

MEMORANDUM

TO: Mr. William A. Ellis, DCM

FROM: Louis V. Perez, ADCD *LVP*

SUBJECT: Draft Letters to the DER/MG, the Governor and the Minister of Finance on the Highway Equipment Loans

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PD-DAF-144
October 3, 1968

capt. NSS
CB

Attached are draft letters to: (1) the DER/MG; (2) the Governor; and (3) the Minister of Finance. Copies will also be sent to the Ministries of Planning and Transport and to the DNER. These letters reflect the comments of the Project Committee as well as your own. As soon as I have your approval these letters will be put in final form.

Accepted

At our meeting yesterday we agreed:

1. To proceed with the letters substantially as drafted.
2. That you would call the Consul in Belo and have him ask the Director of the DNER to come to Rio to see you, at which time you would deliver the letter. The Consul would also be asked to attend.
3. At the same time, letters would be sent to the Governor, to the Ministers of Finance, Planning and Transport, and to the DNER, transmitting a copy of our letter to the DNER. It was agreed that you would personally deliver the letter to the Minister of Finance.
4. When the DER and the State have replied affirmatively, a USAID negotiating mission would go to Minas. If the DER and the State are unwilling to negotiate along the lines proposed by USAID, we would then have no alternative but to call the loans.

Attachments: a/s

cc: Minister Belton (thru Mr. Ellis)
DDCM:HKleine
ECON:RBloomfield
CONT:RCurtis
ENRO:WRStone
ENKO:JCampbell
LGS:FDeRosa
CDLS:LFradkin
Consul/Belo - CSpohnholz
AID/W - ARA/LA/BB
LA/CD

ADCD:LVPerez:cat 10-3-68

REVISED 1
DRAFT: LVPerez
ADCD: 10-3-68

Dr. Eduardo da Silva Bamberra
Director-General
Departamento de Estradas de Rodagem
do Estado de Minas Gerais
Alameda Ksequiel Dias
Belo Horizonte, MG

Dear Dr. Bamberra:

At my request, our Controller's office has now completed a special audit examination of the highway maintenance equipment project being financed under AID Loans 512-G-043 and 512-L-047 on which disbursements have been suspended since July 1967.

I was very distressed to note from this report that the DER's financial situation has continued to worsen. As a result, the project maintenance equipment is operating at less than 50% effectiveness, and the DER and the State are heavily in debt to suppliers and contractors for road construction. Moreover, it appears that the DER has not fulfilled various commitments and obligations which it undertook under the loan agreement with USAID.

The report concludes, that unless prompt and vigorous remedial measures are taken, and an adequate source of funding can be guaranteed, the project has little possibility of being successful. I think there can be little doubt about this conclusion. In the light of DER's failure to comply with the terms of the loan agreement, USAID would be fully within its rights in declaring the loans in default and demanding immediate payment of the entire amount outstanding plus interest as provided in

the loan agreements. This would be a very serious step indeed, and one which we do not wish to take if there is any possibility of saving the project.

In developing a solution, we have tried to identify the several causes for the failure of the project. These appear to be: (1) insufficient resources to cover the salaries and expenses of the DER/MG and to utilize all of the equipment provided; (2) excessive level of construction activities; and (3) excessively high level of short-term deficit financing. It is thus quite clear that unless specific resources in adequate amounts are earmarked and segregated exclusively for the DER/MG salaries and for the maintenance activity, such activity will not be self-sustaining, and the project will fail. Accordingly, we believe a solution must be found along the following lines:

1. The maintenance equipment program for the State would be re-designed and scaled down commensurate with the State's technical and financial capabilities, based on minimum equipment needs for routine maintenance and minor batterment works; such a re-designed project would be determined jointly by DER and USAID after a full field review by your consulting engineers in accordance with terms of reference to be jointly established.

2. The re-designed program would necessarily be considerably smaller than the original one. It any equipment should be shown to be

excess by the review, it would be disposed of by: (a) sale at public auction or (b) transfer or sale at fair market value to other highway departments or other users; the proceeds of such sales or transfers would be applied to reduce the principal outstanding of the respective AID Loans (512-G-043 and 512-L-047) from which such equipment was financed. The DER would thus bear any loss involved between the original cost and the proceeds. USAID would assist the DER in transfers of equipment to other highway departments.

3. An estimate would be made by the consultants of the annual resources required to operate the DER (salaries and other administrative expenses) and the reduced maintenance program for the next five years. A special blocked account in the name of the DER would be created in the Banco do Brasil or other depository satisfactory to USAID useable only for DER's normal salary and administrative expenses and the costs of the maintenance program. With the approval of the DNER and federal authorities, an agreed portion of the proceeds of the National Highway Fund and of the state motor vehicle registration tax in an amount sufficient to meet the needs as estimated by the consultants, would be deposited monthly in such account. The depository bank would be responsible for providing monthly statements of account to USAID and they or the consulting engineers would be responsible for certifying that the special funds mentioned were used only for the purposes agreed upon over the five-year period 1969-1973. Each quarter, estimates of receipts and expenditures will be prepared, and any excess funds could be released to the DER for its other operations with USAID's approval.

4. The DER would promptly take action to ensure compliance with the other contractual obligations and commitments under the loan agreement as set forth in Annex A*.

5. The undisbursed balance of Loan 512-L-04, would be cancelled except to the extent required for: (a) consulting services and training; (b) spare parts and (c) equipment indispensable to complement existing units.

I would appreciate your informing me as soon as possible in writing, whether or not you are prepared to proceed along the lines suggested.

Sincerely yours,

William A. Ellis
Director

cc: Governor of Minas Gerais
Minister of Finance
Minister of Transportation
Minister of Planning
DNER

b/cc: Messrs. Belton, Ellis, Kleins, Consul (Belo Horizonte),
Curtis, Stone, De Rosa, Perez

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* Annex A would list the covenants and obligations which DER has not complied with (as per the audit report).

REVISION 1
DRAFT:LVPeres
ADCD: 10-3-68

Excellency:

The recent special audit examination of the maintenance equipment program of the DER/MG financed by AID loans 512-G-043 and 512-L-047 has been completed.

The report is very distressing. More than a year after our loans were suspended, the DER's financial situation is, if anything, worse. Moreover, the DER/MG is not meeting several of its contractual obligations to USAID.

Under these circumstances, USAID would be fully within its rights in declaring these loans in default and demanding immediate payment of the entire amount outstanding. This would be a very serious step indeed, and one which we do not wish to take as long as there is any possibility of saving the project. As a development institution, we prefer the latter course.

I enclose a copy of our letter of today's date to the Director of the DER concerning the recent audit examination of the project and proposing a solution which would enable the majority of the equipment to be utilized efficiently. Such a solution would only be possible with the fullest cooperation of all the parties concerned, including the State and the Federal Government.

His Excellency
Dr. Israel Pinheiro
Governor of Minas Gerais

I would appreciate your informing me in writing, as soon as possible, whether or not the State is prepared to proceed along the lines suggested in my letter to the D&R.

Accept, Mr. Governor, my expression of highest esteem.

Sincerely yours,

William A. Ellis
Director

DRAFT:LVPeres
ADCD:10-3-68

USAID Loans to Departamento
de Estradas de Rodagem do
Estado de Minas Gerais for
Highway Maintenance Equipment

Excellency:

In July 1967 USAID found it necessary to suspend further disbursements on its loans for the highway maintenance program in the State of Minas Gerais. For ease of reference, I enclose copies of our letter to the DER/MG dated July 20, 1967 suspending disbursements. Also enclosed is a copy of our letter to you dated December 4, 1967 on the same subject.

Since July 1967, we have made several attempts to secure firm assurances from the DER/MG and the State to provide the necessary financial resources to enable the original project to be carried out. Despite receipt of such assurances, the financial problems remain unsolved. A significant portion of the equipment financed is presently idle, and the balance is being used at far less than satisfactory levels.

I am sure that you appreciate, Mr. Minister, that we cannot permit this unsatisfactory situation to continue indefinitely. Recently, at my request, our Controller concluded a special audit examination of the project prior to our taking any further action beyond the suspension already in effect. This examination confirmed that the DER's financial condition has continued to worsen, and that the DER and the State are

His Excellency
Dr. Antonio Delfim Neto
Ministry of Finance

heavily in debt to suppliers and contractors for road construction programs. As a consequence, the maintenance equipment financed by our loan is operating at less than 50% effectiveness.

There is little doubt that unless prompt and vigorous measures are taken, the project has little possibility of being successful. In the light of the DER's failure to comply with the terms of the loan agreement, USAID would be fully within its rights in declaring the loans in default and demanding immediate payment of the entire amount outstanding, plus interest, as provided in the loan agreements.

