

CONFORMED COPY

LOAN NUMBER 3702 PH

(Leyte-Cebu Geothermal Project -- PNOC-EDC)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

PHILIPPINE NATIONAL OIL COMPANY ENERGY DEVELOPMENT CORPORATION

Dated March 11, 1994

LOAN NUMBER 3702 PH

PROJECT AGREEMENT

AGREEMENT, dated March 11, 1994, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the "Bank") and PHILIPPINE NATIONAL OIL COMPANY ENERGY DEVELOPMENT CORPORATION ("PNOC-EDC").

WHEREAS: (A) By the Loan Agreement of even date herewith between the Philippine National Oil Company (the "Borrower") and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to sixty-four million dollars (\$64,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that PNOC-EDC agree to undertake such obligations toward the Bank as are set forth in this Agreement;

WHEREAS: (B) By a subsidiary loan agreement to be entered into between the Borrower and PNOC-EDC, the proceeds of the loan provided for under the Loan Agreement will be relented to PNOC-EDC on the terms and conditions set forth in the said Subsidiary Loan Agreement; and

WHEREAS: (C) PNOC-EDC, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement.

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Preamble to this Agreement, the Loan Agreement and the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. PNOC-EDC declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate economic, energy, engineering, financial, administrative and environmental practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. PNOC-EDC shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement and the Project.

Section 2.04. PNOC-EDC shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, PNOC-EDC shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement, or any provision thereof.

Section 2.05. (a) PNOC-EDC shall, at the request of the Bank, exchange views with the Bank with regard to the progress of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

(b) PNOC-EDC shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Loan, or the performance by PNOC-EDC of its obligations under this Agreement and under the Subsidiary Loan Agreement.

ARTICLE III

Management and Operations of PNOC-EDC

Section 3.01. PNOC-EDC shall carry on its operations and conduct its affairs in accordance with sound administrative, financial, and engineering practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. PNOC-EDC shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, and

engineering practices.

Section 3.03. PNOC-EDC shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

Section 4.01. (a) PNOC-EDC shall maintain separate records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) PNOC-EDC shall:

- (i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each Fiscal Year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than six (6) months after the end of each such year, (A) certified copies of its financial statements for such year as so audited and (B) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Loan Account were made on the basis of statements of expenditures, PNOC-EDC shall:

- (i) maintain, in accordance with paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, until at least one (1) year after the Bank has received the audit report for the fiscal year in which the last withdrawal from the Loan Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Bank's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such Fiscal Year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

Section 4.02. (a) Except as the Bank shall otherwise agree, PNOC-EDC shall maintain a ratio of current assets to current liabilities of not less than 1.0.

(b) Before November 15 in each of its Fiscal Years, PNOC-EDC

shall, on the basis of forecasts prepared by PNOC-EDC and satisfactory to the Bank, review whether it would meet the requirements set forth in paragraph (a) in respect of such year, and the next following Fiscal Year, and shall furnish to the Bank the results of such review upon its completion.

(c) If any such review shows that PNOC-EDC would not meet the requirements set forth in paragraph (a) for PNOC-EDC's Fiscal Years covered by such review, PNOC-EDC shall promptly take all necessary measures (including without limitation, adjustments of the structure or levels of its rates) in order to meet such requirements.

(d) For the purposes of this Section:

- (i) The term "current assets" means cash, all assets which could in the ordinary course of business be converted into cash within twelve (12) months, including accounts receivable, marketable securities, inventories and pre-paid expenses properly chargeable to operating expenses within the next Fiscal Year.
- (ii) The term "current liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve (12) months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.
- (iii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Guarantor, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 4.03. (a) Except as the Bank shall otherwise agree, PNOC-EDC shall not incur any debt, if after the incurrence of such debt the ratio of debt to equity shall be greater than 70 to 30.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of PNOC-EDC maturing by its terms more than one (1) year after the date on which it is originally incurred, excluding inter-company advances classified as debt.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment, on the date, and to the extent, the amount of such debt has become outstanding pursuant to such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into but only to the extent that the guaranteed debt is outstanding.
- (iii) The term "equity" means the sum of the total unimpaired paid-up capital, retained earnings and reserves of PNOC-EDC not allocated to cover specific liabilities.
- (iv) Whenever for the purposes of this Section it

