

TRANSLATION

Complementary Loan No. 302-A/OC-GU
Resolution No. DE-174/81

COMPLEMENTARY LOAN AGREEMENT

between the

REPUBLIC OF GUATEMALA

and the

INTER-AMERICAN DEVELOPMENT BANK

(Additional works for the Hydroelectric Project at
Pueblo Viejo on the Chixoy River)

December 17, 1981

COMPLEMENTARY LOAN AGREEMENT

COMPLEMENTARY LOAN AGREEMENT dated December 17, 1981, between the REPUBLIC OF GUATEMALA (hereinafter called the "Borrower") and the INTER-AMERICAN DEVELOPMENT BANK (hereinafter called the "Bank").

PREAMBLE

This Agreement complements Loan Contract No. 301-A/OC-GU between the Bank and the Borrower, and both loans are to be used in completing the works of the Hydroelectric Project at Pueblo Viejo on the Chixoy River (hereinafter called the "Project"). The funds to be made available to the Borrower by the Bank hereunder are to be obtained by the Bank through the sale of participations in the Loan to private financial institutions operating in the London interbank Eurodollar market. Accordingly, the Bank and the Borrower take note that the terms and conditions of this Agreement and particularly those included in Chapters III and IV hereof are based in part on the special requirements for financings in the London interbank Eurodollar market.

CHAPTER I

The Loan and Purpose

Section 1.01. Amount. Subject to the terms and conditions set forth herein, the Bank agrees to extend to the Borrower, and the latter accepts, a Loan in an amount not exceeding twenty five million Dollars (US\$25,000,000) which are part of the ordinary capital resources of the Bank, with funds obtained through the sale of participations to Commercial Banks. The obligation of the Bank hereunder to extend such Loan is hereinafter called the "Commitment" of the Bank. The Commitment of the Bank may be terminated by written notice to the Borrower if, within one hundred eighty (180) days after the date hereof, the Borrower shall not have fulfilled the conditions precedent to the initial Drawdown set forth in Sections 7.01 and 7.02 hereof. The Commitment of the Bank shall terminate in any event two (2) years after the date of ratification of this Agreement in accordance with Section 9.01.

Section 1.02. Change in Commitment. The Borrower, shall have the right at any time or from time to time, upon not less than three (3) Banking Days' irrevocable written notice to the Bank, to terminate the Commitment of the Bank, in whole or in part, provided that each partial termination shall be in an amount of five hundred thousand Dollars (US\$500,000) or a multiple thereof.

Section 1.03. Purpose and Use of Proceeds of the Loan. The Borrower agrees that the purpose of the Loan is to complement the financing provided under Loan Contract No. 301-A/OC-GU, referred to in the Preamble above, and the Borrower further agrees that all proceeds of the Loan shall be applied to the costs of the Project.

Section 1.04. Drawdowns. (a) The Borrower may borrow the Loan in one or more Drawdowns each in an integral multiple of five hundred thousand Dollars (US\$500,000) and in an amount of not less than five hundred thousand Dollars (US\$500,000).

(b) The Borrower shall give the Bank a request for each Drawdown, in such form as the Bank shall specify, at least thirty (30) Banking Days prior to the proposed date of the Drawdown. Such request once received by the Bank shall be irrevocable and binding on the Borrower and the Borrower shall reimburse the Bank for any costs or losses incurred by the Commercial Banks in the event that the Borrower does not satisfy all the conditions precedent to such Drawdown on the date thereof.

(c) At the request of the Bank, the Borrower shall sign and deliver to the Bank: (i) a receipt or receipts for the amount of each Drawdown and/or (ii) a promissory note or notes or other negotiable instruments evidencing the Borrower's obligation to repay the Drawdown and/or the Loan and interest thereon in accordance herewith, such receipts or promissory notes to be in such form as the Bank may reasonably prescribe.

(d) The Borrower shall demonstrate to the satisfaction of the Bank, within 6 months after each disbursement is made, that the resources disbursed have been utilized by it for the execution of the Project.

CHAPTER II

Definitions

Section 2.01. Definitions. The following terms shall have the meanings set forth below:

(a) "Advance" shall mean a payment by a Commercial Bank for the purpose of a Drawdown or a roll-over Drawdown under this Complementary Loan Agreement.

(b) "Agent Commercial Bank" shall mean The Bank of Nova Scotia.

(c) "Banking Day" shall mean a day on which dealings are carried out in the London interbank Eurodollar market and which is also a day on which commercial banks are open for business in New York, New York.

(d) "Commercial Bank" or "Commercial Banks" shall mean any and all of the participant banks listed in Schedule I hereto.

(e) "Commitment" shall mean the obligation of the Bank to extend the Loan as set forth in Section 1.01 hereof.

(f) "Debt" shall mean in regard to the Borrower all indebtedness or obligation created, issued, guaranteed directly or indirectly, incurred or assumed by the respective obligor for money borrowed or for the deferred purchase price of property or services purchased, as well as any such indebtedness or obligation secured in any manner by any lien or other encumbrance upon the assets or revenues of such obligor.

(g) "Dollars" and "\$" shall mean lawful money of the United States of America.