I am sure that you recognize, Mr. Minister, that this would be a very serious step indeed, and one which would necessarily involve the Government of Brazil as guarantor of the dollar loan. As a development institution, we do not wish to take such a drastic step if there is any possibility of saving the project.

I have today delivered a letter to the Director of the DER/MC apprising him of our serious concern, and suggesting a possible solution which would enable us to continue with the loan. A copy of my letter is attached. In essence, we are suggesting that the original program be scaled down commensurate with the State's financial capacity and that the funding of the reduced program be guaranteed by an earmarking of specific tax

revenues in a blocked account. Such a financial arrangement appears indispensable in view of our past experience with this project. Approval would be required by your Ministry to the proposed earmarking of the National Highway Fund transfers.

I have also written to the Governor of Minas Gerais in the same tenor and have requested both the DER and the Governor to inform me as soon as possible whether or not they are prepared to proceed along the lines suggested.

In view of the importance of this matter to your Government, I suggest that you consider appointing a special representative to represent you in the forthcoming discussions between the DER, the State and USAID representatives.

Accept, Excellency, my expression of highest esteem.

Sincerely yours,

William A. Ellis
Director

cc: Minister of Planning
Minister of Transport
DER

DRAFT:LVPeres
ADCD:10-3-68

Dr. Eliseu Resende
Director Geral
D.N.E.R.
Av. Presidente Vargas, 522 - 14
Rio de Janeiro, CB

Dear Dr. Resende:

Enclosed, for your information, is a copy of my letter of today's date to His Excellency, the Minister of Finance, regarding USAID loans to the Highway Department of the State of Minas Gerais.

Sincerely yours,

William A. Ellis
Director

Enclosure:

As Stated.

**DRAFT:LVPerez
ADCD:10-3-68**

(Letters to Ministers of Planning and Transportation)

Excellency:

Enclosed, for your information, is a copy of my letter of today's date to His Excellency, the Minister of Finance, regarding USAID loans to the Highway Department of the State of Minas Gerais.

Accept, Excellency, my expression of highest esteem.

Sincerely yours,

**William A. Ellis
Director**

Enclosure:

As stated.

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512-22-310-234
A.I.D. LOAN No. 512-L-047

ALLIANCE FOR PROGRESS
LOAN AGREEMENT

(Foreign Assistance Act: Alliance for Progress Funds)

BRAZIL - Minas Gerais Highway Department

Between the

STATE HIGHWAY DEPARTMENT OF MINAS GERAIS

and the

UNITED STATES OF AMERICA

Dated: July 22, 1965.

ALLIANCE FOR PROGRESS

LOAN AGREEMENT

AGREEMENT, in furtherance of the Alliance for Progress, dated the 22nd day of July, 1965, between STATE HIGHWAY DEPARTMENT OF MINAS GERAIS ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D."), with the concurrence of the Coordinating Commission for the Alliance for Progress ("COCAP").

ARTICLE I

The Loan

SECTION 1.1. The Loan. A.I.D. hereby agrees to lend to the Borrower, pursuant to the Foreign Assistance Act of 1961, as amended, up to \$15,000,000 (fifteen million United States dollars) to assist in financing the U.S. dollar ("dollar") and Brazilian cruzeiro ("cruzeiro") costs of goods and services, including consulting engineering services, required for the project as defined in Section 1.3. As used in this Agreement "Eligible Items" shall mean the goods and services financed under this Agreement, and "Principal" shall mean the aggregate amount disbursed under this Agreement.

SECTION 1.2. Cruzeiro Financing. Pursuant to the Agricultural Trade Development and Assistance Act of 1954, as amended

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2.

(P.L.480), A.I.D. has agreed, by Loan Agreement No. 512-G-043 dated April 2, 1965 (hereinafter "P.L.480 Loan Agreement") to lend to the Borrower up to nine billion Brazilian cruzeiros (Cr\$ 9,000,000,000) to assist in financing the cruzeiro costs of goods and services required for the Project as defined in Section 1.2 of the P.L.480 Loan Agreement and Section 1.3 of this Agreement. The loan established by the P.L.480 Loan Agreement is hereinafter referred to as the "P.L.480 Loan".

SECTION 1.3. The Project. As used in this Agreement and the P.L.480 Loan Agreement "Project" shall mean the improvement of Borrower's highway maintenance capability through (i) the planning, development and initiation of a maintenance program for the state highway network ("Maintenance Program"); (ii) the training of personnel to execute the Maintenance Program, including the development and introduction into use of an in-service training program which is to result in the institution of an in-service training manual prior to the end of the Project; (iii) the procurement of maintenance equipment and spare parts; and (iv) technical assistance to the Borrower, including assistance in developing the systems described in subsection 3.2(a).

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ARTICLE IIInterest; Terms of Payment

SECTION 2.1. Interest. Unless A.I.D. specifies otherwise pursuant to Section 2.5, Borrower shall pay semiannually to A.I.D. in dollars, on the unrepaid Principal, and on unpaid interest due, interest at the rate of three and one-half (3 1/2) percent per annum. Interest shall accrue from the date of respective disbursements hereunder, the first such payment to be due and payable no later than six (6) months after the first such disbursement, on a date to be specified by A.I.D.

SECTION 2.2. Repayment. Unless A.I.D. specifies otherwise pursuant to Section 2.5, the Borrower shall repay the Principal to A.I.D. in dollars over not more than twenty (20) years in thirty-five (35) approximately equal semiannual installments, the first installment to be due and payable two and one-half (2 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 and unpaid, and then to the repayment of Principal.

SECTION 2.4. Prepayment. The Borrower shall have the right to prepay, without penalty, at any time, all or any part of the Principal. Any prepayment shall be applied in the order prescribed in Section 2.3, and amounts applied to the remaining

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installments of Principal shall be applied pro rata to such installments.

SECTION 2.5. Currency and Recipient of Repayment.

(a) If A.I.D. shall so notify the Borrower in writing, the Borrower shall, until A.I.D. gives notice otherwise, discharge its obligations to make payments pursuant to this Article, and if A.I.D. so directs, to make payments pursuant to Section 7.1, by making all such payments in accordance with the terms of this Agreement to the Government of Brazil in Brazilian currency, equivalent to, and at the same time as, the dollar payments which would otherwise be made ("Special Payment Procedure"). In notifying the Borrower A.I.D. shall specify the exchange rate at which the equivalents in dollars of such payments of Brazilian currency are to be calculated, provided, however, that the Borrower shall in no case be required to pay more units of Brazilian currency per dollar to the Government of Brazil than it would have been required by the Central Bank of Brasil to pay to obtain dollars for payments directly to A.I.D. pursuant to this Agreement.

(b) Receipt by the Borrower of notice of election pursuant to subsection 2.5(a) shall not terminate those payment obligations of the Borrower to A.I.D. under this Agreement not discharged in accordance with the terms of subsection 2.5(a) hereof, or any other rights of A.I.D. under this Agreement.

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SECTION 2.6. Place of Payment. All payments to be made to A.I.D. shall be made to the Controller, Agency for International Development Mission to Brazil, Rio de Janeiro, Brazil or at such other place as A.I.D. may specify. Such payments shall be deemed to have been paid when received by A.I.D.

ARTICLE IIIConditions PrecedentSECTION 3.1. Conditions Precedent to Initial Financing.

Prior to the first disbursement or to the issuance of the first commitment document under this Agreement, the Borrower shall furnish A.I.D. in form and substance satisfactory to A.I.D.:

a. An opinion or opinions of legal counsel satisfactory to A.I.D. that this Agreement has been duly authorized or ratified by, and executed on behalf of the Borrower, has been registered if and as required by the law of Brazil, has been approved by the Senate of the United States of Brazil, and constitutes a valid and legally binding obligation of the Borrower in accordance with its terms;

b. A certificate substantially in the form of Exhibit I hereto (Certificate of Authorized Representatives);

c. Evidence that an agreement of guaranty has been executed by the Government of Brazil ("Guarantor") guaranteeing repayment of the loan and payment of all interest and other payments required pursuant to this Agreement, and that said guaranty is in effect in accordance with its terms;

d. Evidence of arrangements with appropriate monetary authorities for the registration of this Agreement in accordance with the laws of Brazil;

e. A complete financial plan for the Project through the

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7.

end of 1967, together with evidence that (1) Borrower's 1965 cash contribution to the Project already made available to Borrower has been expended for the Project, and how the funds to be received during 1965 are to be expended; (2) resources, other than the loan, will be made available as needed to (i) complete the Project; (ii) continue the Maintenance Program after disbursements hereunder have terminated; and (iii) properly maintain all equipment financed hereunder.

f. Evidence of contractual or other arrangements for technical consulting services to be performed for the Project by a firm or firms satisfactory to A.I.D., and procured in accordance with procedures to be specified by A.I.D.

