

No. 17255

**UNITED STATES OF AMERICA
and
HAITI**

**Alliance for Progress Loan Agreement relating to the
agricultural feeder road system (with annex). Signed
at Port-au-Prince on 29 June 1976**

Authentic text: English.

Registered by the United States of America on 24 November 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
HAÏTI**

**Accord de prêt au titre de l'Alliance pour le progrès relatif
à des routes de desserte agricoles (avec annexe). Signé
à Port-au-Prince le 29 juin 1976**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 24 novembre 1978.

ALLIANCE FOR PROGRESS LOAN AGREEMENT¹ BETWEEN THE REPUBLIC OF HAITI AND THE UNITED STATES OF AMERICA

Dated: June 29, 1976

Loan No. 521-T-007

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¹ Came into force on 29 June 1976 by signature.

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LOAN AGREEMENT dated June 29, 1976, between the REPUBLIC OF HAITI ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

Article I. THE LOAN

Section 1.01. THE LOAN. A.I.D. agrees to lend to the Borrower in furtherance of the Alliance for Progress and pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed five million United States dollars (\$5,000,000) ("Loan") to assist Borrower in carrying out the Project referred to in Section 1.02. The Loan shall be used exclusively to finance the United States dollar costs of goods and services required for the Project ("Dollar Costs") and 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 will improve Haiti's agricultural feeder road system by providing all-weather access to isolated rural communities. Complementary to the effort to reconstruct feeder roads will be the establishment of an Equipment Leasing Service to facilitate the participation of Haitian private contractors in the Project and a pilot project to test various labor intensive methods of road reconstruction and maintenance. The Project is more fully described in Annex I, attached hereto, which annex may be modified in writing by the agreement of the parties hereto.

Section 1.03. USE OF FUNDS GENERATED BY OTHER UNITED STATES ASSISTANCE. Borrower shall use for the Project, in lieu of any United States dollars that would otherwise be disbursed under the Loan to finance Local Currency Costs of the Project, any currencies other than United States dollars that may become available to Borrower after the date of this Agreement in connection with assistance (other than the Loan) provided by the United States of America to Borrower to the extent and for the purposes that A.I.D. and Borrower may agree in writing. Any such funds used for the Project shall reduce the amount of the Loan (to the extent that it shall not then have been disbursed) by any equivalent amount of United States dollars computed, as of the date such currencies are used for the Project, at the rate of exchange yielding the greatest number of gourdes per dollar which, at the time of such use, is not unlawful in Haiti.

Article II. LOAN TERMS

Section 2.01. INTEREST. Borrower shall pay to A.I.D. interest which shall accrue at the rate of two percent (2%) per annum for ten (10) years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement (as such date is defined in Section 7.04), and shall be computed on the basis of a 365-day year. Interest shall be payable 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. 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 (9 1/2) years after the date on which the first interest payment is due in accordance with Section 2.01. A.I.D. shall provide 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 Agency for International Development (A.I.D.), Cashier (SER/CONT), Washington, D.C. 20523, United States of America. Payment shall be deemed made when received.

Section 2.04. PREPAYMENT. Upon payment of all interest and refunds then due, 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. In the light of the undertakings of the United States of America and the other signatories of the Act of Bogotá¹ and the Charter of Punta del Este² to forge an Alliance for Progress, 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 Haiti, taking into consideration the relative capital requirements of the Republic of Haiti and of the various signatories of the Act of Bogotá and the Charter of Punta del Este.

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, 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 Secretary of State of Justice of the Republic of Haiti, or other counsel acceptable to A.I.D., that this Agreement has been duly

¹ *Department of State Bulletin*, October 3, 1960, p. 537.

² *Ibid.*, September 11, 1961, p. 463.

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 Borrower specified in Section 9.02, and a specimen signature of each person specified in such statement;
- (c) Evidence that the Secretariat of Public Works, Transport and Communications (“TPTC”) has appointed a full-time Project manager; and
- (d) Evidence that it has established a separate account in the National Bank of the Republic of Haiti for the deposit of Borrower’s contributions to, and A.I.D.’s disbursements of local currency for, the Project.

