

A.I.D. Loan No. \_\_\_\_\_

## ALLIANCE FOR PROGRESS

## LOAN AGREEMENT

(PERU: Olmos - Bagua - Yurimaguas Highway  
POMACOCOA - TARAPOTO SECTION)

BETWEEN

THE REPUBLIC OF PERU

AND

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

ALLIANCE FOR PROGRESS

LOAN AGREEMENT

AGREEMENT, in furtherance of the Alliance for Progress, dated the       day of  
1964, between 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 1.1 The Loan. - A.I.D. hereby agrees to lend Borrower pursuant to the Foreign Assistance Act of 1961, as amended, up to twelve million one hundred thousand United States dollars (\$12,100,000) or its equivalent in Peruvian soles for the sol and (should Borrower and A.I.D. subsequently so agree in writing) dollar costs of goods and services required for the project as defined in Section 1.2. The aggregate amount disbursed hereunder is hereinafter referred to as "Principal".

SECTION 1.2 The Project. - This loan is made to assist Borrower in carrying out a project ("Project") for the construction of an all-weather, asphalt surfaced Peruvian class-II highway, with roadable surface of six meters approximately 278 km. long between Pomacocha and Tarapeto.

ARTICLE II

Credit Fee: Terms of Repayment

SECTION 2.1 Interest.- Borrower shall pay semi-annually to A.I.D. in dollars on the unrepaid Principal, and on unpaid interest due, interest which shall accrue from the date of the respective disbursements hereunder, the first such payment to be due and payable not later than six (6) months after the first such disbursement, on a date to be specified by A.I.D. Interest on the first six million dollars (\$6,000,000) disbursed hereunder shall accrue at a rate of three-quarters of one ( $3/4$  of 1) percent per annum for ten (10) years after the first such disbursement, and two (2) percent per annum thereafter. Interest on the balance of the loan shall accrue at a rate of three and one-half ( $3-1/2$ ) percent per annum. In both cases, interest shall be computed on the basis of a 365-day year. Disbursements hereunder shall be denominated in dollars and shall be deemed to occur (a) in the case of sol costs, on the respective dates on which Borrower or its designee receives sales pursuant to Section 4.1, or (b) in the case of dollar costs on the respective dates on which payments by A.I.D. are made to a banking institution pursuant to a commitment document referred to in Section 4.2.

SECTION 2.2 Repayment.- Borrower shall repay the Principal to A.I.D. in dollars in sixty-one (61) equal semi-annual installments, the first installment to be due and payable nine and one-half ( $9-1/2$ ) years after the first interest payment is due.

SECTION 2.3 Application and Place of Payments.- All payments shall be applied first to the payment of any interest due, then to the repayment of the first six million dollars (\$6,000,000) of Principal disbursed hereunder and then to the repayment of the balance of Principal. All payments shall be made to the Controller, United States A.I.D. Mission in Peru, and shall be deemed to have been paid when received by A.I.D.

at that place.

SECTION 2.4 Prepayment. - Borrower shall have the right to prepay, without penalty, on any date on which interest is due, all or any part of the Principal. Any prepayment shall be applied first to the payment of any interest due, and then pro rata to the remaining installments of Principal.

SECTION 2.5 Renegotiation of Terms. - In the light of the undertakings of the United States of America, Borrower and other signatories of the Act of Bogota and the Charter of Punta del Este to forge an Alliance for Progress, Borrower agrees that it will negotiate with A.I.D. concerning the acceleration of payments required pursuant to this Agreement at any time or from time to time as A.I.D. may request; provided, however, that no such request under this Section shall be made prior to six (6) months before the date on which the first installment is payable under Section 2.2 of this Agreement. The parties hereto shall mutually determine whether such an acceleration shall take place on the basis of the following criteria:

(a) The capacity of Borrower to service a more rapid liquidation of its obligations in 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;

(b) The relative capital requirements of the Borrower and of the other signatories of the Act of Bogota and of the charter of Punta del Este.