SECTION 3.2. Additional Conditions Precedent with Respect to Financing Other Than Technical Consulting Services. Prior to any disbursement or issuance of a commitment document for Eligible Items other than technical consulting services, the Borrower shall furnish A.I.D. in form and substance satisfactory to A.I.D.:

a. Evidence that Borrower has developed and formally instituted sound permanent systems of (i) in-service training of highway maintenance personnel, based on an A.I.D.-approved training program; (ii) hiring of personnel; (iii) equipment replacement schedules including sources of all necessary funds; (iv) inventories of spare parts; and (v) highway load limits,

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including adequate mechanisms for enforcement of said limits.

b. Evidence that the Maintenance Program has been developed and will be implemented in a manner satisfactory to A.I.D.

c. Evidence that all conditions precedent to disbursement under the P.L.480 Loan Agreement have been met and that funds made available and equipment financed under the P.L.480 Loan have been and are being effectively utilized and maintained by the Borrower.

d. Evidence of contractual or other arrangements satisfactory to A.I.D. for procurement of equipment for the Project by a procurement agent satisfactory to A.I.D., in accordance with procedures satisfactory to A.I.D.

e. Specifications and estimates of equipment and spare parts to be financed hereunder as A.I.D. may request.

SECTION 3.3. Terminal Date for Fulfillment of Conditions Precedent. Except as A.I.D. may otherwise agree in writing, if the conditions established by Section 3.1 have not been satisfied by September 30, 1965, or if the conditions established by Section 3.2 have not been satisfied by November 4, 1965, A.I.D. may, at any time thereafter, terminate this Agreement by giving written notice to the Borrower. Upon such termination, the Borrower shall repay the unrepaid Principal and any accrued interest, whereupon all other obligations of the Borrower and A.I.D. under this Agreement shall cease.

ARTICLE IV
Disbursement

SECTION 4.1. Disbursements for Direct Dollar Costs. To obtain disbursements for direct dollar costs of the Project, Borrower may from time to time, and in accordance with 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 Local (Indirect Dollar) Costs. To obtain disbursements hereunder for local (indirect dollar) costs of the Project, Borrower may from time to time, and in accordance with local currency requirements and expenditures for the Project, request A.I.D. to make available an amount of cruzeiros for the Project. Each such request shall be supported by such documentation as A.I.D. may require. The provisions of the Special Letter of Credit Implementation Agreement, dated July 16, 1965, between the Bank of Brazil,

the Central Bank of Brazil, and A.I.D. shall apply to Special Letters of Credit utilized to make cruzeiros available for the purposes of this loan. Cruzeiro disbursements hereunder shall be charged against the loan at the rate set forth in Section 6.6 hereof.

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. Denomination and Time of Disbursements. Disbursements hereunder shall be denominated in dollars and shall be deemed to occur (a) in the case of 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 local (indirect dollar) costs, on the respective dates on which Borrower or its designee receives cruzeiros pursuant to Section 4.2.

SECTION 4.5. Terminal Date for Requests for Commitment Documents and Disbursements. Except as A.I.D. may otherwise agree in writing, no commitment documents shall be issued in response to requests received after November 3, 1966, and no disbursement shall be made against documentation submitted after November 3, 1966.

ARTICLE VCovenants Concerning Procurement

SECTION 5.1. Source of Procurement. All Eligible Items (except shipping and marine insurance) financed under this Agreement shall have their source and origin in the United States of America or in Brazil. Shipping and marine insurance financed hereunder shall have their source and origin in the United States of America. Transportation services procured from a United States-flag carrier shall be deemed to have their source and origin in the United States. Marine insurance issued in the United States by a company authorized to do a marine insurance business in any state of the United States of America shall be deemed to have its source and origin in the United States. No less than seven million five hundred thousand dollars (\$7,500,000) of the Loan shall be utilized to finance Eligible Items having their source and origin in 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 countries included in A.I.D. Geographic Code 935 as in effect at the time such goods and services are procured.

SECTION 5.2. Method of Procurement. No more than reasonable prices shall be paid for any Eligible Item, and all such items (except technical consulting, procurement, and other professional

services) shall be procured on a fair and competitive basis. Except with respect to the foregoing professional services, prices should normally approximate the lowest competitive price for the Eligible Item procured; operating costs, quality, time and cost of delivery, terms of payment, and other factors considered. Prices for Eligible Items which are procured in bulk within the United States shall not exceed the market prices prevailing in the United States at the time of purchase. Eligible Items shall be procured in accordance with such procedures as A.I.D. shall specify.

SECTION 5.3. Eligibility Date. No goods or services may be financed in whole or in part by the Loan which arise out of orders firmly placed or entered into, or services performed, prior to the effective date of the P.L. 480 Loan Agreement.

SECTION 5.4. Transportation.

a. At least fifty (50) percent of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by the loan, 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. All Eligible Items transported to Brazil on vessels other than privately-owned United States-flag commercial vessels shall be transported on carriers owned, operated or under the control of countries included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time such transportation is procured; provided, however, that no Eligible Items may be transported on any ocean vessel which A.I.D. in a notice to the Borrower has designated as ineligible to carry A.I.D. financed commodities.

SECTION 5.5. Marine Insurance. If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, the Government of Brazil, by statute, decree, rule or regulation, favors any marine insurance company of any country over any marine insurance company authorized to do business in any state of the United States of America, shipments of Eligible Items 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.

SECTION 5.6. Small Business Notification. In order that American small business shall have the opportunity to participate in furnishing Eligible Items, the Borrower shall, at such time

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as A.I.D. may specify, prior to ordering or contracting for any Eligible Item to be procured in the United States of America other than professional services estimated to cost more than the equivalent of five thousand United States dollars (\$5,000) cause to be received by A.I.D. such information concerning Eligible Items as A.I.D. may require.

SECTION 5.7. Contracts. No Eligible Item may be financed in whole or in part by the loan which arises (a) out of contracts for engineering, procurement or other services unless A.I.D. has given its approval in writing to the terms of such contracts and the firms which will provide such services; or (b) out of any contract for the performance of services outside the United States by United States citizens unless A.I.D. has approved in writing the employment of such persons.

ARTICLE VIAdditional Covenants and WarrantiesSECTION 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, maintenance 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 objectives of the Project. Borrower shall cause the Project to be carried out in conformity with any contracts, engineering, or procurement arrangements, plans, specifications, schedules and systems of any kind approved by A.I.D., and in conformity with any other documents approved by A.I.D. and shall cause A.I.D. concurrence to be obtained prior to any material modification or cancellation thereof.

b. Borrower shall provide or cause to be provided **any** financial resources additional to this loan required by the financial plan submitted pursuant to subsection 3.1(e) and any other resources required to carry out and complete the Project in a timely fashion.

c. Borrower shall adequately maintain, in accordance with sound practice, all equipment financed by this Loan and the P.L. 480 Loan.

d. Borrower shall develop and formally institute a sound permanent cost accounting system to realistically distribute costs against operations for which expenditures were incurred.

SECTION 6.2. Excess Property. Equipment to be financed under the loan and to be procured from the United States shall be procured from U.S. Government stocks of reconditioned excess property ("Excess Property") to the maximum extent practicable and to the extent that the Borrower determines that such equipment is technically suitable and can be made available on a timely basis. Such determination shall be the sole responsibility of the Borrower, with the advice of Borrower's technical consultant. Prior to procurement of any new equipment from the United States, Borrower shall notify A.I.D. of its decision either (i) that suitable Excess Property is not available on a timely basis; or (ii) that Excess Property which is available is not suitable for use in the Project.

SECTION 6.3. Long Term Debt. Until full repayment of the Loan, Borrower shall not enter any arrangements by which the Borrower incurs indebtedness maturing in more than one year without first submitting evidence to form and substance satisfactory to A.I.D. that the additional debt will not adversely affect Borrower's ability to repay this loan.

SECTION 6.4. Utilization of Goods and Services. All goods and services financed under this Agreement under commitment documents issued pursuant to Section 4.1 or with cruzeiros made available pursuant to Section 4.2 shall be used exclusively for the Project.

SECTION 6.5. 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 Brazil.

b. Either all goods and services financed hereunder for the Project, whether procured directly by Borrower or by any contractor with Borrower, shall be exempt from any taxes, charges or fees on ownership or use, and any other taxes, investment or deposit requirements and currency controls in Brazil and the import, acquisition, use or disposition of any such goods or services shall be exempt from any tariffs, customs, duties, import taxes, taxes on purchase or disposition, and any other taxes or similar charges or fees in Brazil, or Borrower shall pay any such taxes, charges, fees, tariffs, duties, deposit requirements and any other similar requirements of Brazil, and none of these shall be financed with loan funds; Project funds may be used.

