

Loan No.4/SFR-GU

LOAN AGREEMENT  
(CARIBBEAN DEVELOPMENT FACILITY)

BETWEEN  
CARIBBEAN DEVELOPMENT BANK

AND  
GUYANA

Dated: November 20, 1978

## LOAN AGREEMENT

AGREEMENT dated November 20, 1978 between the Caribbean Development Bank (hereinafter called the Bank) and the Government of Guyana (hereinafter called the Borrower).

### ARTICLE 1

#### The Loan and its Purpose

Section 1.01 The Loan. The Bank agrees to lend to the Borrower from the Special Funds Resources of the Bank on the terms and conditions in this Loan Agreement set forth or referred to an amount not exceeding at the time of disbursement the equivalent of four million five hundred thousand United States dollars (US\$4,500,000).

Section 1.02 Loan Account. The Bank hereby agrees to open a Loan Account in its books in the name of the Borrower and shall credit to such account the amount of the Loan. The amount of the Loan may be withdrawn from the Loan Account as provided in, and subject to the rights of cancellation or suspension set forth in this Loan Agreement.

Section 1.03 Purpose The purpose for which the Loan is granted is to assist the Borrower in financing local costs components of one or more projects listed in Part 1 of Schedule 1 to this Loan Agreement as such Schedule may be amended from time to time by agreement between the Bank and the Borrower to include other projects approved by the Bank which are being financed by any of the external donors listed in Part II of the said Schedule 1 to this Loan Agreement. All projects financed from the proceeds of the Loan are hereinafter referred to as the Projects and the external donors listed or referred to in Schedule 1 to this Loan Agreement is hereinafter called the external prime donors.

## ARTICLE II

## Amortisation and Interest

Section 2.01 Amortisation and Interest. The Borrower shall repay the amount of the Loan withdrawn from the Loan Account together with interest at the rate of four percent (4%) per annum on the amount of the Loan withdrawn and outstanding from time to time in twenty (20) equal or approximately equal and consecutive semi-annual instalments of principal and interest. The instalments shall be payable on January 15 and July 15 in each year (hereinafter called the Due Dates) the first instalment being due and payable on the first due date after the expiry of nine (9) years from the date of first disbursement by the United States of America acting through the Agency for International Development (hereinafter called AID) under the Loan Agreement No. 538-0023 dated September 28, 1978 between the Bank and the United States of America or on such later date as may be specified in writing by the Bank. The Bank shall provide the Borrower (i) with the date of such first disbursement before the closing date referred to in Section 3.03 hereof and (ii) with an amortisation schedule before the date for the payment of the first instalment under this Section.

Section 2.02 Payment of Interest before Commencement of Amortisation.

Prior to the commencement of amortisation in accordance with Section 2.01 this Loan Agreement the Borrower shall pay interest at the rate of four percent (4%) per annum on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time. Such interest shall accrue from the respective dates on which amounts shall be so withdrawn and shall be payable semi-annually on the Due Dates, the first payment being due and payable on the first Due Date after the date of the first disbursement hereunder.

Section 2.03 Computation of Interest. Interest shall be computed daily on the basis of a 365-day year.

Section 2.04 Advance Payments. The Borrower shall have the right upon payment of all accrued interest and other charges and upon not less than 45 days notice to the Bank, to repay in advance of maturity any portion of the amount of the Loan outstanding. Advance payments, unless otherwise agreed, shall be applied to the outstanding instalments of principal in the inverse order of their maturity and the amortisation schedule provided under Section 2.01 of this Loan Agreement shall be amended accordingly.

Section 2.05 Place of Payment. The principal of, and interest on, the Loan shall be paid at such places as the Bank may request.

Section 2.06 Overdue Payments. In case the Borrower fails to pay the principal and/or interest due and payable under this Loan Agreement, the Borrower shall pay to the Bank interest on such overdue principal and/or interest at the rate of four percent (4%) per annum for a period immediately succeeding the due date to the day of actual payment thereof, both dates inclusive.

Section 2.07 Renegotiation of Terms. The Bank and the Borrower 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 Borrower which enables the Borrower to repay the Loan on a shorter schedule. Any request by either Party to the other to so negotiate will give the name of the person or persons who will represent the requesting Party in such negotiations and within thirty (30) days after delivery of a request to negotiate, the requested Party will communicate to the other, the name and address of the person or persons who will represent the requested Party in such negotiations. The representatives of the Parties will meet to carry on negotiations no later than thirty (30) days after delivery of the request.

Party's communication and 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 the Bank.

### ARTICLE III

#### Withdrawal of Proceeds of Loan

Section 3.01 Withdrawal and Application of Proceeds. (a) Subject to the provisions of this Loan Agreement the Borrower is entitled to withdraw from the Loan Account amounts required for meeting expenditures made after June 30, 1978 for local costs as specified in paragraph 1.4 of Schedule 2 to this Loan Agreement of goods and services utilised in each of the Projects.

(b) The proceeds of the Loan so withdrawn shall be applied by the Borrower for the purposes of each of the Projects in accordance with the provisions of this Loan Agreement but shall not be used to finance any part of the cost of the goods and services financed out of the proceeds of the Loan which consists of foreign currency costs or identifiable taxes, tariffs, duties and other levies imposed under the laws of Guyana.

Section 3.02 Special Commitments. At the request of the Borrower and upon such terms and conditions as shall be agreed upon between the Bank and the Borrower, the Bank may enter into special commitments in writing to pay amounts to the Borrower or others in respect of the cost of goods and services to be financed out of the proceeds of the Loan notwithstanding any subsequent suspension or cancellation.

Section 3.03 Final Period for Disbursement. The sum referred to in Section 1.01 of this Loan Agreement may be disbursed up to September 30, 1979, or such later date as shall be specified in writing by the Bank (hereinafter called the closing date).

