

CONFORMED COPY

LOAN NUMBER 3747 PH

Project Agreement

(Leyte - Luzon Geothermal Project - PNOC-EDC)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

PHILIPPINE NATIONAL OIL COMPANY -
ENERGY DEVELOPMENT CORPORATION

Dated September 12, 1994

LOAN NUMBER 3747 PH

PROJECT AGREEMENT

AGREEMENT, dated September 12, 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 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 one hundred fourteen million dollars (\$114,000,000), 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 relent to PNOC-EDC on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS: (C) PNOC-EDC, in consideration of, inter alia, 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 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:

(a) carry out the Project (i) with due diligence and efficiency, (ii) in conformity with appropriate administrative, financial, engineering and energy practices, and (iii) in accordance with appropriate safety, health and environmental standards acceptable to the Bank; and

(b) provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

Section 2.02. Without limitation upon the provisions of Section 2.01 of this Agreement, PNOC-EDC shall:

(a) Take all measures necessary to ensure that all persons displaced as a result of the Project shall be resettled in accordance with a resettlement plan acceptable to the Bank and designed to improve the living standards of such persons; and

(b) (i) Maintain operational procedures adequate to enable it to monitor and evaluate, in accordance with indicators acceptable to the Bank, the carrying out of the resettlement plan referred to in paragraph (a) hereof; (ii) prepare and furnish to the Bank not later than June 30 in each calendar year during which resettlement activities are carried out, a report, of such scope and in such detail as the Bank shall reasonably request, on the monitoring and evaluation activities carried out pursuant to subparagraph (i) hereof, together with any additional measures proposed to further the progress in the carrying out of the resettlement plan referred to in paragraph (a) hereof; and (iii) thereafter, promptly take all such measures referred to in subparagraph (ii) hereof, taking into account the comments of the Bank thereon.

Section 2.03. 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 the Schedule to this Agreement.

Section 2.04.(a) 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.

(b) Without limitation upon the provisions of paragraph (a) of this Section, PNOC-EDC shall prepare, in accordance with guidelines satisfactory to the Bank, and furnish to the Bank for information not later than April 30, July 31, October 31 and January 31 of each Fiscal Year, a report on the progress of the Project.

Section 2.05. 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 2.06. (a) PNOC-EDC shall, at the request of the Bank, exchange views with the Bank with regard to 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 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, engineering and energy 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 engineering, financial and energy 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.

Section 3.04. Except in the ordinary course of its business, PNOC-EDC shall not, without the Bank's prior consent sell, lease, transfer or otherwise dispose of any of its property or assets which are required for the efficient conduct of its operations or the carrying out of the Project.

Section 3.05. PNOC-EDC shall promptly take all measures necessary to: (a) maintain its corporate existence and right to carry on its operations; and (b) acquire, maintain, renew and otherwise exercise all rights, powers, privileges and franchises required for the proper conduct of its operations and carrying out of its obligations under this Agreement.

ARTICLE IV

Financial Covenants

Section 4.01. (a) PNOC-EDC shall maintain records and separate 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) and the records and accounts for the Special Account 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.

Section 4.02. (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 year after the date on which it is originally incurred.
- (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 twelve 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.

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 purposes of this Section:

- (i) The term "debt" means any indebtedness of PNOC-EDC maturing by its terms more than one year after the date on which it is originally incurred.
- (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 "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 maintain a ratio of current assets to current liabilities of not less than 1.0.

(b) Before November 30 in each Fiscal Year, 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 the 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 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 months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.
- (iii) 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.
- (iv) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, 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 PNO-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 PNO-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:	Telex:
INTBAFRAD Washington, D.C.	248423 (RCA), 82987 (FTCC), 64145 (WUI) or 197688 (TRT).

For PNOC-EDC:

Philippine National Oil Company
Energy Development Corporation
PNOC Complex
Merrit Road
Fort Bonifacio
Metro Manila
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 may be taken or executed by its President or such other person or persons as the said President 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/ Callisto Madavo
Acting Regional Vice President
East Asia and Pacific

PHILIPPINE NATIONAL OIL COMPANY
ENERGY DEVELOPMENT CORPORATION

By /s/ Raul Ch. Rabe
Authorized Representative

SCHEDULE

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").

(a) 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 pre-disclosed correction factors acceptable to the Bank, one 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.

(b) In the procurement of goods and works in accordance with this Part A, PNOC-EDC 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, PNOC-EDC shall use bidding documents based on other internationally recognized standard forms agreed with the Bank.

2. Bidders for goods and works estimated to cost the equivalent of twenty million dollars (\$20,000,000) or more per contract shall be pre-qualified as provided in paragraph 2.10 of the Guidelines.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 hereof, goods manufactured in 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

Limited International Bidding

1. High-temperature equipment and materials required for geothermal development estimated to cost the equivalent of two million dollars (\$2,000,000) or less per contract, up to an aggregate amount not to exceed the equivalent of twelve million dollars (\$12,000,000), may be procured under contracts awarded through limited international bidding procedures on the basis of evaluation and comparison of bids obtained from 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, 2.56 thereof).

Local Competitive Bidding

2. Works estimated to cost the equivalent of one million dollars (\$1,000,000) or less per contract, up to an aggregate amount not to exceed the equivalent of ten million dollars (\$10,000,000) may be procured under contracts awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Bank.

Part D: Review by the Bank of Procurement Decisions

1. Review of pre-qualification:

With respect to the pre-qualification of bidders as provided in Part A.2 hereof, the procedures set forth in paragraph 1 of

Appendix 1 to the Guidelines shall apply.

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

(a) With respect to each contract for 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. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to said paragraph 2 (d) shall be furnished to the Bank prior to the making of the first payment out of the Special Account in respect of such contract.

(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. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 4 to the Loan Agreement.

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

3. 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

Consultants' services shall be procured under contracts awarded to consultants: (a) whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank; and (b) who 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 Consultant Guidelines). For complex, time-based assignments, PNOC-EDC shall employ such consultants under contracts using the standard form 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, PNOC-EDC shall use other standard forms agreed with the Bank.