(h) "Drawdown" shall mean each payment or transfer of funds made hereunder upon request of the Borrower and on the basis of Advances from the Commercial Banks.

(i) "Event of Default" shall mean the occurrence of any of the events set forth in Section 8.01 hereof.

(j) "Executing Agency" shall mean the Instituto Nacional de Electrificación, of Guatemala.

(k) "External Debt" shall mean Debt payable in a currency other than the currency of Guatemala or which is payable to any person resident or having its head office or chief place of business outside of Guatemala.

(l) "Interest Adjustment Date" shall mean June 17 and December 17 in each year, provided that if any such date falls on a day which is not a Banking Day, the Interest Adjustment Date shall be the next preceding Banking Day.

(m) "Interest Determination Date" shall mean the date two (2) Banking Days prior to the first day of each Interest Period.

(n) "Interest Period" shall mean in respect of each Drawdown, the period commencing on the date of such Drawdown and ending on the day immediately preceding the first Interest Adjustment Date after the date of such Drawdown (or, if the date of such Drawdown is less than 30 days prior to the first Interest Adjustment Date after the date of such Drawdown, such period shall end on the day immediately preceding the second Interest Adjustment Date after the date of such Drawdown) and thereafter each successive period commencing on the Interest Adjustment Date immediately following the last day of the immediately preceding Interest Period and ending on the day immediately preceding the next following Interest Adjustment Date.

(o) "LIBOR" shall mean in respect of each Interest Period the rate of interest determined by the Agent Commercial Bank to be the arithmetic average (rounded upwards to the nearest whole multiple of one-sixteenth of one percent (1/16 of 1%)) of the respective rate quoted to each of the Reference Banks (or if one or more of the Reference Banks shall not be quoted such a rate, then to the Reference Bank or Reference Banks actually quoted such a rate) at approximately 11.00 A.M. London time on the Interest Determination Date applicable to such Interest Period for the offering by prime banks in the London interbank Eurodollar market of Dollars for such Interest Period in an amount comparable to the principal amount of the Advances of the respective Reference Bank scheduled to be outstanding for such Interest Period.

(p) "Loan" shall mean the aggregate principal amount agreed to be disbursed for the benefit of the Borrower hereunder, or the amount of the principal disbursed or the amount thereof then outstanding, depending on the context.

(q) "Loan Contract No. 301-A/OC-GU" shall mean the loan contract signed the date hereof, between the Bank and the Borrower in the amount of forty three million Dollars (\$43,000,000) or the equivalent in other currencies (except that of Guatemala), which are part of the ordinary capital of the Bank, bearing interest at the rate of 9-1/4% per annum, and the equivalent of two

million Dollars (US\$2,000,000) in the currency of Guatemala bearing interest at the rate of 4% per annum, to be amortized commencing not earlier than June 8, 1985 and ending December 8, 2001.

(r) "Project" shall mean the completion of the construction works of the Hydroelectric Project at Pueblo Viejo on the Chixoy River, which Project is described in greater detail in Annex B hereto and is to be carried out by the Executing Agency.

(s) "Reference Banks" shall mean The Bank of Nova Scotia, International Mexican Bank Limited and Libra Bank Limited.

CHAPTER III

Repayment, Interest, Fees

Section 3.01. Repayment of Loan. The Loan shall be repaid in nine (9) equal, consecutive semi-annual installments, payable on each Interest Adjustment Date commencing with the second Interest Adjustment Date in 1984.

Section 3.02. Prepayment of Loan. The Borrower may at its option and without penalty prepay the Loan in part or in full together with accrued interest thereon to the date of prepayment, subject to the following conditions:

- (a) each partial prepayment shall be in a minimum amount of five hundred thousand Dollars (US\$500,000) or a multiple thereof;
- (b) each prepayment shall be made on an Interest Adjustment Date;
- (c) the Borrower shall give the Bank written notice of such prepayment not less than thirty (30) days prior to such proposed prepayment;
- (d) timely notice of prepayment, once having been received by the Bank, shall be irrevocable and binding on the Borrower;
- (e) partial prepayments shall be applied against installments of the Loan in the inverse order of their maturity; and
- (f) amounts prepaid may not be reborrowed hereunder.

Section 3.03. Interest. (a) The Borrower agrees to pay to the Bank interest on the Loan outstanding from time to time on each Interest Adjustment Date for the Interest Period(s) then ending at a rate determined by the Bank, based on notice received from the Agent Commercial Bank, to be one and one-half percent (1-1/2%) per annum above LIBOR for such Interest Period.

(b) Promptly after each Interest Determination Date, the Bank, on the basis of notice received from the Agent Commercial Bank, shall notify the Borrower of the interest rate for the relevant Interest Period. The determination by the Bank based upon notice received from the Agent Commercial Bank of LIBOR shall be conclusive and binding (absent manifest error in computation or transmission) on the Borrower.

Section 3.04. Commitment Fee. The Borrower shall pay a commitment fee of one half percent (1/2%) per annum on the daily average unused amount of the Bank's Commitment commencing to accrue January 17, 1982 until December 17, 1982, and five eighths of one percent (5/8 of 1%) per annum commencing to accrue from December 17, 1982 until the date the Commitment terminates or is fully utilized. The commitment fee shall be payable in arrears on each Interest Adjustment Date.