Section 3.04 Procurement Except as the Bank may otherwise agree, the goods and services to be financed out of the proceeds of the Loan shall be procured in accordance with the procedures outlined in Schedule 2 to this Loan Agreement as such Schedule may be amended from time to time by the Bank in accordance with such other procedures as the Bank may from time to time specify in writing to the Borrower. For contracts which have been or are to be awarded according to procedures agreed to between the Borrower and the external prime donor(s) such procurement shall be eligible for financing from the proceeds of the Loan so long as the external donor or the Borrower satisfies the Bank that (a) competitive procedures were used to obtain such goods and services or, if other than competitive procedures were used (i.e. force account, proprietary procurement or sole source procurement) that reasonable prices were obtained, and (b) the source and origin provisions set out in paragraph 1.4 of Schedule 2 to this Loan Agreement were followed.

Section 3.05 Goods and Services to be used Exclusively in Carrying Out the Project. Except as the Bank may otherwise agree the Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used exclusively in carrying out the Project.

Section 3.06 Requests for Withdrawals or for Special Commitment. When the Borrower desires to withdraw any amount from the Loan Account or to request the Bank to enter into a special commitment pursuant to Section the Borrower shall deliver to the Bank a written application in such form and containing such statements and agreements as the Bank shall reasonably request. Applications for withdrawal with the necessary documentation as hereinafter in this Article provided shall be made promptly in relation to expenditures for the Project.

Section 3.07 Authorisation of Requests for Withdrawals. The Borrower shall furnish to the Bank evidence of the authority of the person or persons authorised to sign applications for withdrawal and the authenticated specimen signature of any such person or persons.

**Section 3.08 Documentation of Requests for Withdrawals.** The Borrower shall furnish to the Bank such documents and other evidence in support of the application as the Bank shall reasonably request, whether before or after the Bank shall have permitted any withdrawal in the application.

**Section 3.09 Applications and Documents to Satisfy Bank.** Each application and the accompanying documents and other evidence must be sufficient in form and substance to satisfy the Bank that the Borrower is entitled to withdraw from the Loan Account the amount applied for and that the amount to be withdrawn from the Loan Account has been or will be used only for purposes specified in this Loan Agreement.

**Section 3.10 Payments to Borrower.** Payments by the Bank to the Borrower of amounts which the Borrower is entitled to withdraw from the Loan Account shall be made to or on the order of the Borrower.

#### ARTICLE IV

##### Currency Provisions

**Section 4.01 Currencies in which Withdrawals are to be made.** Except as the Bank shall otherwise specify in writing, the cost of goods and services financed out of the proceeds of the Loan shall be paid in United States dollars. Withdrawals by the Borrower from the Loan Account shall be made in United States dollars or Guyana dollars provided that, where withdrawal is in Guyana dollars, such Guyana dollars shall be purchased with United States dollars for the purpose of such withdrawal.

**Section 4.02 Currencies in which Principal and Interest are Payable.** Except as the Bank shall otherwise agree in writing, all payments for principal and interest shall be made in United States dollars.

**Section 4.03 Purchase of Currencies.** The Bank will, at the request of the Borrower and on such terms and conditions as the Bank shall determine, purchase any currency needed by the Borrower for payment of principal and interest required under this Loan Agreement upon payment by the Borrower of sufficient funds therefor in such currency or currencies to be specified by the Bank from time to time. In purchasing the currencies required, the Bank shall be acting as agent of the Borrower and the Borrower shall be deemed to have made any payment required under this Loan Agreement only and to the extent that the Bank has received such payment in the currency or currencies required.

Section 4.04 Valuation of Currencies. Whenever it is necessary for the purposes of this Loan Agreement to determine the value of one currency in terms of another such value shall be as reasonably determined by the Bank in consultation with the International Monetary Fund.

## ARTICLE V

Conditions Precedent

Section 5.01 Conditions Precedent to First Disbursement. The Bank shall not be obliged to make the first disbursement until the following prerequisites have been complied with to its entire satisfaction:-

- (1) the Bank shall have received from the Borrower, one or more opinions satisfactory to the Bank, of a legal practitioner acceptable to the Bank, showing that -
  - (i) the Borrower has complied with all the necessary requirements under the Constitution, Laws and Regulations in force in Guyana in order to enter into this Loan Agreement;
  - (ii) this Loan Agreement has been duly authorised by and executed and delivered on behalf of the Borrower and constitutes a valid and legally binding obligation of the Borrower enforceable in accordance with its terms;
- (2) The Bank shall have received proof that the person or persons who signed this Loan Agreement on behalf of the Borrower were legally empowered to do so;
- (3) the Borrower shall have designated one or more representatives to represent it in all acts regarding the implementation of this Loan Agreement and shall have furnished the Bank with authenticated facsimiles of the signature of the said representative or representatives.



- (4) The Borrower shall have furnished CDB with evidence, acceptable to CDB, that the Exchange Control Authority has given an undertaking that, in the allocation of foreign exchange, top priority will be given to the procurement of all goods and services which form part of the foreign exchange component of each project, in particular, those goods and services which are not being financed by any external prime donor, other than the Bank, which is providing financing for such project.

Conditions Precedent to First Disbursement on each Project.

The Bank shall not be obliged to make the first disbursement on any project until the following prerequisites have been complied with to its entire satisfaction -

- (1) The Bank shall have identified the project as being eligible for financing and that such project
  - (a) is sponsored by one or more external prime donors;
  - (b) is designed to have a significant impact upon the poor in the territory of the Borrower, referring generally, for the purposes of the Loan to those persons in the lower 50 percentiles in terms of income per capita;
  - (c) falls within the following categories:-
    - (i) food and nutrition projects, including, without limitation, agriculture, livestock and dairy, fisheries, forestry, marketing and credit services, rural community development and rural infrastructure (e.g. small-scale irrigation, access roads);
    - (ii) projects to reduce the rate of population growth or which foster improved health, disease prevention and environmental sanitation;

- (iii) education and human resources development, including, without limitation, formal and non-formal education, manpower training and placement, public administration and human resources planning; or
- (iv) special development activities, including, without limitation, those projects involving small-scale enterprises and self-employment activities, urban development programs, labour intensive industrial enterprises, appropriate technology, non-conventional energy production and conservation, environmental protection and development research.

