

CONFIRMED COPY

A.I.D. Loan Number 664-II-043

Project Number 664-22-370-260

PD 4AS 795

LOAN AGREEMENT

Between the

GOVERNMENT OF THE REPUBLIC OF TUNISIA

and the

UNITED STATES OF AMERICA

for

Tunis/Carthage International Airport Improvements  
Phase II (Construction)

Dated: May 6, 1969

BEST AVAILABLE DOCUMENT

SK 6-30-29  
R 6-27-69

TABLE OF CONTENTS

ARTICLE AND SECTION	TITLE	PAGE
<u>ARTICLE I The Loan</u>		
Section 1.01 -	The Loan.....	1
Section 1.02 -	The Project.....	1
Section 1.03 -	Borrower's Financing.....	1
<u>ARTICLE II Loan Terms</u>		
Section 2.01 -	Interest.....	2
Section 2.02 -	Repayment.....	2
Section 2.03 -	Application, Currency, and Place of Payment.....	3
Section 2.04 -	Prepayment.....	3
Section 2.05 -	Renegotiation of the Terms of the Loan.....	3
<u>ARTICLE III Conditions Precedent to Disbursement</u>		
Section 3.01 -	Conditions Precedent to Initial Disbursement.....	3
Section 3.02 -	Conditions Precedent to Additional Disbursement.....	4
Section 3.03 -	Terminal Dates for Meeting Conditions Precedent to Disbursement.....	5
Section 3.04 -	Notification of Meeting of Conditions Precedent to Disbursement.....	6
<u>ARTICLE IV General Covenants and Warranties</u>		
Section 4.01 -	Execution of the Project.....	6
Section 4.02 -	Funds and Other Resources to be Provided by Borrower.....	6
Section 4.03 -	Continuing Consultation.....	7
Section 4.04 -	Management.....	7
Section 4.05 -	Operation and Maintenance.....	7
Section 4.06 -	Taxation.....	7
Section 4.07 -	Utilization of Goods and Services....	8
Section 4.08 -	Disclosure of Material Facts and Circumstances.....	8
Section 4.09 -	Commissions, Fees, and Other Payments	9
Section 4.10 -	Maintenance and Audit of Records.....	9
Section 4.11 -	Reports.....	10
Section 4.12 -	Inspections.....	10
Section 4.13 -	Investment Guaranty Project Approval by Borrower.....	11

BEST AVAILABLE DOCUMENT

16

ARTICLE AND SECTION	TITLE	PAGE
<u>ARTICLE V Special Covenants and Warranties</u>		
Section 5.01	- Establishment of Separate Entity.....	11
<u>ARTICLE VI Procurement</u>		
Section 6.01	- Procurement from the United States....	12
Section 6.02	- Eligibility Date.....	12
Section 6.03	- Goods and Services Not Financed Under Loan.....	12
Section 6.04	- Implementation of Procurement Requirements.....	13
Section 6.05	- Plans, Specifications, and Contracts..	13
Section 6.06	- Reasonable Price.....	14
Section 6.07	- Employment of Third-country Nationals under Construction Contracts.....	14
Section 6.08	- Shipping and Insurance.....	14
Section 6.09	- Notification to Potential Suppliers...	16
Section 6.10	- Information and Marking.....	16
<u>ARTICLE VII Disbursements</u>		
Section 7.01	- Letters of Commitment to United States Banks.....	16
Section 7.02	- Other Forms of Disbursement.....	17
Section 7.03	- Date of Disbursement.....	17
Section 7.04	- Terminal Date for Disbursement.....	17
<u>ARTICLE VIII Cancellation and Suspension</u>		
Section 8.01	- Cancellation by the Borrower.....	18
Section 8.02	- Events of Default; Acceleration.....	18
Section 8.03	- Suspension of Disbursement.....	19
Section 8.04	- Cancellation by A.I.D.....	20
Section 8.05	- Continued Effectiveness of Agreement..	21
Section 8.06	- Refunds.....	21
Section 8.07	- Expenses of Collection.....	22
Section 8.08	- Nonwaiver of Remedies.....	22
<u>ARTICLE IX Miscellaneous</u>		
Section 9.01	- Communications.....	22
Section 9.02	- Representatives.....	23
Section 9.03	- Implementation Letters.....	24
Section 9.04	- Promissory Notes.....	24
Section 9.05	- Termination Upon Full Payment.....	24
<u>ANNEX 1 Description of Project</u>		