SECTION 6.6. Rate of Exchange. Except as the parties shall otherwise agree, the rate of exchange between dollars and cruzeiros in all transactions pursuant to this Agreement shall be at the rate employed by the Bank of Brazil on the date of said transaction for sales of United States dollars to importers in Brazil for imports which provides the largest number of cruzeiros per United States dollar.

SECTION 6.7. Utilization of Other Currencies. Borrower agrees that cruzeiros made available to the Guarantor in connection with other United States assistance to Brazil may be utilized for the Project, subject to mutual agreement between A.I.D. and Guarantor on priorities for the utilization of such cruzeiros at such time as arrangements are made for the provision of such assistance or such cruzeiros become available for purposes of the economic development of Brazil. In the event that such funds are utilized for the Project, the amount of the loan shall be reduced by an equivalent amount of dollars computed at the exchange rate prescribed in Section 6.6. Utilization of such funds shall not be considered a disbursement under this Agreement.

SECTION 6.8. Information. Appropriate arrangements satisfactory to A.I.D. shall be made by Borrower to publicize the loan as a program of American aid in furtherance of the Alliance for Progress. Borrower shall ensure that the clasped hands and Alliance for Progress symbols are conspicuously marked on equipment financed hereunder.

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

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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. Commissions, Fees and Other Payments. The Borrower warrants and covenants that, in connection with obtaining this loan or taking any action under or with respect to this agreement, it has not paid and will not pay or agree to pay, nor to the best of its knowledge has there been paid or will there be paid or agreed to be paid by any other person or entity, commissions, fees or other payments of any kind, except as regular compensation for bona fide professional, technical or other comparable services. Borrower shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical or comparable services to which it is a party or of which it has knowledge (indicating whether such payment has or is to be made on a contingent basis) and if the amount of any such payment is deemed unreasonable by A.I.D., Borrower shall cause a reduction satisfactory to A.I.D. to be made therein.

SECTION 6.11. Maintenance of Records; Inspections; Reports.

a. The Borrower shall maintain or cause to be maintained books and records adequate to identify the Eligible Items; to disclose their cost and their use; and to indicate the progress of the Project. The Borrower shall also maintain or

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cause to be maintained books and records in accordance with sound accounting practice showing its financial condition. Such books and records shall be audited regularly, at such intervals as A.I.D. may specify, by auditors acceptable to A.I.D. The Borrower shall authorize such auditors to prepare audit reports in form satisfactory to A.I.D. and to answer directly any reasonable request for information about the Borrower's accounts. Such books and records shall be maintained and audited for such period as A.I.D. may require.

b. A.I.D. shall have the right at all reasonable times to examine such books and records and all other documents, correspondence, memoranda, and other records relating to the Project and the loan. The Borrower shall cooperate with, and give reasonable assistance to, and shall facilitate inspection by A.I.D. of operations and the utilization of funds under this Agreement, and shall afford all reasonable opportunity for authorized representatives of A.I.D. to visit any part of the territory of Brazil for purposes related to this Agreement.

c. The Borrower shall promptly furnish to A.I.D. such financial and other reports and information relating to the Project, the loan or transactions pursuant to this Agreement, and any covenants of this Agreement as A.I.D. may request.

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ARTICLE VIIRemedies of A.I.D.

SECTION 7.1. Events of Default; Acceleration. If any of the following events ("Events of Default") occurs:

a. The Borrower fails to pay in full when due any installments of Principal or interest or any other payment required under this Agreement;

b. The Borrower or Guarantor fail to comply with any other provision contained herein or in the guaranty agreement;

c. Any representation or warranty made by or on behalf of the Borrower or Guarantor with respect to obtaining this loan or made or required to be made hereunder is determined by A.I.D. to be incorrect in any material respect;

d. A default occurs under any other agreement between the Borrower or the Guarantor and the United States 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, and under any such declaration, unless the default is cured within thirty (30) days thereafter, such Principal and all interest accrued thereon shall become due and payable as of the date of such declaration.

SECTION 7.2. Termination of Disbursements; Transfer of Goods to A.I.D. If at any time:

a. An Event of Default occurs;

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 the Borrower or Guarantor will be able to perform its obligations hereunder or under the guaranty agreement; 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 letters of commitment; (ii) suspend or cancel outstanding letters of commitment 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 the Borrower promptly thereafter; (iii) decline to make disbursements other than under letters of commitment; and (iv) at A.I.D.'s expense, direct that title to goods financed hereunder shall be transferred to A.I.D. if the goods are from a source outside Brazil, in a deliverable state and have not been off-loaded in ports of entry of Brazil, it being understood that to the extent that any costs connected with the purchase and transportation of these goods have been financed by the loan, such 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

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or used in accordance with the terms of this Agreement, or is in violation of the law governing A.I.D. (including A.I.D. regulations applicable to the Borrower's operations), A.I.D. at its option, may, notwithstanding the availability of any other remedy provided for in Section 7.2, require the Borrower to pay A.I.D. within thirty (30) days after receipt of a written request therefor, an amount not to exceed the amount of such disbursement; provided, however, that such request by A.I.D. shall be made not later than five (5) years after the date of the final disbursement hereunder. Any such refund received by A.I.D. shall be applied as provided in Section 2.3, and amounts applied to the remaining installments of Principal shall be applied in inverse order of their maturity.

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 rights, powers or remedies.

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 the Borrower and reimbursed as A.I.D. shall specify.

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ARTICLE VIIIMiscellaneous

SECTION 8.1. Effective Date of Loan Agreement. 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 Borrower hereby designates the person or persons holding the position or positions specified in Exhibit No. 1 of this agreement as its representative with authority to designate in writing other representatives of Borrower in its dealings with A.I.D. The Borrower's representatives designated pursuant to the preceding sentence, unless A.I.D. is given notice otherwise, shall have authority to agree on behalf of the Borrower to any modification of this Agreement which does not substantially increase the Borrower's obligation hereunder. Until receipt by A.I.D. of written notice of revocation by the 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 by the Borrower.

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SECTION 8.3. Successors to Rights of A.I.D. If, by operation of any law of the United States of America, or by virtue of assignment, any corporate or other agency of the Government of the United States of America succeeds to the rights and obligations of A.I.D. under this Agreement, such agency shall be deemed to be A.I.D. for purposes of this Agreement.

SECTION 8.4. Communications. Any communication or document given, made or sent by the 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 address:

To the Borrower:

Mail Address:

Departamento de Estradas de Rodagem, Minas Gerais
Alameda Ezequiel Dias
Belo Horizonte, Minas Gerais

Cable Address:

DER/MG
Belo Horizonte.

To A.I.D. (five copies):

Mail Address:

Office of Capital Development
Agency for International Development
Embaixada dos Estados Unidos da América
Rio de Janeiro, Brazil.

EXHIBIT I

CERTIFICATE OF AUTHORIZED REPRESENTATIVES

Re.: Loan No. 512-L-047

STATE HIGHWAY DEPARTMENT OF MINAS GERAIS ("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 _____, 1955, between Borrower and A.I.D., establishing a loan in Borrower's favor in the amount of fifteen million United States dollars, 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:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
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It is also represented and warranted that the above signatures are the authentic signatures of the respective persons.

STATE HIGHWAY DEPARTMENT OF MINAS
GERAIS

By: _____

Title: _____

Date: _____

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

THE STATE HIGHWAY DEPARTMENT OF
MINAS GERAIS

By: [Signature]
Title: Director

UNITED STATES OF AMERICA

By: [Signature]
Title: Director, USAID/Brazil

Concurrence: COORDINATING COMMISSION FOR THE
ALLIANCE FOR PROGRESS

By: [Signature]
Title: Coordinator

Witnessed by:

[Signature]
[Signature]
[Signature]

L.C.P-6-47
5120234-⑦
PD-AAF-144

PAYMENT AGREEMENT

Between the
UNITED STATES OF BRAZIL
and the
UNITED STATES OF AMERICA

In Connection With A.I.D. Loan No. 512-I-047
(Minas Gerais Highway Department)

Dated: October 14, 1965
512-22-310-239

CONFORMED COPY

ALLIANCE FOR PROGRESS

PAYMENT AGREEMENT

PAYMENT AGREEMENT, in furtherance of the Alliance for Progress, dated the 14th day of October, 1955 between the GOVERNMENT OF THE UNITED STATES OF BRAZIL ("Government") and the GOVERNMENT OF THE UNITED STATES OF AMERICA, acting through the Agency for International Development ("A.I.D.").

