

No. 19882

**UNITED STATES OF AMERICA
and
GUATEMALA**

**Loan Agreement for small farmer marketing (with annexes
and financial plan). Signed at Guatemala City on
18 May 1978**

Authentic texts: English and Spanish.

Registered by the United States of America on 10 June 1981.

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

**Accord de prêt relatif à la commercialisation des produits de
la petite exploitation agricole (avec annexes et plan
financier). Signé à Guatemala le 18 mai 1978**

Textes authentiques : anglais et espagnol.

Enregistré par les États-Unis d'Amérique le 10 juin 1981.

LOAN AGREEMENT¹ BETWEEN THE REPUBLIC OF GUATEMALA AND THE UNITED STATES OF AMERICA FOR SMALL FARMER MARKETING

Agency for International Development

Loan 520-T-030

LOAN AGREEMENT dated May 18, 1978 between the REPUBLIC OF GUATEMALA ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("AID").

Article 1. THE AGREEMENT

The purpose of this Agreement is to set out the understandings of the parties named above ("Parties") with respect to the undertaking by the Borrower of the Project described below, and with respect to the financing of the Project by the Parties.

Article 2. THE PROJECT

Section 2.1. DEFINITION OF PROJECT. The Project will consist of the establishment of a cooperative marketing entity directed toward increasing the incomes of small farmers producing temperate climate fruits and vegetables by providing them with an improved marketing system.

Within the limits of the above definition of the Project, elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 9.2., without formal amendment of this Agreement.

Article 3. FINANCING

Section 3.1. THE LOAN. To assist the Borrower to meet the costs of carrying out the Project, A.I.D., in furtherance of the Alliance for Progress and pursuant to the Foreign Assistance Act of 1961, as amended, agrees to lend the Borrower under the terms of this Agreement not to exceed three million four hundred thousand United States ("U.S.") dollars (\$3,400,000.00) ("Loan"). The aggregate amount of disbursements under the Loan is referred to as "Principal".

The Loan may be used to finance foreign exchange costs, as defined in Section 7.1, and local currency costs, as defined in Section 7.2, of goods and services required for the Project.

Section 3.2. BORROWER RESOURCES FOR THE PROJECT. (a) The Borrower agrees to provide or cause to be provided for the Project all funds, in addition to the Loan, and all other resources required to carry out the Project effectively and in a timely manner.

(b) The resources provided by Borrower for the Project will be not less than the equivalent of U.S. \$2,500,000.00, including costs borne on an "in-kind" basis.

¹ Came into force on 18 May 1978 by signature.

Section 3.3. PROJECT ASSISTANCE COMPLETION DATE. (a) "The Project Assistance Completion Date" (PACD), which is six years from date of signing, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the Loan will have been performed and all goods financed under the Loan will have been furnished for the Project as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the Loan for services performed subsequent to the PACD or for goods furnished for the Project, as contemplated in this Agreement, subsequent to the PACD.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in Section 8.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Borrower, may at any time or times reduce the amount of the Loan by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

Article 4. LOAN TERMS

Section 4.1. INTEREST. The Borrower will pay to A.I.D. interest which will 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 will accrue from the date (as defined in Section 8.5) of each respective disbursement, and will be payable semiannually. The first payment of interest will 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 4.2. REPAYMENT. The Borrower will repay to A.I.D. the Principal within thirty (30) years from the date of the first disbursement of the Loan in forty-one (41) approximately equal semiannual installments of Principal and interest. The first installment of Principal will be payable nine and one-half (9½) years after the date on which the first interest payment is due in accordance with Section 4.1. A.I.D. will provide the Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

Section 4.3. APPLICATION, CURRENCY, AND PLACE OF PAYMENT. All payments of interest and Principal hereunder will be made in U.S. dollars and will 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, payments will be made to the Controller, Office of Financial Management, Agency for International Development, Washington, D.C. 20523, U.S.A., and will be deemed made when received by the Office of Financial Management.

Section 4.4. PREPAYMENT. Upon payment of all interest and any refunds then due, the Borrower may prepay, without penalty, all or any part of the Principal. Unless A.I.D. otherwise agrees in writing, any such prepayment will be applied to the installments of Principal in the inverse order of their maturity.

