

LOAN AGREEMENT

(BRITISH GUIANA: Atkinson Field-Mackenzie Road)

between the

GOVERNMENT OF BRITISH GUIANA

and the

UNITED STATES OF AMERICA

Dated: 29.10.65

LOAN AGREEMENT

AGREEMENT, dated as of the 29th day of October 1965, between the GOVERNMENT OF BRITISH GUIANA ("Borrower"), and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

ARTICLE I

The Loan: The Project

SECTION 1.1. The Loan. A.I.D. agrees to lend Borrower pursuant to the Foreign Assistance Act of 1961, as amended, up to five million five hundred thousand United States dollars (\$5,500,000) for the United States dollar ("U.S. dollar") and British West Indian dollar ("West Indian dollar") costs of goods and services required for the project as defined in Section 1.2 hereof. Except as A.I.D. may otherwise agree in writing, the West Indian dollar costs of goods and services financed hereunder will not exceed the equivalent of one million U.S. dollars (\$1,000,000). The aggregate amount disbursed hereunder is hereinafter referred to as "Principal."

SECTION 1.2. The Project. This loan is made to assist Borrower in carrying out a project ("Project") for the construction of a highway of approximately fifty miles. The road, which may include improvements of existing roads, will extend from Soesdyke, a village near Atkinson Field, to the point of junction with the existing Ituni road near Mackenzie. This point of junction is located as shown on the original Atkinson Field to Mackenzie road plans as prepared by the Ministry of Works & Hydraulics in 1962. Except as A.I.D. may otherwise agree in writing, the highway will be twenty-two

feet wide, with a two-lane bituminous surface, and five feet shoulders. This road will be known as the Atkinson Field-Mackenzie Road.

ARTICLE II

Interest: Terms of Payment

SECTION 2.1. Interest. Borrower shall pay to A.I.D. in U.S. dollars on unrepaid Principal, and on unpaid interest due, interest at the rate of one (1) percent per annum during the first ten (10) years after the first such disbursement, and two and one-half ($2\frac{1}{2}$) percent per annum thereafter, in both cases computed on the basis of a 365 day year. Interest on unrepaid Principal shall accrue from the dates of the respective disbursements hereunder, and interest on unpaid interest due shall accrue from the date or dates that such interest was due and payable. Interest shall be payable semi-annually, the first such payment to be due and payable no later than six (6) months after the first disbursement, on a date to be specified by A.I.D. Disbursements hereunder shall be denominated in U.S. dollars and shall be deemed to occur (a) in the case of U.S. dollar costs on the respective dates on which payments by A.I.D. are made to a banking institution pursuant to a commitment document referred to in Section 4.1 or (b) in the case of West Indian dollar costs, on the respective dates on which Borrower or its designee receives West Indian dollars pursuant to Section 4.2.

SECTION 2.2. Repayment. Borrower shall repay the Principal to A.I.D. in dollars over not to exceed forty (40) years, as follows: in sixty-one (61) equal semi-annual installments, the first installment to be due and payable

nine and one-half ($9\frac{1}{2}$) years after the first interest payment is due.

SECTION 2.3. Application of Payments. All payments shall be applied first to the payment of any interest due, then to the repayment of the Principal.

SECTION 2.4. Prepayment. Borrower shall have the right to prepay, without penalty, on any date on which interest is due, all or any part of the Principal. Any prepayment shall be applied first to the payment of any interest due, and then pro rata to the remaining installments of Principal.

ARTICLE III

Conditions Precedent

SECTION 3.1. Conditions Precedent to Initial Financing. Prior to the first disbursement or issuance of a commitment document, Borrower shall furnish A.I.D. in form and substance satisfactory to A.I.D.:

- (a) An opinion or opinions of the highest legal officer of Borrower or of other counsel satisfactory to A.I.D., that this Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, Borrower and constitutes a valid and legally binding obligation of Borrower in accordance with its terms;
- (b) A certificate in duplicate substantially in the form of Exhibit No. 1 attached hereto. (Certificate of Authorized Representative);
- (c) Evidence of arrangements for engineering services for the Project, including preparing the final plans and specifications,

assisting in the preparation of bid documents, assisting in the carrying out of bidding and award procedures, supervising construction, and certifying payments to contractors.