(2) The Bank shall have received a written statement, acceptable to the Bank, from the external prime donor(s):-

- (a) confirming that the project remains technically, economically and financially feasible (a copy of the original Loan paper or document should also be provided to the Bank);
- (b) providing the Bank with (i) an updated financial plan showing total financing required for the period July 1, 1978 to September 30, 1979; (ii) the amount of financing required from the Caribbean Development Facility during that period and (iii) the amounts and sources of financing for all costs of the project not covered by the Caribbean Development Facility for such period (in this part of the statement, the external prime donor should include the projected amount of the loan funds that would be disbursed for the project);
- (c) confirming that the project will not have a significant effect on the human environment or, that if the project does have a significant effect on the human environment, that a satisfactory environmental analysis of such effect has been completed;
- (d) providing the Bank with a description of the project and a brief explanation as to how the project will benefit the poor in the territory of the Borrower referring to those people in the lower 50 percentiles in terms of per capita income.

ARTICLE VI  
Particular Covenants

Section 6.01 Execution of Projects. The Borrower shall carry out or cause each of the Projects to be carried out with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and technical standards and practices.

Section 6.02 Records and Information. (a) The Borrower shall maintain records adequate to indentify the goods and services financed out of the proceeds of the Loan, to disclose the use thereof in the Projects to show expenditure of the proceeds of the Loan and to record the progress of the Projects (including the cost thereof).

(b) The authorised representatives of the Bank and AID shall be entitled to enter any lands or facilities operated by the Borrower for the purpose of inspection of the Projects and any relevant records and documents and the Borrower shall provide the authorised representatives of the Bank and AID with all reasonable opportunities and facilities for this purpose.

(c) The Borrower shall furnish or cause to be furnished to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan and the Projects and the administration and operations thereof and the financial condition of the Borrower.

Section 6.03 Co-operation Between Bank and Borrower. (a) The Bank and the Borrower shall co-operate fully to ensure that the purposes of the Loan will be accomplished. To that end, the Bank and the Borrower shall from time to time, at the request of either party, exchange views through their representatives with regard to the progress of each of the Projects and any other matters relating to the purposes of the Loan. (b) The Borrower shall promptly inform the Bank of any condition which interferes with, or threatens to interfere the accomplishment of the purposes of the Loan, the maintenance of the service thereof or the performance by the Borrower of its obligations under this Agreement.

(c) The Borrower shall afford all reasonable opportunities and facilities for accredited representatives of the Bank and AID to visit any part of the territory of the Borrower for purposes related to the Loan and each of the Projects.

Section 6.04. Responsibility of Borrower for Taxes, Fees, etc. The Borrower shall pay or cause to be paid all taxes, duties and fees, if any, imposed under the laws in force in the territory of the Borrower in connection with the execution, issue, delivery or registration of this Loan Agreement and any agreement amending or supplemental to this Loan Agreement and all payments of principal and interest hereunder shall be made without deduction for any taxes imposed under any laws.

Section 6.05 Additional Funds. The Borrower shall provide promptly, as necessary, all funds, in addition to the Loan and the financing which is being provided by external prime donors for the Projects, and all other resources required for the punctual and effective carrying out of the Projects.

Section 6.06. Priority of Loan. (a) It is the mutual intention of the Borrower and the Bank that no external debt shall enjoy any priority over the Loan by way of a lien on governmental assets. (b) To that end, the Borrower undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any governmental assets as security for any external debt, such lien will, ipso facto and at no cost to the Bank, equally and ratably secure the payment of the principal and interest on the Loan, and that in the creation of any such lien express provision will be made to that effect. The Borrower shall promptly inform the Bank of the creation of any such lien.

(c) The foregoing provisions of this Section shall not apply to:-

- (1) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; or (2) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

(d) As used in this Section the term -

- (1) "external debt" means any debt payable in any medium other than the currency which at the time in question is legal tender in the territory of the Borrower whether such debt is payable absolutely or at the option of the creditor in such other medium;
- (2) "governmental assets" means assets of the Borrower, of any of its political sub-divisions, of any agency of the Borrower or of any such political sub-division, including the Bank of Guyana.

Section 6.07 Exemption from Taxes and Duties. (a) The Borrower shall bear such part of the cost of such goods as consists of identifiable taxes, tariffs, duties and other levies.

(b) Where the employment by the Borrower for the purposes of the Project of any firm of contractors or consultants is financed out of the proceeds of the Loan, then, to the extent that any firm any personnel thereof and any property or transactions relating to such financed contracts are not exempt from identifiable taxes, tariffs, duties and other levies imposed under the law of Guyana, the Borrower shall cause the same to be paid or reimbursed under Section 6.05 of this Loan Agreement with funds other than the proceeds of the Loan.

## ARTICLE VII

### Cancellation and Suspension

Section 7.01 Cancellation of Loan by Borrower. The Borrower may by notice to the Bank cancel any amount of the Loan which the Borrower shall not have withdrawn prior to the giving of such notice, except that the Borrower may not so cancel any amount of the Loan in respect of which the Bank shall have entered into a special commitment pursuant to Section 3.02 of this Loan Agreement.

Section 7.02 Suspension of Borrower's Right to Make Withdrawals from Loan Account.

