

No. 18047

**UNITED STATES OF AMERICA
and
INDONESIA**

Loan Agreement relating to technical assistance and consulting services. Signed at Jakarta on 28 July 1976

Amendment No. 1 to the above-mentioned Agreement. Signed at Jakarta on 27 July 1977

Amendment No. 2 to the above-mentioned Agreement, as amended. Signed at Jakarta on 12 April 1978

Authentic texts: English.

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

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

Accord de prêt relatif à une assistance technique et à des services de consultants. Signé à Jakarta le 28 juillet 1976

Avenant n° 1 à l'Accord susmentionné. Signé à Jakarta le 27 juillet 1977

Avenant n° 2 à l'Accord susmentionné, tel que modifié. Signé à Jakarta le 12 avril 1978

Textes authentiques: anglais.

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

LOAN AGREEMENT¹ (INDONESIA: TECHNICAL ASSISTANCE/CONSULTING SERVICES) BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Dated: July 28, 1976

A.I.D. Loan No. 497-T-040

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¹ Came into force on 28 July 1976 by signature.

LOAN AGREEMENT

LOAN AGREEMENT dated July 28, 1976, between the REPUBLIC OF INDONESIA ("Borrower") and the UNITED STATES OF AMERICA ("United States") 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 five million United States dollars (\$5,000,000) ("Loan") to assist the Borrower in carrying out the Project defined in section 1.02. The Loan shall be used exclusively to assist in financing the foreign exchange and local currency costs of professional services and related materials and equipment 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 mean the performance of prefeasibility and feasibility studies, sector or regional studies, market studies and various economic, technical and managerial consulting services related to capital projects in Indonesia, or which are otherwise in support of economic development interests as may be mutually agreed by the Borrower and A.I.D. Such studies and services are hereinafter referred to as "subprojects."

Article II. LOAN TERMS

Section 2.01. INTEREST. The Borrower shall pay to A.I.D. interest which shall accrue at the rate of 2% per annum for 10 years following the date of the first disbursement hereunder and at the rate of 3% per annum thereafter on the outstanding balance of the 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 hereunder, on a date to be specified by A.I.D.

Section 2.02. REPAYMENT. The Borrower shall repay to A.I.D. the principal within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semiannual installments of principal and interest. The first installment of principal shall be payable nine and one-half (9 1/2) years after the date on which the first interest payment is due in accordance with section 2.01. A.I.D. shall provide the Borrower with an amortization schedule in accordance with this section after the final disbursement under the Loan.

Section 2.03. APPLICATION, CURRENCY AND PLACE OF PAYMENT. All payments of interest and principal hereunder shall be made in United States dollars and shall be applied first to the payment of interest due and then to the repayment of principal. Except as A.I.D. may otherwise specify in writing, all such payments shall be made to the Controller, Agency for International Development, Washington, D.C., U.S.A., and shall be deemed made when received by the office of the Controller.

Section 2.04. PREPAYMENT. Upon payment of all interest and refunds then due, the Borrower may prepay, without penalty, all or any part of the principal.

Any such prepayment shall be applied to the installments of principal in the inverse order of their maturity.

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

Article III. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.01. CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT. Unless A.I.D. otherwise agrees in writing, prior to the first disbursement or to the issuance of the first Letter of Commitment or other commitment document under the Loan, the Borrower shall furnish 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 Loan Agreement has been duly authorized or ratified by, and executed on behalf of, the Borrower and is a valid and legally binding obligation of the Borrower in accordance with its terms; and
- (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.

