

4/18/73

6900006-4 NORMAN COHEN
P.P.C.

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Sp. There will be a mtg.
Tues. 10 AM. Shall I
AFR/ES

MEMORANDUM FOR THE DEVELOPMENT LOAN COMMITTEE

FROM: John L. Withers, Director REDSO/EA *JLW*
SUBJECT: Botswana -- Botswana/Zambia Road Construction
A.I.D. Loan 690-H-001

We hope this will
cover the
paper for the B-
amendment.
Please advise

Problem: Additional funds of approximately \$3.7 million are required to finance the construction of the Bot-Zam Road. The Government of Botswana, after receiving and analyzing construction bids from four U.S. firms, has requested A.I.D. to provide the additional \$3.7 million funding to permit a construction contract award to the low bidder who has been found responsive to bidding conditions.

W. J. G. 9.1. 28/6

Background: A loan of \$12.6 million was authorized on April 28, 1972 to finance the construction and engineering supervision for an improvement to about 227 miles of road, and the procurement of road maintenance equipment at an estimated cost of \$130,000 (see Capital Assistance Paper AID-DLC/P-1011 dated April 18, 1972). Total estimated project costs at that time were estimated to be \$12.6 million including \$9.47 for construction; \$1.0 for engineering supervision; \$.13 for maintenance equipment; and \$2.0 for project contingencies. The A.I.D. loan financed these costs with the GOB providing an estimated \$200,000 in design-related services and the GRZ \$326,000 in ferry facilities on the Zambezi River.

The U.S. engineering firm of Tippetts-Abbett-McCarthy-Stratton (TAMS) carried out the detailed design under an AID grant. Their preliminary construction costs were the basis of the loan authorization. Their final design cost estimate of \$10.5 million was completed in mid-1972. Contingency item in CAP covered this increase over the preliminary estimate of \$9.47 million.

A.I.D. approved the prequalification of seven U.S. contractors, six of whom requested bid documents. Four contractors attended the site visit and pre-bid conference in early December 1972. Following a five month postponement of bid opening to permit bidder review of recently completed sub-surface water investigation, the bids were opened on March 30, 1973. The following bids were received:

Grove International Corp.	\$ 13.5 million
Central International	15.3 million
Oman Construction Co., Inc.	15.9 million
Nello L. Teer Co.	19.3 million

The Grove bid has been analyzed by TAMS and considered to be fully responsive and reasonable in cost after consideration of various factors which probably account for the increase in cost over the final TAMS estimate. The GOB and A.I.D. have reviewed the bid and concur in a contract award to Grove.

Discussion: A.I.D. believes three major factors contribute mostly to the shortfall in construction funding. The first two relate to the unit prices for road surface and base materials which exceeded TAMS estimate. The nature of the pavement structural design is such as to place much emphasis on the availability of sufficient ground water to stabilize the soils comprising the roadway structure. In spite of the geologic data presented at the pre-bid conference, it is concluded by GOB, TAMS and A.I.D. that the uncertainties associated with securing enough water to stabilize the surface and base soils resulted in bid prices higher than the TAMS estimate.

A second factor which probably accounts for a higher than expected price for materials was the availability and location of gravel surface materials. The Grove bid appears to have evaluated this situation by submitting a construction plan by which he will place surface material using large volume capacity (38 cubic yard) long haul, truck trailer combinations. All surfacing material apparently will be prepared uniformly at a central mixing plant using crusher/screening equipment. This method of construction requires additional contractor investment in construction plant over that usually expected on projects with readily acceptable and available soils. It is estimated that Grove's plant and equipment investment on this job will be \$5 to \$6 million.

A third major factor contributing to an overall increase in bid is the current political situation in the Botswana/Zambia/Rhodesia area. There is no specific occurrence which can be identified but the Zambia/Rhodesia border closing in early 1973 undoubtedly prompted contractors to include risk and contingency costs in their unit price calculations. The analysis of the Grove bid did not reveal any particular item where such a value was added but it is assumed that risk costs are distributed equally throughout the bid.

The bid analysis by TAMS sets forth additional factors which account for the bid increase over their estimate. These factors include:

- a) cost escalation resulting from the postponement of bid opening from the originally planned date of October 30, 1972 to March 30, 1973;
- b) inflation of construction costs in the U.S.;

- c) dollar devaluations;
- d) increase in the U.S. prime interest rate to borrow money to undertake contractor financing of men and plant;
- e) decrease in availability of subcontractors and manpower due to border closing;
- f) extension of the period of construction through another rainy season due to the postponement of bid opening.

The foregoing data have been accepted by both the GOB and A.I.D. as justifying the increased project cost, and recommend award of contract to Grove International.