If any of the following events shall have occurred or be continuing, the Bank may by notice to the Borrower suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account:

- (i) The Borrower shall have failed to make payment (notwithstanding the fact that such payment may have been made by a third party) of principal, interest or any other payment required under this Loan Agreement or any other Loan Agreement between the Bank and the Borrower;
- (ii) The Borrower shall have failed to perform any other obligation under this Loan Agreement;
- (iii) The Borrower shall have failed to make payment of principal or interest or any other payment required under any guarantee agreement between the Borrower and the Bank;
- (iv) An extraordinary situation shall have arisen which shall make it improbable in the Bank's opinion that any of the projects can be carried out or that the Borrower will be able to perform its obligations under this Loan Agreement;
- (v) Prior to the closing date, any material adverse change in the condition of the Borrower, as represented by the Borrower, shall have occurred;
- (vi) A representation made by the Borrower in or pursuant to this Loan Agreement or any statement furnished in connection therewith and intended to be relied upon by the Bank in making the Loan shall have been incorrect in any material respect;
- (vii) The Borrower shall have withdrawn or been suspended from membership in the Bank;
- (viii) The Bank shall have suspended in whole or in part the right of the Borrower to make withdrawals under any other Agreement with the Bank because of a failure of the Borrower to perform any of its obligations under any such agreement;

- (ix) AID shall have suspended in whole or in part the right of the Bank to make withdrawals under the Loan Agreement No. 538-0028 referred to in Section 2.01 hereof because of a failure of the Bank to perform any of its obligations under such agreement or for any other reason;
- (x) Any external prime donor shall have suspended in whole or in part the right of the Borrower to make withdrawals under any Loan Agreement between the external prime donor and the Borrower for financing of any of the projects because of a failure of the Borrower to perform any of its obligations under such agreement;
- (xi) The event specified in sub-paragraphs (iii) and (iv) of Section 8.01 shall have occurred;
- (xii) Any other event specified in this Loan Agreement for the purposes of this Section shall have occurred.

The right of the Borrower to make withdrawals from the Loan Account shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist or until the Bank shall have notified the Borrower that the right to make withdrawals shall be restored whichever is the earlier. But in the event of any such notice of restoration, the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall affect or impair any right, power or remedy of the Bank in respect of any other or subsequent event described in this Section.

Section 7.03 Cancellation. If any of the following events shall occur, at any time thereafter, the Bank may by notice to the Borrower terminate the right of the Borrower to make withdrawals from the Loan Account or with respect to the relevant amount of the Loan, as the case may be, and upon the giving of such notice the amount of the Loan specified therein shall be cancelled.

- (i) The Borrower shall have failed to comply with the requirements of Section 5.01 of this Loan Agreement by the ~~sixtieth~~ day after the date of this Loan Agreement or by such later date as the Bank may specify in writing;
- (ii) by November 30, 1978, or such later date as the Bank may specify in writing, the Bank has not received any application for withdrawal from the Loan Account or for Special Commitment in accordance with Article III of this Loan Agreement, or any application, having been so received, shall not have been acceptable to the Bank;
- (iii) the right of the Borrower to make withdrawals from the Loan Account shall have been suspended with respect to any amount of the Loan for a continuous period of thirty days;
- (iv) at any time the Bank determines, after consultation with the Borrower, that an amount of the Loan will not be required for the purposes of any of the Projects;
- (v) after the closing date an amount of the Loan remains unwithdrawn from the Loan Account.

Section 7.04 Effectiveness of Provisions after Cancellation or Suspension.

Notwithstanding any cancellation or suspension, all the provisions of this Loan Agreement shall continue in full force and effect except as in this Article specifically provided.

Section 7.05 Amounts subject to Special Commitment not Affected by Cancellation or Suspension by the Bank. No cancellation or suspension by the Bank shall apply to amounts subject to any special commitment entered into by the Bank pursuant to Section 3.02 of this Loan Agreement.



ARTICLE VIII  
Events of Default

Section 8.01 If any of the following events shall occur and shall continue for the period specified, if any, then at any subsequent time during the continuance thereof, the Bank, at its option, may by notice to the Borrower declare the principal of the Loan outstanding to be due and payable immediately together with the interest and any other payments required under this Loan Agreement and upon such declaration such principal, together with the interest and any other payments required under this Loan Agreement, shall become due and payable immediately.

- (i) a default shall occur in the payment of principal or interest or any other payment required under this Loan Agreement or under any other Agreement between the Borrower and the Bank and such default shall continue for a period of thirty (30) days.
- (ii) a default shall occur in the performance of any other obligation on the part of the Borrower under this Loan Agreement and such default shall continue for a period of sixty (60) days after notice thereof shall have been given by the Bank to the Borrower.
- (iii) a default shall occur in the performance of any obligation on the part of the Borrower under any Loan Agreement between the external prime donor and the Borrower for financing any of the projects and such default shall continue for a period of sixty (60) days after notice thereof shall have been given by the external prime donor to the Borrower.
- (iv) the Borrower shall have failed to fulfil any of its other obligations to the Bank whether arising under the Agreement establishing the Bank or otherwise.

- (v) there shall have been a cancellation, pursuant to Section 7.03 of this Loan Agreement, of such an amount of the Loan as will make it improbable in the Bank's opinion that the projects can be carried out or that the Borrower will be able to perform any of its obligations under this Loan Agreement.

ARTICLE IX  
Termination

Section 9.01 Upon payment in full of the principal amount of the Loan withdrawn from the Loan Account and all interest thereon and any other payment required under this Loan Agreement, this Loan Agreement **and all** obligations of the parties hereto shall forthwith terminate.

ARTICLE X  
Enforceability

Section 10.01 Enforceability. The rights and obligations of the Bank and the Borrower under this Loan Agreement shall be valid and enforceable in accordance with the terms, notwithstanding any provision of the Laws of the Borrower to the contrary. Neither the Bank nor the Borrower shall be entitled in any proceedings under this Agreement to assert any claim that any provision of this Loan Agreement is invalid or unenforceable because of any provision of such laws or the Agreement establishing the Bank or for any other reason.

ARTICLE XI  
Miscellaneous

Section 11.01 All statements, reports, certificates, evidence, opinions, notices, communications and other documents or information furnished or given under this Loan Agreement shall be supplied or submitted in the English Language without cost to the Bank.

Section 11.02 No failure or delay on the part of the Bank to exercise any right, power or privilege under this Loan Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Loan Agreement preclude any other or further exercise thereof or the exercise of any right, power or privilege.

Section 11.03 All notices and other communications hereunder shall be given in writing and shall be addressed to the appropriate party at the address set forth below, or at such other place as such party may designate in writing:

For the Bank:

Caribbean Development Bank  
Wilbey  
St. Michael  
Barbados, W.I.