Section 4.5. RENEGOTIATION OF TERMS. (a) In the light of the undertakings of the United States of America and of the other signatories of the Act of Bogotá¹ and the Charter of Punta del Este² to forge an Alliance for Progress, the Borrower and A.I.D. agree to negotiate, at such time or times as either may request, an acceleration of the repayment of the Loan in the event that there is any significant and continuing improvement in the internal and external economic and financial position and prospects of the Republic of Guatemala, which enable the Borrower to repay the Loan on a shorter schedule, taking into consideration the relative capital requirements of the Republic of Guatemala and of the other signatories of the Act of Bogotá and the Charter of Punta del Este.

(b) Any request by either Party to the other to so negotiate will be made pursuant to Section 9.2, and will give the name and address of the person or persons who will represent the requesting Party in such negotiations.

(c) Within thirty (30) days after delivery of a request to negotiate, the requested Party will communicate to the other, pursuant to Section 9.2, the name and address of the person or persons who will represent the requested Party in such negotiations.

(d) The representatives of the Parties will meet to carry on negotiations no later than thirty (30) days after delivery of the requested Party's communication under sub-section (c). The negotiations will take place at a location mutually agreed upon by the representatives of the Parties, provided that, in the absence of mutual agreement, the negotiations will take place at the office of Borrower's Minister of Finance in Guatemala.

Section 4.6. TERMINATION ON FULL PAYMENT. Upon payment in full of the Principal and any accrued interest, this Agreement and all obligations of the Borrower and A.I.D. under it will cease.

Article 5. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 5.1. FIRST DISBURSEMENT. Prior to the first disbursement under the Loan, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Borrower shall furnish or cause to be furnished in form and substance satisfactory to A.I.D.:

- (a) An opinion of counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;
- (b) A statement of the name of the person holding or acting in the office of the Borrower specified in Section 9.2, and of any additional representatives, together with a specimen signature of each person specified in such statement;
- (c) Copies of an agreement between the Ministry of Finance and the National Agricultural Development Bank (BANDESA), providing for transfer of the Loan funds and a sum of not less than \$1,700,000 equivalent of counterpart funds to BANDESA for the purpose of financing the Cooperative Marketing Association in accordance with a schedule acceptable to A.I.D.;

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

² *Ibid.*, 11 September 1961, p. 463.

- (d) Copies of the charter, by-laws and operating policies or the equivalent documents required by the laws of the Republic of Guatemala of the Cooperative Marketing Association, duly approved as required by law and/or by regulations of the Cooperative Marketing Association;
- (e) Evidence that at least, 1,500 farmers and at least two cooperative federations have subscribed for certificates of participation in the Cooperative Marketing Association, and that at least \$50,000 equivalent has been paid in to the Cooperative Marketing Association under such subscriptions; and copies of a plan for the subscription and payment of at least \$200,000 equivalent in additional capital; and,
- (f) Copies of an executed financing agreement governing the transfer of funds from BANDESA to the Cooperative Marketing Association.

Section 5.2. DISBURSEMENTS FOR WORKING CAPITAL. Except as A.I.D. may otherwise agree in writing, prior to any disbursement or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made to finance working capital, Borrower shall furnish or caused to be furnished, in form and substance satisfactory to A.I.D., evidence that satisfactory staff has been employed by the Cooperative Marketing Association for business operations.

Section 5.3. DISBURSEMENTS FOR LONG-TERM STORAGE EXPANSION. Except as A.I.D. may otherwise agree in writing, prior to any disbursement or to the issuance by AID of documentation pursuant to which disbursement will be made to finance expansion of long-term storage facilities, Borrower shall furnish or cause to be furnished, in form and substance satisfactory to A.I.D.:

- (a) Evidence that operating results during the first three years of business activity (or such other period to which A.I.D. may agree) continue to justify such expansion; and
- (b) Final plans and specifications for construction of such facilities.

Section 5.4. NOTIFICATION. When A.I.D. has determined that the conditions precedent specified in Sections 5.1, 5.2 and 5.3 have been met, it will promptly notify the Borrower.

Section 5.5. TERMINAL DATES FOR CONDITIONS PRECEDENT. (a) If all of the conditions specified in Section 5.1 have not 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 written notice to Borrower.