Financial Analysis: The original financial plan set forth in the authorized loan provided funds as follows:

	<u>FX</u>	<u>Local Costs</u>	<u>Total Costs</u>
Construction	\$6,292,856	\$3,179,952	\$ 9,472,808
Engineering Supervision	600,000	400,000	1,000,000
Maintenance Equipment	130,000	-	130,000
Contingency	<u>1,232,270</u>	<u>764,922</u>	<u>1,997,192</u>
TOTAL	\$8,255,126	\$4,344,874	\$12,600,000

Both construction and contingency items are changed as a result of the Grove bid of \$8,977,842 in dollars and 3,160,825 Rand (\$4.492 million). The revised project funding is as follows:

	<u>FX</u>	<u>Local Costs</u>	<u>Total Costs</u>
Construction	\$ 8.978 mil	\$ 4.492 mil	\$13.470 mil
Engineering Supervision	.600	.400	1.000
Maintenance Equipment	.130	-	.130
Contingency	<u>1.000</u>	<u>.700</u>	<u>1.700</u>
TOTAL	\$10.708	\$ 5.592	\$16.300

The contingency item in the revised financial plan is reduced both in amount and percentage from that in the original plan. At the time the loan was authorized the construction costs were of a preliminary character. The revised costs are based upon actual bidding. The \$1.7 million project

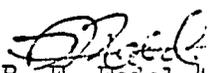
contingency provides nearly 12% for construction overruns which might arise during construction as well as any additional engineering costs which may develop as a consequence of the contractors method of construction, i.e., central mixing plant.

The funds provided under the proposed \$3.7 million loan amendment would be made available on the same terms applicable to the original loan.

The statutory criteria were satisfied in the original Capital Assistance Paper and are applicable to this amendment.

 The economic impact and justification for the project remains unchanged from the role of the project to the economy of Botswana developed in the original Capital Assistance Paper. The closing of the Zambia/Rhodesia border has increased the importance of the road as a major external line of communication for the importation of goods to Zambia.

Recommendation: That the Committee approve the Loan Amendment Authorization (ANNEX I) to provide an additional \$3,700,000 to finance the foreign exchange and local costs required to construct the Bot-Zam Highway.


Drafted by R. F. Fedel:4-18-73

Clearance: J. P. Guedet 

DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
Washington, D. C. 20523

CAPITAL ASSISTANCE LOAN AUTHORIZATION
AMENDMENT

Provided From: Development Loan Funds
Botswana-Zambia Road (Construction) (Regional)

Pursuant to the authority vested in the Administrator of the Agency for International Development (hereinafter called "A.I.D.") by the Foreign Assistance Act of 1961, as amended, and the delegations of authority issued thereunder, I hereby authorize the following:

An amendment to increase the above-captioned loan to the Government of Botswana ("Borrower") by an amount not to exceed three million seven hundred thousand dollars (\$3,700,000) to assist in financing the foreign exchange and local costs of equipment, materials and services required to construct the Botswana-Zambia Road, subject to the following terms and conditions:

1. Interest Rate and Terms of Repayment: Borrower shall repay the loan in forty (40) years, including a grace period of not to exceed ten (10) years. Borrower shall pay interest on the unrepaid principal and any interest accrued thereon at a rate of (a) two per cent (2%) per annum during the grace period and (b) three per cent (3%) per annum thereafter.
2. Currency of Repayment: Repayment of the loan and payment of interest shall be made in United States dollars.
3. Other Terms and Conditions:
 - a. Procurement. Equipment, materials and services financed under the loan shall be procured from Botswana and from countries included in Code 941 of the A.I.D. Geographic Code Book.
 - b. Other Terms and Conditions. The loan shall be subject to other terms and conditions as A.I.D. may deem advisable.

ASSISTANT ADMINISTRATOR FOR AFRICA

Date: _____

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CONFORMED COPY

A.I.D. LOAN NO. 690-H-001 ✓

8/31/72

LOAN AGREEMENT

Between

THE GOVERNMENT OF BOTSWANA

and the

UNITED STATES OF AMERICA

for

THE BOTSWANA/ZAMBIA ROAD

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LOAN AGREEMENT dated *August 31, 1972*
between the GOVERNMENT OF BOTSWANA ("Borrower") and the
UNITED STATES OF AMERICA, acting through the AGENCY FOR
INTERNATIONAL DEVELOPMENT ("AID").

ARTICLE I

The Loan

SECTION 1.01. The Loan. AID agrees to lend to the Borrower pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed Twelve Million Six Hundred Thousand United States Dollars (\$12,600,000) ("Loan") to assist the Borrower to carry out the Project referred to in Section 1.02 ("Project"). The Loan shall be used exclusively to finance the Foreign Exchange costs of equipment and materials (goods) and services required for the Project ("Foreign Exchange Costs") and local currency costs of goods and services required for the Project ("Local Currency Costs"). Except as AID may otherwise agree in writing, the amount of the Loan used to finance the Local Currency Costs shall not exceed the equivalent of United States Dollars (\$4,344,874). The aggregate amount of disbursements under the Loan is hereinafter referred to as "Principal."