Section 3.05. Computation of Interest and Commitment Fee. Interest and commitment fee shall be calculated on the basis of actual number of days elapsed and a year of 360 days.

Section 3.06. Management Fee. The Borrower shall pay to the Bank, for transfer to the Agent Commercial Bank, a management fee in the amount of three hundred forty three thousand seven hundred fifty Dollars (US\$343,750). The management fee shall be payable in its entirety on March 17, 1982.

Section 3.07. Expenses. The Borrower shall, whether or not any portion of the Loan is drawn hereunder, pay the Bank on March 17, 1982, for all reasonable expenses duly certified, but not exceeding twenty thousand Dollars (\$20,000), incurred by the Agent Commercial Bank in connection with the review of this Agreement and the Participation Agreement.

Section 3.08. Payments. (a) All sums payable to the Bank hereunder or under any document or instrument contemplated hereby, including but not limited to payments of principal and interest, the management fee, the commitment fee, and any costs or expenses, shall be payable in New York, New York in Dollars in same-day funds (or such other Dollar funds as may be determined by the Bank to be customary for the settlement of international banking transactions) not later than 12:00 noon New York City time on the day in question to the account of the Bank in New York, New York designated by the Bank to the Borrower.

(b) Any payments made to the Bank hereunder shall be applied first against costs and expenses due hereunder, then against fees due hereunder, then against interest due, then against the principal of the Loan due and thereafter to the prepayment of the Loan in accordance with Section 3.02.

(c) Any payments made to the Bank by the Executing Agency on behalf of the Borrower during the period between the date of the signing of this Agreement and the date of its effectiveness shall be applied to the obligations of the Borrower as set forth in Sections 3.04, 3.06 and 3.07 above.

CHAPTER V

Funding Provisions

Section 4.01. Substitute Basis of Borrowing. (a) If the Agent Commercial Bank on any Interest Determination Date shall have notified the Bank that two or more of the Commercial Banks due to circumstances affecting the interbank Eurodollar market are not being offered Dollar deposits by prime banks in the London interbank Eurodollar market for periods equal to the relevant Interest

Period and in the amounts of their Advances to be outstanding during such Interest Period, the Bank shall promptly give notice of such fact to the Borrower.

(b) The Bank, in consultation with the Commercial Banks, promptly after the giving of such notice shall enter into negotiations with the Borrower with a view to agreeing on an alternative mutually acceptable basis for funding the Loan and for determining the interest rates from time to time applicable to the Loan (hereinafter referred to as the "Substitute Basis of Borrowing"). If at the expiry of thirty (30) days from the date of the notice, the Bank, with the written concurrence of all of the Commercial Banks, and the Borrower have agreed on such Substitute Basis of Borrowing, it shall be retroactive to and take effect from the beginning of the then current Interest Period.

(c) If at the expiry of thirty (30) days from the date of any such notice, no Substitute Basis of Borrowing has been agreed upon, then (i) the Borrower shall, within forty (40) days from the date of such notice, repay the Loan, and (ii) interest shall be payable to the Bank on the Loan until the date of repayment at the rate which is one and one-half percent (1-1/2%) above the rates per annum (rounded up to the nearest 1/16th) which shall be notified to the Bank by the Agent Commercial Bank as representing the cost to each respective Commercial Bank of funding its Advances scheduled to be outstanding during such period.

(d) Subject to (c) above, the procedures specified in clauses (a) and (b) above shall apply to each Interest Period after the first Interest Period to which they were applied until the Agent Commercial Bank shall notify the Bank that the conditions referred to above no longer exist and the Bank so notifies the Borrower.

Section 4.02. Taxes. The Borrower agrees that the principal, as well as interest, fees and all other amounts payable under this Complementary Loan Agreement, shall be paid without any deduction or restriction whatsoever, and shall be free from all present and future income, stamp and other taxes and levies, imposts, deductions, charges, and withholdings whatsoever imposed, assessed, levied or collected by the Republic of Guatemala or any political subdivision or taxing authority thereof or therein, and further that this Agreement shall be exempt from all taxes or fees which might otherwise be applicable in connection with the execution, issuance, delivery or registration hereof.

Section 4.03. Compliance Costs. (a) The cost of maintaining any reserves or special deposits against any Commercial Bank's Advances and any other cost of complying with any law, regulation or condition with respect to the Advances or relating in any way to funding or maintaining the Advances, including without limitation any reserve or special deposit requirement and any governmental restraint, guideline or policy not having the force of law which any Commercial Bank may comply with, shall be reimbursed by the Borrower to the Bank on behalf of such Commercial Bank, if such Commercial Bank shall have furnished the Bank through the Agent Commercial Bank with a statement setting forth the nature and the basis for the determination of the amount of such cost, for delivery to the Borrower.

(b) If the Borrower shall be required to make any payment under Section 4.03(a), the Borrower shall be free at any time within thirty (30) days of the effectiveness of the requirement of such payment to prepay the respective Commercial Bank's Advances as provided in Section 4.05, subject to giving the Bank through the Agent Commercial Bank not less than five (5) Banking Days' notice thereof.

