

No. 18048

**UNITED STATES OF AMERICA
and
PORTUGAL**

**Loan Agreement for basic sanitation (with annex). Signed at
Lisbon on 13 August 1976**

Authentic texts: English and Portuguese.

Registered by the United States of America on 14 November 1979.

**ÉTATS-UNIS D'AMÉRIQUE
et
PORTUGAL**

**Accord de prêt relatif à l'hygiène publique (avec annexe).
Signé à Lisbonne le 13 août 1976**

Textes authentiques: anglais et portugais.

Enregistré par les États-Unis d'Amérique le 14 novembre 1979.

LOAN AGREEMENT¹ BETWEEN THE GOVERNMENT OF PORTUGAL AND THE UNITED STATES OF AMERICA FOR BASIC SANITATION

Dated: August 13, 1976

A.I.D. Loan No. 150-Z-007

LOAN AGREEMENT dated the 13th August 1976 between the GOVERNMENT OF PORTUGAL ("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 eight million United States dollars (\$8,000,000) ("Loan") to assist the Borrower in carrying out the Project referred to in section 1.02. The Loan shall be used exclusively to finance the costs of goods and services required for the Project. The aggregate amount of disbursements under the Loan is hereinafter referred to as "principal".

Section 1.02. THE PROJECT. The "Project" shall consist of the construction and start-up of water supply and/or sewerage handling systems in approximately twenty-five (25) locations throughout Portugal. The implementing agency will be the Borrower's Directorate General of Basic Sanitation (DGSB). The Project is more fully described in annex A attached hereto, which annex may be modified by mutual agreement in writing.

Article II. LOAN TERMS

Section 2.01. INTEREST. The Borrower shall pay to A.I.D. interest which shall accrue at the rate of five percent (5%) per annum 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 6.03, 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, 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 twenty-five (25) years from the date of the first disbursement hereunder in forty-one (41) approximately equal semiannual installments of principal and interest. The first installment of principal shall be payable four and one-half (4 1/2) years after the date on which the first interest payment is due in accordance with section 2.01. A.I.D. shall provide the Borrower with an amortization schedule in accordance with this section after the final disbursement under the Loan.

Section 2.03. APPLICATION, CURRENCY AND PLACE OF PAYMENT. All payments of interest and principal hereunder shall be made in United States

¹ Came into force on 13 August 1976 by signature.

dollars and shall be applied first to the payment of interest due and then to the repayment of principal. Except as A.I.D. may otherwise specify in writing, all such payments shall be made to the Controller, Agency for International Development, Washington, D.C., U.S.A., and shall be deemed made when received by the Office of the Controller.

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

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

Article III. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.01. CONDITIONS PRECEDENT TO ANY DISBURSEMENT. Prior to the first disbursement 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 Attorney General (*Procurador Geral da República*) of Portugal or of other counsel acceptable to A.I.D. that this Agreement has been duly authorized 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 description of the arrangements, including the terms and conditions, under which disbursements under the Loan will be made available by the Borrower to the DGSB and by the DGSB to any other institution, for implementation of the Project;
- (d) A time-phased implementation plan for carrying out the Project, including construction schedules and a financial plan for the subprojects identified in annex A;
- (e) A description of standards, criteria and procedures under the Project for (i) selection and approval of subprojects and (ii) contracting for construction and engineering services;
- (f) Evidence that Borrower has established a segregated fund ("Project Fund") for financing sub-projects identified in annex A.

Section 3.02. TERMINAL DATES OF MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. If all the conditions specified in section 3.01 shall not have been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may agree in writing, A.I.D., at its option, may terminate this Agreement by giving written notice to the Borrower. Upon giving such notice, this Agreement and all obligations of the parties hereunder shall terminate.

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

Article IV. GENERAL COVENANTS AND WARRANTIES

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

(b) Borrower shall cause the Loan funds to be administered in conformity with the terms and conditions of this Agreement, and in such manner as to facilitate the success of the Project.