SECTION 1.02. The Project. The Project shall consist of the construction and engineering supervision for three gravel surfaced

roads totaling 371 kilometers, and the provision of three road depots and maintenance equipment and training program for maintenance staff. The first road will be 300 kilometers and runs from Nata to the Kazungula Ferry on the Zambezi River. The second road will be the Chobe River Bypass Road, 65 kilometers in length and connecting Ngoma to the Nata-Kazungula Road. The third road is a 6 kilometer access road connecting Pandamatenga with the Nata-Kazungula Road. The Project is more fully described in Annex 1, attached hereto, which Annex may be modified by written agreement of the Borrower and AID. The goods and services to be financed under the Loan shall be listed in the implementation letters referred to in Section 8.03 ("Implementation Letters").

SECTION 1.03. Use of Funds Generated by Other United States Assistance. The Borrower shall use for the Project, in lieu of any United States dollars that would otherwise be disbursed under the Loan to finance the Local Currency Costs of the Project, any currencies other than United States dollars that may become available to the Borrower after the date of this Agreement in connection with assistance (other than the Loan) provided by the United States of America to the Borrower to the extent and for the purposes that AID and the Borrower may agree in writing. Any such funds used for the Project shall reduce the amount of the

Loan (to the extent that it shall not then have been disbursed) by an equivalent amount of United States dollars computed, as of the date of the agreement between AID and the Borrower as to the use of such funds, at the rate of exchange most favorable to the dollar then lawfully existing in Botswana.

ARTICLE II

Loan Terms

SECTION 2.01. Interest. The Borrower shall pay to AID interest which shall accrue at the rate of two percent (2%) per annum for ten years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement (as such date is defined in Section 6.04), and shall be computed on the basis of a 365-day year. Interest shall be payable semiannually. The first payment of interest shall be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by AID.

SECTION 2.02. Repayment. The Borrower shall repay to AID the Principal within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semiannual installments of Principal and interest. The first

installment of Principal shall be payable nine and one-half ($9 \frac{1}{2}$) years after the date on which the first interest payment is due in accordance with Section 2.01. AID shall provide the Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

SECTION 2.03. Application, Currency, and Place of Payment. All payments of interest and Principal hereunder shall be made in United States dollars and shall be applied first to the payment of interest due and then to the repayment of Principal. Except as AID may otherwise specify in writing, all such payments shall be made to the Controller, Agency for International Development, Washington, D. C., U.S.A., and shall be deemed made when received by the Office of the Controller.

SECTION 2.04. Prepayment. Upon payment of all interest and refunds then due, the Borrower may prepay, without penalty, all or any part of the Principal. Any such prepayment shall be applied to the installments of Principal in the inverse order of their maturity.

SECTION 2.05. Renegotiation of the Terms of the Loan. The Borrower agrees to negotiate with AID, at such time or times as AID may request, an acceleration of the repayment of the Loan in the event that there is any significant improvement in the

internal and external economic and financial position and prospects of the country of the Borrower.

ARTICLE III

Conditions Precedent to Disbursement

SECTION 3.01. Conditions Precedent to Initial Disbursement.

Prior to the first disbursement or to the issuance of the first Letter of Commitment under the Loan, the Borrower shall, except as AID may otherwise agree in writing, furnish to AID in form and substance satisfactory to AID:

(a) An opinion of the Attorney General of Borrower or of other counsel acceptable to AID that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;

(b) A statement of the names of the persons holding or acting in the office of the Borrower specified in Section 8.02, and a specimen signature of each person specified in such statement;

(c) Final plans and specifications, bid documents, and cost estimates for carrying out the Project;

(d) An executed contract for supervisory engineering services for the Project acceptable to AID with a firm acceptable to AID;

(e) An executed contract for construction services for the

Project acceptable to AID with a firm acceptable to AID;

(f) Evidence that Borrower has taken all steps necessary to acquire all land and easements necessary to carry out the Project;

(g) An outline of the legal procedures available to Borrower or those that will be sought by Borrower, which can be used to compel users of the project to observe weight limitations; and a statement by the responsible official of Borrower to the effect that active enforcement of those weight limitations will in fact be carried out;

(h) Such other information as AID may request with respect to the Project.