ARTICLE I

Definitions and Terms to Government

SECTION 1.1. The Loan Agreement. The Loan Agreement numbered A.I.D. Loan No. 512-L-047, between the State Highway Department of Minas Gerais ("Borrower") and A.I.D., dated July 22, 1955, establishing a loan to the Borrower with a total Principal of not to exceed \$15,000,000 (fifteen million dollars), is herein called the "Loan Agreement", and the loan established thereby is herein called the "Loan".

SECTION 1.2. Principal. As used in this Payment Agreement, "Principal" shall mean the aggregate amount of dollars disbursed under the Loan Agreement.

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SECTION 1.3. Transferred Principal. As used in this Payment Agreement, "Transferred Principal" means Principal paid by Borrower to Government pursuant to Section 2.5 of the Loan Agreement and Section 2.1 of this Agreement.

SECTION 1.4. Outstanding Transferred Principal. As used in this Payment Agreement, "Outstanding Transferred Principal" means Transferred Principal not repaid to A.I.D. by Government.

SECTION 1.5. Government Interest Rate. As used in this Payment Agreement, "Government Interest Rate" means interest at one (1) per cent for ten (10) years following the first disbursement under the Loan Agreement, and two and one-half (2 1/2) per cent thereafter.

SECTION 1.6. Government Amortization Terms. As used in this Payment Agreement, "Government Amortization Terms" means amortization over not more than forty (40) years, in sixty-one (61) semi-annual installments, the first of which shall be due and payable not later than ten (10) years after the first disbursement under the Loan Agreement, on a date to be specified by A.I.D. The amount of each installment shall be determined by dividing the total amount of the Government's obligation to repay outstanding Principal to A.I.D. immediately before paying that installment by the number of installments remaining to be paid at that time.

ARTICLE IISpecial Procedure for Borrower'sPayments to Government

SECTION 2.1. Receipt of Borrower's Payments. Pursuant to Section 2.5 of the Loan Agreement, the Government and A.I.D. hereby agree that the Government shall receive from the Borrower payments in Brazilian currency ("Cruzeiros") in discharge of the Borrower's obligations to make payment in United States dollars under the Loan Agreement ("Special Payment Procedure").

SECTION 2.2. Notice.

a. Upon satisfactory completion of the condition precedent set forth in Article X of this Payment Agreement, A.I.D. shall notify the Borrower in accordance with the Loan Agreement that this Payment Agreement is in effect.

b. Promptly upon receipt thereof Government shall notify A.I.D. of all payments received from Borrower in accordance with this Agreement.

SECTION 2.3. Exchange Rate. The Cruzeiro equivalent of the dollar amount which a Borrower would be obligated to pay to A.I.D. in dollars if this Payment Agreement were not in effect shall be calculated at whichever rate of exchange would be employed by the Central Bank of Brazil if the Borrower were obtaining dollars for payments directly to A.I.D. pursuant to the Loan Agreement.

SECTION 2.4. Denomination of Borrower's Payments.

Although payable to Government in Cruzeiros, all payments by Borrower to Government shall, immediately upon receipt by Government, be denominated in dollars employing the exchange rate specified in or pursuant to Section 2.3.

SECTION 2.5. Use of Borrower's Payments- Special Account.

The Government shall deposit the Borrower's payments in a separate account which the Government shall establish in the Central Bank of Brazil or such other Bank as the Government and A.I.D. may agree upon ("Special Account"). Unless A.I.D. agrees otherwise in writing, such account shall be drawn upon by the Government for the purpose of meeting payment obligations to A.I.D. pursuant to this Payment Agreement or for such purposes beneficial to the economic and social development of Brazil consistent with the goals of the Alliance for Progress as shall be mutually agreed to in writing by the Government, or such organization as it may designate, and A.I.D. Provided, however, that the provisions of this Section shall in no way limit, modify or alter Government's obligation to make payment to A.I.D. pursuant to this Agreement.

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ARTICLE IIIDeferred Payment by Government to A.I.D.

SECTION 3.1. Scope. The provisions of this Article III shall apply unless and until A.I.D. invokes the guaranty set forth in Article IV.

SECTION 3.2. Interest Payments - Interest on Untransferred Principal. Immediately upon receipt of any interest payment from the Borrower, Government shall pay to A.I.D. the lesser of the following two amounts: (i) an amount equal to the interest which the Borrower would have been obligated to pay to A.I.D. if Borrower's interest obligation had been computed at the Government Interest Rate; or (ii) the amount of interest actually received from the Borrower.

SECTION 3.3. Interest Payments - Interest on Transferred Principal. In addition to the obligations set forth in Section 3.2, Government shall pay to A.I.D. interest at the Government Interest Rate, on Outstanding Transferred Principal and on any interest due and payable by Government to A.I.D. Interest on Outstanding Transferred Principal shall accrue from the dates on which Principal payments are received from Borrower by Government, and shall be payable to A.I.D. semi-annually, the first such payment to be made on a date to be specified

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by A.I.D., which date shall be no later than six (6) months after Interest on Outstanding Transferred Principal begins to accrue.

SECTION 3.4. Amortization of Transferred Principal.

Government agrees to pay to A.I.D. all Transferred Principal in accordance with the Government Amortization Terms.

SECTION 3.5. Use of Balances. All amounts representing

1. differences between interest paid by Borrower to Government in accordance with Section 2.1, and interest payable by Government to A.I.D. pursuant to this Payment Agreement; and
11. differences between the total amount of Transferred Principal and Transferred Principal due and payable by Government to A.I.D. pursuant to this Payment Agreement;

shall remain available to Government for use in accordance with Section 2.5 until such time as needed for payments to A.I.D.

ARTICLE IVIndependent GuarantySECTION 4.1. Guaranty.

- a. The Government unconditionally and absolutely, jointly and severally as primary obligor with the Borrower, undertakes to make, in accordance with the terms of the Loan Agreement, due and punctual payment of the Principal, interest and any other payment required of the Borrower under the Loan Agreement.
- b. The Government shall furnish such information and take such steps, related to making this Guaranty operative as A.I.D. may reasonably request.
- c. The Government agrees to remain bound under this Payment Agreement notwithstanding the extension of time of performance to, the granting of any other indulgency to, or any other modification of any obligation of the Borrower under the Loan Agreement.
- d. A.I.D. may invoke the foregoing guaranty upon the occurrence of any Event of Default as defined in the Loan Agreement, by delivery of notice to the Government. Except as otherwise provided in Section 4.4, upon delivery of such notice and until such time as A.I.D. may otherwise agree in writing, Government shall meet its obligations to A.I.D. under this Article by making payments to A.I.D. in accordance with Section 4.2 and 4.3.

SECTION 4.2. Amortization. In the event that the Guaranty is invoked by A.I.D., the Government shall pay to A.I.D. the amount that the Borrower is obligated to pay to A.I.D. pursuant to Section 2.2 of the Loan Agreement ("Repayment"), whether or not Borrower has discharged said obligation by payments to Government in cruzeiros in accordance with Section 2.5 of the Loan Agreement and Section 2.1 of this Payment Agreement. Such payments by Government to A.I.D. shall be in accordance with the Government Amortization Terms.

SECTION 4.3. Interest. In the event that the Guaranty is invoked by A.I.D., Government shall pay to A.I.D. interest at the Government Interest Rate on any Principal which has not been repaid to A.I.D., and on any interest due to A.I.D. Such interest shall accrue from the dates of the respective disbursements by A.I.D. under the Loan Agreement, and shall be payable to A.I.D. semi-annually, the first such payment to be due and payable on a date to be specified by A.I.D.

SECTION 4.4. Independent Nature of Guaranty. The Guaranty established in Section 4.1 shall remain in full force and effect whether or not the Special Payment Procedures established by Section 2.1 and other provisions of this Payment Agreement are, for any reason, terminated. In the event such Procedures are, for any reason, terminated, and the Guaranty is invoked by A.I.D., the provisions of Sections 4.2 and 4.3 shall cease to apply and Government shall meet its obligations to A.I.D. under

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this Article by making payments to A.I.D. in accordance with the Loan Agreement and Section 4.1 of this Agreement.

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ARTICLE VGovernment Payments - General

SECTION 5.1. Currency of Payments. All payments by Government to A.I.D. shall be in United States dollars.

SECTION 5.2. Place of Payments. All payments by Government to A.I.D. shall be deemed to have been paid when delivered to the Controller, U.S.A.I.D. Mission to Brazil, Embassy of the United States of America, Rio de Janeiro, GB, Brasil, or to such other address as A.I.D. may specify.

SECTION 5.3. Application of Payments. All payments by Government to A.I.D. shall be applied first to the payment of any interest due from Government to A.I.D. and unpaid, and then to the repayment of Principal due from Government to A.I.D.

