

No. 16626

**UNITED STATES OF AMERICA
and
PERU**

**Loan Agreement for a Program for improved water and
land use in the Sierra (with annex). Signed at Lima on
29 September 1976**

Authentic texts: English and Spanish.

Registered by the United States of America on 27 April 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
PÉROU**

**Accord de prêt relatif à un Programme d'amélioration des
utilisations des eaux et des sols dans la Sierra (avec
annexe). Signé à Lima le 29 septembre 1976**

Textes authentiques : anglais et espagnol.

Enregistré par les États-Unis d'Amérique le 27 avril 1978.

LOAN AGREEMENT¹ BETWEEN THE REPUBLIC OF PERU AND THE UNITED STATES OF AMERICA FOR PROGRAM FOR IMPROVED WATER AND LAND USE IN THE SIERRA

Date: September 29, 1976

A.I.D. Loan No. 527-T-059

LOAN AGREEMENT dated September 29, 1976 between the Government of the REPUBLIC OF PERU ("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 Section 103 of the Foreign Assistance Act of 1961, as amended, an amount not to exceed eleven million United States Dollars (US\$ 11,000,000) ("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 ("Dollar Costs") and a portion of the local currency costs ("Local Currency Costs") of goods and services required for the Project. The aggregate amount of disbursements under the Loan is hereinafter referred to as "Principal".

Section 1.02. THE PROJECT. The Project will contribute to a program of improved water and land use in the sierra of Peru by financing the planning and implementation of small scale irrigation and drainage works and complementary afforestation in the watershed and bordering areas of the Mantaro River and the watersheds of the Crisnejas, Condebamba, and Cajamarca Rivers. Up to nine million one hundred thousand (US\$ 9,100,000) dollars of Loan funds will be available to finance foreign and local currency costs of these activities. Up to nine hundred thousand dollars (US\$ 900,000) of Loan funds will finance a related program of technical assistance. The balance of one million dollars (US\$ 1,000,000) of Loan funds will be available as contribution to a credit fund established to finance investments in land development and on-farm improvements under the Project.

The Borrower shall contribute to the financing of the Project the equivalent of ten million dollars (US\$ 10,000,000) as national counterpart. Of this total the equivalent of eight million dollars (US\$ 8,000,000) will be designated to finance the costs of implementation of the Project, including the planning and administrative costs, and the equivalent of two million dollars (US\$ 2,000,000) will be designated for the credit fund.

The Borrower designates the Ministry of Agriculture as the Implementing Agency for the purpose of carrying out the Project as a "Special Project". The Borrower further designates the Agrarian Bank of Peru as Financial Agent for the purposes of administering the credit program under the Project. The Ministry of Agriculture, as Implementing Agency, will execute with the Agrarian Bank an agreement or agreements, as necessary, to coordinate their respective responsibilities in accordance with this Loan Agreement.

The Project is more fully described in the Annex I attached hereto, which Annex forms an integral part of this Agreement and may be modified in writing by mutual agreement of the parties.

¹ Came into force on 29 September 1976 by signature.

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, Peruvian soles 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 purpose that A.I.D. and the Borrower may agree to 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 A.I.D. and the Borrower as to the use of such funds, at that rate of exchange between United States dollars and Peruvian soles which yields the greatest number of soles per dollar and which is not unlawful in Peru.

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 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 7.04) 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 A.I.D.

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 semiannual installments of Principal and interest. The first installment of Principal shall be payable nine and one-half (9½) 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.

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 Agency for International Development, Washington, D.C. 20523, Attention Cashier SER/CONT, and shall be deemed made when received by the Office of the Cashier.

Section 2.04. PREPAYMENT. Upon payment of all interest, Principal, and refunds then due, the Borrower may prepay, without any other charges, 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. an acceleration of the repayment of the Loan at any time or times as A.I.D. or the Borrower may request. The parties hereto shall mutually determine whether such an acceleration shall take place on the basis of the following criteria:

- (i) The capacity of the Borrower to service a more rapid liquidation of its obligations in the light of the internal and external financial position of Peru, taking into account debts owing to any agency of the United States of America, or to any international organization of which the United States of America is a member; and
- (ii) The relative capital requirements of the Borrower and of the other signatories of the Act of Bogotá¹ and the Charter of Punta del Este.²

¹ United States of America, *Department of State Bulletin*, 3 October 1960.