Section 3.02. CONDITIONS PRECEDENT TO ADDITIONAL DISBURSEMENT. Prior to any disbursement under the Loan in excess of \$100,000, Borrower shall furnish to A.I.D., in form and substance satisfactory to A.I.D.:

- (a) Evidence that an adequate accounting and record keeping system has been instituted within the TPTC, and
- (b) Evidence that adequate construction standards guidelines have been issued for TPTC construction brigades.

Section 3.03. CONDITIONS PRECEDENT TO DISBURSEMENT FOR EQUIPMENT LEASING SERVICE COMPONENT. Prior to any disbursement or to the issuance of any Letter of Commitment under the Loan for the purchase of equipment for the Equipment Leasing Service component of the Project, 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) Evidence that all necessary legal steps for the establishment of the Equipment Leasing Service have been taken;
- (b) Evidence that appropriate arrangements for the administration of the Equipment Leasing Service are being made.

Section 3.04. CONDITIONS PRECEDENT FOR THE LABOR INTENSIVE PILOT PROJECT COMPONENT. Prior to any disbursement or the issuance of any Letter of Commitment under the Loan for the Labor Intensive Pilot Project component of the Project, Borrower shall furnish to A.I.D., in form and substance satisfactory to A.I.D., a time-phased implementation plan for this component.

Section 3.05. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. (a) If all of the conditions specified in Section 3.01 shall not have been met within 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. 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 Sections 3.02 and 3.03 shall not have been met within 180 days from the date of this Agreement or such later date as A.I.D. may agree to in writing, or, if all of the conditions specified in Section 3.04 shall not have been met within one year 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 cancel the then undisbursed balance of the amount of the Loan and/or may terminate this Agreement by giving written notice to the Borrower. 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 3.06. 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 Sections 3.01, 3.02, 3.03 and 3.04 have been met.

Article IV. GENERAL COVENANTS AND WARRANTIES

Section 4.01. EXECUTION OF THE PROJECT. (a) Borrower shall carry out the Project with due diligence and efficiency, and in conformity with sound engineering, construction, financial, administrative, planning and management practices. In this connection, Borrower shall at all times employ suitably qualified and experienced consultants and other personnel for the Project.

(b) Borrower shall cause the Project to be carried out in conformity with all of the plans, specifications, contracts, schedules, rules, regulations, and all 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. (a) Borrower covenants to contribute the equivalent of at least three million seven hundred fifty thousand dollars (\$3,750,000) to the Project;

(b) Borrower shall provide promptly as needed all funds, and/or facilities in addition to the Loan and the amount stated in subsection (a) of this Section, required for the punctual and effective carrying out of the Project.

Section 4.03. CONTINUING CONSULTATION. Borrower and A.I.D. shall cooperate fully to assure that the purpose of the Loan will be accomplished. To this end, Borrower and A.I.D. shall from time to time, at the request of either party, exchange views through their representatives with regard to the progress of the Project, the performance by Borrower of its obligations under this Agreement, the performance of the consultants, contractors, and suppliers engaged in the Project, and other matters relating to the Project. The effect of the Project on the natural environment shall be taken into consideration prior to and during the implementation of the Project, and Borrower and A.I.D. shall cooperate to minimize any harmful effects upon the natural environment. Without limitation upon the foregoing, Borrower and A.I.D. will carry out an annual review of the Project during the period of disbursement of the Loan.

Section 4.04. MANAGEMENT. The Borrower shall cause to be provided qualified and experienced management for the Project, and it shall cause to be trained such staff as may be appropriate for carrying out the Project.

Section 4.05. 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 Haiti. To the extent that (a) any contractor, including any consulting firm, any personnel of such contractor financed hereunder, and any property or transactions relating to such contracts, financed hereunder, and (b) any commodity procurement transaction financed hereunder, are not exempt from identifiable taxes, tariffs, duties, and other

levies imposed under laws in effect in Haiti, 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 4.06. 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 times as goods financed under the Loan can no longer be usefully employed for the Project, Borrower may use or dispose of such goods in such manner as A.I.D. may agree to in writing prior to such use or disposition.

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

Section 4.07. DISCLOSURE OF MATERIAL FACTS AND CIRCUMSTANCES. Borrower represents and warrants that all facts and circumstances that it has disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Loan are accurate and complete, and that it has disclosed to A.I.D., accurately and completely, all facts and circumstances that might materially affect the Project and the discharge of its obligations under this Agreement. The Borrower shall promptly inform A.I.D. of any facts and circumstances that may hereafter arise that might materially affect the Project or the discharge of the Borrower's obligations under this Agreement.