BEST AVAILABLE DOCUMENT

3

LOAN AGREEMENT dated May 6, 1969  
between the GOVERNMENT OF THE REPUBLIC OF TUNISIA ("Borrower") and the  
UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL  
DEVELOPMENT ("A.I.D. ").

ARTICLE I

The Loan

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 Six Million Two Hundred Thousand United States Dollars (\$6,200,000.00) ("Loan") to assist the Borrower in carrying out the Project referred to in Section 1.02 ("Project"). The Loan shall be used exclusively to finance United States dollar costs of goods and services required for the Project ("Dollar Costs"). The aggregate amount of disbursements under the Loan is hereinafter referred to as 'Principal'.

SECTION 1.02. The Project. The Project shall consist of construction of and supervisory engineering services for a passenger terminal and related facilities at Tunis/Carthage International Airport near Tunis. The Project is more fully described in Annex 1 hereto, the specific details of which may be modified by written agreement of Borrower and A.I.D.

SECTION 1.03. Borrower's Financing. Pursuant to, but not in limitation of, Borrower's obligation to provide any additional resources or any additional costs, in addition to the costs financed

hereunder, required to complete the Project, Borrower agrees to finance the local costs of goods and services required for the Project, and all non-U.S. foreign exchange costs.

ARTICLE II

Loan Terms

SECTION 2.01. Interest. The Borrower shall pay to A.I.D. interest which shall accrue at the rate of two percent (2%) per annum for ten years following 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 7.03), 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 A.I.D. *1st Disbursement: 3/13/70*  
*1st Interest: 9/13/70*

SECTION 2.02. Repayment. The Borrower shall repay to A.I.D. the Principal within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semi-annual installments of Principal and interest. The first installment of Principal shall be payable nine and one-half (9 1/2) years after the date on which the first interest payment is due in accordance with Section 2.01. A.I.D. shall provide the Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan. *1st Principal = 3/13/80*

5

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 A.I.D. 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 A.I.D., at such time or times as A.I.D. 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 A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

6

(a) An opinion of the Secretary of State for Justice of the Borrower, or of other legal counsel satisfactory to A.I.D., that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;

(b) A statement of the names of the persons holding or acting in the office of the Borrower specified in Section 9.02, and a specimen signature of each person specified in such statement; and

(c) An executed contract with a firm acceptable to A.I.D. for the performance of all supervisory engineering and architectural services for the Project.

SECTION 3.02. Conditions Precedent to Additional Disbursement.

Prior to any disbursement or to the issuance of any Letter of Commitment under the Loan for any purpose other than to finance the services referred to in Section 3.01, the Borrower shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) An executed contract with a firm acceptable to A.I.D. for the performance of all construction services necessary to construct Parts 1, 2 and 4 of the Project as specified in Annex I hereto;

(b) Plans or arrangements for timely construction of Parts 3 and 5 of the Project as specified in Annex I hereto;

(c) A description of plans and arrangements for establishment by March 31, 1970 or earlier, of a financially autonomous public

7

Corporation or Authority in accordance with Section 5.01, together with (i) preliminary forecasts (proformas) of the balance sheet and income statements (including a detailed schedule of sources of revenue) of such Corporation or Authority for its first three years of operation and (ii) its proposed Charter or Articles of Incorporation and By-Laws;

(d) A description of arrangements in Tunisia to be made by the Borrower to assure that its funds to be provided under Section 1.03 will be available on a timely basis, when and as needed, to finance contracts for goods and services for the Project;

(e) A certificate of an authorized official of the Directorate of Customs at the Port of Tunis - La Goulette to the effect that such Directorate is cognizant of the terms of Section 4.06 hereof and of the applicability of such Section to contracts financed hereunder; and

(f) Such other information as A.I.D. may request with respect to the Project.