Section 4.04. Change of Law. Notwithstanding any other provision herein, in the event that the Bank shall have been notified by any Commercial Bank of any change in any applicable law, rule or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof which shall make it unlawful for such Commercial Bank to make additional Advances, then the obligation of such Commercial Bank to make further Advances shall terminate and the Commitment of the Bank shall be reduced accordingly. In such an event, the Bank shall promptly forward to the Borrower evidence certified by such Commercial Bank as to such change in law, rule, regulation, interpretation or administration.

Section 4.05. Funding Provisions Prepayments. If the Borrower shall exercise its right to prepay the Loan in full pursuant to Section 4.01, or amounts equal to any Commercial Bank's Advances then outstanding, pursuant to Section 4.03, the Borrower shall pay such amounts, the interest accrued thereon to the date of prepayment (computed on the Substitute Basis of Borrowing, if applicable, for the time it is in effect), together with such additional amounts as may be necessary to compensate the Commercial Banks for any losses and reasonable costs of such prepayment.

Section 4.06. Funding Costs. For purposes of Sections 1.04(b), 4.05 and 8.02 the costs and losses of the Commercial Banks shall include, but shall not be limited to, any loss arising from the re-employment of funds within the applicable Interest Period at rates lower than the cost to the Commercial Banks of such funds and any related costs. The Bank shall notify the Borrower of the aggregate amount of such costs and losses by delivering to the Borrower a statement received by the Bank from the relevant Commercial Bank setting forth the nature and basis for the determination of such costs and losses.

Section 4.07. Minimization of Adverse Funding Consequences. The Commercial Banks have represented and warranted to the Bank that they shall reasonably endeavor to minimize compliance costs under Section 4.03 hereof and the effects arising out of situations specified in Section 4.04 hereof and that, upon the occurrence of any of the circumstances specified in Section 4.01 hereof, they will enter into negotiations in good faith with a view to agreeing on an alternative mutually acceptable basis for funding the Loan and determining the applicable interest rates.

CHAPTER V

Representations and Warranties

The Borrower represents, warrants and covenants to the Bank as follows:

Section 5.01. Power and Authority. The Borrower has full power, authority and legal right to borrow the Loan and assume the other obligations provided for in this Agreement, to execute and deliver this Agreement and the promissory

notes or receipts referred to in Section 1.04(c) hereof, and to observe and perform the terms and conditions hereof and thereof.

Section 5.02. Legal Action. The Borrower has taken all necessary legal action to authorize the execution, delivery and effectiveness of this Agreement and the observance and performance of the terms and conditions applicable to the payment obligations hereunder.

Section 5.03. Restrictions. There is no law, ordinance, decree or regulation and no contractual or other obligation binding on the Borrower or its assets or revenues that is or will be contravened by the execution and delivery of this Agreement or by the observance or performance of any of the terms hereof, nor will any charge or other encumbrance on any of the assets or revenues of the Borrower be created or imposed as a result of such execution, delivery or performance.

Section 5.04. Agreement Binding. This Agreement constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms and the promissory notes and/or receipts specified in Section 1.04(c) hereof when executed and delivered pursuant hereto will constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms.

Section 5.05. Ranking of Loan. The obligations of the Borrower hereunder rank, and until discharged in full will continue to rank, in right of payment and of security, pari passu in all respects with all External Debt of the Borrower, other than External Debt permitted to be secured under Section 5.06(i) and (ii).

Section 5.06. Liens. The property, assets and revenues of the Borrower are not subject to any mortgage, lien, security interest, pledge or other charge or encumbrance or any similar arrangement of any kind (all such arrangements being herein collectively called "liens") securing any External Debt. The foregoing shall not apply to: (i) encumbrances created on purchased goods to assure the payment of the unpaid balance of the purchase price; and (ii) encumbrances created in banking operations to guarantee payment of debts with maturities of not more than one year. The term "assets or revenues" shall mean all types of assets or revenues which belong to or are received by the Borrower or any of its dependent agencies which are not autonomous entities with their own separate capital.

Section 5.07. Taxation. In accordance with the Agreement Establishing the Inter-American Development Bank, which has full force and effect in the Republic of Guatemala, there is no income, stamp or other tax or levy, impost, deduction, charge or withholding whatsoever which may be imposed, assessed, levied or collected by the Republic of Guatemala or any political subdivision or taxing authority thereof or therein in connection with the execution, delivery or performance of the payment obligations under this Agreement or the promissory notes or receipts referred to in Section 1.04(c) hereof.

CHAPTER VI

Covenants

The Borrower hereby covenants and agrees as follows:

Section 6.01. Use of Proceeds. The Borrower shall use the proceeds of the Loan only for the purposes specified in Section 1.03 hereof.

Section 6.02. Authorizations. The Borrower shall promptly issue each consent, license, authorization or approval and make each filing or registration which shall hereafter be either necessary or desirable to enable the Borrower to make all payments required hereunder and shall promptly furnish evidence thereof to the Bank.

Section 6.03. Notice. The Borrower shall promptly give notice to the Bank of the occurrence of any Event of Default or an event that, with the giving of notice or with the passing of time, or both, would constitute an Event of Default hereunder.