SECTION 5.4. Prepayment. The Government shall have the right to prepay without penalty at any time, all or any part of the Outstanding Transferred Principal. Any prepayment shall be applied in the order prescribed in Section 5.3 and amounts applied to the remaining installments of Outstanding Transferred Principal shall be applied pro rata to such installments.

SECTION 5.5. Renegotiation of Terms. In the light of the undertakings of the Government of the United States of America, the Government and the other signatories of the Act of Bogota and the Charter of Punta del Este to join in an Alliance for Progress, the Government agrees that at any time

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or times when it is requested to do so by A.I.D. under this Section, but not sooner than six (6) months before the date on which the first installment of Outstanding Transferred Principal is payable under Section 3.4 of this Payment Agreement, it will negotiate with A.I.D. concerning the acceleration of payments required to be made to A.I.D. pursuant to this Payment Agreement. The parties hereto shall mutually determine to what extent repayment should be accelerated on the basis of one or more of the following criteria:

- a. The capacity of the Government to service a more rapid liquidation of its obligations in the light of the internal and external financial position of Brazil, taking into account debts owing to any agency of the United States of America or to any international organization of which the United States of America is a member;
- b. The relative capital requirements of the Government and of the other signatories of the Act of Bogota and of the Charter of Punta del Este.

SECTION 5.6. Interest Computations on 365-Day Year Basis.

Interest under this Agreement shall be computed on the basis of a 365-day year.

ARTICLE VIAdditional Covenants and Warranties

SECTION 6.1. Information. The Government shall cooperate with A.I.D. in publicizing this Payment Agreement and the Loan Agreement as programs of American aid in furtherance of the Alliance for Progress.

SECTION 6.2. Notice of Adverse Developments. The Government shall promptly inform A.I.D. of any conditions which interfere with, or threaten to interfere with, the carrying out by the Government of its obligations under this Agreement.

SECTION 6.3. Taxation of this Payment Agreement and Payments Hereunder. This Payment Agreement shall be free from, and all payments to A.I.D. made hereunder shall be paid without deduction for and free from, any taxation or fees imposed under the laws of Brazil or laws in effect in its territory.

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ARTICLE VIIRecords; Inspections; ReportsSECTION 7.1. Maintenance of Records; Inspections; Reports.

a. The Government shall maintain or cause to be maintained for such time as shall meet the needs of the parties, books and records, including documentation, in accordance with sound accounting principles and practices adequate to identify the payments received pursuant to Section 2.1 hereof, and to identify programs or projects financed by funds disbursed from the Special Account, and indicate the progress of such activities.

b. Such books and records shall be open at all times for examination by authorized representatives of the Government and A.I.D., which procedure is consistent with Article II, Section 5 of the Agreement between the Government of Brazil and the Government of the United States of America signed on May 30, 1953, and subsequently approved by the Brazilian Congress. For this purpose, if the Government and A.I.D. mutually agree, the Government may maintain, within its accounting system, a segregated set of books and records for all transactions specifically related to the Special Account. Examination of the books and records will be carried out in practice by procedures which may include the following whenever mutually agreed to by the Government and A.I.D.:

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1. Joint auditing under mutually agreed to conditions.
2. The use of independent auditors selected by the Government and acceptable to A.I.D.
3. The inspection outside the premises of the Government of certified documentation relating to the Special Account.

c. The Government shall cooperate with, and give reasonable assistance to, and shall facilitate inspections by A.I.D. with respect to the execution of the activities financed through the Special Account, and shall afford all reasonable opportunity for authorized representatives of A.I.D. to visit any part of the territory of Brazil for purposes related to this Payment Agreement.

d. The Government shall promptly furnish to A.I.D. such financial and other reports and information relating to the covenants of this Payment Agreement or transactions pursuant hereto as A.I.D. may request.

ARTICLE VIIIRemedies of A.I.D.

SECTION 8.1. Grounds for Termination. If any one or more of the following events ("Grounds for Termination") shall occur:

- a. Government shall fail to comply with any provision contained herein;
- b. A default shall have occurred under any other agreement between Government or any of its agencies and the United States of America or any of its agencies;
- c. A.I.D. determines that any representation or warranty made by or on behalf of Government in connection with this Agreement or the negotiations incident thereto, or pursuant to this Agreement is incorrect in any material respect;
- d. Any change in the character, capacity or creditworthiness of the Borrower, or a change in the conduct of the project described in the Loan Agreement, which occurs because Government or any governmental authority in Brazil shall have taken any action for the dissolution or disestablishment of the Borrower or for the suspension of the Borrower's activities or a substantial part thereof, or for the cancellation, substantial amendment or suspension of the right of Borrower to carry out a project;
- e. A.I.D. determines that an extraordinary situation has arisen which makes it improbable that the purposes of

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this Agreement be attained or that Government will be able to perform its obligations hereunder;

f. Continuation of the procedures established herein would be in violation of the law governing A.I.D.;

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

1. all or any part of the Outstanding Transferred Principal and any interest accrued thereon to be due and payable to A.I.D. immediately, specifying which installments thereof, and interest thereon shall become due and payable; and/or

11. the special payment procedure established herein to be terminated.

Upon any such declaration, unless the cause for termination is cured within sixty (60) days thereafter, such Principal and interest shall become due and payable immediately, and/or the special payment procedure shall be terminated in accordance with the terms of such declaration. Unless A.I.D. otherwise specifies, such termination shall not in any way affect the continued validity of the guaranty contained in Section 4.1.

SECTION 8.2. Waiver of Causes for Termination. No delay in exercising or omission to exercise any right accruing to A.I.D. under this Agreement shall be construed as an acquiescence or as a waiver by A.I.D. of any such right.

SECTION 8.3. Defaults. For purposes of other agreements

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between Government and the United States of America or any of its agencies, the occurrence of an event specified in Subsections 8.1(a), (c) or (d) shall be considered an "Event of Default" under this Agreement.

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ARTICLE IXMiscellaneousSECTION 9.1. Use of Representatives.

a. All actions required or permitted to be performed or taken under this Agreement by the Government or A.I.D. may be performed by their respective duly authorized representatives.

b. The Government hereby designates the Minister of Finance as its representative with authority to designate in writing other representatives in its dealings with A.I.D. The representatives of the Government named pursuant to the preceding sentence, unless A.I.D. is given notice otherwise, shall have authority to agree on behalf of the Government to any modification of this Agreement which does not substantially increase the Government's obligations hereunder. Until receipt by A.I.D. of written notice of revocation by the Government 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 by the Government.

SECTION 9.2. No Prejudice. No provision of this Agreement shall terminate or modify any right of A.I.D. specified in or which may arise pursuant to the Loan Agreement.

SECTION 9.3. Notice. Any notice, request or communication given, made or sent by the Government or A.I.D. pursuant to

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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 other party at the following addresses:

To the Government:

Mail Address:

Ministerio da Fazenda
Rio de Janeiro
Brasil.

Cable Address:

MINIFAZ
Rio de Janeiro

To A.I.D. (five copies):

Mail Address:

Office of Capital Development
Agency for International Development
Embaixada dos Estados Unidos da America
Rio de Janeiro, Brazil.

Cable Address:

USAID
Amembassy
Rio de Janeiro.

Other addresses may be substituted for the above upon the giving of notice and acknowledgement of such substitution.

SECTION 9.4. Effective Date of Payment Agreement. This Agreement shall enter into effect as of the day and year first above written.

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ARTICLE XConditions Precedent

SECTION 10.1. Conditions Precedent to Use of Deferred Payment Procedures. The Special Payment Procedure shall not be employed unless and until Government has furnished A.I.D. in form and substance satisfactory to A.I.D.:

a. An opinion or opinions of the highest legal officer of the Ministry of Finance, or of other counsel **satisfactory** to A.I.D., that this Agreement has been duly authorized or ratified by and executed on behalf of Government, and that this Agreement, and any obligations incurred by Government pursuant hereto do and will constitute valid and legally binding obligations of Government in accordance with their terms;

b. Evidence of the authority of the person or persons who will act as representative or representatives of Government in connection with the operation of this Agreement pursuant to Section 9.1 of this Agreement, together **with** an authenticated specimen signature of each such person certified as to its authenticity by duly constituted Brazilian authority;

c. A copy of any agreement between Government and Borrower relating to Government's rights against the Borrower in the event that the Guaranty in Section 4.1 is invoked by A.I.D., or, in the absence of any such agreement, a statement of the applicable law.

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SECTION 10.2. Terminal Date for Satisfying Conditions Precedent. If the conditions contained in Section 10.1 of this Agreement have not been satisfied by December 31, 1965 or such later date as A.I.D. may specify, A.I.D. may at any time thereafter terminate the Special Payment Procedure and/or all provisions of this Agreement by giving notice to Government.