SECTION 3.03. Terminal Dates for Meeting Conditions Precedent to Disbursement. Except as A.I.D. may otherwise agree in writing, if all of the conditions specified in Section 3.01 shall not have been met within 60 days from the date of this Agreement, or if the conditions specified in Section 3.02 shall not have been met within 120 days from the date of this Agreement, then A.I.D., at its option, may terminate this Agreement by giving written notice to the Borrower. Upon the giving of such notice, Borrower shall repay any unrepaid principal and any accrued interest whereupon this Agreement and all other obligations of the parties hereunder shall terminate.

SECTION 3.04. Notification of Meeting of Conditions Precedent to Disbursement. A.I.D. shall notify the Borrower upon determination by A.I.D. that the conditions precedent to disbursement specified in Sections 3.01 and 3.02 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 and project management practices. In this connection, the Borrower shall at all times employ suitably qualified and experienced contractors to be professionally responsible for the performance of all supervisory engineering and construction services necessary for the execution of 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 A.I.D. pursuant to this Agreement.

SECTION 4.02. Funds and Other Resources to be Provided by Borrower. The Borrower shall provide promptly as needed all funds, in addition to the Loan, and all other resources required for the punctual and effective carrying out of the Project.

SECTION 4.03. Continuing Consultation. The Borrower and A.I.D. shall cooperate fully to assure that the purpose of the Loan will be accomplished. To this end, the Borrower and A.I.D. 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 contractors or consultants 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 acceptable to A.I.D., and it shall train such staff as may be appropriate for the support 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 purposes 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 Tunisia. Any contractor, including any personnel of such contractor financed hereunder, and any property or transactions relating to such contracts as well as any commodity procurement

transaction financed hereunder shall <sup>be</sup> exempt from all identifiable taxes, tariffs, duties, and other levies imposed under laws in effect in Tunisia.

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 A.I.D. 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 A.I.D. may agree to in writing prior to such use or disposition.

(b) Except as A.I.D. 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 A.I.D. 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 all facts and circumstances that it has disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Loan are accurate and complete, and that it has disclosed to A.I.D., 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 A.I.D. 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

11

obligations under this Agreement. It is understood that any change in a representation made or document furnished to satisfy a Condition Precedent under Section 3.01 or Section 3.02 shall constitute a material fact or circumstance for purposes of this Section.

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 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 been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable by A.I.D., the same shall be adjusted in a manner satisfactory to A.I.D.

(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

17

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 A.I.D. may require, and shall be maintained for five years after the date of the last disbursement by A.I.D. or until all sums due A.I.D. under this Agreement have been paid, whichever date shall first occur.

SECTION 4.11. Reports. The Borrower shall furnish to A.I.D. such information and reports relating to the Loan and to the Project as A.I.D. may request.

SECTION 4.12. Inspections. The authorized representatives of A.I.D. 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 A.I.D. to facilitate such inspections and shall permit representatives of

A.I.D. 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 Tunisia and the United States of America on the subject of investment guaranties, and no further approval by the Government of Tunisia shall be required to permit A.I.D. under that Agreement to issue investment guaranties covering a contractor's investment in that Project.

