

**No. 16574**

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**UNITED STATES OF AMERICA  
and  
INDONESIA**

**Loan Agreement for Sederhana (simple) Irrigation and  
Land Development. Signed at Jakarta on 30 June 1975**

**Amendment No. 1 to the above-mentioned Agreement.  
Signed at Jakarta on 28 October 1976**

*Authentic texts: English.*

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

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

**Accord de prêt en vue de l'irrigation (simple) et de la mise en  
valeur des sols à Sederhana. Signé à Jakarta le 30 juin  
1975**

**Avenant n° 1 à l'Accord susmentionné. Signé à Jakarta le  
28 octobre 1976**

*Textes authentiques : anglais.*

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

# LOAN AGREEMENT<sup>1</sup> BETWEEN THE REPUBLIC OF INDONESIA AND THE UNITED STATES OF AMERICA FOR SEDERHANA (SIMPLE) IRRIGATION AND LAND DEVELOPMENT

Dated: June 30, 1975

A.I.D. Loan Number 497-T-037

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<sup>1</sup> Came into force on 30 June 1975 by signature.

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LOAN AGREEMENT dated June 30, 1975, between the REPUBLIC OF INDONESIA ("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 pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed twenty million United States dollars (\$20,000,000) ("Loan") to assist the Borrower in carrying out the project referred to in section 1.02 ("Project"). The Loan shall be used exclusively to finance the United States dollar costs ("Dollar Costs") of goods and services to be listed in implementation letters referred to in section 8.03 ("Implementation Letters"), and part of the local currency costs of goods and services required for the Project ("Local Currency Costs"). The aggregate amount of disbursements under the Loan is hereinafter referred to as "Principal".

*Section 1.02.* THE PROJECT. The Project shall consist of assistance to the Ministry of Public Works and Electric Power ("MPWEP") and the Ministry of Agriculture ("MOA") in carrying out upgrading and new construction of simple irrigation and reclamation facilities of small scale, including certain related farm level implementation activities, covering an area of between 110,000 and 160,000 hectares in order to increase agricultural production and improve the well-being of the low-income segment of the rural population. Subprojects shall consist of geographic areas within the area covered by the overall Project which are fed by individual water sources ("Subprojects"). Subprojects will be located throughout Indonesia and, in general, will be carried out using labor-intensive methods. The total Project budget will be not less than the rupiah equivalent of fifty-nine million two hundred thousand United States dollars (\$59,200,000), of which the Borrower will provide not less than the rupiah equivalent of thirty-five million four hundred thousand United States dollars (\$35,400,000) and individual farmers' participation will amount to approximately the rupiah equivalent of three million eight hundred thousand United States dollars (\$3,800,000).

#### 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 6.04), 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 for dollar costs ("Disbursement") or reimbursement for local costs ("Reimbursement") 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 or reimbursement 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 (9 ½) 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 or reimbursement 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 Republic of Indonesia.

### *Article III. CONDITIONS PRECEDENT TO DISBURSEMENT*

*Section 3.01. CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT.* Prior to the first 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 of the Minister of Justice of the Borrower that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;
- (b) a statement of the names of the persons holding or acting in the office of the Borrower specified in section 8.02, and a specimen signature of each person specified in such statement;
- (c) a draft contract for consulting services for the Project acceptable to A.I.D. with a U.S. Government agency or with another firm or firms or individuals acceptable to A.I.D.;

- (d) (1) written assurance that 100 % of the estimated annual expenditures for each year during which the Project is being conducted (other than the United States dollar costs to be financed under the Loan) will be made available to permit the work of the Project to proceed on a timely basis, (2) a budgetary allocation for the Project for the Indonesian fiscal year 1975-1976, and (3) an approved payment authorization for payment of Indonesian currency in the amount required for the first three months of Project operations;
- (e) such other documents as A.I.D. may reasonably request.

*Section 3.02. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT.* If all of the conditions specified in section 3.01 shall not have been met within 210 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.

