

CONFORMED COPY
LOAN NUMBER 3686 PAN

Loan Agreement
(Roads Rehabilitation Project)

between
REPUBLIC OF PANAMA

and
INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated January 13, 1994

LOAN NUMBER 3686 PAN

LOAN AGREEMENT

AGREEMENT, dated January 13, 1994, between REPUBLIC OF PANAMA (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS: (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Bank to assist in the financing of the Project;

(B) the Bank has received a letter dated November 24, 1993, from the Borrower containing a policy statement for the period 1994 through 1999, designed to reform the Borrower's transport sector, including as an annex to such policy statement, an action plan to carry out specific reforms in the road subsector (the Roads Rehabilitation Action Plan), and declaring the Borrower's commitment to the implementation of the policy statement and the Roads Rehabilitation Action Plan;

(C) the Borrower has contracted with the Inter-American Development Bank (IDB) a loan (the IDB Loan) in an amount equivalent

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to \$180,000,000 to assist in financing the Project on terms and conditions set forth in an agreement (the IDB Loan Agreement) entered into between the Borrower and the IDB on September 27, 1993; and

WHEREAS the Bank has agreed, on the basis, inter alia, of the foregoing, to extend the Loan to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements" of the Bank, dated January 1, 1985, with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) The last sentence of Section 3.02 is deleted.

(b) In Section 6.02, sub-paragraph (k) is re-lettered as sub-paragraph (l) and a new sub-paragraph (k) is added to read:

"(k) An extraordinary situation shall have arisen under which any further withdrawals under the Loan would be inconsistent with the provisions of Article III, Section 3 of the Bank's Articles of Agreement."

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

- (a) "Annual Program" means the program referred to in Section 3.04 (a) of this Agreement;
- (b) "Balboa" means the currency of the Borrower;
- (c) "CST Unit" means the transport sector coordination unit referred to in Section 3.09 (a) of this Agreement;
- (d) "Eligible Inter-urban Subproject" means a specific Inter-urban Subproject (as hereinafter defined) to be carried out under Part B of the Project and financed with the proceeds of the Loan and included in the Annual Program;
- (e) "Eligible Urban Subproject" means a specific Urban Subproject (as hereinafter defined) to be carried out under Part A of the Project and financed with the proceeds of the Loan, and included in the Annual Program;
- (f) "Implementation Letter" means the letter referred to in Section 3.11 (a)(i) of this Agreement, and including as annexes thereto, the Urban Transport Program (as hereinafter defined), the Inter-urban Transport Program (as hereinafter defined), performance indicators, and the procedures and criteria to select each Eligible Urban Subproject and Eligible Inter-urban Subproject, providing, inter alia, that each such Subproject shall:
 - (i) be included in the Urban Transport Program or Inter-urban Transport Program, as the case may be;
 - (ii) yield, at all times, an economic rate of return of at least twelve percent (12%);
 - (iii) be designed in a manner satisfactory to the Bank;
 - (iv) be environmentally assessed by MOP, in accordance with environmental guidelines, satisfactory to

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- the Bank; and
- (v) be technically and economically assessed by MOP, in a manner acceptable to the Bank;
- (g) "Interministerial Agreement" means the agreement entered into between MOP (as hereinafter defined) and MGJ (as hereinafter defined), on August 13, 1993, for the purposes of carrying out Part A of the Project;
- (h) "Inter-urban Subproject" means a specific project to maintain, rehabilitate or improve the inter-urban roads included in the Inter-urban Transport Program (as hereinafter defined);
- (i) "Inter-urban Transport Program" means the Borrower's 1994-1997 program to maintain, rehabilitate and improve the Borrower's inter-urban roads, included as an annex to the Implementation Letter, as such program may be amended from time to time in a manner satisfactory to the Bank;
- (j) "MGJ" means the Ministry of Government and Justice (Ministerio de Gobierno y Justicia) of the Borrower;
- (k) "MIPPE" means the Ministry of Planning and Economic Policy (Ministerio de Planificacion y Politica Economica) of the Borrower;
- (l) "MOP" means the Ministry of Public Works (Ministerio de Obras Publicas) of the Borrower;
- (m) "Project Account" means the account referred to in Section 3.05 (a) of this Agreement;
- (n) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement;
- (o) "UA" means the environmental unit referred to in Section

3.06 (a) of this Agreement (Unidad Ambiental);

(p) "UECP" means the special coordination unit referred to in Section 3.06 (a) of this Agreement;

(q) "Urban Subproject" means a specific project to maintain, rehabilitate or improve the urban roads included in the Urban Transport Program (as hereinafter defined); and

(r) "Urban Transport Program" means the Borrower's 1994-1997 program to maintain, rehabilitate and improve the Borrower's urban roads, included as an annex to the Implementation Letter, as such program may be amended from time to time in a manner satisfactory to the Bank.

ARTICLE II

The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Loan Agreement, various currencies that shall have an aggregate value equivalent to the amount of sixty million Dollars (\$60,000,000), being the sum of withdrawals of the proceeds of the Loan, with each withdrawal valued by the Bank as of the date of such withdrawal.

Section 2.02. (a) The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project described in Schedule 2 to this Agreement and to be financed out of the proceeds of the Loan.

(b) The Borrower shall, for the purposes of the Project, open and maintain in Dollars a special deposit account in Banco

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Nacional de Panama or other commercial bank acceptable to the Bank, on terms and conditions satisfactory to the Bank, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 5 to this Agreement.