ARTICLE V

Special Covenants and Warranties

SECTION 5.01. Establishment of Separate Entity. The Borrower agrees to establish and maintain in operation for the life of the Loan, a financially autonomous public Corporation or Authority vested with adequate authority, all necessary powers and full responsibility for the finances, management, operation and control of Tunis/Carthage International Airport. Such Corporation or Authority shall be fully operational on a basis satisfactory to A.I.D. on or before March 31, 1970. It shall operate and maintain such Airport in accordance with sound and efficient airport management, operation, maintenance and financial practices and, to the maximum extent feasible, shall be financially self-sustaining. Except as A.I.D. may otherwise agree in writing, the Corporation or Authority shall from time to time make such adjustments as are reasonable and practicable in fees, rentals, concession and other charges and shall take all such other action as may

pl

be necessary to assure that its internally-generated revenues are at all times sufficient to (1) cover all operating expenses including reserves for maintenance and depreciation and (2) enable the Corporation to (i) pay interest on and amortization of debt, (ii) maintain adequate working capital, (iii) establish and maintain reserves adequate to meet contingencies and (iv) finance a reasonable portion of its capital expenditures, including replacement of assets. Borrower further agrees that any assignment of responsibility or authority to such Corporation or Authority for the execution of the Project shall only be made with the prior written consent of A.I.D.

## ARTICLE VI

### Procurement

SECTION 6.01. Procurement from the United States. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to this Agreement shall be used exclusively to finance the procurement for the Project of goods and services having both their source and origin in the United States. All ocean shipping and marine insurance financed under the Loan shall have both their source and origin in the United States of America.

SECTION 6.02. Eligibility Date. Except as A.I.D. 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 6.03. 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

15

of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

SECTION 6.04. Implementation of Procurement Requirements. The definitions applicable to the eligibility requirements of Section 6.01 and 6.03 will be set forth in detail in Implementation Letters.

SECTION 6.05. Plans, Specifications, and Contracts.

(a) Except as A.I.D. may otherwise agree in writing, the Borrower shall furnish to A.I.D. promptly upon preparation, all plans, specifications, 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 A.I.D. may otherwise agree in writing, all of the plans, specifications, and schedules furnished pursuant to subsection (a) above shall be approved by A.I.D. 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 A.I.D. 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 A.I.D. may otherwise agree in writing.

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

- (i) contracts for supervision of construction and other professional services,
- (ii) contracts for construction services, and
- (iii) contracts for such other services as A.I.D. may specify.

In the case of any of the above contracts for services, A.I.D. shall also approve in writing the contractor and such contractor personnel as A.I.D. may specify. Material modifications in any of such contracts and changes in any of such personnel shall also be approved by A.I.D. 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 A.I.D. may specify, and construction contractors used by the Borrower for the Project but not financed under the Loan, shall be acceptable to A.I.D.

SECTION 6.06. 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 6.07. 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 6.08. Shipping and Insurance.

(a) Goods procured from the United States and 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 A.I.D. Geographic Code Book as in effect at the time of shipment.

17

(b) At least fifty percent (50%) of the gross tonnage of all goods procured from the United States and financed under the Loan (computed separately for dry bulk carriers, dry cargo liners, and tankers) which shall be transported on ocean vessels shall be transported on privately owned United States flag commercial vessels unless A.I.D. shall determine that such vessels are not available at fair and reasonable rates for United States flag commercial vessels. No such goods may be transported on any ocean vessel (or aircraft) (i) which A.I.D., in a notice to the Borrower, has designated as ineligible to carry A.I.D.-financed goods or (ii) which has been chartered for the carriage of A.I.D.-financed goods unless such charter has been approved by A.I.D.

(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 procured from the United States and 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 procured in the United States and financed under the Loan against risks

18

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. 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 6.09. 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 A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Implementation Letters.

SECTION 6.10. Information and Marking. In consultation with USAID, Borrower shall give publicity to the Loan and the Project as a program of United States aid, and mark goods financed under the Loan as prescribed in Implementation Letters.

## ARTICLE VII

### Disbursements

SECTION 7.01. Letters of Commitment to United States Banks. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request A.I.D. to issue Letters of Commitment for

9

specified amounts to one or more United States banks, satisfactory to A.I.D., committing A.I.D. 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 Dollar 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 A.I.D. may prescribe in Letters of Commitment and Implementation Letters. Banking 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 7.02. Other Forms of Disbursement. Disbursements of the Loan may also be made through such other means as the Borrower and A.I.D. may agree to in writing.