SECTION 3.2. Additional Conditions Precedent to Financing Other Than Engineering Services. Prior to the first disbursement or issuance of commitment documents, other than to finance engineering services, Borrower shall furnish A.I.D. in form and substance satisfactory to A.I.D.:

- (a) Evidence of arrangements for construction services for the Project;
- (b) Such additional construction plans, specifications and schedules as A.I.D. may request;
- (c) Evidence of arrangements for the acquisition of real property rights, including easements and rights of way, required for the timely completion of the Project in accordance with schedules submitted pursuant to subsection 3.2 (b); and
- (d) A detailed plan for the maintenance of the highway being constructed hereunder, including provision for the orderly allocation of adequate budget resources, technical staff and equipment for such purpose.

SECTION 3.3. Terminal Date for Fulfillment of Conditions Precedent. Except as A.I.D. may otherwise agree in writing, if the conditions specified in Section 3.1 have not been satisfied by December 31, 1965 and the conditions specified in Section 3.2 have not been satisfied by July 31, 1966 A.I.D. may,

at any time thereafter, at its option terminate this Agreement by giving notice to Borrower. Upon such termination, Borrower shall repay any unrepaid Principal and shall pay the interest due thereon.

ARTICLE IV

Disbursement

SECTION 4.1. Disbursements for Project U.S. dollar Costs. To obtain disbursements for U.S. dollar costs of the Project, Borrower or its designee may from time to time, and in accordance with U.S. dollar requirements for the Project, request A.I.D. to issue commitment documents to one or more United States banks designated by Borrower or its designee and satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made, through letters of credit or otherwise, to Borrower or any designee of Borrower pursuant to such documentation requirements as A.I.D. may prescribe. Banking charges incurred pursuant to this Section in connection with commitment documents shall be for the account of Borrower and may be financed hereunder.

SECTION 4.2. Disbursements for West Indian Dollar Costs. To obtain disbursements for West Indian dollar costs of the Project, Borrower may from time to time, and in accordance with West Indian dollar requirements and expenditures for the Project, request A.I.D. to make available an amount of West Indian dollars for the Project. Each such request shall be supported by such documentation as A.I.D. may require. In order to obtain disbursements hereunder up to the equivalent of one million U.S. dollars (\$1,000,000) in West Indian dollars for West Indian costs of goods and services, Borrower **will**

submit evidence satisfactory to A.I.D. indicating that Borrower has made available for the Project on a pari passu basis an amount of West Indian dollars equal to the amount of each such request to A.I.D. for West Indian dollars; provided, however, that if A.I.D. determines, pursuant to Section 1.1, that an amount in excess of the equivalent of one million U.S. Dollars (\$1,000,000) should be made available hereunder in West Indian dollars for West Indian costs of goods and services, then this excess amount will not be subjected to the pari passu procedure, but will be made available solely from the loan. The pari passu contributions of Borrower to the Project will be in excess of any contributions which may have been made to the Project by Borrower before the effective date of this Agreement. All of the West Indian dollars made available hereunder will be made available under Special Letters of Credit opened by A.I.D. on the request of Borrower, and all of these Special Letters of Credit shall be in accordance with the provisions of the Special Letter of Credit Memorandum, dated May 27, 1965 between Borrower and A.I.D. as it may be amended.

SECTION 4.3. Other Forms of Disbursement. Disbursements may also be made through such other means as Borrower and A.I.D. may agree to in writing.

SECTION 4.4. Terminal Date for Requests for Commitment Documents for Disbursements. Except as A.I.D. may otherwise agree in writing, no commitment documents shall be issued in response to requests received after July 31, 1969 and no disbursement shall be made against documentation submitted after December 31, 1969.

ARTICLE V

Covenants Concerning Procurement

SECTION 5.1. Eligibility Date. No goods or services may be financed in whole or in part hereunder which arise out of orders or contracts firmly placed or entered into prior to the effective date of this Agreement.

SECTION 5.2. Reasonable Price. No more than reasonable prices shall be paid for goods and services financed in whole or in part hereunder, and such goods and services (except professional services) shall be procured on a fair and competitive basis. Reasonable prices (except for professional services) should normally approximate the lowest competitive price for such goods and services, operating costs, quality, time and cost of delivery, terms of payment, and other factors considered.

SECTION 5.3. Small Business Notification. In order that American small business shall have the opportunity to participate in furnishing goods and services for the Project, Borrower shall, at such time as A.I.D. may specify in writing, prior to ordering or contracting for any such goods or services (Other than professional services) financed under this Agreement estimated to cost more than the equivalent of five thousand U.S. dollars (\$5,000), cause to be received by A.I.D. information concerning such goods or services as A.I.D. may require.