SECTION 3.02. Terminal Dates for Meeting Conditions
Precedent to Disbursement. If all of the conditions specified in Section 3.01 shall not have been met within 200 days from the date of this Agreement, or such later date as AID may agree to in writing, AID, at its option, may terminate this Agreement by giving written notice to the Borrower. Upon the giving of such notice, this Agreement and all obligations of the parties hereunder shall terminate.

SECTION 3.03. Notification of Meeting of Conditions
Precedent to Disbursement. AID shall notify the Borrower upon determination by AID that the conditions precedent to disbursement specified in Section 3.01 have been met.

ARTICLE IV

General Covenants and Warranties

SECTION 4.01. Execution of the Project.

(a) The Borrower shall carry out the Project with due diligence and efficiency, and in conformity with sound engineering, construction, financial, and administrative practices. In this connection, the Borrower shall at all times employ suitably qualified and experienced consultants to be professionally responsible for the design and execution of the Project and suitably qualified and competent construction contractors to carry out the Project.

(b) The Borrower shall cause the Project to be carried out in conformity with all of the plans, specifications, contracts, schedules, and other arrangements and with all modifications therein, approved by AID pursuant to this Agreement.

SECTION 4.02. Funds and Other Resources to be Provided by Borrower. Subject to finalization of a Project construction contract, the Borrower shall provide promptly as needed all funds and all other resources required for the punctual and effective carrying out of construction, maintenance, repair, and operation of the Project.

SECTION 4.03. Continuing Consultation. The Borrower and AID shall cooperate fully to assure that the purpose of the Loan

will be accomplished. To this end, the Borrower and AID shall from time to time, at the request of either party, exchange views through their representatives with regard to the progress of the Project, the performance by the Borrower of its obligations under this Agreement, the performance of the consultants, contractors, and suppliers engaged on the Project, and other matters relating to the Project.

SECTION 4.04. Management. The Borrower shall provide qualified and experienced management for the Project and shall train such staff as may be appropriate for the maintenance and operation of the Project.

SECTION 4.05. Operation and Maintenance. The Borrower shall operate, maintain, and repair the Project in conformity with sound engineering, financial, and administrative practices and in such manner as to insure the continuing and successful achievement of the purpose of the Project.

SECTION 4.06. Taxation. This Agreement, the Loan, and any evidence of indebtedness issued in connection herewith shall be free from, and the Principal and interest shall be paid without deduction for and free from, any taxation or fees imposed under the laws in effect within the country of the Borrower. To the extent that (a) any contractor, including any consulting firm, any personnel

of such contractor financed hereunder, and any property or transaction relating to such contracts and (b) any commodity procurement transaction financed hereunder, are not exempt from identifiable taxes, tariffs, duties, and other levies imposed under laws in effect in the country of the Borrower, the Borrower shall, as and to the extent prescribed in and pursuant to Implementation Letters, pay or reimburse the same under Section 4.02 of this Agreement with funds other than those provided under the Loan.

SECTION 4.07. Utilization of Goods and Services.

(a) Goods and services financed under the Loan shall be used exclusively for the Project, except as AID may otherwise agree in writing. Upon completion of the Project, or at such other time as goods financed under the Loan can no longer usefully be employed for the Project, the Borrower may use or dispose of such goods in such manner as AID may agree to in writing prior to such use or disposition.

(b) Except as AID may otherwise agree in writing, no goods or services financed under the Loan shall be used to promote or assist any foreign aid project or activity associated with or financed by any country not included in Code 935 of the AID Geographic Code Book as in effect at the time of such use.

SECTION 4.08. Disclosure of Material Facts and Circumstances.

The Borrower represents and warrants that, to the best of its knowledge, all facts and circumstances that it has disclosed or caused to be disclosed to AID in the course of obtaining the Loan are accurate and complete, and that, to the best of its ability, it has disclosed to AID, accurately and completely, all facts and circumstances that might materially affect the Project and the discharge of its obligations under this Agreement. The Borrower shall promptly inform AID of any facts and circumstances that may hereafter arise that might materially affect, or that it is reasonable to believe might materially affect the Project or the discharge of the Borrower's obligations under this Agreement.

SECTION 4.09. Commissions, Fees, and Other Payments.

(a) Borrower warrants and covenants that in connection with obtaining the Loan, or taking any action under or with respect to this Agreement, it has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid nor will there be paid or agreed to be paid by any other person or entity, commissions, fees, or other payments of any kind, except as regular compensation to the Borrower's full time officers and employees or as compensation for bona fide professional, technical, or comparable services. The Borrower shall promptly report to

AID any payment or agreement to pay for such bona fide professional, technical, or comparable services to which it is a party or of which it has knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable by AID, the same shall be adjusted in a manner satisfactory to AID.