(b) If all of the conditions specified in Section 5.2 have not been met within 12 months 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 Loan, to the extent not irrevocably committed to third parties, and may terminate this Agreement by written notice to the Borrower. In the event of such termination, the Borrower will repay immediately the Principal then outstanding and any accrued interest; on receipt of such payments in full, this Agreement and all obligations of the Parties hereunder will terminate.

Article 6. SPECIAL COVENANTS

Section 6.1. PROJECT EVALUATION. The Parties agree to establish an evaluation program as part of the Project. Except as the Parties otherwise agree in

writing, the program will include, during the implementation of the Project and at one or more points thereafter: (a) evaluation of progress toward attainment of the objectives of the Project; (b) identification and evaluation of problem areas or constraints which may inhibit such attainment; (c) assessment of how such information may be used to help overcome such problems; and (d) evaluation, to the degree feasible, of the overall development impact of the Project.

Section 6.2. PROJECT FINANCING. Borrower hereby covenants that, except as A.I.D. may otherwise agree in writing, Borrower shall provide and utilize for the Project, financial and other resources required by and compatible with the Project Description and Financial Plan included as an Annex to this Agreement.

Article 7. PROCUREMENT SOURCE

Section 7.1. FOREIGN EXCHANGE COSTS. Disbursements pursuant to Section 8.1 will be used exclusively to finance the costs of goods and services required for the Project having their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book excluding the countries of the Central American Common Market as in effect at the time orders are placed or contracts entered into for such goods and services ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the Project Loan Standard Provisions Annex, Section C.1(b) with respect to marine insurance.

Section 7.2. LOCAL CURRENCY COSTS. Disbursements pursuant to Section 8.2 will be used exclusively to finance the costs of goods and services required for the Project having their source and origin in the Central American Common Market ("Local Currency Costs").

Article 8. DISBURSEMENTS

Section 8.1. DISBURSEMENT FOR FOREIGN EXCHANGE COSTS. (a) After satisfaction of conditions precedent, the Borrower may obtain disbursements of funds under the Loan for the Foreign Exchange Costs of goods and services required for the Project in accordance with the terms of this Agreement, by such of the following methods as may be mutually agreed upon:

- (1) By submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (i) requests for reimbursement for such goods or services, or (ii) requests for A.I.D. to procure commodities or services in Borrower's behalf for the Project; or
- (2) By requesting A.I.D. to issue Letters of Commitment for specified amounts (i) to U.S. banks, satisfactory to A.I.D., committing A.I.D. to reimburse such banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, or (ii) directly to contractors or suppliers, committing A.I.D. to pay such contractors or suppliers for such goods or services.

(b) Banking charges incurred by Borrower in connection with Letters of Credit will be financed under the Loan unless the Borrower instructs A.I.D. to the contrary. Such other charges as the Parties may agree to may also be financed under the Loan.

Section 8.2. DISBURSEMENT FOR LOCAL CURRENCY COSTS. (a) After satisfaction of conditions precedent, the Borrower may obtain disbursements of funds under the Loan for the Local Currency Costs of goods and services required for the Project in accordance with the terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, requests to finance such costs.

(b) Local currency needed for such disbursement hereunder may be obtained:

- (1) By acquisition by A.I.D. with U.S. dollars by purchase; or
- (2) By A.I.D. requesting the Borrower to make available the local currency for such costs, and thereafter reimbursing an amount of U.S. dollars equal to the amount of local currency made available by the Borrower.

Section 8.3. OTHER FORMS OF DISBURSEMENT. Disbursements of the Loan may also be made through such other means as the Parties may agree to in writing.

Section 8.4. RATE OF EXCHANGE. Except as may be more specifically provided under Section 8.2, if funds provided under the Loan are introduced into Guatemala by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Borrower will make such arrangements as may be necessary so that such funds may be converted into currency of Guatemala at the highest rate of exchange which, at the time the conversion is made, is not unlawful in Guatemala.

Section 8.5. DATE OF DISBURSEMENT. Disbursements by A.I.D. will be deemed to occur (a) on the date on which A.I.D. makes a disbursement to the Borrower or its designee, or to a bank, contractor or supplier pursuant to a Letter of Commitment, contract, or purchase order; or (b) on the date on which A.I.D. disburses to the Borrower or its designee local currency acquired in accordance with Section 8.2(b)(1).