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

UNITED STATES OF BRAZIL

By: _____

Title: Minister of Finance

UNITED STATES OF AMERICA

By: _____

Title: Director, USAID/Brazil

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

UNITED STATES OF BRAZIL

By: s/ Ectavio Bulhois

Title: Minister of Finance

UNITED STATES OF AMERICA

By: s/ William A. Ellis

Title: Acting Director, USAID/Brazil

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A.I.D. LOAN No. 512-G-043

512-234 ?

ALLIANCE FOR PROGRESS

LOAN AGREEMENT

(P.L.480 104(g) funds)

(Brazil - Minas Gerais Highway
Maintenance Equipment)

Between the

DEPARTAMENTO DE ESTRADAS DE RODAGEM -

MINAS GERAIS

and the

UNITED STATES OF AMERICA

Dated: April 2, 1965.

ALLIANCE FOR PROGRESS

LOAN AGREEMENT

AGREEMENT, in furtherance of the Alliance for Progress, dated the 2nd day of April, 1965, between the DEPARTAMENTO DE ESTRADAS DE RODAGEM, MINAS GERAIS ("Borrower") and the UNITED STATES OF AMERICA, acting through the Agency for International Development ("A.I.D."), with the concurrence of the Coordinating Commission for the Alliance for Progress ("COCAP").

SECTION 1

The Loan

SECTION 1.1. The Loan. A.I.D. hereby agrees to lend to the Borrower pursuant to the Agricultural Trade Development and Assistance Act of 1954, as amended, up to nine billion Brazilian cruzeiros (Cr\$9,000,000,000) to assist in financing the cruzeiro costs of goods and services, including consulting engineering services, required for the project as defined in Section 1.2. As used in this Agreement, "Eligible Items" shall mean the goods and services financed hereunder, and "Principal" shall mean the aggregate amount of cruzeiros disbursed hereunder.

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SECTION 1.2. The Project. As used in this Agreement, "Project" shall mean the purchase of highway maintenance equipment and related spare parts for use in the State of Minas Gerais, including road graders, trucks and tractors, and such other highway maintenance equipment as A.I.D. and Borrower shall agree upon.

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SECTION 2Terms of Repayment; Interest

SECTION 2.1. Interest. The Borrower shall pay semi-annually to A.I.D. in cruzeiros interest due and unpaid of three and one-half ($3 \frac{1}{2}$) per cent per annum (computed on the basis of a 305-day year). Interest shall accrue from the dates of the respective disbursements hereunder. The first such payment shall be due and payable no later than six (6) months after the first such disbursement on a date to be specified by A.I.D.

SECTION 2.2. Repayment. The Borrower shall repay the Principal to A.I.D. in cruzeiros in thirty-five (35) equal semi-annual installments. The first such installment shall be due and payable two and one-half ($2 \frac{1}{2}$) years after the first payment interest is due.

SECTION 3Conditions PrecedentSECTION 3.1. Conditions Precedent to Initial Financing.

Prior to the first disbursement the Borrower shall furnish in form and substance satisfactory to A.I.D.

a. An opinion or opinions of legal counsel satisfactory to A.I.D. that this Agreement has been duly authorized or ratified by, and executed on behalf of the Borrower, and constitutes a valid and legally binding obligation of the Borrower in accordance with its terms.

b. A certificate substantially in the form of Exhibit 1 hereto.

SECTION 3.2. Terminal Date for Fulfillment of Conditions Precedent.

Except as A.I.D. may otherwise agree in writing, if the conditions required by Section 3.1 have not been completed by June 1, 1965, A.I.D. may at any time thereafter terminate this Agreement by giving notice to the Borrower.

SECTION 3.3. Terminal Dates for Disbursements. Except as A.I.D. may otherwise specify in writing no disbursement shall be made against documentation received after June 30, 1966.

SECTION 4Miscellaneous

SECTION 4.1. Effective Date. This Agreement shall enter into effect as of the day and year first above written.

SECTION 4.2. Communications. Any communication or document given, made or sent by the 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 the Borrower:

Mail Address:

Departamento de Estradas de Rodagem, Minas Gerais
Alameda Ezequiel Dias
Belo Horizonte, Minas Gerais

Cable Address:

DER/MG
Belo Horizonte.

To A.I.D. (five copies):

Mail Address:

Office of Capital Development
Agency for International Development
Embaixada dos Estados Unidos da América
Rio de Janeiro, Brazil.

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Cable Address:

A.I.D.
Embaixada dos Estados Unidos da América
Rio de Janeiro.

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

All communications and documents submitted to A.I.D. hereunder shall be in English, and all technical and engineering specifications therein shall be in terms of United States of America standards, except as A.I.D. and the Borrower may otherwise agree in writing.

SECTION 4.3. Designation of Representatives. Pursuant to Section 103.1 of the Annex, Borrower hereby designates the Technical Assistant to the Director - Special Programs.
(Title)

SECTION 4.4. Applicability of Loan Annex. This Agreement is made in accordance with the USAID/Brazil LOCAL CURRENCY LOAN ANNEX dated April 1, 1965 ("Annex"). The Annex is made a part of this Agreement with the same force and effect as if it were fully set forth herein. All terms used in the Annex shall have the same meaning given such terms herein. If any provision of the Annex is inconsistent with a provision of this Agreement, this Agreement shall govern.

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

DEPARTAMENTO DE ESTRADAS DE RODAGEM - MINAS GERAIS

By: [Signature]
Title: Director

UNITED STATES OF AMERICA

By: [Signature]
Title: Director-USAID/Brazil

Concurrence:

COORDINATING COMMISSION FOR THE ALLIANCE FOR PROGRESS (COCAP)

By: [Signature]
Title: Coordinator

In the presence of:

CERTIFICATE OF AUTHORIZED REPRESENTATIVES

Re: LOAN No. _____

[Name of Borrower] ("Borrower") hereby represents and warrants to the Agency for International Development ("A.I.D.") that due authority is vested in the following person(s) to act on its behalf in the capacities specified in connection with the execution and operation of the Loan Agreement, dated April 2, 1965, between Borrower and A.I.D., establishing a loan in Borrower's favor in the amount of nine billion Brazilian cruzeiros, to sign the Loan Agreement, to make representations by signing certificates, to make request for disbursements and to sign any other document that may be required by the Loan Agreement:

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

[Name of Borrower]

By: _____

Title: _____

Date: _____

ALLIANCE FOR PROGRESS

USAID/BRAZIL

LOCAL CURRENCY (P.L. 480 104 g) LOAN ANNEX
(APPLICABLE TO MINAS GERAIS HIGHWAY EQUIPMENT LOAN)

Dated: April 2, 1965.

SECTION 100

Disbursements; Payment

SECTION 100.1. Disbursements. To obtain disbursements for cruzeiro costs under the Loan Agreement, Borrower may from time to time, and in accordance with immediate requirements and expenditures of such currency for the Project, request A.I.D. to disburse cruzeiros for the Project through such arrangements as A.I.D. and the Borrower may agree upon.

SECTION 100.2. Date of Disbursements. Disbursements under the Loan Agreement shall be deemed to occur on the date on which A.I.D. makes payment either directly to the Borrower or its designee.

SECTION 100.3. Application of Payments. All payments made by Borrower to A.I.D. shall be applied first to the payment of any interest due and unpaid and then to the repayment of Principal.

SECTION 100.4. Prepayment. The Borrower shall have the right to prepay, without penalty at any time, all or any part of the Principal. Any prepayment shall be applied in the order prescribed in Section 100.3 hereof, and amounts applied to the remaining installments of Principal shall be applied pro rata to such installments.

SECTION 100.5. Place of Payment. All payments to be made to A.I.D. shall be made to the Controller, Agency for Interna-

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tional Development, Rio de Janeiro, Gb., or at such other place as may be specified by A.I.D. Such payments shall be deemed to have been paid when received by A.I.D.

SECTION 100.6. Currency of Payment. Payments of interest and Principal required under the Loan Agreement shall be made in Brazilian currency, or at the option of the Borrower in United States dollars. If the Borrower elects to exercise the option to make payments in dollars the amount of such payments shall be calculated at the time of payment to be equivalent to the obligation in Brazilian currency computed on the following basis:

- a. The effective rate at which United States dollars are sold in exchange for Brazilian currency to residents of Brazil for the meeting of payments of obligations abroad, provided that, at the time of payment, effective rates for Brazilian currency differing by more than one (1) per cent from par value agreed with the International Monetary Fund for that currency are not permitted by the Government, and provided further that the parties to the Loan Agreement do not agree that another rate would be just and reasonable; and
- b. Otherwise, such other rate as is mutually agreed from time to time.