SECTION 5.4. Source of Procurement. All goods and services, excluding ocean shipping and marine insurance, financed for the Project under this Agreement shall have both their source and origin in the United States of America or British Guiana. If ocean shipping is to be financed hereunder, it

must be procured from a United States flag carrier. If marine insurance is to be financed hereunder it must be placed in the United States with a marine insurance company authorized to do business in any state of the United States.

If A.I.D. determines that in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, Borrower by statute, decree, rule or regulation discriminates against any marine insurance company authorized to do business in any state of the United States of America, all goods financed by the loan shall during the continuance of such discrimination be insured against marine risk in the United States of America with a company or companies authorized to do a marine insurance business in any state of the United States of America.

All other goods and services used in the Project but not financed hereunder shall have their source and origin in any country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time such goods and services are procured.

SECTION 5.5. Transportation

(c) At least fifty (50) percent of the gross tonnage of all goods financed hereunder (computed separately for dry bulk carriers, dry cargo liners and tankers) which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. Determinations that United States-flag commercial vessels are not so available must be approved by A.I.D.

(b) No goods financed hereunder may be transported on any ocean vessel which A.I.D., in a notice to Borrower, has designated as ineligible to carry such goods.

(c) Goods financed hereunder shall be transported to British Guiana on carriers of any country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time such transportation is procured.

SECTION 5.6. Land Rights. The costs of real property rights including easements and rights of way, required for the completion of the Project shall not be eligible for financing under this Agreement.

ARTICLE VI

Additional Covenants and Warranties

SECTION 6.1. Conduct of the Project

(a) Borrower shall cause the Project to be carried out with due diligence and efficiency in conformity with sound engineering, construction and accounting practices. Borrower shall cause its rights in relation to the Project to be exercised so as to protect the interests of Borrower and A.I.D., to meet the requirements and discharge the obligations of Borrower under this Agreement and to facilitate the success of the Project.

(b) Borrower shall provide all financial and other resources apart from the loan which for any reason may be necessary to achieve the successful and timely completion of the Project, including necessary real property rights. If subsequent events indicate that the plan previously submitted to A.I.D. by Borrower for making all such resources available to the Project is not sufficient

to provide the resources so required, Borrower will take whatever other steps are necessary to satisfy its obligation herein.

SECTION 6.2. Maintenance. Borrower shall maintain the Project in accordance with sound road maintenance standards and shall adhere to the plan submitted pursuant to subsection 3.2(d). Borrower shall make adequate provision in its budget annually to maintain the Project. Such amount shall be in addition to amounts Borrower provides in its budget annually for the maintenance and upkeep of other roads and trails in British Guiana.

SECTION 6.3. Contracts.

(a) No costs may be financed in whole or in part hereunder which arise (i) out of contracts for engineering, procurement, construction or other services unless A.I.D. has approved in advance in writing the terms of such contracts and the firms which will provide such services, (ii) out of any contract for the performance of services outside the United States of America by United States citizens unless A.I.D. has approved in advance in writing the employment of such persons or (iii) out of contracts for construction services unless direct labor under such construction contracts is performed by qualified persons in accordance with A.I.D. Regulation 7.

(b) Borrower shall cause the Project to be carried out in conformity with any contracts and engineering, procurement and other arrangements approved by A.I.D. and shall cause A.I.D. concurrence to be obtained prior to any material modification or cancellation thereof.

SECTION 6.4. Rural Development and Colonization. Within one year from the date of execution of this Agreement, Borrower shall use its best efforts

to submit to A.I.D. in form and substance satisfactory to A.I.D. the following:

(i) a plan for the orderly development of access trails and roads within the geographic areas affected by the Project;

(ii) a plan for effective control of the agricultural areas opened by the Project to insure the orderly development and utilization of such land; and

(iii) a plan for settlement of farmers in the agricultural areas having access to the Project, including a plan for the establishment of a supervised agricultural credit program with the assistance, as necessary, from free-world countries.

Borrower shall within one year after the submission, in form and substance satisfactory to A.I.D. of the plans described in (i), (ii) and (iii) above, submit to A.I.D. evidence of actions to implement such plans.