(c) Borrower shall cause the Project to be carried out in conformity with all of the plans, specifications, contracts, schedules, and other arrangements, and with all modifications thereto, agreed upon by A.I.D. pursuant to this Agreement.

Section 4.02. FUNDS AND OTHER RESOURCES TO BE PROVIDED BY BORROWER. The Borrower shall provide promptly as needed all funds in addition to those made available under the Loan and all other resources needed for the effective carrying out of the Project.

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

Section 4.04. TAXATION. This Agreement, the Loan and any evidence of indebtedness issued in connection herewith shall be free from, and the principal and interest shall be paid without deduction for and free from, any taxation or fees imposed under the laws in effect within the country of the Borrower. As, and to the extent that any transaction or property financed hereunder is not exempt from separately identifiable taxes, tariffs, or duties and other levies imposed under laws in effect in the country of the Borrower, the Borrower shall make certain that payments which shall be financed under this Agreement shall be destined for payments of goods and services and not for the payment of such taxes, tariffs, or duties. Otherwise, the Borrower shall reimburse the same under section 7.06 of this Agreement with funds other than those provided under the Loan.

Section 4.05. UTILIZATION OF GOODS AND SERVICES. (a) Goods and services financed under the Loan shall be used exclusively for the Project except as A.I.D. may otherwise agree in writing.

(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 other than the United States.

Section 4.06. MAINTENANCE AND AUDIT OF RECORDS. The Borrower shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating to the

Project and to this Agreement. Such books and records shall, without limitation, be adequate to show:

- (a) The receipt of and use made of funds disbursed pursuant to this Agreement;
- (b) The nature and extent of solicitations of prospective suppliers of goods and services required;
- (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 4.07. REPORTS. The Borrower shall furnish to A.I.D. such information and reports relating to the Loan and to the Project financed hereunder as A.I.D. may request in order to verify accomplishment of the Project.

Section 4.08. INSPECTIONS. The authorized representatives of A.I.D. shall upon application to the Borrower have the right at all reasonable times to inspect the Project, and the books, records and other documents relating to the Project financed hereunder and the Loan in order to verify accomplishment of the Project. The Borrower shall cooperate with A.I.D. to facilitate such inspections.

Article V. PROCUREMENT

Section 5.01. SOURCE OF PROCUREMENT. 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 their source and origin in Portugal or the United States.

Section 5.02. ELIGIBILITY DATE. Except as A.I.D. may otherwise agree in writing, only goods and services which are contracted for on or after March 1, 1976, will be financed under the Loan.

Section 5.03. REASONABLE PRICE. Prices paid for any goods and services financed, in whole or in part, under the Loan shall not exceed those generally prevailing in the national market.

Article VI. DISBURSEMENTS

Section 6.01. DISBURSEMENTS. Upon satisfaction of the conditions precedent set forth in section 3.01 and upon request by the Borrower, A.I.D. will make disbursements under the Loan to the Project fund in accordance with procedures and documentation requirements set forth below, and in implementation letters to be provided to Borrower. Such disbursements shall consist of the following, except as A.I.D. and the Borrower otherwise agree in writing:

- (a) An initial disbursement equivalent to seventy-five percent (75%) of advances actually made by Borrower to construction contractors for materials delivered to subproject sites, provided that Borrower has given to A.I.D. acceptable evidence of (i) such actual advances and (ii) satisfactory quality of materials procured for construction; and