² *Ibid.*, 11 September 1961.

Article III. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.01. CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT. Prior to the first disbursement or to the issuance of any commitment document under the Loan, the Borrower shall submit to A.I.D., in form and substance satisfactory to A.I.D.:

- (a) An opinion or opinions of the Director General of the General Department of Legal Counsel of the Ministry of Economy and Finance, or of other counsel satisfactory to A.I.D., that this Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower, and that it constitutes a valid and binding obligation of the Borrower in accordance with all of its terms;
- (b) Evidence of the authority of the person or persons who will act as representative or representatives of the Borrower pursuant to Section 9.02, together with a specimen signature of each such person duly certified as to its authenticity;
- (c) Evidence that the Borrower's contribution to the Project will be available in a timely manner.

Section 3.02. CONDITIONS PRECEDENT TO DISBURSEMENT FOR OTHER THAN TECHNICAL ASSISTANCE. Prior to any disbursement or the issuance of any commitment documents under the Loan other than to finance technical assistance, the Borrower shall submit to A.I.D., in form and substance satisfactory to A.I.D.:

- (a) A Project Implementation Plan, containing, *inter alia*, a delineation of respective governmental agencies' responsibilities, provisions for adequate staffing, a description of procedures for approving sub-projects, and a plan for monitoring sub-project construction; and
- (b) A list of equipment and machinery required to implement sub-project construction.

Section 3.03. CONDITIONS PRECEDENT TO DISBURSEMENT FOR SUB-LENDING. Prior to any disbursement or the issuance of any commitment documents under the Loan for sub-lending, the Borrower shall submit to A.I.D., in form and substance satisfactory to A.I.D., evidence of the establishment of a fund for sub-lending for on-farm improvements.

Section 3.04. CONDITION PRECEDENT TO DISBURSEMENT FOR INDIVIDUAL SUB-PROJECT CONSTRUCTION. Except as A.I.D. may otherwise agree in writing, prior to any disbursement or the issuance of any commitment document under the Loan to finance construction costs of each individual sub-project, the Borrower shall submit to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) Economic-financial and technical feasibility studies for the individual sub-project which shall meet the sub-project selection criteria established in the Project Implementation Plan submitted in compliance with Section 3.02;
- (b) Engineering plans, specifications, and cost estimates for the sub-project; and
- (c) A time-phased plan for construction and supervision of the sub-project.

Section 3.05. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. (a) If all of the conditions specified in Section 3.01 shall not have been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may agree in writing, A.I.D., 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.

(b) If all the conditions specified in Section 3.02 shall not have been met within one hundred twenty (120) days from the date of this Agreement or such later date as A.I.D., may agree to in writing, A.I.D., at its option, may cancel the then undisbursed balance of the amount of the Loan in whole or in part or may terminate this Agreement by giving written notice to the Borrower. In the event of a termination, upon the giving

of notice, the Borrower shall immediately repay the Principal then outstanding and shall pay any accrued interest and, upon receipt of such payment in full, this Agreement and all obligations of the parties hereunder shall terminate.

(c) If all the conditions specified in Section 3.03 shall not have been met within eighteen (18) months from the date of this Agreement or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may cancel the amount of the Loan which is reserved, under Section 1.02, for the purposes of sub-lending for land development and on-farm investments.

Section 3.06. NOTIFICATION OF MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. A.I.D. shall notify the Borrower when the conditions precedent to disbursement specified in Sections 3.01, 3.02, and 3.03 of this Loan Agreement have been met.

Article IV. GENERAL COVENANTS AND WARRANTIES

Section 4.01. EXECUTION OF THE PROJECT. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency, and in conformity with sound financial and administrative practices.

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

Section 4.02. FUNDS AND OTHER RESOURCES TO BE PROVIDED BY THE BORROWER. The Borrower shall provide or cause to be provided promptly as needed all funds, in addition to the Loan, and all resources required for the punctual and effective carrying out of the Project, including but not limited to the contribution stated in Section 5.01 (a) of this Agreement.

Section 4.03. CONTINUING CONSULTATION. The Borrower and A.I.D. shall cooperate fully to assure that the purposes 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 parties to this Agreement of their obligations under this Agreement, and other matters relating to the Project.

