

No. 12011

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
NICARAGUA**

Guarantee Agreement—*Second Managua Water Supply Project* (with General Conditions Applicable to Loan and Guarantee Agreements). Signed at Washington on 17 March 1972

Authentic text: English.

Registered by the International Bank for Reconstruction and Development on 26 September 1972.

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
NICARAGUA**

Contrat de garantie — *Deuxième projet relatif à l'approvisionnement en eau de Managua* (avec Conditions générales applicables aux contrats d'emprunt et de garantie). Signé à Washington le 17 mars 1972

Texte authentique : anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 26 septembre 1972.

GUARANTEE AGREEMENT¹

AGREEMENT, dated March 17, 1972, between REPUBLIC OF NICARAGUA (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date herewith² between the Bank and Empresa Aguadora de Managua (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to six million nine hundred thousand dollars (\$6,900,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower;

NOW THEREFORE the parties hereto hereby agree as follows:

Article I

GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Guarantee Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969,³ with the same force and effect as if they were fully set forth herein, subject, however, to the modifications thereof set forth in Section 1.01 of the Loan Agreement (said General Conditions Applicable to Loan and Guarantee Agreements, as so modified, being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Guarantee Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in Section 1.02 of the Loan Agreement have the respective meanings therein set forth.

¹ Came into force on 26 April 1972, upon notification by the Bank to the Government of Nicaragua.

² The said Agreement entered into force on 26 April 1972. As it does not constitute an international agreement or a part of the present Agreement, it is not reproduced herein. However, it was published by the Bank as document LN 808 NI, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Guarantee Agreement.

³ See p. 60 of this volume.

Article II

GUARANTEE; BONDS; PROVISION OF FUNDS

Section 2.01. Without limitation or restriction upon any of its other obligations under the Guarantee Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and interest and other charges on, the Loan and the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds prior to their maturity and the punctual performance of all the other obligations of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. The Guarantor shall endorse, in accordance with the provisions of the General Conditions, its guarantee on the Bonds to be executed and delivered by the Borrower. The *Ministro de Hacienda y Crédito Público* of the Guarantor and such other person or persons as he shall appoint in writing are designated as authorized representatives of the Guarantor for the purposes of Section 8.10 of the General Conditions.

Section 2.03. Without limitation or restriction upon the provisions of Section 2.01 of this Guarantee Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for the carrying out of the Project, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

Article III

OTHER COVENANTS

Section 3.01. (a) It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan or the Bonds by way of a lien on governmental assets.

(b) To that end the Guarantor (i) represents that at the date of this Guarantee Agreement no lien exists on any governmental assets as security for any external debt; and (ii) undertakes that, except as the Bank shall otherwise agree, if any such lien shall be created, it will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds and that in the creation of any such lien

express provision will be made to that effect. The Guarantor shall promptly inform the Bank of the creation of any such lien.

(c) The foregoing representation and undertaking shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of such property; and (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

As used in this Section: (a) the term “governmental assets” includes assets of the Guarantor or of any of its political subdivisions or of any Agency, including the Banco Central de Nicaragua and (b) the term “Agency” means any agency or instrumentality of the Guarantor or of any political subdivision of the Guarantor and shall include any institution or organization which is owned or controlled directly or indirectly by the Guarantor or by any political subdivision of the Guarantor or the operations of which are conducted primarily in the interest of or for account of the Guarantor or any political subdivision of the Guarantor.

Section 3.02. The Guarantor shall from time to time take all action necessary to enable the Borrower to set and maintain such rates for the Borrower’s water supply services as shall be required to permit the Borrower to comply with its obligations under Section 5.05 of the Loan Agreement.

Section 3.03. The Guarantor shall take all reasonable measures to ensure that (i) the Borrower’s water sources are safeguarded from contamination to an extent satisfactory to the Guarantor, the Bank and the Borrower; (ii) the execution and operation of the Project are carried out with due regard to ecological and environmental factors, especially concerning the quality of the Borrower’s water sources; and (iii) a sewer is built not later than March 31, 1973, or such other date as may be agreed with the Bank, to carry discharges from industrial facilities located between Laguna Asososca and Lago de Managua into Lago de Managua, or such suitable alternative action as shall have been agreed upon between the Guarantor, the Bank and the Borrower is taken to safeguard Laguna Asososca from contamination.

Section 3.04. The Guarantor shall afford the Bank a reasonable opportunity to exchange views on any appointment to the post of *Gerente General* of the Borrower to be made after the date of this Guarantee Agreement.

Article IV

CONSULTATION AND INFORMATION

Section 4.01. The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end the Guarantor and the Bank shall from time to time, at the request of either party: (i) exchange views through their representatives with regard to the performance of their respective obligations under the Guarantee Agreement and other matters relating to the purposes of the Loan; and (ii) furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor, including its balance of payments, and the external debt of the Guarantor, of any of its political subdivisions and of any agency of the Guarantor or of any such political subdivision.

Section 4.02. (a) The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(b) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

Article V

TAXES AND RESTRICTIONS

Section 5.01. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the foregoing shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 5.02. This Guarantee Agreement, the Loan Agreement, any instrument made pursuant to Section 3.01 of this Guarantee Agreement or Section 5.03 of the Loan Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof and the Guarantor shall, in respect of any instrument

made pursuant to such Section 3.01, pay all such taxes, if any, imposed under the laws of any other country or countries.

Section 5.03. The payment of the principal of, and interest and other charges on, the Loan and the Bonds shall be free from all restrictions, regulations, controls or moratoria of any nature imposed under the laws of the Guarantor or laws in effect in its territories.

Article VI

REPRESENTATIVE OF THE GUARANTOR; ADDRESSES

Section 6.01. The *Ministro de Hacienda y Crédito Público* of the Guarantor is designated as representative of the Guarantor for the purposes of Section 10.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Guarantor:

República de Nicaragua
Ministerio de Hacienda y Crédito Público
Palacio Nacional
Managua, D.N.
Nicaragua, C.A.

Cable address:

Minihacienda
Managua, Nicaragua

For the Bank:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Intbafrad
Washington, D.C.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Guarantee Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

Republic of Nicaragua:

By GUILLERMO SEVILLA-SACASA
Authorized Representative

International Bank for Reconstruction and Development:

By J. BURKE KNAPP
Vice President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO LOAN AND GUARANTEE AGREEMENTS

[*Not published herein. See United Nations, Treaty Series, vol. 691, p. 300.*]