### ARTICLE III

SECTION 3.1 Conditions Precedent to Initial Financing. - Prior to the first disbursement or issuance of a commitment document, Borrower shall furnish A.I.D. in form and substance satisfactory to A.I.D.:

(a) An opinion or opinions of the Minister of Justice of Peru or of other counsel satisfactory to A.I.D. that this Agreement has been duly authorized or ratified by, and executed on behalf of Borrower and constitutes a valid



- and legally binding obligation of Borrower in accordance with its terms;
- (b) Evidence of the authority of the person or persons who will act as the representative or representatives of Borrower pursuant to Section 8.2 hereof, together with a specimen signature of each such person certified as to its authenticity by duly constituted Peruvian authority;
  - (c) Written reports containing the amounts and recipients of any commissions, fees or payments of any kind which have been made or agreed to be made to any person, firm or corporation (other than regular compensation to full-time officers and employees of Borrower) for services in connection with preparing or presenting the application which has resulted in the authorization of the loan by A.I.D. or in connection with negotiations incident to obtaining the loan (indicating whether such payments have or are to be made on a contingent fee basis);
  - (d) Evidence of contractual or other arrangements with an engineering firm satisfactory to A.I.D. for engineering services for the Project, including preparation and review of final designs, plans, bid documents and contracts; supervision of construction including certification of completion, quantities and payments; and review of maintenance plans for the Project road; and
  - (e) Evidence of arrangements for the balance of the financing required for the Project.

**SECTION 3.2 Additional Conditions Precedent to Financing other than Engineering Services.**- Prior to the first disbursement or issuance of a commitment document, other than to finance engineering services, Borrower shall furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) Such plans, specifications and schedules as A.I.D. may request;
- (b) Evidence of arrangements for construction services for the Project with a United States contractor or contractors in joint venture with one or

more Peruvian contractors, including arrangements for procurement of materials, equipment, and supplies for the Project; and for their timely transportation to the Project site;

- (c) Evidence that Borrower shall obtain all real property rights, including easements and rights of way, required for completion of the Project, in time to permit the orderly construction of the road within the time set forth in the schedules submitted pursuant to sub-section 3.2(a) above.
- (d) A detailed plan for the adequate maintenance of the Project road, including arrangements for the financing of such maintenance.

SECTION 3.3 Terminal Date for Fulfillment of Conditions Precedent.- Except as A.I.D. may otherwise agree in writing, if the conditions required by Section 3.1 have not been completed within one hundred twenty (120) days after the signature of this Agreement, and the conditions required by Section 3.2 have not been completed within one hundred eighty (180) days after the signature of this Agreement, A.I.D. may at any time thereafter, at its option, terminate this Agreement by giving notice to Borrower. Upon such termination, Borrower shall repay any unrepaid Principal and shall pay the interest thereon, and all other obligations of the parties hereto under this Agreement shall cease.

#### ARTICLE IV

##### Disbursement

SECTION 4.1 Disbursements for Sol Costs.- To obtain disbursements for sol costs of the Project, Borrower may from time to time, and in accordance with sol requirements and expenditures for the Project, request A.I.D. to make available an amount of sol for the Project. Each such request shall be supported by such documentation as A.I.D. may require in Implementation Letters. Sol disbursements hereunder shall be charged against the loan at the rate set forth in Section 6.4 hereof.

SECTION 4.2 Disbursements for Project Dollar Costs.- To obtain disbursements for dollar costs of the Project, if any, Borrower or its designee may from time to time, and in accordance with dollar requirements for the Project, request A.I.D. to issue commitment documents to one or more United States banks designated by Borrower or its designee and satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made, through letters of credit or otherwise, to Borrower or any designee of Borrower, pursuant to such documentation requirements as A.I.D. may prescribe. Banking charges incurred pursuant to this Section in connection with commitment documents or disbursements shall be for the account of Borrower and may be financed hereunder.