Article 9. MISCELLANEOUS

Section 9.1. COMMUNICATIONS. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such Party at the following address:

To the Borrower:

Mail address:

Ministerio de Finanzas Públicas
Edificio Ministerio de Finanzas
21 Calle y 8a Avenida, Zona 1
Ciudad de Guatemala, Guatemala, C.A.

Alternate address for telegrams:

Minfinanzas
Guatemala, C.A.

To A.I.D.

Mail address:

Office of the Director
USAID Mission to Guatemala
c/o U.S. Embassy
Guatemala City, Guatemala, C.A.

Alternate address for telegrams:

USAID, American Embassy
Guatemala City, Guatemala, C.A.

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

Section 9.2. REPRESENTATIVES. For all purposes relevant to this Agreement, the Borrower will be represented by the individual holding or acting in the office of Minister of Finance and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID Mission to Guatemala, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1 to revise elements of the amplified description in Annex 1. The names of the representatives of the Borrower with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

Section 9.3. STANDARD PROVISIONS ANNEX. A “Standard Provisions Annex” (Annex 2) is attached to and forms part of this Agreement.

Section 9.4. LANGUAGE OF AGREEMENT. This Agreement is prepared in both English and Spanish. In the event of ambiguity or conflict between the two versions, the English language version will control.

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

EN FE DE LO CUAL, el Prestatario y los Estados Unidos de América, cada uno actuando por medio de su representante debidamente autorizado, suscribe este Convenio, en el día indicado en su introducción.

Republic of Guatemala:

[Signed — Signé]

Lic. ARTURO AROCH NAVARRO
Ministro de Finanzas¹

[Signed — Signé]

General de Brigada DEM²
FAUSTO DAVID RUBIO CORONADO
Ministro de Agricultura³

The United States of America:

[Signed — Signé]

GEORGE R. ANDREWS
Deputy Chief of Mission

[Signed — Signé]

FREDERICK W. SCHIECK
Director
USAID Mission to Guatemala

¹ Minister of Finances.

² Brigadier-General DEM.

³ Minister of Agriculture.

ANNEX 1

AID LOAN AGREEMENT 520-T-030

SMALL FARMER MARKETING—THE PROJECT

The objective of the Project is to achieve a significant and permanent increase in the incomes of small farmers in the Highland Region who grow temperate climate fruits and vegetables by introducing an organized and efficient system for marketing these products. The objective of the Project is to be achieved by creating a Cooperative Marketing Association with the assistance and participation of the Cooperative Movement.

The Association will operate three regional buying stations strategically located in the Highlands: one in the Department of Huehuetenango, one in the Department of Quezaltenango and one in the Sololá/Tecpán area. Fruits and vegetables will be bought directly from farmers and groups of farmers on a cash basis. In the buying stations produce will be washed, sorted and assembled into truckload lots for shipment to the capital city or to buyers who purchase directly from the regional buying stations.

The Association will have an operations center in the vicinity of Guatemala City's principal wholesale produce market. It is here where trucks will deliver produce from the buying stations and where the principal wholesale and retail selling efforts will take place. The central facility will also function as a buying station for produce originating in the Departments of Guatemala and Sacatepéquez.

The introduction of sophisticated production techniques is not considered essential to the success of the Project and therefore is not included in its scope. Only simple production improvement measures such as scheduled plantings and crop grading are planned during the Project disbursement period. Fertilizers and other agricultural inputs, and the credit necessary for financing them, will be channeled to small farmers through existing programs of the Government of Guatemala and the Cooperative Movement.

The Association will carry out a time-phased program for marketing a variety of products chosen for their profitability. To start, nine relatively less perishable, high volume produce items have been selected for possible commercialization, namely: potatoes, onions, garlic, carrots, cabbage, beets, peaches, apples and turnips. Each year more items will be added reaching a potential total of some 28 selected products, including twenty vegetables and eight fruits.

In order to concentrate efforts and thereby minimize risk, the activities of the Association will be limited exclusively to fresh produce marketing during the first three years of operations. During this initial phase the Association will store produce only for short periods.

In the fourth year, if operating results and market conditions so warrant, building expansions will be constructed for the storage of produce for longer periods. Due to the cyclical price pattern of many produce items, it is anticipated that this activity could result in a favorable impact on the incomes of affiliated farmers.