For the Borrower:

Secretary to the Treasury  
Ministry of Finance  
Main & Urquhart  
P.O. Box 757  
Georgetown, GUYANA

Cable Address: Caribank, Bridgetown  
Telex: W6 287

Cable Address: Minfin, Georgetown,  
Guyana.

Any such notice or other communication shall be deemed to have been duly given or made when delivered by hand or mail or by telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address specified in this Section or at such other address as such party may have designated by notice to the party giving notice or making such communication.

Section 11.04 Subject to Article 42 of the Agreement establishing the Bank, if the Borrower ceases to be a member of the Bank, any amount due to it on its shares repurchased by the Bank shall be withheld so long as the Borrower remains liable to the Bank in respect of the Loan made under this Loan Agreement. Such amount may, at the option of the Bank, be applied on any such liability as it matures.

Section 11.05 Subject to Article 46 of the Agreement establishing the Bank, in the event of a distribution of the assets of the Bank, the Borrower not be entitled to receive its share in such distribution until it has settled its obligations to the Bank under this Loan Agreement.

ARTICLE XII

Arbitration

Section 12.01 (a) Any controversy between the parties to this Loan Agreement and any claim by any such party against any other such party arising out of this Loan Agreement which shall not be determined by agreement between the parties shall be submitted to arbitration before an Arbitration Committee as hereinafter provided.

(b) The parties to such arbitration shall be the Bank on one side and the Borrower on the other side.

(c) The Arbitration Committee shall consist of three arbitrators appointed as follows:

One arbitrator shall be appointed by the Bank; another by the Borrower; and a third (hereinafter called the umpire) shall be appointed by agreement between the parties, either directly or through their respective arbitrators. If the parties fail to agree on who shall be the umpire, he shall be appointed at the request of either party by the Secretary-General of the Caribbean Community. If either side fails to appoint an arbitrator he shall be appointed by the umpire. If either of the appointed arbitrators or the umpire is unwilling or unable to act or to continue to act in such capacity, his successor shall be appointed in the same manner as for the original appointment. The successor shall perform the same functions and shall have the same powers as his predecessor.

(d) An Arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the remedy sought and the name of the arbitrator appointed by the party instituting such proceeding. Within thirty days after the giving of such notice the other party shall notify the party instituting

the proceeding of the name of the arbitrator appointed by such other party.

(c) If within thirty days after giving notice instituting the arbitration proceeding the parties shall not have agreed upon an umpire, either party may request the appointment of an umpire as provided in sub-paragraph (c) hereof.

(f) The Arbitration Committee shall convene in Barbados at any time and place as shall be fixed by the umpire. Thereafter the Committee shall meet in Barbados or Guyana at such time and place as the Committee shall determine.

(g) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitration Committee shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitration Committee shall be by majority vote.

(h) The Arbitration Committee shall afford to both sides a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by majority of the Arbitration Committee shall constitute the award of the Committee. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to this Loan Agreement. Each party shall abide by and comply with any such award rendered by the Arbitration Committee in accordance with the provisions of this Section.

(i) The parties shall fix the amount of remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. The Bank and the Borrower shall each defray its own expenses in the Arbitration proceedings. The costs of the Arbitration Committee shall be divided between and borne equally by the Bank on the one side and the Borrower on the other. Any question concerning the division of the costs of the Arbitration Committee or the procedure for payment of such costs shall be determined by the Arbitration Committee .

SCHEDULE 1

(Section 1.03)

PART 1

LIST OF POSSIBLE ELIGIBLE PROJECTS FOR CDB PROGRAMME LOAN

<u>Name of Project</u>	<u>External Prime Donor</u>
Manhaica - Manaicony - Abary Rice Irrigation	Inter-American Development Bank
Tapakuma Irrigation & Drainage	International Bank for Reconstruction and Development and International Development Agency
Education Project II	do
West Demerara Road	International Development Agency

PART II

LIST OF EXTERNAL DONORS referred to in Section 1.03 of the Loan Agreement.

1. The International Bank for Reconstruction and Development
2. The Inter-American Development Bank
3. The Caribbean Development Bank
4. The European Development Fund
5. Any international assistance agency which is a member of the United Nations system; and
6. Any foreign assistance agency of any Government, except the Government of the United States, that is a member of the Caribbean Group for Co-operation and Economic Development.

(j) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the determination of any controversy between the parties to this Loan Agreement or any claim by any such party against the other such party arising thereunder.

(k) If within thirty days after the counterparts of the award shall be delivered to the parties the award shall not be complied with, any party may enter judgement upon or institute a proceeding to enforce the award in any court of competent jurisdiction against any other party, may enforce such judgement by execution or may pursue any other appropriate remedies against such other party for the enforcement of the award and the provisions of this Loan Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgement or enforcement of award against the Borrower except as such procedure may be available otherwise than by reason of the provisions of this Section.

(l) Service of any notice or process in connection with any proceeding under this Section or in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 11.03. The parties to this Loan Agreement waive any and all other requirements for the service of any such notice or process.

GUIDELINES FOR PROCUREMENT

1. General

1.1. Purpose

Set out hereunder are the guidelines to be applied by borrowers and sub-borrowers for procurement of goods and services financed totally or partly with funds under the loan made by the Caribbean Development Bank (hereinafter called CDB) out of that portion of its Special Funds Resources provided through the United States of America Agency for International Development (hereinafter called AID).

1.2. Objectives

'Widespread' competitive procurement of goods and services is to be encouraged for the best possible utilisation of funds provided under the loan. Procurement must be made from the sources specified in 1.3. 'Eligibility' which can provide the required goods and services most economically and compatibly with other needs.

1.3 Eligibility

Any qualified supplier of goods and services is free to compete for contracts under the loan if his regular place of business is in an eligible source. In these guidelines, 'eligible source' means the United States of America (hereinafter called USA) or one of CDB's member states and territories or any of these countries that could be classified as lesser developed countries which are included in CODE 941 of AID Geographic Code Book as in effect at the time orders are placed or contracts are entered into for goods and services. Excluded are countries not included in the Free World and the countries shown in Appendices A & B which are not considered lesser developed countries for the purposes of this Loan.