SECTION 4.3 Other Forms of Disbursement.- Disbursements may also be made through such other means as Borrower and A.I.D. may agree to in writing.

SECTION 4.4 Terminal Date for Requests for Commitment Documents and for Disbursement  
Except as A.I.D. may otherwise agree in writing, no commitment document shall be issued in response to requests received after December 31, 1972, no disbursement shall be made against documentation submitted after June 30, 1973.

## ARTICLE V

### Covenants Concerning Procurement

SECTION 5.1 Procurement.- Equipment, materials and services (except marine insurance and ocean shipping) financed hereunder shall have their source and origin in either the United States of America or Peru, Ocean shipping financed hereunder shall be procured from a United States flag carrier; marine insurance may be procured in accordance with Section 5.4(c). All other goods and services used in the Project but not financed hereunder shall have their source and origin in Peru, or in countries included in Code 899 of the A.I.D. Geographic Code Book as in effect at the time such goods and services are procured.

SECTION 5.2 Project Dollar Goods and Services.- Except as provided in Section 5.4(c)



commitment documents issued pursuant to Section 4.2 shall be used exclusively to procure goods and services for the Project, including ocean shipping, having both their source and origin in the United States of America ("Project Dollar Goods and Services"). Ocean shipping procured from a United States flag carrier shall be deemed to have its source and origin in the United States.

SECTION 5.3 Reasonable Price.- No more than reasonable prices shall be paid for Project Dollar Goods and Services and such items (other than professional services) shall be procured on a fair and competitive basis. Reasonable prices (except for professional services) should normally approximate the lowest competitive price for the goods or services procured, quality, time and cost of delivery, terms of payment and other factors considered.

SECTION 5.4 Administration.-

- (a) Project Dollar Goods shall be transported to Peru on carriers of Peru or countries included in Code 899 of the A.I.D. Geographic Code Book as in effect at the time of procurement.
- (b) At least fifty (50) percent of the gross tonnage of all Project Dollar Goods (computed separately for dry bulk carrier, dry cargo liners and tankers) which shall be transported on ocean vessels shall be transported on privately-owned United States flag commercial vessels. The balance of the gross tonnage of all Project Dollar Goods which shall be transported on ocean vessels may be transported on carriers of the Republic of Peru or carriers of countries included in Code 899 of the A.I.D. Geographic Code Book as of the time to shipment, provided, however, that transportation or related charges arising from such transportation may not be financed hereunder. No Project Dollar Goods may be transported on any



ocean vessel which A.I.D., in a notice to Borrower, has designated as ineligible to carry Project Dollar Goods.

- (c) Marine insurance of Project Dollar Goods may be financed under this Agreement provided such insurance is placed at the lowest available competitive rate in Peru or in a country included in Code 899 of the A.I.D. Geographic Code Book as in effect at the time of placement.

If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, the Republic of 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, Project Dollar Goods financed under this Agreement shall during the continuance of such discrimination be insured against marine risk, and such insurance shall be placed in the United States of America with a company or companies authorized to do a marine insurance business in any state of the United States of America.

SECTION 5.5 Eligibility Date.- Except as A.I.D. may otherwise agree in writing, no goods or services may be financed in whole or in part hereunder which are procured pursuant to orders or contracts firmly placed or entered into prior to the effective date of this Agreement.

SECTION 5.6 Small Business Notification.- In order that American small business shall have the opportunity to participate in furnishing Project Dollar Goods and Services for the Project, Borrower shall, at such time as A.I.D. may specify prior to ordering or contracting for any such goods or services estimated to cost more than the equivalent of five thousand dollars (\$5,000), cause to be received by A.I.D., information concerning such goods or services as A.I.D. may require.

SECTION 5.7 Contracts.- No costs may be financed in whole or in part hereunder which arise (a) out of contracts for engineering, procurement, construction or other services unless A.I.D. has approved in writing the terms of such contracts and the firms which will provide such services; or (b) out of any contract for the performance of services outside the United States by United States citizens unless A.I.D. has approved in writing the employment of such person; or (c) out of any contract for construction services unless such contract comports with A.I.D. requirements with respect to eligible direct labor.