SECTION 7.03. Date of Disbursement. Disbursements by A.I.D. shall be deemed to occur on the date on which A.I.D. makes a disbursement to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment.

SECTION 7.04. Terminal Date for Disbursement. Except as A.I.D. 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 7.02, or amendment thereto shall be issued in response to requests received by A.I.D. after June 1, 1970, and no disbursement shall be made against documentation received by A.I.D.

or any bank described in Section 7.01 after December 1, 1971. A.I.D. at its option, may at any time or times after December 1, 1971, reduce the Loan by all or any part thereof for which documentation was not received by such date.

ARTICLE VIII

Cancellation and Suspension

SECTION 8.01. Cancellation by the Borrower. The Borrower may, with the prior written consent of A.I.D., by written notice to A.I.D., cancel any part of the Loan (i) which, prior to the giving of such notice, A.I.D. has not disbursed or committed itself to disburse, or (ii) which has not then been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit.

SECTION 8.02. 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;
- (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 A.I.D., or any of its predecessor agencies,

21

then A.I.D. 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 8.03. Suspension of Disbursement. In the event that at any time:

- (a) An Event of Default has occurred;
- (b) An event occurs that A.I.D. 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;
- (c) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or
- (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 A.I.D. 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 A.I.D. 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 A.I.D.'s expense, direct that title to goods financed under the Loan shall be transferred to A.I.D. 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 8.04. Cancellation by A.I.D. Following any suspension of disbursements pursuant to Section 8.03, 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, A.I.D. 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.

23

SECTION 8.05. 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 8.06. 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, A.I.D., notwithstanding the availability or exercise of any other remedies provided for under this Agreement, may require the Borrower to refund such amount in United States dollars to A.I.D. within thirty 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, A.I.D.'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 A.I.D. 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, A.I.D. 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 8.07. Expenses of Collection. All reasonable costs incurred by A.I.D., other than salaries of its staff, in connection with the collection of any refund or in connection with amounts due A.I.D. by reason of the occurrence of any of the events specified in Section 8.02 may be charged to the Borrower and reimbursed to A.I.D. in such manner as A.I.D. may specify.

SECTION 8.08. Nonwaiver of Remedies. 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.

## ARTICLE IX

### Miscellaneous

SECTION 9.01. Communications. Any notice, request, document, or other communication given, made, or sent by the Borrower or A.I.D. 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, telegrams, cable, or radiogram at the following addresses:

TO BORROWER: Mail Address: Secretariat d'Etat  
aux Affaires Etrangeres  
Republique de Tunisie  
Place du Gouvernement  
Tunis. Tunisia

Cable Address: (Same as mail address)

TO A.I.D.: Mail Address: Office of Capital Development  
and Finance  
Bureau for Africa  
Agency for International Develop-  
ment  
c/o Mission Director  
USAID Mission to Tunisia  
American Embassy  
Tunis, Tunisia

Cable Address: A.I.D.  
Washington, D.C.

Other addresses may be substituted for the above upon the giving of notice. All notices, requests, communications, and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

SECTION 9.02. Representatives. For all purposes relative to this Agreement, the Borrower will be represented by the individual holding or acting in the office of Secretariat d'Etat aux Affaires Etrangeres. Such individual shall have the authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder,

JL

Borrower shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. Until receipt by A.I.D. 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 9.03. Implementation Letters. A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Agreement.

SECTION 9.04. Promissory Notes. At such time or times as A.I.D. 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 A.I.D. may reasonably request.

SECTION 9.05. 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 A.I.D. 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.