- (b) A second disbursement equivalent to seventy-five percent (75%) of agreed construction costs (as defined in implementation letter No. 1) actually spent by Borrower in construction of, or procurement in connection with construction of, eligible subprojects listed in annex A, up to the fixed amount limit agreed upon for each eligible subproject, less initial disbursements made for any subproject pursuant to subsection (a) above, and provided that Borrower has given to A.I.D. acceptable evidence of (i) such actual expenditures and (ii) satisfactory construction and quality of goods procured for construction; and
- (c) Additional quarterly disbursements equivalent to seventy-five percent (75%) of agreed construction costs actually spent by Borrower in the preceding quarter in construction of, or procurement of materials in connection with construction of, eligible schools listed in annex A, up to the fixed amount limit agreed upon for each eligible school, provided that Borrower has given to A.I.D. acceptable evidence of (i) such actual expenditures and (ii) satisfactory construction and quality of goods procured for construction; and
- (d) Additional quarterly disbursements equivalent to seventy-five percent (75%) of agreed construction costs actually spent by Borrower in the preceding quarter in construction of eligible schools listed in annex A, up to the fixed amount limit agreed upon for each eligible school, provided that for each disbursement, Borrower has given A.I.D. acceptable evidence of the type required in subsection (a) above and, in addition, provides acceptable evidence of timely and current contribution of Borrower's share pursuant to the financial plan and such other funds as are required for the Project.

Disbursements in accordance with the terms of this Agreement shall be made in United States dollars. The number of dollars to be disbursed shall be calculated at the time of each disbursement by dividing the number of Portuguese escudos which Borrower and A.I.D. agree are eligible for reimbursement by the highest rate of exchange at which A.I.D. could legally purchase escudos in Portugal on the day of disbursement.

Section 6.02. OTHER FORMS OF DISBURSEMENT. Disbursement of the Loan may also be made through such other means as the Borrower and A.I.D. may agree in writing.

Section 6.03. DATE OF DISBURSEMENT. Disbursements by A.I.D. shall be deemed to occur, in the case of disbursements pursuant to section 6.01, on the date on which A.I.D. disburses the escudos to the Borrower or to its designee, and in the case of disbursements pursuant to section 6.02, on the date on which A.I.D. makes a disbursement to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment.

Section 6.04. TERMINAL DATE FOR DISBURSEMENT. Except as A.I.D. may otherwise agree in writing, no disbursements shall be made against documentation received by A.I.D. after December 31, 1978. A.I.D. at its option may at any time or times after December 31, 1978, reduce the Loan by all or any part hereof for which documentation was not received by such date.

Article VII. CANCELLATION AND SUSPENSION

Section 7.01. CANCELLATION BY THE BORROWER. The Borrower may, 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 been utilized through the issuance of irrevocable Letters of Credit.

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 shall have failed to comply with any other provision of this Agreement,
- (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 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 irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

Section 7.03. SUSPENSION OF DISBURSEMENTS. In the event that at any time:

- (a) An event of default has occurred,
- (b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement, or
- (c) Any disbursement would be inconsistent with 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; and
- (iii) Decline to issue additional commitment documents.

Section 7.04. CANCELLATION BY A.I.D. Following any suspension of disbursement pursuant to section 7.03, if the cause or causes for such suspension 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 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 not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursements 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 under this Agreement, may require the Borrower to refund such amount in United States dollars to A.I.D. within ninety (90) days after receipt of a request therefor. Such amount shall be made available first for the cost of goods and services procured 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 consultant, 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 a price above that prevailing in the national market, for goods or services, or to goods or services that were inadequate, A.I.D. shall first make such refund available for the cost of goods or services procured 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 amounts 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. NON-WAIVER 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 such right, power or remedy or of any other right, power or remedy hereunder.

Article VIII. MISCELLANEOUS

Section 8.01. 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 addresses:

To Borrower:

Mail and cable address:

Ministro das Finanças
Rua da Alfândega
Lisboa, Portugal

To A.I.D.:

Mail and cable address:

A.I.D. Representative
Embassy of the United States of America
Lisbon, Portugal

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 will be represented by the individual holding or acting in the office of Ministro das Finanças and A.I.D. will be represented by the individual holding or acting in the office of the A.I.D. Representative, Embassy of the United States of America, Lisbon. Such individual shall have the authority to designate by written notice additional representatives. 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 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, with the concurrence of the Borrower, 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 other evidence of indebtedness with respect to the Loan. The above documents shall be in a form, containing terms, and supported by 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 and A.I.D. under this Loan Agreement shall terminate.