*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. GENERAL EXECUTION COVENANTS.* (a) The Borrower shall cause the MPWEP and the MOA to carry out the Project with due diligence and efficiency, and in conformity with acceptable engineering, construction, financial, administrative, technical and management practices.

(b) The Borrower shall cause the MPWEP and the MOA to carry out the Project in conformity with all of the plans, specifications, contracts, schedules, and other arrangements, and with all modifications therein.

(c) The Borrower shall ensure that land titles necessary to obtain financing required to implement individual subprojects are provided to farmers in a timely manner.

(d) The Borrower shall ensure that the medium-term credit for land clearing, leveling and paddy farming required to implement individual subprojects is provided to farmers in a timely manner.

(e) The Borrower shall ensure that new transmigrant and resettled farmers and construction workers whose services are required to implement individual subprojects are available in a timely manner.

(f) The Borrower shall ensure that construction of tertiary canals and farm service ditches for individual subprojects not completed during Project implementation is carried out expeditiously.

(g) The Borrower shall ensure that the BIMAS production input package is made available in all individual subproject service areas beginning in the second year following the completion of the major works.

*Section 4.02. CONDITION TO COMMENCING CONSTRUCTION OF FIRST SUBPROJECT.* Prior to the commencement of construction of the first subproject for which reimbursement will be sought by the Borrower under the Loan, the Borrower shall prepare, and Borrower and A.I.D. shall agree upon in writing, detailed criteria for selection of subprojects, including economic, environmental and other relevant factors.

*Section 4.03. CONDITIONS TO COMMENCING CONSTRUCTION OF ANY INDIVIDUAL SUBPROJECT.* Prior to the commencement of construction of any individual sub-

project for which reimbursement will be sought by the Borrower under the Loan, the Borrower shall provide to A.I.D.:

- (a) a certification of technical soundness, including conformity to selection criteria, with the final plans and specifications attached; and
- (b) a construction cost estimate based on the final plans and specifications.

A.I.D. shall satisfy itself as to the technical soundness of the subproject and the reasonableness of the construction cost estimate and inform the Borrower of the result in writing.

**Section 4.04.** CONDITIONS TO COMMENCING CONSTRUCTION OF FIRST SUBPROJECT WITH A.I.D. CONTRIBUTION EXCEEDING \$100,000. Except as A.I.D. may otherwise agree in writing, prior to commencement of construction of the first subproject in a province for which reimbursement exceeding \$100,000 for construction of major works will be sought by the Borrower under the Loan, and unless construction is carried out on a force account basis, the Borrower shall provide to A.I.D., and A.I.D. shall review and approve in writing:

- (a) Borrower's construction contractor prequalification standards;
- (b) Borrower's list(s) of prequalified construction contractors including a certification that all contractors listed meet the applicable prequalification standards of the Borrower approved by A.I.D.; and
- (c) Borrower's standard construction contract forms.

**Section 4.05.** CONDITIONS TO COMMENCING CONSTRUCTION OF ANY INDIVIDUAL SUBPROJECT WITH A.I.D. CONTRIBUTION EXCEEDING \$100,000. Except as A.I.D. may otherwise agree in writing, prior to commencement of construction of any individual subproject for which reimbursement exceeding \$100,000 for construction of major works will be sought by the Borrower under the Loan, the Borrower shall provide to A.I.D., and A.I.D. shall review and approve in writing:

- (a) the identity of construction contractor(s); and
- (b) a copy of the contract(s) with a certification that the applicable standard construction contract form approved by A.I.D. was utilized, and a statement of exceptions, if any.

**Section 4.06.** CONDITION TO COMMENCING FIRST IN-COUNTRY TRAINING COURSE. Prior to the commencement of the first in-country training course for which reimbursement will be sought by the Borrower under the Loan, the Borrower shall provide to A.I.D., and A.I.D. shall review and approve in writing, a training plan for the Project covering subjects to be described in Implementation Letters for:

- (a) the Directorate General for Water Resources Development ("DGWRD");
- (b) the Agency for Agriculture Education, Training and Extension ("AAETE");
- (c) the Directorate General of Food Crops ("DGFC");
- (d) Provincial Public Works offices;
- (e) Provincial Agriculture Services; and
- (f) individual farmers.