Section 3.02. SPECIFIC CONDITIONS PRECEDENT TO DISBURSEMENT FOR EACH SUBPROJECT. Prior to disbursement or to the issuance of a Letter of Commitment or other disbursing authorization for any particular subproject, 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) Evidence that all Indonesian currency necessary for such subproject is available;
- (b) An application for financing containing all data deemed relevant by A.I. D., including:
 - (i) A detailed description of the subproject services required;
 - (ii) A detailed cost estimate broken down into local currency costs and foreign exchange costs for each Indonesian Fiscal Year involved;
 - (iii) A schedule showing the amount of A.I.D. loan funds needed and the Borrower's contribution, broken down into local currency costs and foreign exchange costs for each Indonesian Fiscal Year involved;
 - (iv) Evidence that the Borrower's contribution will be made available on a timely basis;
 - (v) An economic assessment of the subproject including discussion of its priority in and relation to the Second Five-Year Plan (PELITA II);
 - (vi) A description of ways in which the subproject (or the development activity to result from the subproject) will benefit Indonesia's lower income majority;
 - (vii) A reasonably definitive, even if preliminary, scope of work for the required services;

- (viii) In those cases where engineering final design services are required, (a) evidence that project feasibility has been established; (b) evidence that financing will be available on a timely basis to under take the project as designed; and (c) evidence that there are no significant adverse environmental effects of the proposed project;
 - (ix) The name of the Project Manager having primary responsibility in the implementing agency for subproject execution plus the designation of any counterpart personnel who are expected to work with those whose services are procured for the subproject; and
 - (x) A schedule of the logistical support to be provided by the implementing agency to the consultant(s) for the timely and efficient conduct of the work;
- (c) A fully negotiated draft contract covering the subproject services, with the terms of such contract and the selection of such consultant acceptable to A.I.D.

Section 3.03. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. If all of the conditions specified in section 3.01 shall not have been met within 90 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 3.04. NOTIFICATION OF MEETING OF CONDITIONS PRECEDENT TO DISBURSEMENT. A.I.D. shall notify the Borrower upon determination by A.I.D. that the conditions precedent to disbursement specified in section 3.01 have been met; and, with respect to a particular subproject, that the conditions precedent to disbursement specified in section 3.02 have been met.

Article IV. GENERAL COVENANTS AND WARRANTIES

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

(b) The 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 therein, duly approved by A.I.D. pursuant to this Agreement.

(c) The Borrower covenants and agrees that not less than fifty percent (50%) of the funds provided hereunder shall be used for subprojects related to food and nutrition.

Section 4.02. FUNDS AND OTHER RESOURCES TO BE PROVIDED BY BORROWER. The Borrower shall provide promptly as needed all funds, in addition to the Loan, and all other resources required for the punctual and effective carrying out of the Project, on the further condition that these contributions by the Borrower shall constitute at least 25% of the costs of the entire Project.

Section 4.03. CONTINUING CONSULTATION. The Borrower 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 Projects, the performance by the Borrower of its obligations under this Agreement, the performance of the consultants, contractors, and suppliers engaged on the Project, and other matters relating to the Project.

Section 4.04. UTILIZATION OF GOODS AND SERVICES. (a) Goods and services financed under the Loan shall be used exclusively for the Project, except as A.I.D. may otherwise agree in writing. Upon completion of the Project or at such other time as goods financed under the Loan can no longer usefully be employed for the Project, the Borrower may use such goods in such manner as to further the objectives sought in carrying out the 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 4.05. 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 Indonesia. To the extent that (a) any expatriate contractor, including any expatriate consulting firm, any 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 4.06. DISCLOSURE OF MATERIAL FACTS AND CIRCUMSTANCES. The 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, or that it is reasonable to believe might materially affect, the Project or the discharge of the Borrower's obligations under this Agreement.

Section 4.07. 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 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 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) The Borrower warrants and covenants that no payments have been or will be received by the Borrower or any official of the Borrower, in connection with the procurement of goods and services financed hereunder, except fees, taxes, or similar payments legally established in the country of the Borrower.

Section 4.08. 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 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 solicitation 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 4.09. REPORTS. The Borrower shall 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 4.10. 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 books, records, and other documents relating to the Project and the Loan. The Borrower shall cooperate with A.I.D. to facilitate such inspections and shall permit representatives of A.I.D. and consultants and contractors to visit areas relating to the Project for purposes relating to the Loan.