The Association will be constituted with its own juridical personality. Its capital will be variable and its liability will be limited. It will be non-profit and its purpose will be the benefit of its members. The right to participate in ownership through purchase of certificates of participation will be restricted to cooperative federations having producers of fruits and vegetables within their memberships. Producers of fruits and vegetables who are members of federated cooperatives will participate in the ownership of the Association through their respective federations. Producers of fruits and vegetables who are not members of cooperatives, or who are members of unfederated cooperatives, will be permitted to sell their produce to the Association provided that a nominal discount is applied and in the distribution of any operating surpluses. The governance of the Association will be vested in a board of directors composed of representatives of the

federations and of fruit and vegetable producers appointed by their corresponding federations. The board of directors will set the policies of the Association, but as regards operating and administrative matters, the board of directors will delegate a high degree of autonomy to a qualified management experienced in the field of marketing agricultural products.

The federations, and producers of fruits and vegetables through their federations, will invest capital in the Association. This capital will be complemented by financing extended by the Government of Guatemala through the National Agricultural Development Bank (BANDESA) with AID loan and counterpart funds. The terms of the financing extended to the Association will be concessionary, with a repayment period of not less than thirty years, a grace period on principal repayment of not less than ten years, and interest at no more than three percent during the grace period and no more than four percent thereafter.

The implementation period of the Project will be six years, including one year for organization and promotion. The Financial Plan of the Project, which in addition to the Loan provided under this Agreement, includes non-reimbursable AID financing up to the amount of \$800,000, is presented on the following page. As indicated in the Financial Plan, AID Loan funds will be used to finance buildings, equipment and a portion of working capital. Government of Guatemala resources will be used to finance land acquisition, working capital and production credit. The cooperative federations and producers of fruits and vegetables will put up the Association's venture capital, and in addition, the federations will finance a portion of production credit. The cost of technical assistance and a portion of the Association's organization costs will be financed by AID on a non-reimbursable basis under a separate agreement.

FINANCIAL PLAN

(In thousand US dollars)

	GOG	AID Loan	AID Grant	Federa- tions	Small farmers	Total
<i>Capital budget</i>						
Initial phase*						
Land	400					400
Buildings and equipment		2,200				2,200
Working capital	900	200		90	60	1,250
<i>Subtotal</i>	1,300	2,400		90	60	3,850
Second phase**						
Buildings and equipment		1,000				1,000
Working capital	400			60	40	500
<i>Subtotal</i>	400	1,000		60	40	1,500
TOTAL CAPITAL COSTS	1,700	3,400		150	100	5,350
<i>Support costs</i>						
Production credit	800			200		1,000
Technical assistance			634			634
Organization costs			166			166
TOTAL SUPPORT COSTS	800		800	200		1,800
TOTAL PROJECT COSTS	2,500	3,400	800	350	100	7,150

* Fresh produce marketing.

** Long term storage expansion.

A N N E X 2

AID LOAN AGREEMENT 520-T-030

SMALL FARMER MARKETING—STANDARD PROVISIONS

Definitions: As used in this Annex, the “Agreement” refers to the Project Loan Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

Article A. PROJECT IMPLEMENTATION LETTERS

To assist Borrower in the implementation of the Project, AID from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The Parties may also use jointly agreed upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in Annex 1.

Article B. GENERAL COVENANTS

Section B.1. CONSULTATION. The Parties will cooperate to assure that the purpose of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on the progress of the Project, the performance of obligations under this Agreement, the performance of any consultants, contractors, or suppliers engaged on the Project, and other matters relating to the Project.

Section B.2. EXECUTION OF PROJECT. The Borrower will:

- (a) Carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules, or other arrangements, and with any modifications therein, approved by AID pursuant to this Agreement.
- (b) Provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purpose of the Project.

Section B.3. UTILIZATION OF GOODS AND SERVICES. (a) Any resources financed under the Loan will, unless otherwise agreed in writing by AID, be devoted to the Project until the completion of the Project, and thereafter will be used so as to further the objectives sought in carrying out the Project.

(b) Goods or services financed under the Loan, except as AID may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in Code 935 of the AID Geographic Code Book as in effect at the time of such use.

Section B.4. TAXATION. (a) This Agreement and the Loan will be free from, and the Principal and interest will be paid free from any taxation or fees imposed under laws in effect in the Republic of Guatemala.