#### ARTICLE VI

##### Additional Covenants and Warranties

##### SECTION 6.1 Conduct of the Project.-

- (a) Borrower shall cause the Project to be carried out with due diligence and efficiency in conformity with sound engineering, construction and accounting practices. Borrower shall cause its rights in relation to the Project to be exercised so as to protect the interests of Borrower and A.I.D., to meet the requirements and discharge the obligations of Borrower under this Agreement and to facilitate the success of the Project. Borrower shall cause the Project to be carried out in conformity with any contracts, engineering, construction, procurement or other arrangements, or plans, specifications and schedules approved by A.I.D. and shall cause written concurrence of A.I.D. to be obtained prior to any material modification or cancellation thereof.
- (b) Borrower shall obtain all real property rights, including easements and rights of way, required for completion of the Project, in time to permit the orderly construction of the road within the time set forth in the schedules submitted pursuant to sub-section 3.2(a) above.
- (c) Borrower shall provide or cause to be provided any resources additional to this loan essential to the timely completion of the Project, and to

maintain the Project road after its completion.

- (d) Borrower shall adequately maintain, repair and operate, or cause to be adequately maintained, repaired or operated, in accordance with sound practices, all goods financed hereunder, and shall ensure that the Project road will be maintained in accordance with sound road maintenance standards, in conformity with the maintenance plan submitted pursuant to Section 3.2(d) hereof.
- (e) Borrower covenants and warrants that there shall be free access to the Project site for any and all personnel, materials, equipment or supplies for the Project.
- (f) Borrower covenants and warrants that all work on the Project, including all management, supervision, engineering, and construction shall be carried out by the construction and engineering contractors, and the Highway Department of the Ministry of Development and Public Works, and that no other entities shall be permitted to participate in any aspect of the Project. Borrower shall cause the personnel of any other entity which may be presently working on or along the proposed route for the Project to be removed at such time as the construction contractor is ready to start work on the Project.

SECTION 6.2 Utilization of Goods and Services.- All goods and services financed hereunder shall be used exclusively for the Project. In the case of any such goods which are not fully expended through their use for the Project, the foregoing provision shall apply until the completion of the Project or until such time as they can no longer be usefully employed for the Project, provided that no such goods shall be exported from Peru without the prior approval of A.I.D.



SECTION 6.3 Non-Taxation.-

- (a) This Agreement, and the amount agreed to be lent hereunder, 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 Peru.
- (b) Either all goods and services for the Project, whether procured directly by Borrower or by any contractor with Borrower, shall be exempt from any taxes, charges or fees on ownership or use, and any other taxes, investment or deposit requirements (including requirements for the purchase of government bonds) and currency controls in Peru, and the import, acquisition, use or disposition of any such goods or services shall be exempt from any tariffs, custom duties, import taxes, taxes on purchase or disposition, and any other taxes or similar charges or fees in Peru; or the Borrower shall increase its contribution to the costs of the Project by the amount of any such taxes, charges, fees, tariffs duties, deposit requirements (including requirements for the purchase of Government bonds), currency controls etc. in Peru, and no such charges or payments shall be financed hereunder.

SECTION 6.4 Rate of Exchange.- The rate of exchange between dollars and soles in all transactions pursuant to this Agreement shall be that existing commercial rate providing the greatest number of soles per dollar which, at the time of any such transaction, is not unlawful in Peru.

SECTION 6.5 Utilization of Other Currencies.- Borrower agrees that soles made available to Borrower in connection with other United States assistance to Peru may be utilized for the Project, subject to mutual agreement on priorities for the utilization of such soles when arrangements are made for the provision of such

assistance or when such sales become available for purposes of the economic development of Peru. In the event that such funds are utilized for the Project, the amount of the loan shall be reduced by an equivalent amount of dollars computed at the exchange rate prescribed in Section 6.4. Utilization of such funds shall not be considered a disbursement under this Agreement.