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SECTION 101Covenants Concerning Procurement

SECTION 101.1. Source of Procurement. All Eligible Items shall have their source and origin in Brazil.

SECTION 101.2. Method of Procurement. No more than reasonable prices shall be paid for any Eligible Item, and all such items (except architectural, engineering, management and such other professional services as A.I.D. may specify) shall be procured on a fair competitive basis, in accordance with applicable laws in effect within Brazil. Prices (except for the foregoing professional services) should normally approximate the lowest competitive price for the Eligible Item procured, operating costs, quality, time and costs of delivery, terms of payment and other factors considered.

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SECTION 102Additional Covenants and Warranties

SECTION 102.1. Conduct of the Project. The Borrower will:

a. Carry out and complete the Project, with due diligence and efficiency, providing any additional resources which may be required. The Project shall be carried out in conformity with sound engineering and financial practices. The Borrower covenants that it will use the Eligible Items in accordance with plans and procedures developed mutually with A.I.D. for that purpose.

b. Adequately maintain and repair, in accordance with sound maintenance practices, all Eligible Items.

SECTION 102.2. Utilization of Eligible Items. All Eligible Items shall be used exclusively for the Project. In the case of any goods financed hereunder which are not fully expended through their use for the Project, the foregoing provision shall apply until the completion of the Project, provided that no goods financed hereunder shall be exported from Brazil without prior approval of A.I.D. No Eligible Item shall at any time be used to promote or assist any Project or activity associated with or financed by any country not included in A.I.D. Geographic Code 935 as in effect at the time of such projected

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use without the prior written consent of A.I.D.

SECTION 102.3. Information and Marking. Appropriate arrangements shall be made by the Borrower, satisfactory to A.I.D., to publicize the Project as United States aid in furtherance of the Alliance for Progress. Such publicity shall include, but shall not be limited to, prominent display of the Alliance for Progress symbol and the "Hand Clasp" symbol on the equipment being financed under the loan.

SECTION 102.4. Notice of Material Developments. The Borrower represents and warrants that it has disclosed to A.I.D. all circumstances which may materially affect this Project or the discharge of its obligations under the Loan 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 102.5. Taxation. The Loan Agreement and the execution, delivery and registration thereof, shall be free from and the Principal and interest shall be paid without deductions for and free from all taxes, fees, or other charges, if any, imposed under the laws of Brazil or any laws in effect in its territory.

SECTION 102.6. Commissions, Fees and Other Payments. Borrower warrants and covenants that, in connection with obtaining the loan or taking any action under or with respect to the Loan Agreement, it has not paid and will not pay or agree to

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pay nor to the best of its knowledge has there been paid or will there be paid or agreed to be paid by any other person or entity, commissions, fees or other payments of any kind, except as regular compensation to Borrower's full time officers and employees or as compensation for bona fide professional, technical or other comparable services. Borrower shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical or comparable services to which it is a party or of which it has knowledge (indicating whether such payment has or is to be made on a contingent basis) and if the amount of any such payment is deemed unreasonable by A.I.D., Borrower shall cause a reduction satisfactory to A.I.D. to be made therein.

SECTION 102.7. Records; Reports; Inspections.

a. The Borrower shall maintain or cause to be maintained in accordance with sound accounting practices, books and records adequate to identify Eligible Items, to disclose the cost and use thereof in the Project, to show the nature and extent of the solicitation of prospective suppliers and the basis for the award of contracts or orders, and to indicate the progress of the Project. Such books and records shall be maintained until five (5) years after the final disbursement pursuant to this Agreement.

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b. Such books and records shall be open at all times for examination by authorized representatives of the Government and A.I.D. which procedure is consistent with Article II, Section 5, of the agreement between the Government and the United States of America, signed on May 30, 1953, and subsequently approved by the Brazilian Congress. For this purpose, if the Borrower and A.I.D. mutually agree, the Borrower may maintain, within its accounting system, a segregated set of books and records for all transactions specifically related to the loan. Examination of the books and records will be carried out in practice by procedures which may include the following whenever mutually agreed to by the Borrower and A.I.D.:

1. Joint auditing under mutually agreed to conditions;
2. The use of independent auditors selected by the Borrower and acceptable to A.I.D.;
3. The inspection outside the premises of the Borrower of certified documentation relating to the loan.

c. The Borrower shall cooperate with and give reasonable assistance to, and shall facilitate inspection by A.I.D. with respect to the execution of the Project in conformity with this Agreement, and shall afford all reasonable opportunity for authorized representatives of A.I.D. to visit any part of the territory of Brazil for purposes related to this Agreement.

d. The Borrower shall promptly furnish A.I.D. such

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financial and other reports and information relating to the loan or transaction pursuant to the Loan Agreement and any covenants thereof as A.I.D. may request.

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SECTION 103MiscellaneousSECTION 103.1. Use of Representatives.

a. All actions required or permitted to be performed or taken under the Agreement and this Annex by the Borrower or A.I.D. may be performed by their respective duly authorized representatives.

b. Borrower designates the person or persons holding the position or positions specified in Section 4.3 of the Loan Agreement as its representative with authority to designate in writing other representatives of the Borrower in its dealings with A.I.D. The Borrower's representatives designated pursuant to said Section 4.3, unless A.I.D. is given notice otherwise, shall have authority to agree on behalf of the Borrower to any modification of the Loan Agreement or this Annex which does not substantially increase the Borrower's obligation thereunder. Until receipt by A.I.D. of written notice of revocation by the 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 by the Borrower.

SECTION 103.2. Successors to Rights of A.I.D. If, by

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operation of any law of the United States of America or by virtue of assignment, any corporate or other agency of the Government of the United States of America succeeds to the rights and obligations of A.I.D. under the Loan Agreement, such agency shall be deemed to be A.I.D. for purposes thereof.

SECTION 103.3. Other Agreements. The Loan Agreement is entered into pursuant to the following agreements between the United States of America and the United States of Brazil:

- a. the agreement relating to Technical Cooperation, dated December 19, 1950;
- b. the agreement for Special Technical Services, dated May 30, 1953; and
- c. the Agricultural Commodity Agreement, dated September 11, 1963, as amended.

SECTION 104Remedies of A.I.D.

SECTION 104.1. Events of Default; Acceleration. If any of the following events ("Events of Default") occurs:

- a. The Borrower fails to pay in full when due any installments of Principal or interest or any other payments required under the Loan Agreement or this Annex.
- b. The Borrower fails to comply with any other provision contained in the Loan Agreement or this Annex.
- c. Any representation or warranty made by or on behalf of the Borrower with respect to obtaining the loan or made or required to be made under the Loan Agreement or this Annex is determined by A.I.D. to be incorrect in any material respect;

then, A.I.D., at its option, may declare all or any part of the unrepaid Principal to be due and payable immediately, and upon any such declaration, unless the default is cured within thirty (30) days thereafter, such Principal and interest accrued thereon shall become due and payable immediately.

SECTION 104.2. Termination of Disbursements. If at any time

- a. An Event of Default occurs;
- b. An event occurs which A.I.D. determines to be an

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extraordinary situation which makes it improbable that the purposes of the loan will be attained or that the Borrower will be able to perform its obligations under the Loan Agreement or this Annex; or

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

then, A.I.D., at its option, after giving prior detailed notice in writing to the Borrower, may decline to issue any further disbursements under the loan.

SECTION 104.3. Refunds. If A.I.D. determines that any disbursement made by it under the Loan Agreement for any Eligible Item is not supported by valid documentation submitted by the Borrower in accordance with the terms of the Loan Agreement or this Annex, or is not used in accordance with the terms of the Loan Agreement or this Annex, or is in violation of the law governing A.I.D. (including A.I.D. regulations applicable to the Project), A.I.D., at its option, may, notwithstanding the availability of any other remedy provided for under the Loan Agreement or this Annex or the exercise of the remedies provided for in Section 104.1 and 104.2, require the Borrower to refund to A.I.D., within thirty (30) days after receipt of a request therefor, an amount not to exceed the amount for such disbursement. Any such refund received by A.I.D. shall be applied as provided in Section 100.3 of the Annex, and amounts applied

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to the remaining installments of Principal shall be applied in inverse order of their maturity. No request shall be made by A.I.D. pursuant to this Section later than five (5) years after the date of the final disbursement pursuant to the Loan Agreement.

SECTION 104.4. Waivers. No delay in exercising any right, power or remedy accruing to A.I.D. under the Loan Agreement or this Annex shall be construed as a waiver of any of such rights, powers or remedies.

SECTION 104.5. Expenses of Collection. All reasonable costs incurred by A.I.D. (other than salaries of its regular staff) after an Event of Default has occurred in connection with the collection of amounts due under the Loan Agreement, may be charged to the Borrower and reimbursed as A.I.D. shall specify.