Section 4.08. COMMISSIONS, FEES AND OTHER PAYMENTS. (a) Borrower warrants and covenants that in connection with obtaining the Loan, or taking any action under or with respect to this Agreement, it has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid nor will there be paid by any other person or entity, commissions, fees, or other payments of any kind, except as regular compensation to the Borrower's full-time officers and employees or as compensation for *bona fide* professional, technical, or comparable services. The Borrower shall promptly report to A.I.D. any payment or agreement to pay for such *bona fide* professional, technical, or comparable services to which 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) Borrower warrants and covenants that no payments have been or will be received by Borrower, or any official of Borrower in connection with the procurement of goods and services financed hereunder, except fees, taxes, or similar payments legally established in Haiti.

Section 4.09. MAINTENANCE AND AUDIT OF RECORDS. Borrower shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and to this Agreement. Such books and records shall without limitation be adequate to show:

- (a) 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 4.10. REPORTS. Borrower agrees to furnish to A.I.D. such information and reports relating to the Loan and to the Project as A.I.D. may reasonably request.

Section 4.11. INSPECTIONS. The authorized representatives of A.I.D. shall have the right at all reasonable times to inspect the Project sites, the utilization of all goods and services financed under the Loan, and Borrower's books, records, and other documents relating to the Project and the Loan. Borrower shall cooperate with A.I.D. to facilitate such inspections and shall permit representatives of A.I.D. to visit any part of Haiti for any purpose relating to the Loan.

Article V. SPECIAL COVENANTS AND WARRANTIES

Section 5.01. EQUIPMENT LEASING SERVICE. Borrower covenants to assure that reasonable rates are charged for the use of Equipment Leasing Service equipment and that such equipment will be used effectively in furtherance of the purposes of the Project. Borrower also covenants to conduct an evaluation of the Equipment Leasing Service within two years of its initiation; the evaluation should provide the basis for determining the overall effectiveness of the Equipment Leasing Service and the necessity for continued support of operating costs of the Service from sources other than the Loan and the Borrower's contribution under Subsection 4.02 (a) hereof.

Section 5.02. CONSTRUCTION BRIGADES. Borrower covenants to assure that sufficient and qualified personnel are available to the TPTC construction brigades. Borrower also covenants to assure that, except as A.I.D. may otherwise agree in writing, at least two fully equipped TPTC construction brigades, as well as the private construction contractors engaged under the Project, will, during the disbursement period of the Loan, give priority to the reconstruction of roads selected by the Borrower and A.I.D.

Section 5.03. MAINTENANCE. Borrower covenants to maintain properly all roads reconstructed under the Project.

Article VI. PROCUREMENT

Section 6.01. PROCUREMENT FROM SELECTED FREE WORLD COUNTRIES. Except as A.I.D. may otherwise agree in writing, and except as provided in Subsection 6.09 (c) with respect to marine insurance, disbursements made pursuant to Section 7.01 shall be used exclusively to finance the procurement for the Project of goods and services having their source and origin in countries included

in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into for such goods and services (“Selected Free World Goods and Services”). Notwithstanding any other provisions hereunder, motor vehicles procured under the Loan must be manufactured in the United States. All ocean shipping financed under the Loan shall have both its source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

Section 6.02. PROCUREMENT FROM HAITI. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Section 7.02 shall be used exclusively to finance the procurement for the Project of goods and services having both their source and origin in Haiti.

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

Section 6.04. 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 6.05. IMPLEMENTATION OF PROCUREMENT REQUIREMENTS. The definitions applicable to the eligibility requirements of Sections 6.01, 6.02 and 6.04 will be set forth in detail in Implementation Letters.

Section 6.06. PLANS, SPECIFICATIONS AND CONTRACTS. (a) Except as A.I.D. may otherwise agree in writing, the Borrower shall furnish to A.I.D., promptly upon preparation, all plans, specifications, schedules, bid documents, contracts and all other arrangements 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 schedules, etc., furnished pursuant to Subsection (a) above shall be approved by A.I.D. in writing.