SECTION 6.6 Information.- Appropriate arrangements satisfactory to A.I.D. shall be made by Borrower to publicize the loan as a program of United States aid in furtherance of the Alliance for Progress. Borrower shall ensure that the Alliance for Progress symbol is conspicuously posted at Project construction sites and along the completed Project road and that the clasped hands symbol is utilized as appropriate in accordance with arrangements satisfactory to A.I.D.

SECTION 6.7 Notice of Material Developments.- Borrower represents and warrants that it has disclosed to A.I.D. all circumstances which may materially affect the Project or the discharge of its obligations under this Agreement and covenants that it will inform A.I.D. promptly of any conditions which interfere, or which it is reasonable to believe will interfere, with any of the foregoing.

SECTION 6.8. Commissions, Fees and Other Payments

- (a) Borrower covenants that no commissions, fees or payments of any kind in connection with preparing or presenting the application which has resulted in the authorization of the loan by A.I.D., or in connection with negotiations incident to obtaining the loan, have been or will be made or agreed to be made to any person, firm or corporation other than regular compensation to officials and full-time officers and employees of Borrower, or for bona fide professional, technical or other comparable services.
- (b) Borrower covenants that all commissions, fees or payments determined by A.I.D. to be unreasonable shall be adjusted in a manner satisfactory to A.I.D. and that every recipient of any such commission, fee or payment shall be informed of this condition.
- (c) Borrower shall promptly report to A.I.D. information of any commissions, fees or payments specified in subsection 6.8(a) hereof which have been made or agreed to be made after the period covered by the report required in subsection 3.1(c) (indicating whether such payments have been or are to be made on a contingent fee basis).
- (d) Borrower covenants that no payments have been or will be received by Borrower or any official of Borrower in connection with the establishment of arrangements for engineering, procurement, construction or other services except such fees, taxes or similar payments as are duly established by law in Peru.



SECTION 6.9. Maintenance of Records: Inspections: Reports.

- (a) Borrower shall maintain or cause to be maintained, books and records in accordance with sound accounting principles and practices adequate to identify the disposition of funds disbursed pursuant to this Agreement, and of goods and services financed by such funds; to show the nature and extent of solicitation of prospective suppliers and the basis of award of contracts or orders for the Project; and to indicate the progress of the Project. Such books and records shall be audited regularly at such intervals as A.I.D. may specify by auditors acceptable to A.I.D. and shall be maintained and audited for such period as A.I.D. may require. A.I.D. shall have the right at all reasonable times to examine in Peru such books and records and all other documents and other records relating to the Project and this Agreement. Borrower shall promptly furnish to A.I.D. such financial and other reports and information relating to the Project, the loan or transactions pursuant thereto as A.I.D. may reasonably request. Borrower shall cooperate with A.I.D. to facilitate inspection of the Project.

ARTICLE VII

Remedies of A.I.D.

SECTION 7.1. Events of Default: Acceleration. If any one or more of the following events ("Events or Default") shall occur;

- (a) Borrower shall fail to pay in full any interest, installment of Principal or any other payment required under this Agreement when due;
- (b) Borrower shall fail to comply with any other provision contained herein;
- (c) Any representation or warranty made by or on behalf of Borrower with respect to obtaining this loan or made or required to be made hereunder is incorrect in any material respect;

then, A.I.D., at its option, may declare all or any part of the unrepaid Principal to be due and payable immediately, and upon any such declaration, unless the default is cured within sixty (60) days thereafter, such Principal and any interest accrued thereon shall become due and payable immediately.