Article V. PROCUREMENT

Section 5.01. PROCUREMENT SOURCE AND ORIGIN. Except as A.I.D. may otherwise agree in writing, the source and origin of goods and services financed under the Loan shall be 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, except that to the extent that Local Currency Costs are financed under the Loan, goods and services shall have their source and origin in Indonesia. All ocean shipping financed under the Loan shall have 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 5.02. ELIGIBILITY DATE. Except as A.I.D. may otherwise agree in writing, no goods or services may be financed under the Loan which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement. Provided further, and except as A.I.D. may otherwise agree in writing, no services may be financed under the Loan which are procured pursuant

to contracts entered into after twenty-four (24) months after the date of this Agreement.

Section 5.03. IMPLEMENTATION OF PROCUREMENT REQUIREMENTS. The definitions applicable to the eligibility requirements of section 5.01 will be set forth in detail in implementation letters.

Section 5.04. PLANS, SPECIFICATIONS AND CONTRACTS. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Borrower will furnish to A.I.D. upon preparation:

- (1) Any plans, specifications, procurement schedules, contracts, or other documentation relating to goods or services to be financed by A.I.D., including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals; material modifications in such documentation will likewise be furnished A.I.D. on preparation;
- (2) Such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services which, though not financed by A.I.D., are deemed by it to be of major importance to the Project; aspects of the Project involving matters under this subsection (a) (2) will be identified in implementation letters.

(b) Bid documents related to the prequalification of contractors, and documents related to the solicitation of proposals for goods and services financed under the Loan will be duly approved by A.I.D. in writing prior to their issuance.

(c) Contracts and contractors financed by A.I.D. for engineering and other professional services, and for such other services, equipment or materials as may be specified in implementation letters, will be duly approved by A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be duly approved in writing by A.I.D. prior to execution.

(d) 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 shall be acceptable to A.I.D.

Section 5.05. REASONABLE PRICE. No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the Loan, as more fully described in implementation letters. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures therefor prescribed in implementation letters.

Section 5.06. SHIPPING AND INSURANCE. (a) Goods financed under the Loan shall be transported to the country of the Borrower on flag carriers of any country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

(b) At least fifty percent (50%) of the gross tonnage of all goods financed under the Loan (computed separately for dry bulk carriers, dry cargo liners, and tankers) which shall be transported on ocean vessels shall be transported on privately owned United States flag commercial vessels unless A.I.D. shall determine that at the time of shipment such vessels are not available, or if available, not available at fair and reasonable rates for United States flag commercial vessels. In addition, unless A.I.D. makes the determination of

unavailability noted above, at least fifty percent (50%) of the gross freight revenue generated by all shipments financed under the Loan which shall be transported on dry cargo liners shall be paid to or for the benefit of privately owned United States flag commercial vessels. No such goods may be transported on any ocean vessel (or aircraft) (i) which A.I.D., in a notice to the Borrower, has designated as ineligible to carry A.I.D.-financed goods or (ii) which has been chartered for the carriage of A.I.D.-financed goods unless such charter has been approved by A.I.D.

(c) Marine insurance on goods financed under the Loan may also be financed under the Loan with disbursements made pursuant to section 6.01, provided (i) such insurance is placed at the lowest available competitive rate in Indonesia or in a country included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of placement, and (ii) claims thereunder are payable in the currency in which such goods were financed. If the government of the Borrower, by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the country of the Borrower financed under the Loan shall be insured against marine risks and such insurance shall be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(d) The Borrower shall insure, or cause to be insured, all goods financed under the Loan against risks incident to their transit to the port of entry in Indonesia and, except as A.I.D. may otherwise agree in writing, to the point of their use in the Project. Such insurance shall be issued upon terms and conditions consistent with sound commercial practice, shall insure the full value of the goods, and shall be payable in the currency in which such goods were financed. Any indemnification received by the Borrower under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse the Borrower for the replacement or repair of such goods. Any such replacements shall have both their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book and shall be otherwise subject to the provisions of this Agreement.