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

SECTION 4.10. Maintenance and Audit of Records. The Borrower shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and to this Agreement. Such books and records shall, without limitation, be adequate to show:

(a) the receipt and use made of goods and services acquired with funds disbursed pursuant to this Agreement;

(b) the nature and extent of solicitations of prospective suppliers of goods and services acquired;

(c) the basis of the award of contracts and orders to

successful bidders; and

(d) the progress of the Project.

Such books and records shall be regularly audited, in accordance with sound auditing standards, for such period and at such intervals as AID may require, and shall be maintained for five years after the date of the last disbursement by AID or until all sums due AID under this Agreement have been paid, whichever date shall first occur.

SECTION 4. 11. Reports. The Borrower shall furnish to AID such information and reports relating to the Loan and to the Project as AID may request.

SECTION 4. 12. Inspections. The authorized representatives of AID shall have the right at all reasonable times to inspect the Project, the utilization of all goods and services financed under the Loan, and the Borrower's books, records, and other documents relating to the Project and the Loan. The Borrower shall cooperate with AID to facilitate such inspections and shall permit representatives of AID to visit any part of the country of the Borrower for any purpose relating to the Loan.

SECTION 4. 13. Investment Guaranty Project Approval by Borrower. The Borrower agrees that the construction work to be financed under this Agreement is a project approved by the

Borrower pursuant to the Agreement between the Government of Botswana and the United States of America on the subject of investment guaranties, and no further approval by the Government of Botswana shall be required to permit AID under that agreement to issue investment guaranties covering a contractor's investment in that project.

ARTICLE V

Procurement

SECTION 5.01. Non-Local Procurement. Except as AID shall otherwise agree in writing, disbursements made pursuant to Section 6.01, except those for marine insurance and goods procured pursuant to Section 5.11, shall be used exclusively to finance the procurement for the project of equipment, materials and services having both their source and origin in countries included in Code 941 of the AID Geographic Code Book as in effect at the time orders are placed or contracts are entered into therefor. Marine insurance may be financed under the Loan provided (i) such insurance is placed at the lowest available competitive rate in Botswana or any country included in Code 941 of the AID Geographic Code Book, as in effect at the time of placement, and (ii) claims thereunder are payable in freely convertible currency.

SECTION 5.02. Procurement from Botswana. Disbursements

made pursuant to Section 6.02 shall be used exclusively to finance the procurement for the Project of equipment, materials and services having both their source and origin in Botswana.

SECTION 5.03. Eligibility Date. Except as AID may otherwise agree in writing, no goods or services may be financed under the Loan which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement.

SECTION 5.04. Goods and Services Not Financed Under Loan. Goods and services procured for the Project, but not financed under the Loan, shall have their source and origin in countries included in Code 935 of the AID Geographic Code Book as in effect at the time orders are placed for such goods and services.

SECTION 5.05. Implementation of Procurement Requirements. The definitions applicable to the eligibility requirements of Section 5.01, 5.02, and 5.04 will be set forth in detail in Implementation Letters.

SECTION 5.06. Plans, Specifications, and Contracts.

(a) Except as AID may otherwise agree in writing, the Borrower shall furnish to AID promptly upon preparation, all plans, specifications, construction schedules, bid documents, and contracts relating to the Project, and any modifications therein, whether or not the goods and services to which they relate are financed under

the Loan.

(b) Except as AID may otherwise agree in writing, all of the plans, specifications, and construction schedules furnished pursuant to subsection (a) above shall be approved by AID in writing.

(c) All bid documents and documents related to the solicitation of proposals relating to goods and services financed under the Loan shall be approved by AID in writing prior to their issuance. All plans, specifications, and other documents relating to goods and services financed under the Loan shall be in terms of United States standards and measurements, except as AID may otherwise agree in writing.

(d) The following contracts financed under the Loan shall be approved by AID in writing prior to their execution:

- (i) contracts for engineering and other professional services,
- (ii) contracts for construction services,
- (iii) contracts for such other services as AID may specify,
- (iv) contracts for such equipment and materials as AID may specify.

In the case of any of the above contracts for services, AID shall also approve in writing the contractor and such contractor personnel as AID may specify. Material modifications in any of such contracts and changes in any of such personnel shall also be approved by AID in writing prior to their becoming effective.

(e) Consulting firms used by the Borrower for the Project but not financed under the Loan, the scope of their services and such of their personnel assigned to the Project as AID may specify, and construction contractors used by the Borrower for the Project but not financed under the Loan shall be acceptable to AID.

SECTION 5.07. Reasonable Price. No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the Loan, as more fully described in Implementation Letters. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures therefor prescribed in Implementation Letters.

SECTION 5.08. Employment of Third-country Nationals Under Construction Contracts. The employment of personnel to perform services under construction contracts financed under the Loan shall be subject to requirements with respect to third-country nationals prescribed in Implementation Letters.