Section 6.04. Negative Pledge. If the Borrower should agree to create any specific encumbrance on all or part of its assets or revenues to secure any External Debt, it shall at the same time create an encumbrance guaranteeing to the Bank, equally and proportionally, the fulfillment of the pecuniary obligations arising from this Complementary Loan Agreement. The foregoing shall not apply to: (i) encumbrances created on purchased goods to assure the payment of the unpaid balance of the purchase price; and (ii) encumbrances created in banking operations to guarantee payment of debts with original maturities of not more than one year. The term "assets or revenues" shall mean all types of assets or revenues which belong to or are received by the Borrower or any of its dependent agencies which are not autonomous entities with their own separate capital.

Section 6.05. Reports and Other Matters Relating to the Project. (a) For the purpose of this Agreement, the Borrower shall comply with all of its agreements and covenants contained in Loan Contract No. 301-A/OC-GU except those pertaining to international competition, the area of eligibility for the utilization of the funds, and to the payment to meet the Bank's expenses of general inspection and supervision. Such agreements and covenants are hereby incorporated herein by reference, mutatis mutandis, and shall, unless the Bank agrees otherwise, be deemed to continue in effect for the benefit of the Bank as such terms are in effect on the date hereof, whether or not Loan Contract No. 301-A/OC-GU remains in effect between, or is modified or amended by, or any provisions thereof are waived by, the parties thereto.

(b) In the case of acquisitions of goods which are to be financed with resources of this Loan, such acquisitions shall meet the technical requirements of the Project, and the cost of such goods shall be reasonable. At the request of the Bank, the Borrower shall demonstrate that the purchase price agreed upon or paid for such goods are reasonable and that the goods are of a quality which meet the technical requirements of the Project.

CHAPTER VII

Conditions to Drawdowns

Section 7.01. Condition Precedent to Initial Drawdown. The obligation of the Bank to make available funds for the initial Drawdown is subject to the condition precedent that the Bank shall have received the following, each of which shall be in form and substance satisfactory to it:

- (a) Legal opinion. A favorable opinion of legal counsel to the Borrower addressed to the Bank and dated not more than 10 days prior to the Drawdown date, substantially in the form of Annex C hereto.
- (b) Authorizations: (i) copies of the relevant statutes and decrees or other appropriate documents which authorize the execution and delivery of, and performance of the payment obligations under, this Agreement by the Borrower; (ii) evidence of the authority of the persons who have executed this Agreement on behalf of the Borrower; (iii) copies of the governmental authorizations, consents, approvals and licenses, and evidence of the filings and registrations, that in the opinion of the Bank are necessary or desirable under applicable law and regulations for the execution, delivery, and effectiveness of this Agreement, and for the payments under this Agreement.
- (c) Loan Contract No. 301-A/OC-GU. Evidence that the Borrower has complied with the conditions for an initial disbursement set forth in Loan Contract No. 301-A/OC-GU.
- (d) Other Matters. Such other approvals, opinions and documents as the Bank may reasonably request.

Section 7.02. Conditions Precedent to Each Drawdown. The obligation of the Bank to make available funds for each Drawdown (including the initial Drawdown) is subject to the fulfillment of the following conditions precedent:

- (a) Advances. The Bank shall have received the Advances in respect of such Drawdown from the Commercial Banks.
- (b) Complementary Loan Agreement Status. The representations and warranties of the Borrower in this Agreement shall be true and correct in all material aspects on and as of the date of such Drawdown as if made on such date, and no Event of Default or event that with the giving of notice or with the passing of time, or both, would constitute an Event of Default, shall have occurred and be continuing, and if requested by the Bank, a certificate to such effect signed by an authorized officer of the Borrower shall be delivered to the Bank on the date of such Drawdown.
- (c) Loan Contract No. 301-A/OC-GU. The Borrower shall have complied to the extent applicable with the conditions for a disbursement set forth in Loan Contract No. 301-A/OC-GU.

- (d) Program Progress. The Bank shall have received such documents as the Bank shall reasonably request concerning the progress of the Project and related matters, including without limitation the use of Loan proceeds.
- (e) Request. The Bank shall have received a request for Drawdown pursuant to Section 1.04(b) hereof.
- (f) Other Matters. The Bank shall have received such other approvals, opinions and documents as it may reasonably request.

CHAPTER VIII

Events of Default

Section 8.01 Events of Default. Each of the following shall constitute an Event of Default under this Contract:

- (a) The Borrower fails to make payment to the Bank of any amount that the Borrower is obliged to pay under this Agreement or related instruments on the date when such amount is due and payable.
- (b) The Borrower fails to perform or violates any other provision of this Agreement and such failure or violation continues unremedied for a period of sixty (60) days from the date the Bank gives notice to the Borrower thereof.
- (c) Any governmental registration or approval granted or required in connection with the execution or, delivery or effectiveness of, or required payments under, this Agreement expires or is terminated or revoked or is modified and is not corrected in a manner satisfactory to the Bank within sixty (60) days.
- (d) The Borrower fails for a period exceeding sixty (60) days to make any payment when due under Loan Contract No. 301-A/OC-GU or any other loan agreement with the Bank or defaults for a period exceeding sixty (60) days in any of its other obligations set forth in Loan Contract No. 301-A/OC-GU or in any other loan agreement with the Bank.