SECTION 6.5. Utilization of Goods and Services. All goods and services financed under this agreement under commitment documents issued pursuant to Section 4.1 or with West Indian dollars made available pursuant to Section 4.2 shall be used exclusively for the Project. In the case of any such goods which are not fully expended through their use for the Project, the foregoing provision shall apply until the completion of the Project or until such time as they can no longer be usefully employed for the Project, and thereafter such goods and services may be utilized for any purpose at the discretion of Borrower subject, however, to such terms and conditions concerning utilization as A.I.D. may impose during the period of repayments and provided further that no such

goods shall be exported from British Guiana without the prior approval of A.I.D.

SECTION 6.6. Non-Taxation

(a) This agreement, and the amount agreed to be lent hereunder, shall be free from, and the Principal and interest shall be paid without deduction for and free from, any taxation or fees imposed under the laws in effect within British Guiana.

(b) No taxes, charges, fees, tariffs, duties, deposit requirements or similar payments of any kind shall be eligible for financing under this agreement.

SECTION 6.7. Rate of Exchange. Except as the parties hereto may otherwise agree in writing, the rate of exchange between U.S. dollars and West Indian dollars in all transactions pursuant to this Agreement shall be at the highest rate of exchange that is not unlawful for financing commodity imports. Such rates shall be determined as of the time of the transaction hereunder.

SECTION 6.8. Information. Appropriate arrangements satisfactory to A.I.D. shall be made by Borrower to publicize the loan.

SECTION 6.9. Notice of Material Developments. Borrower represents and warrants that it has disclosed to A.I.D. all circumstances which may materially affect the Project or the discharge of its obligations under this Agreement and covenants that it will inform A.I.D. of any conditions which interfere, or which it is reasonable to believe will interfere with any of the foregoing.

SECTION 6.10. Commission, Fees and Other Payments.

(a) Borrower warrants and covenants that it has not paid, agreed to pay, or cause to be paid and will not pay, agree to pay, or cause to be paid

to any person or entity (except Borrower's regular full-time officers and employees to the extent of their regular remuneration) any commission, fee or other payment in connection with the establishment or operation of this Loan.

(b) Borrower covenants that no payments have been or will be received by Borrower or any official of Borrower in connection with the establishment of arrangements for engineering and construction services except such fees, taxes or similar payments duly established by law in British Guiana.

SECTION 6.11. Maintenance of Records: Inspections; Reports

(a) Borrower shall maintain or cause to be maintained books and records in accordance with sound accounting principles and practices adequate to identify the disposition of funds disbursed pursuant to this agreement for the Project and of goods and services financed by such funds; to show the nature and extent of solicitation of prospective suppliers and the basis of award of contracts or orders for the Project; and to indicate the progress of the Project. Such books and records shall be audited regularly at such intervals as A.I.D. may specify by auditors acceptable to A.I.D. and shall be maintained and audited for such period as A.I.D. may require. A.I.D. shall have the right at all reasonable times to examine in British Guiana such books and records and all other documents and other records relating to the Project and this Agreement. Borrower shall promptly furnish to A.I.D. such financial and other reports and information relating to the Project, the loan or transactions pursuant thereto as A.I.D. may reasonably request. Borrower shall cooperate with A.I.D. to facilitate inspection of the Project.

ARTICLE VII

Remedies of A.I.D.

SECTION 7.1. Events of Default: Acceleration. If any one or more of the following events ("Event of Default") shall occur:

(a) Borrower shall fail to pay in full when due any interest, installment of Principal or any other payment required under this Agreement;

(b) Borrower shall fail to comply with any other provision contained herein;

(c) Any representation or warranty made by or on behalf of Borrower with respect to obtaining this loan or made or required to be made hereunder is incorrect in any material respect; or

(d) A default shall have occurred under any other agreement between Borrower or any of its agencies and the United States of America or any of its agencies

then, A.I.D., at its option, may declare all or any part of the unrepaid Principal to be due and payable immediately; provided that A.I.D. shall not exercise its option under this Section if the default is cured within sixty (60) days after A.I.D. gives notice of its intention to exercise its option under this Section.