SECTION 5.09. Shipping and Insurance.

(a) Goods financed under the Loan shall be transported to the country of the Borrower on flag carriers of any country included in Code 935 of the AID Geographic Code Book as in effect at the time of shipment.

(b) Unless AID shall determine that privately-owned United States-flag commercial vessels are not available at fair and

reasonable rates for such vessels.

(i) at least fifty percent (50%) of the gross tonnage of all goods financed under the Loan (computed separately for dry bulk carriers, dry cargo liners and tankers) and transported on ocean vessels shall be transported on privately-owned United States-flag commercial vessels, and

(ii) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed under the Loan and transported on dry cargo liners shall be paid to or for the benefit of privately-owned United States-flag commercial vessels.

No such goods may be transported on any ocean vessel (or aircraft)

(i) which AID, in a notice to the Borrower, has designated as ineligible to carry AID-financed goods or (ii) which has been chartered for the carriage of AID-financed goods unless such charter has been approved by AID.

(c) If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, the country of the Borrower, 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, goods financed under 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.

(d) The Borrower shall insure, or cause to be insured, all goods financed under the Loan against risks incident to their transit to the point of their use in the Project. Such insurance shall be issued upon terms and conditions consistent with sound commercial practice, shall insure the full value of the goods, and shall be payable in the currency in which such goods were financed or in any other freely convertible currency. Any indemnification received by the Borrower under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse the Borrower for the replacement or repair of such goods. Any such replacements shall be of United States source and origin and otherwise subject to the provisions of this Agreement.

SECTION 5. 10. Notification to Potential Suppliers. In order that all United States firms shall have the opportunity to participate in furnishing goods and services to be financed under the Loan, the Borrower shall furnish to AID such information with regard thereto, and at such times, as AID may request in Implementation Letters.

SECTION 5. 11. United States Government-owned Excess Property. The Borrower shall utilize, with respect to goods financed under the Loan to which the Borrower takes title at the time of procurement, such recon-

ditioned United States Government-owned Excess Property as may be consistent with the requirements of the Project and as may be available within a reasonable period of time. The Borrower shall seek assistance from AID and AID will assist the Borrower in ascertaining the availability of and in obtaining such Excess Property. AID will make arrangements for any necessary inspection of such property by the Borrower or its representative. The costs of inspection and of acquisition, and all charges incident to the transfer to the Borrower of such Excess Property, may be financed under the Loan. Prior to the procurement of any goods, other than Excess Property, financed under the Loan and after having sought such AID assistance, the Borrower shall indicate to AID in writing, on the basis of information then available to it, either that such goods cannot be made available from reconditioned United States Government-owned Excess Property on a timely basis or that the goods that can be made available are not technically suitable for use in the Project.

SECTION 5.12. Information and Marking. Borrower shall use its best endeavors to give publicity to the Loan and the Project as a program of United States aid, identify the Project site, and mark goods financed under the Loan, as prescribed in Implementation Letters.

ARTICLE VI

Disbursements

SECTION 6.01. Disbursement for Foreign Exchange Costs - Letters of Commitment to United States Banks. Upon satisfaction of conditions precedent, the Borrower may from time to time, request AID to issue Letters of Commitment for specified amounts to one or more United States banks, satisfactory to AID, committing AID to reimburse such bank or banks for payments made by them to contractors or suppliers, through the use of Letters of Credit or otherwise, for Foreign Exchange Costs of goods and services procured for the Project in accordance with the terms and conditions of this Agreement. Payment by a bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as AID may prescribe in Letters of Commitment and Implementation Letters. Bank charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Borrower and may be financed under the Loan.

SECTION 6.02. Disbursement for Local Currency Costs. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request disbursement by AID of local currency for Local Currency Costs of goods and services procured for the Project in accordance with the terms and conditions of this Agreement by submitting to AID such supporting documentation as AID may prescribe in Implementation Letters. AID, at its option, may make such

disbursements from local currency of the country of the Borrower owned by the U. S. Government or obtained by AID with United States dollars. The United States dollar amount of the Loan disbursed under this Section will be the amount of United States dollars actually expended to obtain the local currency or the equivalent of U. S. owned local currency converted at the rate of exchange specified in Section 1.03.

SECTION 6.03. Other Forms of Disbursement. Disbursements of the Loan may also be made through such other means as the Borrower and AID may agree to in writing.

SECTION 6.04. Date of Disbursement. Disbursement by AID shall be deemed to occur (a) in the case of disbursements pursuant to Section 6.01 on the date on which AID makes a disbursement to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment, and (b) in the case of disbursements pursuant to Section 6.02, on the date on which AID disburses the local currency to the Borrower or its designee.