By: Stuart T. Paron

Stuart T. Paron  
Title: Director, U.S. Special Mission for  
Economic and Technical Cooperation  
UNITED STATES OF AMERICA

By: Bechir Lepaj

Bechir Lepaj  
Title: Director of International Cooperation  
Secretariat of State for Foreign Affairs  
GOVERNMENT OF THE REPUBLIC  
OF TUNISIA

ff

DESCRIPTION OF PROJECT

The project consists of the construction of airport improvements and supervision of project construction by a US consulting engineering firm at the Tunis/Carthage International Airport. The airport improvements consists of five major Parts as follows:

PART 1. Passenger Terminal Building, three stories high, constructed of reinforced concrete. The structure will contain a gross enclosed floor area of approximately 21,185 square meters (227,950 sq. ft.).

The building is basically "E"-shaped with open courtyards facing the auto parking area and the closed side facing the aircraft apron. The central portion of the building will house most of the major functional areas with the two remaining wings providing passenger holding lounges, apron access stairs and miscellaneous supporting functions.

PART 2. Aircraft apron and connecting taxiway. The apron will be constructed of concrete pavement placed over a stabilized aggregate base measuring approximately 119 meters by 460 meters. The 22.5 meter wide taxiway will provide a connection link between the freight apron area located to the south and a direct link from the north end of the terminal apron eastward to the parallel taxiway for the North-South runway. The apron and taxiway will be constructed of 13 inches of concrete and will accommodate multiengine jet aircraft. The apron and taxiway will have 7.5 meter wide bituminous paved shoulders for jet blast protection.

PART 3. Fire/crash rescue building constructed with reinforced concrete columns, non load-bearing brick partitions and with approximately 892 square meters of floor space; containing eight vehicle bays to house the fire/crash equipment and providing administrative and personnel facilities for 24-hour fire and rescue protection at the airport.

PART 4. Site work consisting of exterior lighting, electric service and sanitary sewer and water system.

PART 5. Ground installations consisting of rough grading, landscaping, roads and automobile parking areas. Procurement and installation of telephone equipment and interconnecting wiring.

Parts 1, 2 and 4 are to be constructed by a U.S. prime contractor. Parts 3 and 5 are to be constructed and financed by the Government of Tunisia with its own forces or by Tunisian prime contractors.

C. Attachment C, AID Capital Projects Guidelines for Borrower Procurement of Construction Services of United States Source and Origin, will assist you in selecting construction contractor(s) and in preparing contract(s) meeting the requirements of Section 3.02(a) of the loan agreement.

In requesting A.I.D. approval of the proposed award of the construction contract, please provide an analysis of all bids received, prepared by your consulting engineer.

D. In submitting the necessary documentation for satisfaction of Section 3.02(e) of the loan agreement, your Directorate of Customs should state that it acknowledges the applicability of the subject agreement regarding taxes and duties in particular. The purpose of this requirement is to assure that the movement of goods through customs will be facilitated without undue delay.

E. Please note that under Section 3.03 of the loan agreement the terminal date for fulfillment of initial conditions precedent is 60 days from the date of the agreement and 120 days in the case of additional conditions precedent.

## II. Procurement of Goods and Services

A. Source of Procurement (Loan Agreement Section 6.01). All goods and services to be financed under the loan must have their source and origin in the United States, in accordance with the provisions of Section 6.01 of the loan agreement. For further information concerning source and origin of goods and services to be financed under the loan, see Section 4 of Attachments B and C. Please refer especially to Section 4.2.2 of these AID Capital Projects Guidelines for the definition of "U.S. firm".

B. Geographic Code Classification of Source Countries for All Goods and Services Connected with the Project. Code 935, referred to in various sections of the loan agreement, is described in the A.I.D. Geographic Code Book available at our USAID Mission in Tunis.

C. Publicity, Prequalification and Bid Procedures for Procurement of Services (Loan Agreement Sections 6.01 through 6.06 and Section 6.09). In accordance with the instructions contained in Attachment C, Section 2, A.I.D. has received and published a synopsis in connection with construction services required for the project. Prequalification of firms for bidding for construction services is proceeding on schedule. A.I.D. has also received and is reviewing the draft Invitation for Bids (IFB), which includes final plans and specifications, instructions to bidders, the bid form and proposed contract. Our comments will be forthcoming shortly.

