credit in favor of the Borrower or his designee. The SLC shall be used to reimburse local currency costs mutually agreed upon between Borrower, LWUA and A.I.D.

(c) Exchange Rate. 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 Sections 7.01 and 7.03, 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.

*Section 7.05. TERMINAL DATE FOR 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. after December 31, 1979, and no disbursement shall be made against documentation received by A.I.D. or any bank described in Section 7.01 after March 31, 1981. A.I.D., at its option, may at any time or times after March 31, 1981, 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., 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 or LWUA 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,

then A.I.D. may give to the Borrower or LWUA notice that all or any part of the unpaid 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 unpaid 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 or LWUA 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.; or
- (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,

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 of 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 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, LWUA 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 LWUA:

Mail Address: Local Water Utilities Administration  
PHILCOMCEN Building  
Ortigas Avenue, Pasig  
Rizal, Philippines

Cable Address: LOCAL WATER

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, LWUA will be represented by the individual holding or acting in the office of General Manager, LWUA, and A.I.D. will be represented by the individual holding or acting in the office of 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 or LWUA 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 or LWUA 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 and A.I.D. under this Loan Agreement shall terminate.

IN WITNESS WHEREOF, Borrower, LWUA 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 delivery 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

AMENDMENT<sup>1</sup> NO. 1 TO LOAN AGREEMENT NO. 492-U-042

THIS AGREEMENT, entered into as of this 7th day of February 1977, between the GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES ("Borrower"), the LOCAL WATER UTILITIES ADMINISTRATION ("LWUA") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D."),

WITNESSETH that

WHEREAS A.I.D., the Borrower and the Local Water Utilities Administration entered into a Loan Agreement No. 492-U-042 on August 6, 1976,<sup>2</sup> to provide \$10,000,000 for the Project, and

WHEREAS the intent was to provide \$20,000,000 for the Project, and A.I.D. has authorized an additional \$10,000,000 and

THEREFORE, the Borrower and A.I.D. hereby agree to amend the Agreement as follows:

1. Section 1. 01. The Loan: The phrase "an amount not to exceed Ten Million United States Dollars (\$10,000,000)" is deleted and the phrase "an amount not to exceed Twenty Million United States Dollars (\$20,000,000)" is substituted therefor.

2. Section 5. 01. Borrower's Covenants: Add the following:

"(d) to provide to LWUA, in addition to its legal capitalization, the peso equivalent to the amount of each Special Letter of Credit."

3. Section 6. 09. Port Charges: Delete the entire section.

*Condition Precedent to Opening Letters of Commitment under Amendment No. 1.* Within sixty (60) days of the execution of Amendment No. 1 to the Agreement and, prior to the first disbursement or to the issuance of the first Letter of Commitment for utilization of loan funds added by this Amendment No. 1, the Borrower, or LWUA, 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.: an opinion of the Secretary of Justice of the Borrower on behalf of Borrower and LWUA that both Borrower and LWUA 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 and LWUA, and that this Loan Agreement is a valid and legally binding obligation of the Borrower and LWUA in accordance with its terms.

Except as hereinabove expressly amended the said Loan Agreement is confirmed and continued in full force and effect in accordance with its terms.

<sup>1</sup> Came into force on 7 February 1977 by signature.

<sup>2</sup> See p. 350 of this volume.

IN WITNESS WHEREOF, the parties to said Agreement have caused this Amendment to be executed by their duly authorized representatives.

Republic of the Philippines:

[Signed]

By: GERARDO P. SICAT

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

[Signed]

By: CARLOS C. LEANO, JR.

Title: General Manager  
Local Water Utilities Administration

United States of America:

[Signed]

By: PETER M. CODY

Title: Director  
USAID/Philippines

[Signed]

By: RICHARD M. DANGLER

Title: Assistant Director for Capital  
Development  
USAID/Philippines

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