Section 4.04. MANAGEMENT. The Borrower shall cause to be provided qualified and experienced management for the Project and shall cause to be trained such staff as may be appropriate for the successful organization, development, maintenance, execution, and evaluation of the Project.

Section 4.05. 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 Republic of Peru. To the extent that (a) any contractor, including any consulting firm, any personnel of such contractor financed hereunder, and any property or transactions 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 Republic of Peru, 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 4.06. UTILIZATION OF GOODS AND SERVICES. (a) Goods and services financed under the Loan shall be used exclusively for the Project, except as the Borrower and A.I.D. may otherwise agree in writing.

(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 4.07. 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 Borrower's obligations under this Agreement.

Section 4.08. COMMISSIONS, FEES, AND OTHER PAYMENTS. (a) Borrower warrants 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 Borrower's full time officers and employees or as compensation for bona fide professional, technical, or comparable services. Borrower shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical, or comparable services to which it is a party or of which it has knowledge (indicating whether such payment has been made or is to be made on a contingent basis) and if the amount of any such payment is deemed unreasonable, the same shall be adjusted in a satisfactory manner.

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

Section 4.09. 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, both fiscal and qualitative, of the Project.

Such books and records shall be regularly audited by auditors acceptable to A.I.D. 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 4.10. REPORTS. The Borrower shall furnish to A.I.D. such information and reports relating to the Loan and the Project as A.I.D. may request.

Section 4.11. INSPECTION. The authorized representatives of A.I.D. shall have the right at all reasonable times to inspect the Project, the utilization of all goods, facilities, and services financed under the Loan, and the Borrower's books, records, and other documents of the Borrower or any of its constituent agencies relating to the Project and the Loan. The Borrower shall cooperate with A.I.D. to facilitate such inspections and visits to areas related to the Project.

Article V. SPECIAL COVENANTS AND WARRANTIES

Section 5.01. SPECIAL COVENANTS AND WARRANTIES. The Borrower covenants:

- (a) To provide as its contribution to the Project the equivalent of at least ten million United States dollars (US\$ 10,000,000);
- (b) That no substantive changes will be made in the plans, rules, regulations, or other evidence submitted in response to Article III of this Loan Agreement without the written consent of A.I.D.;
- (c) To review annually with A.I.D. the progress of the Project, and that approximately three years from the date of this Agreement such a review will measure the progress of the Project against the targets established in the Project Implementation Plan with a view to determining whether funds remaining uncommitted or undischursed under the Loan at the time could reasonably be expected to be utilized within the remainder of the disbursement period.

Article VI. PROCUREMENT

Section 6.01. PROCUREMENT FROM A.I.D. CODE 941 COUNTRIES. Except as A.I.D. may otherwise agree in writing, and except as provided in subsection 6.08 (c) of this Agreement with respect to marine insurance, disbursements made pursuant to Section 7.01 shall be used exclusively to finance the procurement for the Project of goods and services having their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into for such goods and services (“Code 941 Goods and Services”). Notwithstanding any other provisions herein, motor vehicles to be procured with Loan funds must be manufactured in the United States. All ocean shipping financed under the Loan shall have both its source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

Section 6.02. PROCUREMENT FROM PERU. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Section 7.02 shall be used exclusively to finance the procurement for the Project of goods and services having both their source and origin in Peru.

Section 6.03. 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 6.04. GOODS AND SERVICES NOT FINANCED UNDER THE 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 A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

Section 6.05. IMPLEMENTATION OF PROCUREMENT REQUIREMENTS. The definitions applicable to the eligibility requirements of Sections 6.01, 6.02, and 6.04 will be set forth in detail in Implementation Letters.

Section 6.06. PLANS, SPECIFICATIONS AND CONTRACTS. Except as the Parties may otherwise agree in writing:

- (a) The Borrower will furnish or cause to be furnished to A.I.D. upon preparation all plans, specifications, procurement or construction schedules, bid documents, and contracts, and any modifications therein, relating to goods and services to be financed under the Loan, and relating to goods and services which, though not financed under the Loan, are deemed by A.I.D. to be of major importance to the Project, as prescribed in Implementation Letters.

(b) All bid documents and documents related to the solicitations of proposals relating to goods and services financed under the Loan shall be approved by A.I.D. in writing prior to their issuance.