We direct your attention to Sections 2.5, 2.6 and 2.7 of Attachment C, which explains A.I.D. requirements concerning such matters as issuances of changes in the IFB, receipt of bids, making of awards, A.I.D. approval of awards and contracts, etc. We wish to stress that each contract award must be made to that qualified bidder whose bid, fully responsive to the IFB, is reasonable in price and offers the lowest price. Proposed contract awards are subject to A.I.D. approval, and A.I.D. regulations permit announcement of contract awards only after A.I.D. approval has been obtained.

D. Eligibility of Individuals for Work Under Construction Contracts (Loan Agreement Section 6.07).

1. United States legislation restricts the use of "third-country nationals" on A.I.D.-financed construction projects. These are persons who are neither nationals of the borrower's country nor citizens of the United States. They do not include individuals who have resided in the borrower's country uninterruptedly for the three years immediately preceding the date of the award of the construction contract.

2. At least 80% of the personnel working at the construction site, other than nationals of the borrower's country and other persons who have maintained an uninterrupted three-year residency in the borrower's country, must be United States citizens, whether employed by the prime contractor or by the subcontractor.

3. A.I.D. may consider an exception to this requirement if the employment of third country nationals is necessary to avoid excessive costs to the United States. See Attachment C, Section 3.24.

E. Ocean Shipping Limitations (Loan Agreement Section 6.08).

1. Certain ocean vessels included in the latest "List of Free World and Polish Flag Vessels Arriving in Cuba since January 1, 1963" and the latest "List of Free World and Polish Flag Vessels Arriving in Viet Nam on or after January 25, 1966" are ineligible to carry A.I.D.-financed cargoes from the United States. The USAID Mission in Tunis maintains a current listing of such ineligible vessels which it will furnish upon request. Please take such steps as may be appropriate to make certain that no shipment financed under the loan is made on an ineligible vessel.

2. A.I.D. requires that at least 50% of gross tonnage of all goods financed hereunder shipped on ocean vessels be shipped on United States flag vessels. To the extent that United States flag vessels are utilized for the shipment of eligible items, ocean freight is payable from the loan proceeds. The loan cannot be utilized for the payment of freight shipments on non-United States flag vessels.

III. Disbursement Procedures and Documentation (Loan Agreement Sections 7.01 through 7.04).

A. Foreign Exchange Costs. Letters of commitment may be issued to finance the foreign exchange costs of construction and construction supervision contracts. The procedure for requesting issuance of letters of commitment, actions to be taken after they are issued, and the documentation required by A.I.D. as a basis for disbursement of loan funds are described in Attachment D, Disbursement of Loan Funds: Letter of Commitment Procedure.

B. Banking Charges. Since banking charges are eligible for A.I.D. loan financing under Section 7.01 of the loan agreement, we assume that the borrower wishes to permit financing of banking charges under each letter of commitment issued. Unless you notify us to the contrary, each letter of commitment will cover banking charges of the U.S. bank to which the letter of commitment is issued.

IV. Information and Marking (Loan Agreement Section 6.10). Arrangements shall be made for marking goods and shipping containers and for placing signs at the project sites bearing the A.I.D. emblem. Attachment C, Sections 4.6, 4.6.1 and 4.6.2 will assist you in complying with these requirements.

V. Reports (Loan Agreement Section 4.11). Pursuant to Section 4.11 of the loan agreement, please forward three copies of the following reports to the USAID Mission in Tunis within the periods specified:

A. Quarterly Progress Reports. Quarterly progress reports are required during the entire period of construction. Guidelines for preparing these reports are contained in Attachment E, Progress Reporting Requirements. These reports should conform to calendar quarters, and should be received by A.I.D. within thirty days of the end of each quarter. The first such report will be due at the end of the quarter in which the construction contract is executed.