(c) Except as A.I.D. may otherwise specify, all bid documents and documents related to the solicitation of proposals relating to goods and services financed under the Loan shall be approved by A.I.D. in writing prior to their issuance. Such documents shall be in terms of United States standards and measurements, except as A.I.D. may otherwise agree in writing.

(d) Except as A.I.D. may otherwise agree in writing, the following contracts financed under the Loan shall be approved by A.I.D. in writing prior to their execution.

- (i) Contracts for engineering, consultant and other professional services;
- (ii) Contracts for construction services;
- (iii) Contracts for such other services as A.I.D. may specify; and
- (iv) Contracts for such equipment and material as A.I.D. may specify.

In the case of any of the above contracts for services, A.I.D. shall also approve in writing 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 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 for the Project but not financed under the Loan shall be acceptable to A.I.D.

Section 6.07. REASONABLE PRICES. 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 therefor prescribed in Implementation Letters.

Section 6.08. EMPLOYMENT OF NON-SELECTED FREE WORLD NATIONALS UNDER CONSTRUCTION CONTRACTS. The employment of personnel to perform services under any construction contract financed under the Loan shall be subject to certain requirements with respect to nationals of countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time the construction contract is entered into. These requirements are prescribed in Implementation Letters.

Section 6.09. SHIPPING AND INSURANCE. (a) Selected Free World Goods financed under the Loan shall be transported to Haiti 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) Unless A.I.D. shall determine that privately owned United States-flag commercial vessels are not available at fair and reasonable rates for such vessels,

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

(c) Marine insurance on Selected Free World Goods may be financed under the Loan with disbursements made pursuant to Section 7.01, provided (i) such insurance is placed at the lowest available competitive rate in Haiti or in a country

included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of placement, and (ii) claims thereunder are payable in freely convertible currency. If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, the Republic of Haiti, by statute, decree, rule or regulation, favors any marine insurance company of any country over any marine insurance company authorized to do business in any State of the United States of America, Selected Free World Goods financed under the Loan shall during the continuance of such discrimination be insured against marine risk in the United States of America with a company or companies authorized to do a marine insurance business in any State of the United States of America.

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

Section 6.10. 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, Borrower agrees to 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. Borrower shall utilize, with respect to goods financed under the Loan to which Borrower takes title at the time of procurement, to the maximum extent possible within the Borrower's requirements, 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. Borrower shall seek assistance from A.I.D. and A.I.D. will assist Borrower in ascertaining the availability of and in obtaining such Excess Property. A.I.D. will make arrangements for any necessary inspection of such property by Borrower or its representative. The costs of inspection and of acquisition, and all charges incident to the transfer to Borrower 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, Borrower shall indicate to A.I.D. in writing, on the basis of information then available to it, that the Borrower determined 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 in furtherance

of the Alliance for Progress and mark goods financed under the Loan, as prescribed in Implementation Letters.

Article VII. DISBURSEMENTS

Section 7.01. DISBURSEMENTS FOR UNITED STATES DOLLAR COSTS—LETTERS OF COMMITMENT TO UNITED STATES BANKS. Upon satisfaction of conditions precedent, Borrower may, from time to time, request A.I.D. to issue Letters of Commitment for specified amounts to one or more United States banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers through the use of Letters of Credit or otherwise for 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 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 Borrower and may be financed under the Loan.

Section 7.02. DISBURSEMENT FOR LOCAL CURRENCY COSTS. Upon satisfaction of conditions precedent, Borrower may, from time to time, request disbursement by A.I.D. of local currency for Local Currency Costs of goods and services procured for the Project in accordance with the terms and conditions of this Agreement by submitting to A.I.D. such supporting documentation as A.I.D. may prescribe in Implementation Letters. A.I.D. shall make such disbursements from local currency of Haiti owned by the United States Government and obtained by A.I.D. with United States dollars. The United States dollar equivalent of the local currency made available hereunder shall be the amount of United States dollars required by A.I.D. to obtain the local currency of Haiti.

Section 7.03. OTHER FORMS OF DISBURSEMENT. Disbursements of the Loan may also be made through such other means as Borrower and A.I.D. may agree to in writing.