**Section 4.07.** CONDITION TO COMMENCING ANY INDIVIDUAL IN-COUNTRY TRAINING COURSE. Prior to the commencement of any individual in-country training course for which reimbursement will be sought by the Borrower under the Loan, the Borrower shall provide to A.I.D. and A.I.D. shall review and approve in writing:

- (a) a brief course description; and
- (b) a cost estimate.

*Section 4.08.* CONDITIONS TO SUBMISSION OF FIRST REQUEST FOR REIMBURSEMENT. Except as A.I.D. may otherwise agree in writing, prior to submission of the first request for reimbursement under the Loan, the Borrower shall prepare and Borrower and A.I.D. shall agree upon in writing:

- (a) a flat rate per hectare to cover the following cost items:
  - (i) survey and design of major works and tertiary canals;
  - (ii) formation of water user associations and extension;
  - (iii) construction of farm service ditches; and
- (b) a plan for Borrower monitoring of the Project.

*Section 4.09.* 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 punctual and effective carrying out, completion, maintenance, repair, and operation of the Project. Notwithstanding any other provision of this Loan Agreement, Borrower shall provide not less than 25 % of the total cost of goods and services to be used in the Project which shall not be disbursed or reimbursed by A.I.D. in any form.

*Section 4.10.* CONTINUING CONSULTATION. The Borrower, MPWEP, MOA and A.I.D. shall cooperate fully to assure that the purposes of the Loan will be accomplished. To this end, the Borrower, DGWRD, AAETE, DGFC, the consultant advisory team, and A.I.D. shall from time to time, at the request of any Party, and formally at least once a year, exchange views through their representatives with regard to the progress of the Project, its effectiveness and the results of specific completed subprojects, the performance by the Borrower, MPWEP and MOA 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 4.11.* OPERATION AND MAINTENANCE. The Borrower, MPWEP and MOA shall cause the subprojects when completed to be operated, maintained, and repaired in conformity with acceptable engineering, financial and administrative practices and in such manner as to insure the continuing and successful achievement of the purposes of the Project.

*Section 4.12.* 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 Indonesia. To the extent that (a) any expatriate contractor, including any expatriate consulting firm, and expatriate personnel of such expatriate contractor financed hereunder, and any property or transactions relating to such contracts, and (b) any foreign commodity procurement transaction financed hereunder, are not exempt from identifiable taxes, tariffs, duties, and other levies imposed under laws in effect in Indonesia, the Borrower shall pay or reimburse the same under section 4.02 of this Agreement with funds other than those provided under the Loan. Taxes, tariffs, duties, and other levies imposed under laws in effect in Indonesia on Indonesian contractors, consultants and commodity procurement transactions shall not be financed with funds provided under the Loan.

*Section 4.13.* 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, goods financed under the Loan for the Project shall be used for Borrower's overall Sederhana project.

(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 4.14. DISCLOSURE OF MATERIAL FACTS AND CIRCUMSTANCES.** The Borrower, MPWEP and MOA 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, MPWEP and MOA shall promptly inform A.I.D. of any facts and circumstances that may hereafter arise and might materially affect, or that it is reasonable to believe might materially affect, the Project or the discharge of the Borrower's, MPWEP's or MOA's obligations under this Agreement.

**Section 4.15. COMMISSIONS, FEES AND OTHER PAYMENTS.** (a) Borrower, MPWEP and MOA warrant and covenant 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, MPWEP's or MOA's full-time officers and employees or as compensation for bona fide professional, technical, or comparable services. The Borrower, MPWEP and MOA 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 or either of them is a Party or of which they or either of them 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, MPWEP and MOA warrant and covenant that no payments have been or will be received by the Borrower, MPWEP or MOA, or any official of the Borrower, MPWEP or MOA, in connection with the procurement of goods and services financed hereunder, except fees, taxes, or similar payments legally established in Indonesia.