SECTION 7.2. Termination of Disbursement: Transfer of Goods to A.I.D.
In the event that at any time:

(a) An Event of Default has occurred;

(b) An event occurs which A.I.D. determines to be an extraordinary situation which makes it improbable that the purposes of this loan will be

attained or that Borrower will be able to perform its obligations hereunder; or

(c) Any disbursement would be in violation of the law governing A.I.D.;

then, A.I.D., at its option, may (i) decline to issue further commitment documents, (ii) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable letters of credit or through bank payments made other than under irrevocable letters of credit, giving notice to Borrower promptly thereafter, (iii) decline to make disbursements other than under commitment documents, and (iv) at A.I.D.'s expense, direct that title to goods financed for the Project under this Agreement shall be transferred to A.I.D., if the goods are from a source outside British Guiana in a deliverable state and have not been offloaded in ports of entry serving British Guiana. To the extent that any costs connected with the purchase and transportation of these goods have been financed under this Agreement, these amounts shall be deducted from Principal.

SECTION 7.3. Refunds. If A.I.D. determines that any disbursement is not supported by valid documentation in accordance with the terms of this agreement, or is not made or used in accordance with the terms of this agreement, or was at the time of disbursement in violation of the law governing A.I.D., A.I.D. at its option may, notwithstanding the availability or exercise of any other remedy provided for under this agreement, require Borrower to pay to A.I.D. within thirty (30) days after receipt of a request therefor, an amount not to exceed the amount of such disbursement, provided, that such request

by A.I.D. shall be made no later than five (5) years after the date on which disbursement was made. Upon its receipt by A.I.D. such amount shall be applied first to the payment of any accrued interest and then prorata to the remaining installments of Principal.

SECTION 7.4. Waivers of Default. No delay in exercising or omission to exercise, any right, power, or remedy accruing to A.I.D. under this agreement shall be construed as a waiver of any such right, power or remedy.

SECTION 7.5. Expenses of Collection. All reasonable costs incurred by A.I.D. (other than salaries of its staff) after an Event of Default has occurred in connection with the collection of amounts due under this agreement may be charged to Borrower and reimbursed as A.I.D. shall specify.

ARTICLE VIII

Miscellaneous

SECTION 8.1. Effective Date. This agreement shall enter into effect as of the day and year first above written.

SECTION 8.2. Use of Representatives.

(a) All actions required or permitted to be performed or taken under this agreement by Borrower or A.I.D., may be performed by their respective duly authorized representatives.

(b) The representative(s) named pursuant to Section 3.1(b) shall have authority to represent Borrower in accordance with the above subsection and shall have the authority to designate other representatives. All such representatives, unless A.I.D. is given notice otherwise, shall have authority

to agree on behalf of Borrower to any modification or amplification of this agreement which does not substantially increase Borrower's obligations hereunder. Until receipt by A.I.D. of written notice of revocation by Borrower of the authority of any of its representatives, A.I.D. may accept the signature of such representatives on any instrument as conclusive evidence that any action effected by such instrument is authorized.

SECTION 8.3. Communications. Any communication or document given, made or sent by Borrower or A.I.D. pursuant to this Agreement shall be in writing and shall be deemed to have been duly given, made or sent to the party to which it is addressed when it shall be delivered by hand or by mail, telegram, cable or radiogram to such party at the following addresses:

TO BORROWER:

Mail Address: Minister of Finance
Public Buildings
Georgetown, British Guiana

Cable Address: Same as above

TO A.I.D. (two copies)

Mail Address: USAID Mission to British Guiana
Georgetown
British Guiana

Cable Address: Same as above

Other addresses may be substituted for the above upon giving of notice as provided herein.

All technical and engineering specifications therein shall be in terms of United States standards, except as A.I.D. may otherwise agree in writing.

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

THE GOVERNMENT OF BRITISH GUIANA

By: P.S. d'Aguiar.
Minister of Finance

IN THE PRESENCE OF:

W.P. D'Andrade

THE UNITED STATES OF AMERICA

By: Harry W. Yoe.
AID Representative

IN THE PRESENCE OF:

J. Ramon Solana

CERTIFICATE OF AUTHORIZED REPRESENTATIVES

Re: Loan No.

THE GOVERNMENT OF BRITISH GUIANA ("Borrower") hereby represents and warrants to the Agency for International Development ("A.I.D.") that due authority is vested in the following persons to act on its behalf in the capacities specified in connection with the execution and operation of the Loan Agreement, dated _____ 1965, between Borrower and A.I.D., to sign the Loan Agreement, to make representations by signing certificates, to make requests for disbursements and to sign any other document that may be required by the Loan Agreement:

Name

Title

Signatures

It is also represented and warranted that the above signatures are the authentic signatures of the respective persons.

THE GOVERNMENT OF BRITISH GUIANA

BY: _____

TITLE: _____