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

Section 7.05. TERMINAL DATE FOR DISBURSEMENT. Except as A.I.D. may otherwise agree in writing, no Letter of Commitment, or other commitment document 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 58 months from the date of this Agreement, and no disbursement shall be made against documentation received by A.I.D. or any bank described in Section 7.01 after 64 months from the date of this Agreement. A.I.D., at its option, may at any time or times after 64 months from the date of this Agreement, 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 BORROWER. Borrower may, with the prior written consent of A.I.D., by written notice 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 shall have failed to comply with any other provision of this Agreement, including, but without limitation, the obligation to carry out the Project with due diligence and efficiency;
- (c) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and A.I.D., or any of its predecessor agencies,

then A.I.D. may, at its option, give to 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 days:

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

Section 8.03. SUSPENSION OF DISBURSEMENT. In the event that at any time:

- (a) An Event of Default has occurred;
- (b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement;
- (c) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.;
- (d) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and 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 goods are from a source outside Haiti, are in a deliverable state and have not been offloaded in ports of entry for Haiti. 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 disbursement 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 (30) days after receipt of a request therefor. Such amount shall be made available first for the cost of goods and services procured for the Project hereunder to the extent justified; the remainder, if any, shall be applied to the installments of Principal in the inverse order of their maturity, and the amount of the Loan shall be reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursement under the Loan shall continue for five (5) 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 Borrower and shall be reimbursed to A.I.D. by the Borrower 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 of such rights, powers, or remedies.

Article IX. MISCELLANEOUS

Section 9.01. COMMUNICATIONS. Any notice, request, document, or other communication given, made, or sent by the Borrower or A.I.D. pursuant to this Agreement shall be in writing or by telegram, cable, or radiogram and shall be deemed to have been duly given, made, or sent to the party 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: The Secretary of State for Public Works,
Transport and Communications
Port-au-Prince, Haiti

Cable Address: (Same as above)

To A.I.D.:

Mail Address: United States A.I.D. Mission to Haiti
c/o American Embassy
Port-au-Prince, Haiti

Cable Address: USAID
AmEmbassy
Port-au-Prince

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 may be in French, but must be accompanied by an official English translation.

Section 9.02. REPRESENTATIVES. For all purposes relative to this Agreement, the Borrower will be represented by the individual holding or acting in the office of the Secretary of State of Public Works, Transport and Communications, and A.I.D. will be represented by the individual holding or acting in the office of the Director, USAID/Haiti. 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 a 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 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 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 evidence 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 repayment in full of the Principal and payment of all accrued interest, this Agreement and all obligations of the Borrower and A.I.D. under this Loan Agreement shall terminate.

Section 9.06. ENGLISH LANGUAGE CONTROLS. In the event that the parties hereto also execute this Agreement in the French language, then in the case of ambiguity or conflict between the English and French versions of this Agreement, the English version of this Agreement shall control.

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.

The Republic of Haiti:

By: [Signed]

Ing. FERNAND LAURIN

Title: Secrétaire d'Etat des Travaux Publics, Transports et Communications¹

By: [Signed]

EMMANUEL BROS

Title: Secrétaire d'Etat des Finances et des Affaires Economiques et Secrétaire Exécutif du CONADEP²

The United States of America:

By: [Signed]

HEYWARD ISHAM

Title: Ambassador Extraordinary and Plenipotentiary

By: [Signed]

SCOTT L. BEHOTEGUY

Title: Director, USAID/Haiti

ANNEX I

DESCRIPTION OF PROJECT

A. *The Project*

The Project will assist the Government of Haiti in carrying out a five-year program to reconstruct approximately 940 km of Agricultural Feeder Roads.

The program will be managed by the Secretariat of Public Works, Transportation and Communications (TPTC). The Project is comprised of four major elements:

1. *Reconstruction*

Approximately 940 km of rural roads will be reconstructed. Work will be accomplished by TPTC construction brigades (approximately 620 km) and private Haitian road contractors (320 km). Road links to be reconstructed will be identified in Implementation Letters.

¹ Secretary of State for Public Works, Transport and Communications.

² Secretary of State for Finance and Economic Affairs and Executive Secretary of CONADEP.

2. *Equipment Leasing*

The program will assist in the creation of an Equipment Leasing Service for rental of equipment to private Haitian contractors. The Service will be a public entity, but will be privately managed. Leasing rates will be set at a level sufficient to cover all costs of operation, including depreciation and increased capitalization, after the first two years of operations.