shall be necessary to value, in terms of the currency of the Guarantor, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 4.04 (a) Except as the Bank shall otherwise agree, PNOC-EDC shall not incur any debt unless a reasonable forecast of the revenues and expenditures of PNOC-EDC shows that the estimated net revenues of PNOC-EDC for each Fiscal Year during the term of the debt to be incurred shall be at least 1.25 times the estimated debt service requirements of PNOC-EDC in such year on all debt of PNOC-EDC including the debt to be incurred.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of PNOC-EDC maturing by its terms more than one (1) year after the date on which it is originally incurred, excluding inter-company advances classified as debt.
- (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (iii) The term "net revenues" means the difference between:
 - (A) the sum of revenues from all sources related to operations and net non-operating income; and
 - (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.
- (iv) The term "net non-operating income" means the difference between:
 - (A) revenues from all sources other than those related to operations; and
 - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
- (v) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.
- (vi) The term "reasonable forecast" means a forecast prepared by PNOC-EDC not earlier than six (6) months prior to the incurrence of the debt in question, which both the Bank and PNOC-EDC accept as reasonable and as to which the Bank has notified PNOC-EDC of its acceptability provided that no event has occurred since such

notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of PNOC-EDC.

- (vii) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Guarantor, debt payable in another currency such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Bank and of PNOC-EDC thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify PNOC-EDC thereof.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

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

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (RCA),
82987 (FTCC),
64145 (WUI) or
197688 (TRT).

For PNOC-EDC:

Philippine National Oil Company
Energy Development Corporation
Merritt Road
Fort Bonifacio
Makati, Metro Manila
Republic of the Philippines

Cable address:

Telex:

PNOC-EDC
Makati, Metro Manila

22666
EDC PH

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of PNOC-EDC, or by PNOC-EDC on behalf of the Borrower under the Loan Agreement, may be taken or executed by the President of PNOC-EDC, or such other person or persons as the President of PNOC-EDC shall designate in writing, and PNOC-EDC shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

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

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Marianne Haug

Acting Regional Vice President
East Asia and Pacific

PHILIPPINE NATIONAL OIL COMPANY
ENERGY DEVELOPMENT CORPORATION

By /s/ Monico V. Jacob

Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I. Procurement of Goods and Works

Part A: International Competitive Bidding

1. Except as provided in Part C hereof, goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the "Guidelines"). For fixed-price contracts, the invitation to bid referred to in paragraph 2.13 of the Guidelines shall provide that, when contract award is delayed beyond the original bid validity period, the successful bidder's bid price will be increased for each week of delay by two (2) pre-disclosed correction factors acceptable to the Bank, one (1) to be applied to all foreign currency components, and the other to the local currency component of the bid price. Such an increase shall not be taken into account in the bid evaluation.

2. To the extent practicable, contracts for goods and works shall be grouped into bid packages estimated to cost the equivalent of two hundred thousand dollars (\$200,000) or more.

3. In the procurement of goods and works in accordance with this Part A, the Borrower shall use the relevant standard bidding

documents issued by the Bank, with such modifications thereto as the Bank shall have agreed to be necessary for the purposes of the Project. Where no relevant standard bidding documents have been issued by the Bank, the Borrower shall use bidding documents based on other internationally recognized standard terms agreed with the Bank.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 hereof, goods manufactured within the territory of the Guarantor may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Other Procurement Procedures

Local Competitive Bidding and Limited International Bidding

Contracts for supply and erection may be awarded on the basis of either of the following procurement procedures: (i) local competitive bidding advertised locally, in accordance with procedures satisfactory to the Bank, provided however that the cost of said contracts shall not exceed the equivalent of one million dollars (\$1,000,000) or less per contract, up to an aggregate amount equivalent to five million dollars (\$5,000,000); or (ii) limited international bidding procedures on the basis of the evaluation and comparison of bids invited from a list of at least three (3) qualified suppliers eligible under the Guidelines and in accordance with procedures set forth in Sections I and II of the Guidelines (excluding paragraphs 2.8, 2.9, 2.55 and 2.56 thereof), provided however that the cost of said contracts shall not exceed the equivalent of two million dollars (\$2,000,000) or less per contract, up to an aggregate amount equivalent to fifteen million dollars (\$15,000,000).

Part D: Review by the Bank of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract estimated to cost the equivalent of three million dollars (\$3,000,000) or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals are to be made on the basis of statements of expenditure.

2. The figure of fifteen percent (15%) is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

1. In order to assist the Borrower in carrying out Part B of the Project, the Borrower shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Bank on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981. (the "Consultants Guidelines"). For complex time-based assignments, the Borrower shall employ such consultants under contracts using the standard forms of contract for

consultants' services issued by the Bank, with such modifications as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, the Borrower shall use other standard forms agreed with the Bank.

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultants Guidelines requiring prior review by the Bank, or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts shall not apply to contracts estimated to cost less than the equivalent of twenty thousand dollars (\$20,000) per contract. However, this exception to prior review by the Bank shall not apply to the terms of reference for such contracts nor to the employment of individuals, to single source selection of firms, to assignments of a critical nature as reasonably determined by the Bank and to amendments of contracts raising the contract value to the equivalent of thirty thousand dollars (\$30,000) or more per contract.