Section 5.07. PORT CHARGES. With respect to ocean freight cost which qualify as eligible for financing under the Loan, and except as A.I.D. may otherwise agree in writing, 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, 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 a program of United States aid, identify the Project site(s), and provide other markings or publicity as prescribed in implementation letters.

Article VI. DISBURSEMENTS

Section 6.01. DISBURSEMENT FOR FOREIGN EXCHANGE COSTS—LETTERS OF COMMITMENT TO UNITED STATES BANKS. Upon satisfaction by the Borrower 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, designated by Borrower and 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 foreign exchange costs of goods and services procured for the Project in accordance with the terms and conditions of this Agreement. Payment by a bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as A.I.D. may prescribe in Letters of Commitment and implementation letters. Banking charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Borrower and may be financed under the Loan.

Section 6.02. DISBURSEMENT FOR LOCAL CURRENCY COSTS. After satisfaction of conditions precedent, the Borrower may, from time to time, obtain disbursement from A.I.D. for currency costs of goods and services required for the Project, in accordance with the terms of this Agreement, by requesting A.I.D. to finance such local currency costs by submitting to A.I.D. necessary supporting documentation as prescribed by A.I.D. in implementation letters. A.I.D., at its option, may finance such costs either:

- (a) By making such local currency available from currency of the country of the Borrower obtained by A.I.D. with U.S. dollars, whether by purchase or from such currency already owned by the U.S. Government; or
- (b) By (i) requesting the Borrower to make available the local currency for such costs and (ii) thereafter making available to the Borrower, through the opening or amendment by A.I.D. of Special Letters of Credit in favor of the Borrower or its designee, an amount of U.S. dollars equivalent to the amount of local currency made available by the Borrower, which dollars will be utilized for procurement from the United States under appropriate procedures described in implementation letters.

The U.S. dollar equivalent of the local currency made available hereunder will be, in the case of local currency made available as described in paragraph (a) above, the amount of U.S. dollars required by A.I.D. to obtain the local currency calculated using the highest official rate of exchange at which the Bank Indonesia sells local currency for U.S. dollars in effect on the date of disbursement and, in the case of paragraph (b) above, an amount calculated at the rate of exchange specified in the applicable Special Letter of Credit Implementation Memorandum as of the date of the opening or amendment of the Special Letter of Credit.

Section 6.03. OTHER FORMS OF DISBURSEMENT. Disbursement of the Loan may also be made through such other means as the Borrower and A.I.D. may agree to in writing.

Section 6.04. DATE OF DISBURSEMENT. Disbursements by A.I.D. shall be deemed to occur (a) on the date on which A.I.D. makes a disbursement pursuant to section 6.01 to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment; (b) in the case of disbursement made pursuant to

section 6.02 (a) on the date on which A.I.D. disburses the local currency to the Borrower or its designee; (c) on the date on which A.I.D. opens or amends the Special Letter of Credit referred to in section 6.02 (b); or (d) in the case of disbursements made pursuant to section 6.03, on the date on which A.I.D. makes a disbursement pursuant to the terms of such other disbursement documents.