**Section 4.16. MAINTENANCE AND AUDIT OF RECORDS.** The Borrower, MPWEP and MOA 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) 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 Borrower and A.I.D. may agree in Implementation Letters, 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 4.17. REPORTS.** The Borrower, MPWEP and MOA 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 4.18. 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, MPWEP's and MOA's books, records, and other documents relating to the Project and the Loan. The Borrower, MPWEP and MOA shall cooperate with A.I.D. to facilitate such inspections and shall permit representatives of A.I.D. to visit any part of Indonesia for any purpose relating to the Loan.

#### *Article V. PROCUREMENT*

*Section 5.01. PROCUREMENT WITH LOAN FUNDS.* Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to section 6.01 shall be used exclusively to finance the procurement for the Project of goods and services 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 orders are placed for such goods.

*Section 5.02. ELIGIBILITY DATE.* Except as A.I.D. may otherwise agree in writing, no disbursements for goods or services may be made under the Loan pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement and no reimbursement may be made for

- (a) subprojects the construction of which has begun prior to satisfaction of the requirements set forth in sections 4.02 and 4.03;
- (b) subprojects with A.I.D. contribution exceeding \$100,000, sections 4.04 and 4.05; and
- (c) in-country training courses, sections 4.06 and 4.07.

*Section 5.03. GOODS AND SERVICES NOT FINANCED OR REIMBURSED UNDER LOAN.* Except as A.I.D. may otherwise agree in writing, goods and services procured for the Project, but not financed or reimbursed 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 5.04. IMPLEMENTATION OF PROCUREMENT AND REIMBURSEMENT REQUIREMENTS.* The definitions applicable to the eligibility requirements of sections 5.01 and 5.03 will be set forth in detail in Implementation Letters.

*Section 5.05. PLANS, SPECIFICATIONS, AND CONTRACTS.* (a) The Borrower shall, upon request by A.I.D., furnish to A.I.D. promptly upon preparation for A.I.D. approval all plans, specifications, construction schedules, bid documents, contracts (including contracts for technical consultants), and cost data relating to the Project, and any modifications therein, whether or not the services or subprojects to which they relate are financed or reimbursed under the Loan.

(b) Contracts for consulting services financed under the Loan as U.S. dollar costs as described in section 5.01 shall be approved by A.I.D. in writing prior to their execution. In the case of any of the above contracts for services, A.I.D. shall also approve in writing the consultant and such consultant 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.

(c) Contracts for consulting services reimbursed under the Loan, other than for survey and design, shall be approved by A.I.D. in writing prior to their execution. In the case of any of the above contracts for services, other than for survey and design, A.I.D. shall also approve in writing the consultant and such consultant 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.

(d) The Borrower shall, upon request by A.I.D., furnish to A.I.D. for A.I.D. approval the names of consulting firms proposed to be used by the Borrower for the Project for services other than survey and design 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 the names of construction contractors proposed to be used by the Borrower for the Project but not financed under the Loan.

*Section 5.06. SHIPPING AND INSURANCE.* (a) Goods procured from the United States and financed under the Loan pursuant to section 5.01 shall be transported to Indonesia 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) (1) *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 pursuant to section 5.01 which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels. (2) *Revenue.* Additionally, at least fifty percent (50 %) of the gross freight revenue generated by all shipments financed hereunder pursuant to section 5.01 and transported to Indonesia on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels unless A.I.D. shall determine that such vessels are not available at fair and reasonable rates for U.S.-flag commercial vessels. (3) *Compliance.* Compliance with the requirements of (1) and (2) 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. (4) *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 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): (1) which A.I.D., in a notice to the Borrower, has designated as ineligible to carry A.I.D.-financed goods or (2) 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, Indonesia, 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.

*Section 5.07. 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 Indonesia and Borrower covenants that it shall make available foreign exchange to finance said port charges in accordance with procedures which may be prescribed by A.I.D. in Implementation Letters.