(c) The following contracts financed under the Loan shall be approved by A.I.D. 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 A.I.D. may specify; and
- (iv) contracts for such equipment and materials 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. prior to their becoming effective.

Section 6.07. 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 6.08. SHIPPING AND INSURANCE. (a) A.I.D. Code 941 Goods financed under the Loan shall be transported to the Republic of Peru on flag carriers of the Republic of Peru or any country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of shipment. No such goods may be transported on any ocean vessel (or aircraft) which (i) A.I.D., in a notice to the Borrower, has designated as ineligible to carry A.I.D. financed goods, or (ii) has been chartered for the carriage of A.I.D. financed goods unless such charter has been approved by A.I.D.

(b) Unless A.I.D. 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 A.I.D. Code 941 Goods financed under the Loan and transported on ocean vessels from United States ports (computed separately for dry bulk carriers, dry cargo liners, and tankers) shall be transported on privately-owned United States flag commercial vessels; and at least fifty percent (50%) of the gross freight revenue generated by ocean shipments of Code 941 Goods financed under the Loan and transported on dry cargo liners from United States ports shall be paid to or for the benefit of privately-owned United States-flag commercial vessels; and
- (ii) At least fifty percent (50%) of the gross tonnage of all Code 941 Goods financed under the Loan and transported on ocean vessels from non-United States ports (computed separately for dry bulk carriers, dry cargo liners, and tankers) shall be transported on privately-owned United States-flag commercial vessels; and at least fifty percent (50%) of the gross freight revenue generated by ocean shipments of Code 941 Goods financed under the Loan and transported on dry cargo liners from non-United States ports shall be paid to or for the benefit of privately-owned United States-flag commercial vessels.

(c) Marine insurance on Code 941 Goods may be financed under the Loan with disbursements made pursuant to Section 7.01, provided (i) such insurance is placed at the lowest available competitive rate in Peru or in a country included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of placement, and (ii) claims thereunder are payable in freely convertible currency. If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, Peru, 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, Code 941 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 marine insurance business in any state of the United States of America.

(d) The Borrower shall insure, or cause to be insured, all Code 941 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 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 replacement shall have their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into for such replacements, and shall be 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 pursuant to Section 7.01, 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. 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 reconditioned United States Government-owned Excess Property as may be consistent with the requirements of the Project and as may be accepted by the Borrower. The Borrower shall seek assistance from A.I.D. and A.I.D. will assist the Borrower in ascertaining the availability of and in obtaining such Excess Property. A.I.D. will make arrangements for any necessary inspection of such property by the Borrower or its representative. The costs of inspections and of acquisition, and all charges incident to the transfer to the Borrower of such Excess Property, may be financed under the Loan.

Section 6.11. INFORMATION AND MARKING. The Borrower shall give publicity to the Loan and the Project as a joint undertaking of the United States and Peru and shall identify the Project sites and mark goods financed under the Loan, as prescribed in Implementation Letters.

Article VII. DISBURSEMENTS

Section 7.01. DISBURSEMENT FOR UNITED STATES DOLLAR COSTS—LETTER 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 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. United States 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. DISBURSEMENTS FOR LOCAL CURRENCY COSTS. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request disbursement by

A.I.D. of Peruvian soles for local currency costs of goods and services procured or to be procured for the Project in accordance with the terms and conditions of this Agreement by submitting to A.I.D. such supporting documentation as A.I.D. may prescribe in Implementation Letters. A.I.D. shall make such disbursements in Peruvian soles owned by the U.S. Government and obtained by A.I.D. with United States dollars. The United States dollar equivalent of the Peruvian soles made available hereunder will be the amount of United States dollars required by A.I.D. to obtain the soles.

Section 7.03. OTHER FORMS OF DISBURSEMENT. Disbursement of the Loan may also be made through such other means as the Borrower and A.I.D. may agree to in writing.

Section 7.04. DATE OF DISBURSEMENT. Disbursement by A.I.D. shall be deemed to occur (a) in the case of disbursements pursuant to Section 7.01, 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, and (b) in the case of disbursements pursuant to Section 7.02, on the date on which A.I.D. disburses the local currency to the Borrower or its designee.