Section 6.05. TERMINAL DATE FOR DISBURSEMENT. Except as A.I.D. may otherwise agree in writing, no Letter of Commitment or other document making a commitment for payment will be issued or amended pursuant to requests received by A.I.D. after March 1, 1979, and no disbursement will be made against documentation received by A.I.D. or any bank making payments hereunder after August 31, 1979. After the latter date, A.I.D. may at any time or times reduce the amount of 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 the issuance of irrevocable Letters of Credit or through bank payments made other than under 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, 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 the Borrower notice that all or any part of the unpaid principal shall be due and payable sixty (60) days thereafter, and, unless the event of default is cured within such sixty (60) days:

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

Section 7.03. 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., or
- (d) The Borrower shall have failed to pay when due any interest or any installment of principal or any other payment required under any other Loan Agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies,

then A.I.D. may, at its option:

- (i) Suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit, in which event A.I.D. shall give notice to the Borrower promptly thereafter;
- (ii) Decline to make disbursements other than under outstanding commitment documents;
- (iii) Decline to issue additional commitment documents;
- (iv) At A.I.D.'s expense, direct that title to goods financed under the Loan shall be transferred to A.I.D. if the goods are from a source outside the country of the Borrower, are in a deliverable state and have not been offloaded in ports of entry of the country of the Borrower, in which event A.I.D. shall give notification to the Borrower promptly thereafter; any disbursements 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 pursuant to section 7.03, 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 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 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 sixty (60) days after receipt of a request therefor. Such amount shall be made available first for the cost of goods and services procured for the Project hereunder, to the extent justified; the remainder, if any, shall be applied to the installments of principal in the inverse order of their maturity and the amount of the Loan shall be

reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursement under the Loan shall continue for five years following the date of such disbursement.

(b) In the event that A.I.D. receives a refund from any contractor, supplier, or banking institution, or from any other third party connected with the Loan, with respect to goods and 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 7.07. EXPENSES OF COLLECTION. All reasonable cost 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. NONWAIVER OF REMEDIES. No delay in exercising or omission to exercise any right, power, or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any such rights, powers, or remedies.

Article 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 address:

Departemen Luar Negeri
Pejambon 6
Jakarta, Indonesia

Cable address:

DEPLU Jakarta

To A.I.D.:

Mail address:

United States Agency for International Development
American Embassy
Jakarta, Indonesia

Cable address:

USAID AMEMB Jakarta

Other addresses may be substituted for the above upon the giving of notice. All notices, requests, communications, and documents submitted to A.I.D. hereunder shall be in the English Language, except as A.I.D. may otherwise agree in writing.

Section 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 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 the 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 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.

United States of America:

By: [Signed]

DAVID D. NEWSOM

Ambassador to Indonesia

Republic of Indonesia:

By: [Signed]

Dr. B. S. ARIFIN

Director General for [Foreign]
Economic, Social and Cultural Relations

AMENDMENT No. 1¹ TO LOAN AGREEMENT BETWEEN THE
REPUBLIC OF INDONESIA AND THE UNITED STATES OF
AMERICA FOR TECHNICAL ASSISTANCE/CONSULTING
SERVICES²

Dated: July 27, 1977

A.I.D. Loan No. 497-T-040
Amendment No. 1

This AMENDMENT No. 1, dated July 27, 1977, is entered into between the REPUBLIC OF INDONESIA ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

WITNESSETH:

WHEREAS, the Borrower and A.I.D. entered into a Loan Agreement, designated as A.I.D. Loan No. 497-T-040, on July 28, 1976 ("Loan Agreement")², whereby A.I.D. agreed to lend to the Borrower up to five million United States dollars (\$5,000,000) to assist the Borrower in carrying out a program of prefeasibility and feasibility studies, sector or regional studies, market studies and various economic, technical and managerial consulting services related to capital projects in Indonesia, and

WHEREAS, by reason of recent changes in A.I.D. policies, the Borrower and A.I.D. desire to amend the Loan Agreement to reflect such changes,

NOW, THEREFORE, the Borrower and A.I.D. agree that A.I.D. Loan Agreement No. 497-T-040 is hereby amended as follows:

1. Section 5.07 is hereby modified to read as follows:

"Section 5.07. PORT CHARGES. With respect to commitments made prior to the date of execution of this amendment to finance eligible ocean freight costs, except as A.I.D. may otherwise agree in writing, A.I.D. will finance ninety percent (90%) of such costs for 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. With respect to commitments made after the execution of this amendment to finance eligible ocean freight costs, A.I.D. will finance one hundred percent (100%) of all such costs including port charges for each shipment."