Section 8.02 Consequence of Default. (a) Upon the occurrence of an Event of Default, or if an event shall occur which, with the giving of notice or with the passing of time, or both, would constitute an Event of Default, the Bank may, by written notice to the Borrower, suspend disbursements hereunder. If an Event of Default shall occur and be continuing, the Bank may:

- (i) by written notice to the Borrower declare the entire Loan together with accrued interest and any other sum payable hereunder to be immediately due and payable and the Loan shall thereupon become due and payable without presentment, demand, protest or notice of any kind, other than the notice specifically required by this Section, all of which are expressly waived by the Borrower; and/or

- (ii) by notice to the Borrower declare any undrawn portion of the Commitment cancelled, such cancellation to be effective upon the giving of such notice.

(b) The Borrower shall also pay to the Bank such additional amounts as may be necessary to compensate the Commercial Banks for any losses and reasonable costs resulting from such Event of Default or any event that, with the giving of notice or with the passing of time, or both, would constitute an Event of Default. Such costs and losses shall be indicated in appropriate statements. No waiver of any Event of Default shall constitute a waiver of any other then existing or succeeding Event of Default.

CHAPTER IX

Miscellaneous

Section 9.01. Ratification of this Agreement. (a) If within one year from the date of the signature of the present instrument, this Agreement is not duly ratified by the Congress of Guatemala in accordance to the Constitution and laws of that country, all the provisions and legal expectations contained herein including the Commitment referred to in Chapter I, shall for all legal effects, be reputed to be null and void and without the need of further notice and both the Bank, and the Borrower shall be deemed free from any liabilities, and no charges or claims may be made one against the other, except as provided in paragraph (b) below.

(b) The parties hereto take notice that during the period between the date of the signing of this Agreement and the date of its effectiveness the Executing Agency will make payments to the Borrower which are due in accordance with Sections 3.04, 3.06 and 3.07, and pursuant to Section 3.08(c).

Section 9.02. Entry into Effect and Continuance of this Agreement. The parties hereto agree that this Contract shall enter into force on the date the Contract is ratified as indicated in Section 9.01 above. The Borrower shall notify in writing to the Bank the date the contract enters into effect and shall submit all supporting documents. The Borrower agrees that, notwithstanding any other provisions contained herein, the Bank shall have no obligation to extend funds or any other obligation hereunder if it shall be unable to obtain funds in the amount of each Drawdown of the Loan through the continued sale of participations to the Commercial Banks.

Section 9.03. Validity. The rights and obligations established in this Agreement are valid and enforceable in accordance with its terms, regardless of the legislation of any given country.

Section 9.04. Termination. This Agreement shall terminate upon the payment in full of the principal, interest, fees and all other amounts payable hereunder and upon the fulfillment of all obligations of the Borrower arising hereunder.

Section 9.05. Publicity. The Borrower agrees to indicate suitably in publicity relating to the Project that it is being financed with the cooperation of the Bank.

Section 9.06. Communications. Any notice, request or communication from one party to the other pursuant to this Agreement shall be made in writing and shall be considered given when delivered to the addressee at the respective address set forth below.

To the Borrower:

Mail address:

Ministerio de Finanzas Públicas
Guatemala, Guatemala

Cable address:

MINFIN-GU
Guatemala (GUATEMALA)

To the Bank:

Mail address:

Inter-American Development Bank
808 17th Street, N.W.
Washington, D.C. 20577

Cable address:

INTAMBANC
WASHINGTON DC (U.S.A.)

CHAPTER X

Arbitration

Section 10.01. Commitment to Arbitrate. The parties to this Agreement agree that any controversy arising out of the present Agreement and not resolved by agreement between the parties, shall be unconditionally and irrevocably submitted to the procedure and ruling of the Arbitration Tribunal referred to in Annex A of this Agreement which shall be considered an integral part hereof.

IN WITNESS WHEREOF, the Bank and the Borrower, each acting through its authorized representative, have signed this Agreement, in two equally authentic copies on the date first above specified, in Washington, District of Columbia, United States of America.

REPUBLIC OF GUATEMALA

INTER-AMERICAN DEVELOPMENT BANK

/s/ Arnoldo Belteton
Arnoldo Belteton
Minister of Finance

/s/ Antonio Ortiz Mena
Antonio Ortiz Mena
President

Schedule I

AGENT

THE BANK OF NOVA SCOTIA

BANKS

BNS INTERNATIONAL (PANAMA), S.A.

INTERNATIONAL MEXICAN BANK LIMITED

LIBRA BANK LIMITED

ORION ROYAL BANK LIMITED

THE BANK OF TOKYO, LTD.