Section 7.05. 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 7.03 or amendment thereto, shall be issued in response to requests received by A.I.D. more than fifty-four (54) months after satisfaction of the conditions precedent in Section 3.01 under this Agreement and no disbursement shall be made against documentation received by A.I.D. or any bank described in Section 7.01 more than sixty (60) months after satisfaction of the conditions precedent under Section 3.01 of the Agreement. A.I.D., at its option, may at any time, or times, after such sixty (60) months 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 in the manner hereby agreed upon;
- (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, or any other agreement between the Borrower or any of its agencies and A.I.D. or any of its predecessor agencies;

then A.I.D. may, at its option, give to the Borrower notice that all or any part of the unpaid 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 unpaid Principal and any accrued interest hereunder shall be due and payable immediately; and

- (ii) the amount of any further disbursements made under outstanding irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

Section 8.03. SUSPENSION OF DISBURSEMENT. If any one of the following shall occur:

- (a) An Event of Default (according to Section 8.02);
- (b) An event 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. which would be in violation of the legislation governing A.I.D.;
- (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, or any other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies;
- (e) Satisfactory progress is not being made in carrying out all or any part of the Project in accordance with the terms of this Agreement;

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 Peru, are in a deliverable state and have not been offloaded in ports of entry of Peru. 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.

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 of the 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 (30) 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 (5) 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. NON-WAIVER 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, telegram, cable or radiogram at the following addresses:

To Borrower:

Mail Address:

Ministerio de Economía y Finanzas
Avenida Abancay s/n
Lima, Peru

Cable Address:

MINECONOMIA
Lima, Peru

with copy to General Directorate of Public Credit

To Implementing Agency:

Mail Address:

Ministerio de Agricultura
Avenida Salaverry s/n
Edificio del Ministerio de Trabajo
Jesús María
Lima, Peru

Cable Address:

MINAGRICULTURA
Lima, Peru

with copy to The General Directorate of Water Resources

To A.I.D.:

Mail Address:

United States AID Mission to Peru
c/o United States Embassy
Lima, Peru

Cable Address:

USAID, AmEmbassy
Lima, Peru

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 may be in Spanish and shall refer to "Loan 527-T-059", except as A.I.D. may otherwise require 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 the Minister of Economy and Finance, the Implementing Agency will be represented by the individual holding or acting in the office of the Minister of Agriculture, and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID/Peru. Such representatives shall have the authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, the 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 or the Implementing Agency 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 evidence 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. SUCCESSORS TO RIGHTS OF A.I.D. If by operation of any law of the United States, or by virtue of assignment, any corporate or other agency of the United States Government succeeds to the rights and obligations of A.I.D. under this Agreement, such agency shall be deemed to be A.I.D. for purposes of this Agreement.

Section 9.06. EFFECTIVE DATE OF AGREEMENT. This Agreement shall enter into effect on the day, month and year first above written.

Section 9.07. 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.

Section 9.08. CONTROLLING LANGUAGE. The Loan Agreement is executed in both Spanish and English languages. In case of ambiguity or inconsistency between the English and Spanish versions, the English version shall control.

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

The Republic of Peru:

[Signed]

FERNANDO REUS SALINAS

Director General

for Public Credit

Ministry of Economy and Finance

United States of America:

[Signed]

ROBERT W. DEAN

Ambassador

of the United States of America

[Signed]

Colonel EDUARDO CORREA PRADO

Acting Director Superior

Ministry of Agriculture

[Signed]

DONALD R. FINBERG

Director of A.I.D.

ANNEX I

I. DESCRIPTION OF THE PROJECT

The Project is designed to improve water and land use in the watershed of the Mantaro River and bordering areas, and the watersheds of the Crisnejas, Condebamba, and Cajamarca Rivers ("Project Areas") by financing the following activities: (1) the design and construction, using community labor when possible, of new small-scale irrigation and drainage networks and improvements to existing systems; (2) complementary afforestation of adjacent slopes to prevent erosion, to conserve water, and to protect irrigation structures; (3) sub-lending to participating farmers for investments in land development and on-farm improvements; (4) establishment of regional offices in the Project areas with sufficient technical and administrative support to provide continuing extension services in design and maintenance of irrigation systems and in water use; and (5) a program of technical assistance to provide advisory services to the Implementing Agency, to establish an extension service in water use to participating farmers, and to perform studies for use in watershed planning and project evaluation.