B. Quarterly Shipping Reports. This report is required until all shipping under the loan has been completed and should be submitted within thirty days of the end of each calendar quarter. Attachment F, Borrower's Shipping Statement, contains the format for this report. The Summary Statement, Part I, should give the cumulative actual tonnages shipped, beginning with the initial report through the month of the last report, for United States and non-United States flag vessels, by category of vessels, as applicable.

If the summary indicates a lag in compliance with Section 6.8 of the loan agreement, a statement should be included indicating how the deficit in shipping on United States flag vessels will be made up. If no shipping occurs during a particular calendar quarter, a statement to that effect must be submitted.

32

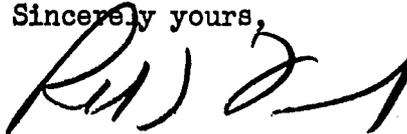
For purposes of submission to A.I.D., this report may be combined with the above Quarterly Progress Report.

C. Annual Financial and Management Report. A financial report is to be submitted to A.I.D. annually through 1980 and is to include a detailed Balance Sheet, Profit and Loss Statement, and Analysis of Retained Earnings, setting forth the Airport Authority's true financial condition and the results of its operations. This report should include an analysis of the Authority's revenue rate structure. You are requested to furnish, in addition, information on any significant changes in the Authority's organization, management, or personnel. Annual traffic statistics will also be required. These financial statements should be audited by independent auditors satisfactory to A.I.D. See also Attachment G.

VI. Correspondence. Three copies, in English, of all documentation, reports and correspondence concerning this loan should be forwarded to A.I.D. Washington through our USAID Mission in Tunis.

We will be pleased to discuss with your representative any aspect of implementation of the loan, or any matter relating to this letter or the attachments hereto.

Sincerely yours,



Robert T. Freeman, Jr.  
Director  
Office of Capital Development  
and Finance.  
Bureau for Africa

**Attachments:**

- Attachment A - Guide for Counsel of Borrower Government (6/64)
- Attachment B - AID Capital Projects Guidelines for Borrower Procurement of Engineering and Other Professional Services of United States Source and Origin (1/69)
- Attachment C - AID Capital Projects Guidelines for Borrower Procurement of Construction Services of U.S. Source and Origin (1/69)
- Attachment D - Disbursement of Loan Funds: Letter of Commitment Procedure (1/67)
- Attachment E - Progress Reporting Requirements (9/63)
- Attachment F - Borrower's Shipping Statement (10/62)
- Attachment G - AID Audit Requirements (9/63)

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

Attachment A

GUIDE FOR COUNSEL OF BORROWER GOVERNMENT

Among the conditions precedent to financing under the Loan Agreement, A.I.D. requires an opinion of the Legal Counsel of the Borrower Government to the effect that the Loan Agreement is legal and binding insofar as the Government is concerned. In preparing the required legal opinion please be guided by the following criteria:

1. A.I.D. prefers the opinion of the senior legal officer of the Government (the Attorney General of the Government or other counsel satisfactory to A.I.D.).

2. The legal opinion should reach, in substance, the essential conclusions concerning the legality and enforceability of the Loan Agreement that are specified under "Conditions Precedent" in the Loan Agreement.

3. A.I.D. will look for an explanation of the legal basis on which such conclusions were reached. This should include a citation of the basic legal authority for entering into the Agreement, a verification of the authority of the Government signator to sign for the Government, and an affirmative representation that all requirements of law have been met to make the Loan Agreement or the actions taken pursuant to it valid and binding.

4. A.I.D. will expect counsel to include relevant excerpts in English from the Constitution, statutes, executive orders or decrees, public notices, etc., relied upon in such opinion.

Two copies of the legal opinion, in English, should be provided to A.I.D. by the Borrower without delay so as to facilitate disbursement of Loan proceeds.