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

¹ Came into force on 27 July 1977 by signature.

² See p. 34 of this volume.

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: S. J. LITTLEFIELD
Acting Director

USAID Mission to Indonesia

Republic of Indonesia:
By: Dr. B. S. ARIFIN
Director General for Foreign
Economic, Social and Cultural Relations
Department of Foreign Affairs

AMENDMENT No. 2¹ TO LOAN AGREEMENT BETWEEN THE
REPUBLIC OF INDONESIA AND THE UNITED STATES OF
AMERICA FOR TECHNICAL ASSISTANCE/CONSULTING
SERVICE²

Dated: April 12, 1978

A.I.D. Loan No. 497-T-040

This AMENDMENT No. 2 dated April 12, 1978, is entered into between the REPUBLIC OF INDONESIA ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

WITNESSETH:

WHEREAS, the Borrower and A.I.D. entered into a Loan Agreement, designated as A.I.D. Loan No. 497-T-040, on July 28, 1976 ("Loan Agreement"),² whereby A.I.D. agreed to lend to the Borrower up to five million United States dollars (\$5,000,000) to assist the Borrower in carrying out a program of prefeasibility and feasibility studies, sector or regional studies, market studies and various economic, technical and managerial consulting services related to capital projects in Indonesia, and

WHEREAS, the Loan Agreement was amended on July 27, 1977,³ and

WHEREAS, the Borrower and A.I.D. desire to further amend the Loan Agreement to reflect an increase in the amount of the loan from \$5,000,000 to \$6,000,000,

NOW, THEREFORE, the Borrower and A.I.D. agree that A.I.D. Loan Agreement No. 497-T-040 is hereby amended as follows:

1. Section 1.01 of the Loan Agreement is hereby amended by substituting the words "six million United States dollars (\$6,000,000)" in lieu of the words, "five million United States dollars (\$5,000,000)."
2. Section 3.02 of the Loan Agreement is hereby amended to read as follows:

"Section 3.02. SPECIFIC CONDITIONS PRECEDENT TO APPROVAL OF EACH SUBPROJECT. Prior to A.I.D. acceptance of any particular subproject for financing under this 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) A detailed description of the subproject services required, including a reasonably definitive, even if preliminary, scope of work for the required services;
- "(b) A cost estimate, divided into local currency costs and foreign exchange costs, for the subproject including the amount to be financed from the Loan;
- "(c) An economic assessment of the subproject including discussion of its priority in and relation to the Second Five-Year Plan (PELITA II);

¹ Came into force on 12 April 1978 by signature.

² See p. 34 of this volume.

³ See p. 47 of this volume.

- “(d) A description of ways in which the subproject (or the development activity to result from the subproject) will benefit Indonesia’s lower income majority;
- “(e) A statement that the Borrower’s contribution, including logistical support and counterpart personnel, will be made available on a timely basis;
- “(f) In those cases where engineering final design services are required, evidence that (i) project feasibility has been established, (ii) financing will be available on a timely basis to undertake the project as designed; and (iii) there are no significant adverse environmental effects of the proposed project.”

3. Section 5.02 of the Loan Agreement is hereby amended by deleting the last sentence of said section and by substituting the following sentence in lieu thereof: “Provided further, and except as A.I.D. may otherwise agree in writing, funds under the Loan are not available to finance contracts for which procurement action begins after June 30, 1978.”

4. Except as hereinabove expressly amended, the Loan Agreement remains 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. 2 to be signed in their names and delivered as of the day and year first above written.

Republic of Indonesia:

By: [Signed]

Prof. Dr. MOCHTAR KUSUMAATMADJA
Minister for Foreign Affairs

United States of America:

By: [Signed]

EDWARD E. MASTERS
Ambassador