The Project will be directed and administered by the Borrower as a "Special Project" for which the Ministry of Agriculture is designated as Implementing Agency, to be represented by the General Directorate of Water Resources. The principal functions to be performed by the General Directorate of Water Resources will be those related to sub-project planning, including the identification, analysis, selection, and design of sub-projects, and sub-project implementation, including procurement of machinery, equipment, and materials, construction, and technical supervision and guidance. The General Directorate of Water Resources, through the Special Project, will be responsible for maintaining Project accounts for those funds for which it is responsible.

All sub-projects to be financed under the Project will be implemented in the Project Areas. Selection of individual sub-projects to be financed will be made by the General Directorate of Water Resources according to technical, economic, financial, and environmental criteria identified in the Project Implementation Plan submitted in compliance with Section 3.02 of the Loan Agreement. Sub-projects eligible for financing under the Project will be those of a technically non-complex nature which (a) can be designed by engineers on the staff of the General Directorate of Water Resources with minimal technical guidance from other sources, (b) can be constructed within a period of 36 months, and (c) maximizes utilization of locally available labor and materials. Responsibility for continuing operation and maintenance of the sub-projects will reside with the appropriate water users association in coordination with the regional and zonal technical staffs of relevant agencies of the Government of Peru, as needed.

To assist in sub-project implementation and to assure a source of continuing technical guidance in designing, constructing, and using irrigation systems, two regional offices ("Regional Project Offices") will be established under the Project. The staffing and operations plans for these offices will be mutually agreed upon by the Ministry of Agriculture and A.I.D.

The credit fund (the "Fund") to be established under the Project will be administered directly by the Agrarian Bank of Peru (the "Bank") as Financial Agent. The Fund will operate as a program within the Special Operations Fund in accordance with the Basic Law of the Bank and with procedures established in a written agreement between the Bank and the Ministry of Agriculture. Medium to long-term credit will be made available from this fund to farmers in the Project areas for investments in land development and on-farm improvements designed to maximize efficiency of water and land use. Specific sub-lending criteria, terms and conditions of sub-loans, and operational guidelines will be prepared by the Bank and agreed to in writing by the Ministry of Agriculture and by A.I.D.

The technical assistance program to be conducted under the Project will be carried out as "Contracted Studies" by utilizing Loan funds to contract with a consulting firm, a university, or other consulting agencies, and will comprise the following elements: (1) technical advisory services to the General Directorate of Water Resources in project planning, analysis, and implementation; (2) extension services to participating farmers in water use efficiency and irrigated agriculture;

(3) basic research in irrigated agriculture and irrigated systems; (4) long- and short-term training for General Directorate of Water Resources staff; (5) equipment required for training and planning programs; and (6) watershed planning and evaluation studies.

The General Directorate of Water Resources will coordinate with the General Directorate of Forestry and Wildlife, the Agrarian Bank, the Agriculture and Food Zones, and other relevant entities for optimum Project implementation.

II. PROJECT FINANCING

The total cost of the Project is estimated at \$21,000,000. Of this total, \$11,000,000 will be provided under the Loan, while the balance, or the equivalent of \$10,000,000 will be provided by the Government of Peru as its contribution to the Project.

Approximately \$13,700,000 of Project funds will be allocated to implement sub-projects in the planning and construction of irrigation and drainage works and in afforestation of adjacent slopes; an amount not to exceed \$300,000 of these funds shall be reserved to finance the expenses of such independent monitoring personnel as may be deemed necessary by A.I.D. Up to \$9,100,000 will be made available under the Loan to finance local and foreign currency costs of these activities. The balance, or the equivalent of approximately \$4,600,000, will be provided from the GOP contribution.

The credit fund to be established under the Project will be capitalized with up to \$1,000,000 of Loan funds and the equivalent of \$2,000,000 of GOP funds, or a total of \$3,000,000 in Project funds. Principal repayments will be returned to the Special Operations Fund and allocated to sub-lending for similar kinds of investments.

The technical assistance program will be financed with up to \$900,000 of Loan funds. Eligible costs under this program are those for technical services, training, equipment, and studies related to the Project. Limited procurement of motor vehicles for use by the Regional Project Offices may also be financed with these funds.

The balance of the total Project cost, or an estimated \$3,400,000, represents the costs of administering the Project, including personnel and local support, office facilities and materials, as well as a reserve fund from which to finance costs increases due to inflation. These costs will be financed from the GOP contribution.