(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Loan, and any property or transactions relating to such contracts and (2) any commodity procurement transaction financed under the Loan

are not exempt from identifiable taxes, tariffs, duties, or other levies imposed under laws in effect in the Republic of Guatemala, the Borrower will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Loan. Notwithstanding the foregoing, this provision does not require exemption from individual or corporate income taxes for Guatemalan citizens or firms.

Section B.5. REPORTS, RECORDS, INSPECTIONS, AUDIT. The Borrower will:

- (a) Furnish AID such information and reports relating to the Project and to this Agreement as AID may reasonably request;
- (b) Maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show, without limitation, the receipt and use of goods and services acquired under the Loan. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three (3) years after the date of last disbursement by AID; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and
- (c) Afford authorized representatives of a Party the opportunity at all reasonable times to inspect the Project, the utilization of goods and services financed by such Party, and books, records, and other documents relating to the Project and the Loan.

Section B.6. COMPLETENESS OF INFORMATION. The Borrower confirms:

- (a) That the facts and circumstances of which it has informed AID, or caused AID to be informed in the course of reaching agreement with AID on the Loan, are accurate and complete, and include all facts and circumstances that might materially affect the Project and the discharge of responsibilities under this Agreement;
- (b) That it will inform AID in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Project or the discharge of responsibilities under this Agreement.

Section B.7. OTHER PAYMENTS. Borrower and AID affirm that no payments have been or will be received by any of their respective officials in connection with the procurement of goods or services financed under the Loan except fees, taxes, or similar payments legally established in the Republic of Guatemala.

Section B.8. INFORMATION AND [MARKING]. The Borrower will give appropriate publicity to the Loan and the Project as a program to which the United States has contributed, identify Project sites, and mark goods financed by AID as described in Project Implementation Letters.

Article C. PROCUREMENT PROVISIONS

Section C.1. SPECIAL RULES. (a) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(b) Premiums for marine insurance placed in the Republic of Guatemala will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C.7(a).

(c) Any motor vehicles financed under the Loan will be of United States manufacture, except as AID may otherwise agree in writing.

Section C.2. ELIGIBILITY DATE. 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, except as the Parties may otherwise agree in writing.

Section C.3. 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 AID upon preparation:

- 1) Any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Loan, 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 AID on preparation.
- 2) Such documentation will also be furnished to AID upon preparation, relating to any goods or services which, though not financed under the Loan, are deemed by AID to be of major importance to the Project. Aspects of the Project involving matters under this sub-section (a) (2) will be identified in Project Implementation Letters.

(b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Loan will be approved by AID in writing prior to their issuance, and their terms will include United States standards and measurements.

(c) Contracts and contractors financed under the Loan for engineering and other professional services, for construction services, and for such other services, equipment, or such materials as may be specified in Project Implementation Letters, will be approved by AID in writing prior to execution of the contracts. Material modifications in such contracts will also be approved in writing by AID 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 AID may specify, and construction contractors used by the Borrower for the Project but not financed under the Loan shall be acceptable to AID.

Section C.4. REASONABLE PRICE. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Loan. Such items will be procured on a fair and, to the maximum extent practicable, on a competitive basis.

Section C.5. NOTIFICATION TO POTENTIAL SUPPLIERS. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Loan, the Borrower will furnish AID such information with regard thereto, and at such times, as AID may request in Project Implementation Letters.

Section C.6. SHIPPING. (a) Goods which are to be transported to the Republic of Guatemala may not be financed under the Loan if transported either:

- 1) On an ocean vessel or aircraft under the flag of a country which is not included in AID Geographic Code 935 as in effect at the time of shipment; or
- 2) On an ocean vessel which AID by written notice to the Borrower has designated as ineligible; or
- 3) Under an ocean or air charter which has not received prior AID approval.

(b) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Loan, if such goods or persons are carried:

- 1) On an ocean vessel under the flag of a country not, at the time of shipment, identified under section 7.1 of the Agreement, without prior written AID approval; or
- 2) On an ocean vessel which AID by written notice to the Borrower, has designated as ineligible; or
- 3) Under an ocean vessel or air charter which has not received prior AID approval.

(c) Unless AID determines that privately-owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels:

- 1) At least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by AID which may be transported on ocean vessels will be transported on privately-owned United States-flag commercial vessels, and
- 2) At least fifty percent (50%) of the gross freight revenue generated by all shipments financed by AID and transported to the Republic of Guatemala on dry cargo liners shall be paid to or for the benefit of privately owned United States flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to any cargo transported from U.S. ports and also any cargo transported from non-U.S. ports, computed separately.