At least 80% of all personnel employed on a project must be nationals of an eligible source. Nationals from any country mentioned in Appendix B hereto may be employed on any project which is financed in whole or in part under the Loan.



When commodities and equipment are being procured, the items must be shipped from an eligible source either directly or via a bonded warehouse. In addition, the items must have been mined, grown or produced in an eligible source. An item is produced in a country when after manufacturing, processing or assembly there, it has assumed characteristics and purposes distinctly different from any of its components.

#### 1.4 Local Costs

The source and origin of local currency cost procurement of loan funded goods and services will, except for imported shelf items, be the territory where the project being financed with the loan is located.

Imported Shelf Items. Imported Shelf Items are goods that are normally imported and kept in stock, in the form in which imported, for sale to meet a general demand in the country for the item. They are not goods which have been specifically imported for use in an AID-financed project. Shelf items are eligible for local cost financing in unlimited quantities if they have been produced in and imported from the USA or a country included in Geographic Code 941 or a member country of CDB.

Shelf Items Imported from Non-Free World Sources. Imported Shelf items procured in or imported from countries not included in Geographic Code 899 and which are listed in Appendix B hereto are ineligible for financing out of the proceeds of the loan. However, off the shelf procurement of imported goods from any of the "Free World" developed countries listed in Appendix A hereto are eligible for financing if the price per unit of the goods does not exceed the equivalent of two thousand five hundred United States Dollars (US\$2,500). The total amount of imported shelf items purchased from these countries under this category may not exceed ten percent (10%) of total local costs financed by the loan or the equivalent of ten thousand United States dollars (US\$10,000), whichever is higher.

### 1.5 Contracts

Otherwise, all procurement contracts should be made on the basis of tenders either in response to advertisement or in response to letters of invitation in the following manner unless otherwise specified by CDB:

- (a) For engineering and professional consulting services where the consultant's fees and expenses are not expected to be greater than US\$5,000 contracts may be awarded on the basis of response to letters of invitation to three or more qualified consultants, approved by CDB, from eligible sources.
- (b) For works or goods estimated to cost less than US\$25,000 contracts may be awarded on the basis of response to letters of invitation to three or more qualified contractors or suppliers approved by CDB and resident in the territory where the project is located.
- (c) For works or goods estimated to cost from US\$25,000 to US\$50,000 contracts may be awarded on the basis of response to letters of invitation to three or more qualified regional contractors or suppliers approved by CDB. CDB must be satisfied that contractors or suppliers from more than one regional CDB member state or territory have been solicited.
- (d) For works or goods estimated to cost more than US\$50,000 and for consulting services not included in sub-paragraph (a) above, contracts should be awarded on the basis of response to solicitation advertisements in accordance with paragraph 1.6 of these guidelines.
- (e) Imported prefabricated steel and transportable structures should be procured under internationally advertised terms.

### 1.6 Advertising

On all procurement contracts for works or goods costing more than US\$50,000 and for consulting services other than those referred to in sub-paragraph 1.5 above, the Borrower's invitation to bid should be advertised in the newspaper of widest circulation in the Borrower's territory and in

at least one other newspaper having a wide circulation in another eligible source.

In all cases, in addition to publication in newspapers, advertisements and notices should also be sent simultaneously to official representatives in the Borrower's territory of USA and each other eligible source. (Official representatives include High Commissioners, Ambassadors, Consuls, Trade Commissioners and other official Governmental representatives.) Where any eligible source has no official representative in the borrower's territory, advertisements and other notices should be sent to the nearest official representative of such eligible source.

CDB may waive the advertising requirement when in its judgement one of the following situations exists:-

- (a) The supplier of goods and services had been selected by the Borrower as a necessary part of his project application to CDB or because he was unaware that his project had been selected for financing under the AID loan; or
- (b) The required 60-day waiting period will cause serious delays or major cost increases in the project.

#### 1.7 Submission of Solicitation Documents

Except as CDB may otherwise require, in the procurement of Consulting Services other than those referred to in sub-paragraph (a) of paragraph 1.4 above, and in the procurement of goods and services estimated to cost more than US\$50,000, four copies of the 'solicitation document' complete with maps, drawings, specifications, payment terms, delivery instructions, etc., are to be sent to CDB. The 'solicitation document' is the 'invitation ~~for bids~~' in cases where sealed bids are requested or the 'letter or invitation' in all other cases.

The required copies shall be sent so as to arrive at CDB at least 60 days in advance of bid closing in case of procurement by formal bid procedure. In case of procurement by negotiation no contract shall be let until at least 60 days after the expected arrival of the information in CDB.

Pre-qualification of Bidders

It is not normal practice to require pre-qualification for suppliers of goods and services. However, if pre-qualification is required for a large or complex contract, CDB will base its assessment on the prospective supplier's ability to perform satisfactorily taking into account:

- (a) the firm's experience and record on similar job requirements;
- (b) its capabilities with respect to size, efficiency and financial situation;
- (c) that the contractors have their principal place of business and are incorporated or legally established in an eligible source;
- (d) that the firm is at least 50% owned by a firm, firms or citizens of an eligible source.

1.9 Size and Nature of Contract

CDB wishes to foster widespread competition whenever feasible. If the procurement can easily be divided into contracts of a specialised character it should be so encouraged.

Turnkey contracts are acceptable only in special circumstances (industrial projects involving processing and manufacturing, etc.). In such cases it may be appropriate, after discussions with CDB, to invite turnkey bids for the component sections or the whole of the project. (A turnkey contract is one in which the engineering, equipment and construction are all provided as a package by one party).

1.0 Bidding

- (a) Contractors can bid separately or in association with other contractors from USA and/or any other "eligible source."
- (b) The contract should expressly permit competitive procurement in USA and any other "eligible source."