*Section 5.08. 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 as dollar costs as defined in section 5.01, the

Borrower 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 5.09.* INFORMATION AND MARKING. Borrower shall give publicity to the Loan and the Project as being assisted by United States aid, identify the Project sites, and mark goods financed under the Loan, as prescribed in Implementation Letters.

#### *Article VI.* DISBURSEMENT AND REIMBURSEMENT

*Section 6.01.* DISBURSEMENT FOR UNITED STATES DOLLAR COSTS — LETTERS 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 consultants or suppliers, through the use of Letters of Credit or otherwise, for dollar 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 consultant 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 6.02.* CONDITIONS TO REIMBURSEMENT FOR ANY PREDETERMINED COSTS. (a) Upon satisfaction of the conditions precedent pursuant to section 3.01, Borrower may initiate reimbursement from time to time by submission of a request for reimbursement to A.I.D. A.I.D. shall reimburse the Borrower forty-two and one-half percent (42 ½ %) of the predetermined cost expressed in dollars for subprojects completed. Such reimbursement shall be made in U.S. dollars.

(b) Each reimbursement request shall contain a certification that reimbursement has not and will not be obtained from any other source.

(c) All documents and certificates submitted with requests for reimbursement are subject to verification by A.I.D. If any of the documents or certificates related to any subproject are not acceptable, A.I.D. may deduct the requested amount for that subproject from the reimbursement request before approving the request.

*Section 6.03.* DOCUMENTS REQUIRED AS CONDITION TO REIMBURSEMENT OF MPWEP PREDETERMINED SUBPROJECT COSTS. Except as A.I.D. may otherwise agree in writing, each request for reimbursement covering MPWEP predetermined costs shall contain for each subproject included in the request:

(a) a certification of completion of construction of the major works in accordance with the plans and specifications approved by A.I.D. pursuant to section 4.03; and

(b) an operation and maintenance plan for the major works.

*Section 6.04.* DOCUMENTS REQUIRED AS CONDITION TO REIMBURSEMENT OF MOA PREDETERMINED SUBPROJECT COSTS. Except as A.I.D. may otherwise agree in writing, each request for reimbursement covering MOA predetermined costs shall contain for each subproject included in the request:

(a) a certification of completion of construction of 40 % of the tertiary canals and farm service ditches;

(b) evidence that a water user association(s) has been formed and is effectively operating;

(c) a water management plan for the tertiary canals and farm service ditches;

- (d) an operations and maintenance plan for the tertiary canals and farm service ditches; and
- (e) a certification that the pattern of private landholdings in the subproject area meets criteria to be described in Implementation Letters.

*Section 6.05. CONDITIONS TO REIMBURSEMENT OF PREDETERMINED COSTS OF IN-COUNTRY TRAINING.* Except as A.I.D. may otherwise agree in writing, each request for reimbursement covering the predetermined costs of in-country training shall contain a certification of completion for each training course included in the request.

*Section 6.06. OTHER FORMS OF DISBURSEMENT.* Disbursements of the Loan may be made through such other means as the Borrower and A.I.D. may agree to in writing.

*Section 6.07. DATE OF DISBURSEMENT.* Disbursements by A.I.D. shall be deemed to occur in the case of disbursements or reimbursements pursuant to sections 6.01 and 6.02 on the date on which A.I.D. makes a disbursement or reimbursement to the Borrower, to its designee or to a banking institution pursuant to a Letter of Commitment and in the case of disbursements made pursuant to section 6.06 on the date on which A.I.D. makes a disbursement pursuant to the terms of such other disbursement documents.

*Section 6.08. TERMINAL DATE FOR DISBURSEMENT.* Except as A.I.D. may otherwise agree in writing, no Letter of Commitment under section 6.01, or other commitment documents which may be called for by another form of disbursement under section 6.06, or amendment thereto, shall be issued in response to requests received by A.I.D. after July 26, 1978, and no disbursement shall be made against documentation received by A.I.D. or any bank described in section 6.01 after January 26, 1979, and no request for reimbursement under section 6.02 shall be honored after July 26, 1978, and no reimbursement shall be made pursuant to such requests after January 26, 1979. A.I.D., at its option, may at any time or times after January 26, 1979, reduce the Loan by all or any part thereof for which documentation was not received by such date.