SECTION 7.2. Termination or Suspension of Disbursement: Transfer of Goods to A.I.D. In the event that at any time:

- (a) An Event of Default has occurred; or
- (b) An event occurs which A.I.D. determines to be an extraordinary situation which makes it improbable that the purposes of this loan will be attained or that Borrower will be able to perform its obligations hereunder; or
- (c) Any disbursement would be in violation of the law governing A.I.D.; or

(d) A default shall have occurred under any other agreement between Borrower or any of its agencies and the United States of America or any of its agencies;

then, A.I.B., at its option, may (i) decline to issue further commitment documents, (ii) 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, giving notice to Borrower promptly thereafter, (iii) decline to make disbursements other than under commitment documents, and (iv) at A.I.B.'s expense direct that title to goods financed for the project under this Agreement shall be transferred to A.I.B., if the goods are from a source outside Peru, in a deliverable state and have not been offloaded in ports of entry of Peru. To the extent that any costs connected with the purchase and transportation of these goods have been financed under this Agreement, these amounts shall be deducted from Principal.

SECTION 7.3. Refunds. If A.I.B. determines that any disbursement is not supported by valid documentation in accordance with the terms of this Agreement, or is not made or used in accordance with the terms of this Agreement, or was at the time of disbursement in violation of the law governing A.I.B., A.I.B., at its option, may, notwithstanding the availability or exercise of any other remedy provided for under this Agreement, require Borrower to pay to A.I.B. within thirty (30) days after receipt of a request therefor, an amount not to exceed the amount of such disbursement, provided that <sup>any</sup> such request by A.I.B. shall be made not later than five (5) years after the date on which disbursement was made. Any such refund received by A.I.B. shall be applied



first to the payment of any accrued interest and then pro rata to the remaining installments of Principal.

SECTION 7.4. Waivers of Default. No delay in exercising or omission to exercise, any right, power, or remedy accruing to A.I.C. under this Agreement shall be construed as a waiver of any such right, power or remedy.

SECTION 7.5. Expenses of Collection. All reasonable costs incurred by A.I.C. (other than salaries of its staff) after an Event of Default has occurred in connection with the collection of amounts due under this Agreement may be charged to Borrower and reimbursed as A.I.C. shall specify.

ARTICLE VIII

Miscellaneous

SECTION 8.1 Effective Date.- This Agreement shall enter into effect as of the day and year first above written.

SECTION 8.2 Use of Representatives.-

- (a) All actions required or permitted to be performed or taken under this Agreement by Borrower or A.I.D. may be performed by their respective duly authorized representatives.
- (b) Director de Caminos shall have authority to represent the Borrower in accordance with the above subsection and shall have the authority to designate other such representatives. All such representatives, unless A.I.D. is given notice otherwise, shall have authority to agree on behalf of Borrower to any modification or amplification of this Agreement which does not substantially increase Borrower's obligations hereunder. Until receipt by A.I.D. of written notice of revocation by Borrower of the authority of any of its representatives, A.I.D. may accept the signature of such representatives on any instrument as conclusive evidence that any action effected by such instrument is authorized.

SECTION 8.3 Communications.- Any communication or document given, made or sent by Borrower or A.I.D. pursuant to this Agreement shall be in writing 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 by hand or by mail, telegram cable or radiogram to such party at the following addresses:

To Moreover:

Mail Address:

Director de Caminos  
Direccion de Caminos  
Ministerio de Fomento y Obras Publicas  
Lima, Peru

Cable Address:

Fomento, DirCaminos  
Lima

To A.I.D. (five copies):

Mail Address:

Office of Capital Development  
United States A.I.D. Mission  
c/o United States Embassy  
Lima, Peru

Cable Address:

USAID  
c/o Embassy  
Lima, Peru.

Other addresses may be substituted for the above upon giving of notice as provided herein.

All communications and documents submitted to A.I.D. hereunder shall be in English or Spanish except that all technical and engineering specifications and related documents shall be in English and in terms of United States standards, except as A.I.D. may otherwise agree in writing.



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

BY THE REPUBLIC OF PERU

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

THE UNITED STATES OF AMERICA

BY \_\_\_\_\_

TITLE: \_\_\_\_\_