1.11 Reference to CDB

Tender documents should mention that the project will be financed by the CDB and AID in the following language:-

"(name of borrower) has received (or has applied for) a loan from the Caribbean Development Bank (CDB) utilising USAID funds equivalent to \$ \_\_\_\_\_ towards the cost of (name of project). It is intended that the proceeds of this loan will be applied to payments under the contract for which this invitation to bid is issued. Payments by CDB or its agent will be made only upon approval by CDB or its agent of an application presented by (name of borrower) in accordance with the terms and conditions of the Loan Agreement and will be subject in all respects to the terms and conditions of that Agreement."

1.12 Language Interpretation

Invitations to bid, specifications and contracts should be prepared in English.

2. Specifications

2.1 Specifications forming part of contract documents must be approved by CDB before tenders are invited. Specifications should follow standard forms and be so worded as to permit and encourage free and full competition. They must be so drafted so that USA suppliers can participate competitively without disadvantage. Where applicable, specifications must conform to local codes of practice.

2.2 If specific standards to which equipment or materials must comply are cited, the specification should state that goods meeting other authoritative standards, which ensure an equal or higher quality than the standards mentioned, will also be accepted.

2.3 Use of Brand Names

Equipment specifications should be based on performance capability. In particular, descriptions contained in specifications should not prescribe brand names, catalogue numbers or types of equipment of a specific manufacture, unless specific replacement parts are required or it has been determined that this is

necessary to include certain essential features. In the latter case the reference should be followed by the words "or equal" and the specifications should permit offers of alternative equipment, articles or materials, which have similar characteristics and provide equal performance and quality to those specified.

#### 2.4. Currency

- (a) The cost of goods and services provided by suppliers outside the currency area of the project site shall be paid in US dollars while those provided by suppliers inside the currency area of the project site shall be paid in the currency of that area. The documents should therefore contain appropriate payment provisions to comply with this requirement.
- (b) Whenever expenditures in both local currency and foreign currencies are involved, the bidding documents should require that the amounts of these expenditures be shown separately, in so far as it is practicable.
- (c) All bids should be expressed in the currency of payment, i.e., in US dollars for suppliers outside the currency area of the project site and in local currency for suppliers within the currency area.

#### Bid Bonds or Participation Fee

Bid Bonds or tender participation fees are a usual requirement for large projects but should not be set so high as to discourage prospective suppliers. Bid bonds or fees should be released to unsuccessful bidders within 14 calendar days after bids have been opened.

#### 2.6 Performance Bonds

All major contracts should require performance bonds or other surety adequate to guarantee that the goods will be supplied to the quality and delivery schedule specified and contracted. The amount of bond will vary with the type and magnitude of the contract, but should be sufficient to protect the borrower in case of default by the supplier.

The life of the bond or surety should extend sufficiently beyond completion of the contract to cover a reasonable warranty period.

2.7 Insurance

The specification should state precisely the types of insurance, if any, to be provided by the successful bidder.

The successful bidder should insure all goods while in transit to the point of use.

3. Bid Opening Evaluation and Contract Award

3.1 CDB reserves the right to ensure that at least three contractors have submitted bids.

3.2 Time between Advertising and Bid Opening

The time allowed for preparation of bids will depend upon the magnitude and complexity of the contract involved. In the case of tenders for procurement, utilising Loan funds, the required copies of tender shall be sent to CDB at least 60 days in advance of bid closing in case of procurement by formal bid procedure. In case of procurement by negotiation no contract shall be let until at least 60 days after the expected arrival of the information in CDB.

3.3. Bid Opening Procedures

The date and time of bid closing must be stated in the invitations to bid. Bids received after this time should be returned unopened. Result of the bid should be submitted to CDB. CDB reserves the right to have a representative present at the opening of bids.

3.4 Clarifications or Alterations of Bids

No bidder should be permitted to alter his bid after the bids have been opened. Only clarifications not changing the substance of the bid may be accepted. The Borrower may ask any bidder for a clarification of his bid but should not ask any bidder to change the substance of his bid.

### 3.5 Procedures to be Confidential

Except as may be required by law, no information relating to examination, clarification and evaluation of bids and recommendations concerning awards should be communicated after the opening of bids to any persons not officially concerned with these procedures before the announcement of the award of the contract to the successful bidder.

### 3.6 Examination of Bids.

Following the opening it should be ascertained whether material errors in computation have been made in bids, whether the bids are fully responsive to the terms of the specifications, whether the required guarantees and sureties have been provided, whether documents have been properly signed and whether the bids are otherwise generally in order. If a bid does not substantially conform to the specifications or is not otherwise substantially responsive to the invitation or does not meet the criteria set out in this document, it should be rejected. A technical analysis should then be made to evaluate each responsive bid and to enable bids to be compared.

### 3.7 Rejection of Bids

No more than a reasonable price shall be paid for goods or service financed, in whole or in part, under the loan. Bidding documents should provide that all bids may be rejected. Such rejection is justified where bids do not conform to the intent of the specifications or where there is evidence of lack of competition. New bids, solely for reasons of price, should normally not be invited. However, borrowers may, after consultation with CDB, reject all bids if the lower bids are above the cost estimates by an amount sufficient to provide a reasonable justification of such action. In such cases, the Borrower may with the approval of CDB negotiate a contract with the lowest evaluated bidder.

### 3.8 Bid Evaluation

Bid evaluation should be consistent with the terms and conditions set forth in the specifications and any modifications thereof prior to the opening of bids. Factors other than price, such as the time of completion of construction on other work, the efficiency and reliability of the equipment, the time of its delivery and the availability of service and spare parts should also be taken into



consideration (whenever possible, being expressed in monetary terms according to the basis given in the specifications), but such non-price factors should be plainly stated in the invitation for bids as minimum requirements for bid eligibility. Bids meeting such requirements should be accepted and considered, while those not meeting minimum standards should be rejected. Thereafter price becomes the sole determinant.

Where it is considered expedient to consider factors other than price in evaluating bids, then the ~~weights~~ to be given such factors should be plainly stated in the invitation for bids for guidance to all concerned.