## *Article VII. CANCELLATION AND SUSPENSION*

*Section 7.01. 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 reimbursement or through payments made through other procedures.

*Section 7.02. 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, MPWEP or MOA 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 the Government of the United States, or any of its agencies,

then A.I.D. may, at its option, give to 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 then outstanding Letters of Credit or any reimbursement or otherwise shall become due and payable as soon as made.

*Section 7.03.* SUSPENSION OF DISBURSEMENT OR REIMBURSEMENT. 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, MPWEP, or MOA will be able to perform their obligations under this Agreement, or
- (c) A.I.D. determines that the overall Project is not being carried out satisfactorily in accordance with agreed upon standards and criteria,
- (d) any disbursement or reimbursement by A.I.D. would be in violation of the legislation governing A.I.D.,

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 or make additional reimbursements;
- (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 Indonesia, are in a deliverable state and have not been offloaded in ports of entry of Indonesia. Any disbursement or reimbursement made or to be made under the Loan with respect to such transferred goods shall be deducted from Principal.

*Section 7.04.* CANCELLATION BY A.I.D. Following any suspension of disbursements or reimbursements pursuant to section 7.03, if the cause or causes for such suspension of disbursements or reimbursements 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 7.05.* CONTINUED EFFECTIVENESS OF AGREEMENT. Notwithstanding any cancellation, suspension of disbursement or reimbursement, 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 7.06.* REFUNDS. (a) In the case of any disbursement or reimbursement not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement or reimbursement 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 Borrower to refund such amount in United States dollars to A.I.D. within sixty days after receipt of a request therefor. Such amount shall be made available first for the cost of goods and services procured and reimbursement for acceptably completed

subprojects 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 or reimbursement under the Loan shall continue for five years following the date of such disbursement or reimbursement.

(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 and reimbursement for acceptably completed subprojects 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 7.07. 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 accounts due A.I.D. by reason of the occurrence of any of the events specified in section 7.02 may be charged to the Borrower and reimbursed to A.I.D. in such manner as A.I.D. may specify.

*Section 7.08. 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 of such rights, powers, or remedies.

#### *Article VIII. MISCELLANEOUS*

*Section 8.01. COMMUNICATIONS.* Any notice, request, document, or other communication given, made, or sent by the Borrower, MPWEP or MOA, 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 addresses:

To Borrower:

Mail address:

Departemen Luar Negeri  
Jl. Singamangaraja 2  
Kebayoran Baru  
Jakarta, Indonesia

Cable address:

DEPLU  
Jakarta, Indonesia

To A.I.D.:

Mail address:

United States Agency for International Development  
American Embassy  
Jakarta, Indonesia

Cable address:

USAID AMEMB  
Jakarta, Indonesia

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 8.02. REPRESENTATIVES.* For all purposes relative to this Agreement, the Borrower shall be represented by the individual holding or acting in the office of Chairman or Vice Chairman, National Development Planning Agency (BAPPENAS), and A.I.D. will be represented by the individual holding or acting in the office of Mission Director, USAID Mission to Indonesia. 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 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 duly authorized.

*Section 8.03. 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 8.04. 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 this Loan, in such form, containing such terms and supported by such legal opinions as A.I.D. may reasonably request.

*Section 8.05. TERMINATION UPON FULL PAYMENT.* Upon payment in full of the Principal and of any accrued interest, this Agreement and all obligations of the Borrower, MPWEP, MOA, and A.I.D. under this Loan Agreement shall terminate.