SECTION 6.05. Terminal Date for Disbursement. Except as AID may otherwise agree in writing, no Letter of Commitment, or other commitment documents which may be called for by another form of disbursement under Section 6.03, or amendment thereto shall be issued in response to requests received by AID later than 42 months from

the date of this agreement, and no disbursement shall be made against documentation received by AID or any bank described in Section 6.01 later than 48 months from the date of this agreement. AID, at its option, may at any time or times after such date, reduce the Loan by all or any part thereof for which documentation was not received by such date.

ARTICLE VII

Cancellation and Suspension

SECTION 7.01. Cancellation by the Borrower. The Borrower may, with the prior written consent of AID by written notice to AID, cancel any part of the Loan (i) which, prior to the giving of such notice, AID has not disbursed or committed itself to disburse, or (ii) which has not then been utilized through the issuance of irrevocable Letters of Credit.

SECTION 7.02. Events of Default; Acceleration. If any one or more of the following events ("Events of Default") shall occur:

(a) The Borrower shall have failed to pay when due any interest or installment of Principal required under this Agreement;

(b) The Borrower shall have failed to comply with any other provision of this Agreement, including, but without limitation, the obligation to carry out the Project with due diligence and efficiency;

23.

(c) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and AID, or any of its predecessor agencies, then AID may, at its option, give to the Borrower notice that all or any part of the unrepaid Principal shall be due and payable sixty (60) days thereafter, and, unless the Event of Default is cured within such sixty (60) days:

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

SECTION 7.03. Suspension of Disbursement. In the event that at any time:

- (a) An Event of Default has occurred;
- (b) An event occurs that AID determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement; or
- (c) Any disbursement by AID would be in violation of the legislation governing AID;

(d) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies;

Then AID may, at its option:

- (i) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit, in which event AID shall give notice to the Borrower promptly thereafter;
- (ii) decline to make disbursements other than under outstanding commitment documents;
- (iii) decline to issue additional commitment documents;
- (iv) at AID's expense, direct that title to goods financed under the loan shall be transferred to AID if the goods are from a source outside the country of the Borrower, are in a deliverable state and have not been offloaded in ports of entry of the country of the Borrower. Any disbursement made or to be made under the Loan with respect to such transferred goods shall be deducted from Principal.

SECTION 7.04. Cancellation by AID. Following any suspension of disbursements pursuant to Section 7.03, if the cause or causes for such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, AID may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to

irrevocable Letters of Credit.

SECTION 7.05. Continued Effectiveness of Agreement. Notwithstanding any cancellation, suspension of disbursement, or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of all Principal and any accrued interest hereunder.

SECTION 7.06. Refunds.

(a) In the case of any disbursement not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement not made or used in accordance with the terms of this Agreement, AID, notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement, may require the Borrower to refund such amount in United States dollars, provided that local currency refunds may be made in the currency of Botswana, to AID within sixty days after receipt of a request therefor. Such amount shall be made available first for the cost of goods and services procured for the Project hereunder, to the extent justified; the remainder, if any, shall be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, AID's right to require a refund

with respect to any disbursement under the Loan shall continue for five years following the date of such disbursement.

(b) In the event that AID receives a refund from any contractor, supplier, or banking institution, or from any other third party connected with the Loan, with respect to goods or services financed under the Loan, and such refund relates to an unreasonable price for goods or services, or to goods that did not conform to specifications, or to services that were inadequate, AID shall first make such refund available for the cost of goods and services procured for the Project hereunder, to the extent justified, the remainder to be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder.

SECTION 7.07. Expenses of Collection. All reasonable costs incurred by AID, other than salaries of its staff, in connection with the collection of any refund or in connection with amounts due AID by reason of the occurrence of any of the events specified in Section 7.02 may be charged to the Borrower and reimbursed to AID in such manner as AID may specify.

SECTION 7.08. Nonwaiver of Remedies. No delay in exercising or omission to exercise any right, power, or remedy accruing to AID

under this Agreement shall be construed as a waiver of any of such rights, powers, or remedies.

ARTICLE VIII

Miscellaneous

SECTION 8.01. Communications. Any notice, request, document, or other communication given, made, or sent by the Borrower or AID pursuant to this Agreement shall be in writing or by telegram, cable, or radiogram and shall be deemed to have been duly given, made, or sent to the party to which it is addressed when it shall be delivered to such party by hand or by mail, telegram, cable, or radiogram at the following addresses:

TO BORROWER:

Mail Address: Ministry of Finance and Development Planning
Private Bag 8, Gaborone, Botswana

Cable Address: "Finance," Gaborone, Botswana

TO AID:

Mail Address: Regional Economic Development Service Office
(East Africa)
P. O. Box 30261
Nairobi, Kenya

Cable Address: REDSO/EA, c/o AmEmbassy NAIROBI

Borrower, in addition, shall provide the USAID Missions in the country of the Borrower with a copy of each communication sent to AID.