ANNEX A

Arbitration

Article One. Composition of the Tribunal. The Arbitration Tribunal shall be composed of three members, to be appointed in the following manner: one by the Bank, another by the Borrower, and a third, hereinafter called the "Referee", by agreement between the parties, either directly or through their respective arbitrators. If the parties fail to agree on who shall be the Referee, he shall be appointed, at the request of either party, by the Secretary General of the Organization of American States. If either of the parties fails to appoint an arbitrator, he shall be appointed by the Referee. If either of the appointed arbitrators or the Referee is unwilling or unable to act or to continue to act, his successor shall be appointed in the same manner as for the original appointment. The successor shall perform the same functions and shall have the same powers as his predecessor.

Article Two. Initiation of the Procedure. In order to submit the controversy to arbitration the claimant shall address to the other party a written communication setting forth the nature of the claim, the satisfaction or compensation sought, and the name of the arbitrator it has appointed. The party receiving such communication shall, within forty-five (45) days, notify the adverse party of the name of the person it has appointed as arbitrator. If, within thirty (30) days after delivery of such notification to the claimant, the parties have not agreed as to the person who is to act as Referee, either party may request the Secretary General of the Organization of American States to make the appointment.

Article Three. Convening of the Tribunal. The Arbitration Tribunal shall be convened in Washington, District of Columbia, on the date designated by the Referee and, once convened, the Tribunal itself shall decide when it shall meet.

Article Four. Procedure. (a) The Tribunal shall be competent only to hear the matter in controversy. It shall adopt its own procedures and may on its own initiative designate whatever experts it considers necessary. In any case, it shall give the parties the opportunity of making oral presentations.

(b) The Tribunal shall proceed ex aequo et bono, basing itself on the terms of the Contract, and shall issue an award even if either party should fail to appear or to present its case.

(c) The award, which shall be in writing and shall be adopted with the concurrent vote of at least two of the arbitrators, shall be handed down within sixty (60) days from the date on which the Referee has been appointed, unless the Tribunal determines that, on account of special and unforeseen circumstances, such period should be extended. The parties shall be notified of the award by means of a communication signed by at least two members of the Tribunal. The parties agree that any award of the Tribunal shall be complied with within thirty (30) days from the date of notification and it shall be final and not be subject to any appeal in any national court or otherwise.

Article Five. Costs. Prior to the convening of the Tribunal, the parties shall agree on the remuneration of the arbitrators and any other person deemed by the parties to be required for the arbitration proceedings. If such agreement is not reached, the Tribunal itself may determine such compensation as is reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the Tribunal shall be divided and borne equally by both parties. Any doubt regarding the division of costs or the manner in which they are to be paid shall be determined, without appeal, by the Tribunal.

Article Six. Notification. All notifications relative to the arbitration proceeding or to the award shall be made in the manner provided in the present Contract. The parties expressly waive any other form of notification.

ANNEX B

THE PROJECT

I. Objectives

Extend INDE's generating system through construction of a hydroelectric power plant in the middle reaches of the Chixoy River.

II. Description of Hydroelectric Project at Pueblo Viejo on the Chixoy River

The project would have an installed capacity of 300 MW and a mean energy production capacity of 1.710 GWH a year.

The principal components of the projects are:

- (a) a rockfill dam at the place called Pueblo Viejo;
- (b) a spillway;
- (c) a power tunnel approximately 26 km. long;
- (d) a powerhouse at Quixal with a switch yard; and
- (e) a transmission line from the plant to Guatemala City, approximately 120 km long, with its corresponding step-down substation.

III. Updated Total Costs and Financing of the Project

- A. The total cost of the project is estimated at the equivalent of US\$630,000,000, distributed approximately as follows:

(equiv. in US\$ thousands)

| | <u>Investment Category</u> | <u>Amount</u> |
|----|---------------------------------------|-------------------------|
| 1. | <u>Engineering and Administration</u> | |
| | Engineering and Supervision | 22,310 |
| | Administration | <u>21,390</u> |
| | Total, Category 1 | 43,700 |
| 2. | <u>Direct Construction Cost</u> | |
| | Access Roads and Camp | 20,921 |
| | Dam | 126,323 |
| | Power Tunnel | 256,043 |
| | Powerhouse | 28,400 |
| | Hydromechanical Equipment | 18,238 |
| | Electromechanical Equipment | 20,600 |
| | Steel Structures | 8,849 |
| | Substations and Transmission Lines | 19,786 |
| | Purchase of Land and Relocation | <u>3,800</u> |
| | Total, Category 2 | 502,960 |
| 3. | <u>Financial Charges</u> | |
| | Interest and Fees | 32,240 |
| | Inspection and Supervision | <u>1,350</u> |
| | Total, Category 3 | 33,590 |
| 4. | <u>No Specific Allocation</u> | |
| | Contingencies | 21,250 |
| | Escalation | <u>28,500</u> |
| | Total, Category 4 | 49,750 |
| | TOTAL | <u>630,000</u> ===== |

- B. The project is being financed with resources from Loans 301/OC-GU, 302/OC-GU, 454/SF-GU and 6/VF-GU for a total equivalent to US\$105,000,000 and with funds from other sources, for a total equivalent to US\$341,547,000.

IV. Objectives and Description of New Financing

- A. The purpose of the new financing is to complete the works which are already being financed with funds from the loans indicated above, as well as additional works. The items to be financed are:

1. Lot 2 - Tunnel

- (a) Surge tank;
- (b) Reinforced concrete intake structure;
- (c) Injections into the power tunnel; and
- (d) Reinforced concrete structure in the siphon.