3. *Labor Intensive Pilot Project*

During the first year of the program, a pilot project will be undertaken to explore various labor intensive methods of road maintenance/reconstruction. Approximately 200 km of road will be involved.

4. *Technical Assistance*

Technical assistance will be provided TPTC over the period of the Loan to assist in carrying out the recommendations of the National Transport Study on reorganization, strengthen TPTC Force Account, and contract work, establish the Equipment Leasing Service and evaluate the results of the Labor Intensive Pilot Project.

B. *Resources*

The Loan will provide up to 5.0 million dollars for the purchase of equipment for the TPTC construction brigades and the Equipment Leasing Service, cover a portion of the costs for purchase of necessary road reconstruction materials, a portion of the operating costs for the brigades, a portion of the expenses of private contract work, and 100% of the costs of the Labor Intensive Pilot Project. The Borrower will provide local currency in the equivalent of 3,750 million dollars to cover the remaining costs of necessary work reconstruction materials, a portion of brigade operating costs, a portion of the expenses of private contract work and 100% of the costs of contract engineering and supervision, and two years' operations of the Leasing Service.

The Borrower will, in addition to the above resources, provide all necessary administrative support for the Project, including the costs of engineering and supervision of construction brigade road work.

C. *Scheduling*

The following table provides an approximate scheduling of resources to the program by A.I.D. and the Borrower.

AGRICULTURAL FEEDER ROAD PROGRAM SCHEDULED PROJECT EXPENDITURES

| <i>Inputs</i> | <i>Year 1</i> | <i>Year 2</i> | <i>Year 3</i> | <i>Year 4</i> | <i>Year 5</i> | <i>Total</i> |
|--------------------------|---------------|---------------|---------------|---------------|---------------|--------------|
| Brigade Equipment | | | | | | |
| GOH | — | — | — | — | — | — |
| AID | 400 | 800 | 600 | 100 | 100 | 2,000 |
| Materials | | | | | | |
| GOH | 50 | 50 | 50 | 50 | 50 | 250 |
| AID | 50 | 100 | 100 | 100 | 100 | 450 |
| Operating Costs | | | | | | |
| GOH | 200 | 200 | 200 | 200 | 200 | 1,000 |
| AID | 50 | 100 | 200 | 200 | 200 | 750 |
| Pilot Project | | | | | | |
| GOH | — | — | — | — | — | — |
| AID | 150 | 50 | — | — | — | 200 |
| Leasing Equipment | | | | | | |
| GOH | — | — | — | — | — | — |
| AID | 400 | 600 | — | — | — | 1,000 |

| <i>Inputs</i> | <i>Year 1</i> | <i>Year 2</i> | <i>Year 3</i> | <i>Year 4</i> | <i>Year 5</i> | <i>Total</i> |
|----------------------------------|---------------|---------------|----------------|----------------|----------------|---------------|
| Equipment Pool Overhead | | | | | | |
| GOH | 100 | 170 | ¹ — | ¹ — | ¹ — | 270 |
| AID | — | — | — | — | — | — |
| Contract Work | | | | | | |
| GOH | 75 | 175 | 400 | 600 | 700 | 1,950 |
| AID | 50 | 75 | 100 | 150 | 225 | 600 |
| Contract Engineering | | | | | | |
| GOH | 20 | 50 | 50 | 80 | 80 | 280 |
| AID | — | — | — | — | — | — |
| TOTAL LOAN PACKAGE | <u>1,545</u> | <u>2,370</u> | <u>1,700</u> | <u>1,480</u> | <u>1,655</u> | <u>8,750</u> |
| GOH | 445 | 645 | 700 | 930 | 1,030 | 3,750 |
| AID | 1,100 | 1,725 | 1,000 | 550 | 625 | 5,000 |
| Technical Assistance (GOH) | — | — | — | — | — | — |
| AID | 550 | 800 | 450 | 400 | 200 | 2,400 |
| TOTAL GRANT | <u>550</u> | <u>800</u> | <u>450</u> | <u>400</u> | <u>200</u> | <u>2,400</u> |
| TOTAL PROGRAM | <u>2,095</u> | <u>3,170</u> | <u>2,150</u> | <u>1,880</u> | <u>1,855</u> | <u>11,150</u> |

¹ Self-supporting. [Footnote in the original.]