Section C.7. INSURANCE. (a) Marine insurance on goods financed by AID which are to be transported to the Republic of Guatemala may be financed as a Foreign Exchange Cost under this Agreement provided:

- 1) Such insurance is placed at the lowest available competitive rate, and
- 2) Claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Borrower (or government of Borrower) by statute, decree, rule, regulation, or practice discriminates with respect to AID-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the Republic of Guatemala financed by AID hereunder will be insured against marine risks and such insurance will 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.

(b) Except as AID may otherwise agree in writing, the Borrower will insure, or cause to be insured, goods financed under the Loan imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Borrower under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Borrower for the replacement or repair of such goods. Any such replacement will be of source and origin of countries listed in AID Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

Section C.8. U.S. GOVERNMENT-OWNED EXCESS PROPERTY. The Borrower agrees that wherever practicable United States Government-owned excess personal property, in lieu of new items financed under the Loan, should be utilized. Funds under the Loan may be used to finance the costs of obtaining such property for the Project.

Article D. TERMINATION AND REMEDIES

Section D.1. CANCELLATION BY BORROWER. The Borrower may, by giving AID 30 days written notice, cancel any part of the Loan which has not been disbursed or committed for disbursement to third parties.

Section D.2. EVENTS OF DEFAULT; ACCELERATION. It will be an "Event of Default":

If Borrower shall have failed:

- (a) To pay when due any interest or installment of Principal required under this Agreement, or
- (b) To comply with any other provision of this Agreement, or
- (c) To pay when due any interest or installment of Principal or other payment required under any other loan, guaranty or other agreement between the Borrower or any of its

agencies and AID or any of its predecessor agencies. If an Event of Default shall have occurred, then AID may give the Borrower notice that all or any part of the unrepaid Principal will be due and payable sixty (60) days thereafter, and, unless such Event of Default is cured within that time:

- 1) Such unrepaid Principal and accrued interest hereunder will be due and payable immediately, and
- 2) The amount of any further disbursements made pursuant to then outstanding commitments to third parties or otherwise will become due and payable as soon as made.

Section D.3. SUSPENSION. If at any time:

- (a) An Event of Default has occurred; or
- (b) An event occurs that AID 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 by AID would be in violation of the legislation governing AID, or
- (d) The Borrower shall have failed to pay when due any interest, installment of principal or other payment required under any other loan, guaranty, or other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies.

Then AID may:

- 1) Suspend or cancel outstanding commitment documents to the extent they have not been utilized through irrevocable commitments to third parties or otherwise, giving prompt notice thereof to the Borrower;
- 2) Decline to issue additional commitment documents or to make disbursements other than under existing ones; and
- 3) At AID's expense, direct that title to goods financed under the Loan be transferred to AID if the goods are from a source outside the Republic of Guatemala, are in a deliverable state and have not been offloaded in ports of entry of the Republic of Guatemala. Any disbursement made under the Loan with respect to such transferred goods will be deducted from Principal.

Section D.4. CANCELLATION BY AID. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section D.3, the cause or causes thereof have not been corrected, AID may cancel any part of the Loan that is not then disbursed or irrevocably committed to third parties.

Section D.5. CONTINUED EFFECTIVENESS OF AGREEMENT. Notwithstanding any cancellation, suspension of disbursements, or acceleration of repayment, the provisions of this Agreement will continue in effect until the payment in full of all Principal and accrued interest hereunder.

Section D.6. REFUNDS. (a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, AID notwithstanding the availability or exercise of any other remedies provided for under this Agreement, may require the Borrower to refund the amount of such disbursement in United States dollars to AID within sixty (60) days after receipt of a request therefor. The right to require such a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three (3) years from the date of the last disbursement under this Agreement.

(b) Any refund under the preceding subsection, or any refund to AID from a contractor, supplier, bank, or other third party with respect to goods or services financed under the Loan, which refund relates to an unreasonable price for or erroneous invoicing of

goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will:

- 1) Be made available first for the cost of goods and services required for the Project, to the extent justified, and
- 2) The remainder, if any, will be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan reduced by the amount of such remainder.

Section D.7. NONWAIVER OF REMEDIES. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.