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

Government of Portugal:

By: *[Signed]*

Dr. JOSÉ MANUAL DE MEDEIROS FERREIRA
Minister of Foreign Affairs

United States of America:

By: *[Signed]*

FRANK C. CARLUCCI
Ambassador

ANNEX A

DESCRIPTION OF THE PROJECT

The Project shall consist of the construction and placing in operation of water supply and/or sewerage handling systems to be situated in approximately 25 locations (“municipalities”) throughout Portugal. A list of the 36 subprojects to be financed (“eligible subprojects”) is shown in table 1 and the remaining 4 subprojects will be agreed to by Borrower and A.I.D. Agreed construction costs (of which A.I.D. will finance not more than 75 percent) for each subproject are also shown in table 1.

Total cost of the 40 systems to be constructed is tentatively estimated to be 330 million escudos.

TABLE I. LIST OF PROJECTS TO BE FINANCED

No/O	District	Council	Place	Population benefited	Water system ^(a)	Sewer system ^(a)	Total amount ^(a)
1.	Angra do Heroísmo	Angra do Heroísmo	Parishes of Cinco Ribeiras, S. Bartolomeu, S. Mateus, S. Pedro, Sta. Bárbara, Sta. Luzia and Terra Chã	9,250	40,000	—	40,000
2.	Beja	Odemira	Sta. Clara-a-Velha, Saboia, Estação C. F. Viradouro	2,500	15,000	10,000	25,000
3.	Beja	Serpa	Pias, Vale de Vargo, Aldeia Nova de S. Bento, A do Pinto	12,200	25,000	15,000	40,000
4.	Braga	Vila Verde	Vila Verde	2,000	—	8,500	8,500
5.	Braga	Vila Verde	Vieira do Minho	1,500	—	10,000	10,000
6.	Castelo Branco	Castelo Branco	Cafede	500	3,000	4,500	7,500
7.	Castelo Branco	Castelo Branco	Juncal do Campo	750	6,500	7,000	13,500
8.	Castelo Branco	Castelo Branco	Freixial do Campo	600	3,000	5,500	8,500
9.	Castelo Branco	Castelo Branco	Louriçal do Campo, Castal da Pelota	1,750	3,500	10,000	13,500
10.	Castelo Branco	Castelo Branco	Lardosa	1,360	3,500	4,000	7,500
11.	Guarda	Trancoso	Vila Franca das Naves, Moimentinha, Granja	1,650	5,000	10,000	15,000
12.	Leiria	Alvaiázere	Alvaiázere	1,000	—	6,000	6,000
13.	Portalegre	Sousel	Santo Amaro	1,000	7,000	5,000	12,000
14.	Santarém	Santarém	Amiais de Baixo	4,200	—	18,000	18,000
15.	Santarém	Santarém	Pernes	1,100	—	10,000	10,000
16.	Viseu	Viseu	Ranhados, Laje de Ranhados	1,700	4,000	8,000	12,000
17.	Beja	Ferreira do Alentejo	Odivelas	1,000	3,500	5,000	8,500
18.	Evora	Borba	Orada	1,500	7,500	4,500	12,000
19.	Beja	Beja	Penedo Gordo	1,300	—	5,500	5,500
20.	Vila Real	Alijó	Sanfins do Douro	1,500	6,100	10,400	16,500
21.	Vila Real	Alijó	Pinhão	1,000	—	6,000	6,000
22.	Santarém	Ferreira do Zêzere	Ferreira do Zêzere	800	—	7,500	7,500
23.	Santarém	Golegã	Golegã	5,000	—	20,000	20,000
	TOTAL			55,160	132,600	190,400	323,000

^(a) Amount in thousand escudos (1,000\$00).