IN WITNESS WHEREOF, Borrower 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 Indonesia:

*By: [Signed]*

FERDY SALIM

Acting Director

for Financial Cooperation and Investment

United States of America:

*By: [Signed]*

KENNETH M. KAUFFMAN

Acting Director

USAID/Indonesia

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## AMENDMENT NO. 1<sup>1</sup> TO LOAN AGREEMENT<sup>2</sup> BETWEEN THE REPUBLIC OF INDONESIA AND THE UNITED STATES OF AMERICA FOR SEDERHANA (SIMPLE) IRRIGATION AND LAND DEVELOPMENT

Dated: October 28, 1976

A.I.D. Loan No. 497-T-037, Amendment No. 1

AMENDMENT No. 1 dated October 28, 1976, between the REPUBLIC OF INDONESIA ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

WITNESSETH that

WHEREAS, the Borrower and A.I.D. entered into a loan agreement, designated as A.I.D. Loan No. 497-T-037, on June 30, 1975<sup>2</sup> ("Loan Agreement"), whereby A.I.D. agreed to lend to the Borrower up to twenty million United States dollars (\$20,000,000) to assist in financing the United States dollar costs and part of the local currency costs of certain goods and services required to assist the Borrower in carrying out upgrading and new construction of simple irrigation facilities of small-scale, including certain related farm level implementation activities, to increase agricultural production and improve the well-being of the low-income segment of the rural population;

WHEREAS, the requirements of the Project as originally designed and contemplated justified a total A.I.D. Loan amount of twenty-three million seven hundred thousand United States dollars (\$23,700,000);

WHEREAS, A.I.D. has agreed to lend the additional amount requested for the purpose of bringing the total Loan amount to the level originally contemplated and on the same terms and conditions contained in the Loan Agreement;

NOW, THEREFORE, the Borrower and A.I.D. hereby agree that A.I.D. Loan No. 497-T-037 is hereby amended as follows:

1. Section 1.01 of the Loan Agreement is hereby amended by substituting the words "twenty-three million seven hundred thousand United States dollars (\$23,700,000)" for the words "twenty million United States dollars (\$20,000,000)".

2. Section 1.02 of the Loan Agreement is hereby amended by substituting the words "sixty-two million nine hundred thousand United States dollars (\$62,900,000)" for the words "fifty-nine million two hundred thousand United States dollars (\$59,200,000)".

3. The Loan Agreement is hereby amended by adding the following new section 3.01-A:

**Section 3.01-A. CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT UNDER AMENDMENT NO. 1 TO THE LOAN.** Prior to the first disbursement or to the issuance of the first Letter of Commitment under Amendment No. 1 to the Loan, or to the amendment of any Letter of Commitment already existing under the Loan, the Borrower shall, except as A.I.D. may otherwise agree in writing, fur-

<sup>1</sup> Came into force on 28 October 1976 by signature.

<sup>2</sup> See p. 186 of this volume.



nish to A.I.D. in form and substance satisfactory to A.I.D. an opinion of the Minister of Justice of the Borrower that this Amendment No. 1 has been duly authorized and/or ratified by, and executed on behalf of the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms.”

4. The Loan Agreement is hereby amended by adding the following new section 3.02-A:

“Section 3.02-A. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT UNDER AMENDMENT NO. 1 TO THE LOAN. If the condition specified in section 3.01-A shall not have been met within 60 days from the date of this Amendment No. 1, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Amendment No. 1 by giving written notice to the Borrower.”

5. The Loan Agreement is hereby amended by adding the following new section 3.03-A:

“Section 3.03-A. NOTIFICATION OF MEETING CONDITIONS PRECEDENT TO INITIAL DISBURSEMENTS UNDER AMENDMENT NO. 1 TO THE LOAN. A.I.D. shall notify the Borrower upon determination by A.I.D. that the conditions precedent to initial disbursements specified in section 3.01-A have been met.”

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

IN WITNESS WHEREOF, the Borrower and the United States of America, each acting through its respective duly authorized representative, have caused this Amendment No. 1 to be signed in their names and delivered as of the day and year first above written.

United States of America:

*By: [Signed]*

DAVID D. NEWSOM  
Ambassador  
to Indonesia

Republic of Indonesia:

*By: [Signed]*

ADAM MALIK  
Minister for Foreign Affairs  
of the Republic of Indonesia