2. Lot 3 - Powerhouse

- (a) Weir in the diversion channel of the Quixal River; and
- (b) Reinforced concrete structure for the powerhouse.

- B. The total cost of the works will be the equivalent of the US\$183,453,000, distributed as follows:

(equiv. in US\$ thousands)

| <u>Investment Categories</u> | <u>Amounts</u> | <u>Bank</u> | <u>Other Sources</u> |
|--|----------------|-------------|----------------------|
| 1. <u>Engineering and Administration</u> | | | |
| 1.1 Engineering and Supervision | 8,847 | 3,900 | 4,947 |
| 1.2 Administration | 4,980 | - | 4,980 |
| Total, Category 1 | 13,827 | 3,900 | 9,927 |
| 2. <u>Direct Construction Cost</u> | | | |
| 2.1 Complementary Works | 1,270 | - | 1,270 |
| 2.2 Lot 1, Dam | 53,717 | - | 53,717 |
| 2.3 Lot 2, Tunnel | 76,500 | 56,000 | 20,500 |
| 2.4 Lot 3, Powerhouse | 2,000 | 2,000 | - |
| Total, Category 2 | 133,487 | 58,000 | 75,487 |
| 3. <u>Financial Charges</u> | | | |
| 3.1 Interests and Fees | 13,782 | - | 13,782 |
| 3.2 Inspection and Supervision | 450 | 450 | - |
| Total, Category 3 | 14,232 | 450 | 13,782 |
| 4. <u>No Specific Allocation</u> | | | |
| 4.1 Contingencies | 12,050 | 3,250 | 8,800 |
| 4.2 Escalations | 9,857 | 4,400 | 5,457 |
| Total, Category 4 | 21,907 | 7,650 | 14,257 |
| TOTAL | 183,453 | 70,000 | 113,453 |
| | ===== | ===== | ===== |
| Percentages | 100.0 | 38.2 | 61.8 |

V. Bidding

When goods to be acquired or services to be contracted by public bidding are to be financed in whole or in part with foreign exchange from the loan, the bidding procedures and specific bidding requirements shall permit unrestricted participation of bidders or contractors from member countries of the Bank. Consequently, no conditions precluding or restricting the offer of goods or the participation of contractors from such countries shall be included in such procedures or specific requirements.

ANNEX C

Form of Opinion of Counsel

The opinion of the counsel to the Borrower addressed to the Bank pursuant to Section 7.01(a) of the Agreement shall be to the effect that:

- (1) The Borrower has full power, authority and legal right to borrow the Loan and assume the other obligations provided for by the Agreement and the promissory notes or receipts referred to in Section 1.04(c) thereof, to execute and deliver the Agreement and such promissory notes or receipts and to observe and perform the terms and conditions thereof.
- (2) The Borrower has taken all necessary legal action to authorize the execution, effectiveness and delivery of the Agreement and the observance and performance of the terms and conditions applicable to the payment obligations thereunder.
- (3) There is no law, ordinance, decree or regulation and no contractual or other obligation binding on the Borrower or its assets or revenues that is or will be contravened by the execution and delivery of the Agreement or by the observance or performance of any of the terms thereof, nor will any charge or other encumbrance on any of the assets or revenues of the Borrower be created or imposed as a result of such execution, delivery or performance.
- (4) All registrations with and approvals of any legislative authority or ministry, agency, exchange authority or other authority of the Republic of Guatemala necessary for the due execution, effectiveness delivery and performance of the payment obligations under the Agreement have been duly made or obtained and are in full force and effect.
- (5) The Agreement constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms and the promissory notes and/or receipts specified in Section 1.04(c) thereof when executed and delivered pursuant thereto will constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms.
- (6) The obligations of the Borrower under the Agreement rank, and until discharged in full will continue to rank, in right of payment and of security, pari passu in all respects with all External Debt of the Borrower, other than External Debt specified in paragraph (7) of this Opinion.
- (7) The property, assets and revenues of the Borrower are not subject to any mortgage, lien, security interest, pledge or other charge or encumbrance or any similar arrangement of any kind (all such arrangements being herein collectively called "liens") securing any External Debt. The foregoing does not apply to: (i) encumbrances created on purchased goods to assure the payment of the unpaid balance of the purchase price; and (ii) encumbrances created in banking operations to guarantee payment of debts with maturities of not more than one year.

(8) In accordance with the Agreement Establishing the Inter-American Development Bank, which has full force and effect in the Republic of Guatemala, there is no income, stamp or other tax or levy, impost, deduction, charge or withholding whatsoever which may be imposed, assessed, levied or collected by the Republic of Guatemala or any political subdivision or taxing authority thereof or therein in connection with the execution, delivery or performance of the payment obligations under the Agreement or the promissory notes or receipts referred to in Section 1.04(c) thereof.

(9) The arbitration procedures provided for in the Agreement are valid and enforceable in accordance with their terms and an award of the Arbitration Tribunal provided for therein would be enforceable against the Borrower in the courts of the Republic of Guatemala as though it were a final judicial judgment against which there can be no judicial appeal.