In the case of bids from building contractors, if the requirement with respect to the employment of nationals mentioned in 1.3 is not met, the cost of the non-conforming firm must be at least 15% lower than that conforming with the lowest offer. In any event, no bid is to be accepted where nationals from the countries shown in Appendices A & B hereto are to be employed. When selecting a firm for professional services, its qualifications for the job is the primary consideration. Price becomes a determining factor only when several firms are equally qualified.

### 3.9 Post-Qualification of Bidders

In the absence of pre-qualification, the Borrower should determine whether the bidder whose bid has been evaluated the lowest has the capability and financial responsibility effectively to carry out the contract concerned. If the bidder does not meet that test his bid should be rejected.

### 3.10 Contract Award

The award of a contract should be made to the bidder whose bid has been determined to be the lowest evaluated bid and who is able to meet the appropriate standards of capability and financial responsibility. Such bidder should not be required, as a condition of award, to undertake responsibilities or work not stipulated in the specifications or to modify his bid price. In the case of contracts for goods and services costing in excess of US\$200,000 or contracts for consulting services CDB must approve the choice of contractor or consultant before the award is made. The agreement between the Borrower and the selected firm of consultants and any amendment thereto must be approved by CDB prior to signature.

#### 4. Contract Provisions

##### Expenditure Under Contracts

No commodities or equipment having their source in any of the countries mentioned in Appendix B hereto may be funded under the loan, either as local purchase or any form of a component of commodities equipment. However, off the shelf goods which have been imported from of the countries listed in Appendix A hereto may be purchased with currency under the Loan, if the price per unit of the goods does not US\$2,500. Only items may be financed that are essential to achieve purposes of the loan. They must be of good quality though not the

Appliances for use in households, alcoholic beverages, bar accessories (including wine glasses for hotels) gambling equipment, jewellery, tobacco and coffee exemplify commodities that may not be acquired with loan funds.

No vehicle, agricultural products obtainable from the United States, pharmaceutical or medicinal preparations may be acquired with loan funds outside the United States except with the prior express approval of CDB.

Used commodities (including rebuilt and reconditioned equipment) may be financed with AID loan funds when authorised in writing under the policy and procedures set forth in AID Small Business Memo, No. 71-12 issued September 21, 1971. Copy of the Small Business Memo and any further details may be obtained from CDB upon request.

##### 4.2. General Conditions of Contract

Borrower's contracts should contain general conditions which should cover, inter alia, definitions and insurance, penalties and bonus, percentage of payments to be retained, termination, advances to be made and how payment is to be made. As and when appropriate, general conditions should also cover special risks, variations, orders and any special requirements of the project or contract.

##### 4.3 Inspection by AID Representatives

AID representatives are authorised to inspect projects and the utilisation of goods and services financed with AID funds.

#### 4.4. Accounting Books and Records

Appropriate accounting books and records should be maintained by the borrower concerning the procurement, receipt and use made of goods and services acquired with AID funds.

#### 4.5 Advance Payment

The percentage of the total payment to be made upon signature of the contract for mobilisations expenses should be reasonable. Other advantages to be made as for example, for special deliveries, testing, etc., should be clearly described in the contract document.

#### 4.6 Escalating Clauses

In the appropriate cases, for local construction contracts, provision may be made for adjustment (upwards and downwards) in the contract price in the event that changes occur including changes of exchange rates, over which the supplier has no control, in the prices of the major cost constituents of the contract, such as labour and imported materials.

For contracts covering imported equipment, to be stated in US dollars, the contracts should be fixed-price with all cost changes for the account of the supplier, and no provision for cost escalation.

#### 4.7 Retention Money

The percentage of the total payment to be held as retention money and the conditions for its ultimate payment should be stipulated in the contract documents.

#### 4.8 Penalty Clause

Provisions for penalties or liquidated damage clauses should be contained in contracts when delays in completion will result in extra cost, loss of revenues or loss of other benefits to the borrower. Provision may also be made for a bonus to be paid to contractors for completion of contracts ahead of time specified in the contract.

APPENDIX 'A'

(Countries which are not eligible)

Algeria	San Marino
Andorra	Saudi Arabia
Australia	Somali Republic
<u>Austria</u>	South Africa
Belgium	Southern Rhodesia
Cyprus	Spain
Denmark	Sweden
Finland	Switzerland
France	United Arab Emirates
Federal Republic of West Germany	Vatican City
Greece	West Berlin
Hong Kong	Yemen
Iceland	Yugoslavia
Iran	
Iraq	
Ireland	
Italy	
Japan	
Kuwait	
Libya	
Liechtenstein	
Luxembourg	
Malta	
Monaco	
Netherlands	
New Zealand	
Norway	
Portugal	
Quator	
Republic of Congo	

#### 4.9 Force Majeure

It is desirable that the general conditions of the contract contain clauses, when appropriate, stipulating that failure on the part of the parties to perform any of their obligations under the contract shall not be considered a default in the performance of such obligations insofar as such failure is the result of an event of Force Majeure (to be defined in the general conditions of the contract).

#### 4.10 Disputes

It is desirable that provisions dealing with the settlement of disputes be included in contract documents, but CDB should not be named as arbitrator nor asked to name an arbitrator.

#### 4.11 Termination of Contract

In the event that the contractor is unable, for any reason, to complete the contract, the borrower may with the approval of CDB choose another suitable contractor.

\* \* \* \* \*

APPENDIX 'B'

Albania

Bulgaria

Mainland China

Cuba

Czechoslovakia

Estonia

East Germany (including the Soc t Zone of Berlin)

Hungary

Latvia

Lithuania

North Korea

North Vietnam

Outer Mongolia

Poland

Rumania

Union of Soviet Socialist Repub ic (U.S.S.R.)

IN WITNESS WHEREOF, this Loan Agreement has been signed in two equally valid copies at Wilkey, St. Michael, Barbados, and Georgetown, Guyana, on behalf of the Bank and the Borrower by their respective duly authorised representatives and shall be deemed to be in force as of the day and year first above written.

CARIBBEAN DEVELOPMENT BANK

GOVERNMENT OF GUYANA

Minister responsible  
for Finance