Other addresses may be substituted for the above upon the giving of

notice. All notices, requests, communications, and documents submitted to AID hereunder shall be in English, except as AID may otherwise agree in writing.

SECTION 8.02. Representatives. For all purposes relative to this Agreement, the Borrower will be represented by the individual holding or acting in the office of Permanent Secretary, Ministry of Finance and Development Planning, and AID will be represented by the individual holding or acting in the office of Director, Regional Economic Development Service Office (East Africa), Nairobi. Such individuals shall have the authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, Borrower shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to AID. Until receipt by AID of written notice of revocation of the authority of any of the duly authorized representatives of the Borrower designated pursuant to this Section, it may accept the signature of any such representative or representatives on any instrument as conclusive evidence that any action effected by such instrument is duly authorized.

SECTION 8.03. Implementation Letters. AID will consult with the Borrower on the procedures for utilizing the Loan and shall from

time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Agreement.

SECTION 8.04. Promissory Notes. At such time or times as AID may request, the Borrower shall issue promissory notes or such other evidences of indebtedness with respect to the Loan, in such form, containing such terms and supported by such legal opinions as AID may reasonably request.

SECTION 8.05. Termination Upon Full Payment. Upon payment in full of the Principal and of any accrued interest, this Agreement and all obligations of the Borrower and AID under this Loan Agreement shall terminate.

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.

GOVERNMENT OF BOTSWANA

By: *[Signature]*

Title: *[Signature]*

UNITED STATES OF AMERICA

By: *Charles A. Nelson*

Title: *Assistant Secretary*

ANNEX I

Description of Project

The proposed project consists of the construction and engineering supervision for three gravel surfaced roads totaling approximately 371 kilometers in length, the provision of three road depots and maintenance equipment, and a training program for maintenance staff. The first section of road runs from the town of Nata, located on the Francistown-Maun Highway, 300 kilometers northward to the Kazungula Ferry on the Zambezi River. The second section, known as the Chobe River Bypass Road, is 65 kilometers in length and runs generally east-west connecting the bridge across the Chobe River at Ngoma to the proposed Nata-Kazungula Road. The third section, the Pandamatenga Access Road, connects the village of Pandamatenga to the proposed Nata-Kazungula Road and is 6 kilometers in length.

The project, together with a planned new ferry service across the Zambezi River at Kazungula, will complete a road scheme linking eastern and northern Botswana with Zambia and other countries in central and eastern Africa.

CONFORMED COPY

A.I.D. Loan No. 690-H-001A

FIRST AMENDMENT
to
LOAN AGREEMENT
between
THE GOVERNMENT OF BOTSWANA
and the
UNITED STATES OF AMERICA
for
Botswana-Zambia Road

Dated: June 13, 1973

L O A N A G R E E M E N T
First Amendment No. 690-H-001A

The LOAN AGREEMENT dated August 31, 1972, between the GOVERNMENT OF BOTSWANA ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.") is hereby amended as follows:

1. In order to increase the amount of the Loan specified in the original Loan Agreement dated August 31, 1972, by four million United States Dollars (\$4,000,000), Section 1.01 is deleted in its entirety and a new Section 1.01 reading as follows is substituted in lieu thereof:

"SECTION 1.01. The Loan. A.I.D. agrees to lend to the Borrower pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed sixteen million six hundred thousand United States Dollars (\$16,600,000) ("Loan") to assist the Borrower to carry out the Project referred to in Section 1.02 ("Project"). The Loan shall be used exclusively to finance the Foreign Exchange costs of equipment and materials (goods) and services required for the Project ("Foreign Exchange Costs") and local currency costs of goods and services required for the Project ("Local Currency Costs"). The aggregate amount of disbursements under the Loan is hereinafter referred to as 'Principal'."

2. Section 3.01 is amended by adding a new sub-section 3.01 (i) to read as follows:

" (i) An opinion of the Attorney General of the Borrower or of other legal counsel satisfactory to A.I.D., that this First Amendment has been duly authorized and/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."

3. Except as specifically modified and amended hereby, the Loan Agreement dated August 31, 1972, shall remain in full force and effect. All references in said Agreement to the words "Loan Agreement" or "this Agreement" shall be deemed to mean the Loan Agreement as hereby amended.

IN WITNESS WHEREOF, Borrower and the United States of America, acting through A.I.D., have executed this First Amendment on the fourth day of June, 1973.

GOVERNMENT OF BOTSWANA

By: *Ch. Masire*

Title: *Vice President*

UNITED STATES OF AMERICA

By: *Charles F. Wurster*

Title: *Ambassador*