Section 2.03. The Closing Date shall be September 30, 2000 or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

Section 2.05. (a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Interest Period equal to the Cost of Qualified Borrowings determined in respect of the preceding Semester, plus one-half of one percent (1/2 of 1%). On each of the dates specified in Section 2.06 of this Agreement, the Borrower shall pay interest accrued on the principal amount outstanding during the preceding Interest Period, calculated at the rate applicable during such Interest Period.

(b) As soon as practicable after the end of each Semester, the Bank shall notify the Borrower of the Cost of Qualified Borrowings determined in respect of such Semester.

(c) For the purposes of this Section:

(i) "Interest Period" means a six-month period ending on the date immediately preceding each date

specified in Section 2.06 of this Agreement, beginning with the Interest Period in which this Agreement is signed.

- (ii) "Cost of Qualified Borrowings" means the cost, as reasonably determined by the Bank and expressed as a percentage per annum, of the outstanding borrowings of the Bank drawn down after June 30, 1982, excluding such borrowings or portions thereof as the Bank has allocated to fund: (A) the Bank's investments; and (B) loans which may be made by the Bank after July 1, 1989 bearing interest rates determined otherwise than as provided in paragraph (a) of this Section.
- (iii) "Semester" means the first six months or the second six months of a calendar year.

(d) On such date as the Bank may specify by no less than six months' notice to the Borrower, paragraphs (a), (b) and (c) (iii) of this Section shall be amended to read as follows:

"(a) The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Quarter equal to the Cost of Qualified Borrowings determined in respect of the preceding Quarter, plus one-half of one percent (1/2 of 1%). On each of the dates specified in Section 2.06 of this Agreement, the Borrower shall pay interest accrued on the principal amount outstanding during the preceding Interest Period, calculated at the rates applicable during such Interest Period."

"(b) As soon as practicable after the end of each Quarter, the Bank shall notify the Borrower of the Cost of Qualified Borrowings determined in respect of such Quarter."

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"(c) (iii) 'Quarter' means a three-month period commencing on January 1, April 1, July 1 or October 1 in a calendar year."

Section 2.06. Interest and other charges shall be payable semiannually on March 15 and September 15 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Loan in accordance with the amortization schedule set forth in Schedule 3 to this Agreement.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, shall:

- (i) through MOP, carry out Parts A, B, C.1 and C.2 of the Project; and
- (ii) through MGJ, carry out Part C.3 of the Project, all with due diligence and efficiency, in accordance with the Implementation Letter and the Interministerial Agreement (with respect to Part A of the Project), and in conformity with appropriate engineering, administrative, technical, safety, maintenance, environmental and financial practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Except as the Bank shall otherwise agree, the Borrower shall not assign, amend, suspend, terminate, waive or fail to enforce the Interministerial Agreement.

Section 3.02. 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 4 to this Agreement.

Section 3.03. (a) The Borrower shall select the Eligible Urban Subprojects and the Eligible Inter-urban Subprojects in accordance with the procedures and criteria set forth in the Implementation Letter.

(b) If as a result of the environmental screening to be carried out pursuant to the provisions of the Implementation Letter, an Urban Subproject or an Inter-urban Subproject, as the case may be, is determined to have a negative impact on the environment, the Borrower shall:

- (i) prior to the initiation of the bidding process for the works to be carried out under such Subproject or prior to the initiation of such works (if no bidding process is envisaged in accordance with the provisions of Schedule 4 to this Agreement), furnish to the Bank a plan, satisfactory to the Bank, to mitigate such negative impact, including, if necessary, a resettlement plan; and
- (ii) upon the Bank's approval, carry out such plan in accordance with its terms.

(c) If as a result of the technical and economical assessments to be carried out pursuant to the provisions of the Implementation Letter, there is a need to expropriate land for carrying out an Urban Subproject or an Inter-urban Subproject, as the case may be, the Borrower shall:

- (i) prior to the initiation of the bidding process

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for the works to be carried out under such Subproject or prior to the initiation of such works (if no bidding process is envisaged in accordance with the provisions of Schedule 4 to this Agreement), furnish to the Bank a plan, satisfactory to the Bank, to compensate affected owners or occupants; and

- (ii) upon the Bank's approval, carry out such plan in accordance with its terms.

Section 3.04. The Borrower shall, by no later than June 30 of each year, starting on 1994, furnish to the Bank:

(a) the program, satisfactory to the Bank, of Eligible Urban Subprojects and Eligible Inter-urban Subprojects to be financed by the Bank during the upcoming calendar year, such program to be based on the Urban Transport Program and Inter-urban Transport Program; and

(b) the budget, satisfactory to the Bank, for the execution of the Annual Program including allocations for maintenance expenditures.

Section 3.05. (a) Without limitation to the provisions of Section 3.01 of this Agreement, the Borrower shall open, and thereafter operate and maintain until completion of the Project, an

account in Balboas in Banco Nacional de Panama or other commercial bank acceptable to the Bank, under terms and conditions satisfactory to the Bank, for purposes of depositing and managing the counterpart funds required to carry out the Project.

- (b) The Borrower shall:
- (i) provide in its annual budget, and deposit in the account referred to in paragraph (a) above, promptly as needed, in Balboas equivalent, as counterpart funds for the execution of the Project and for the maintenance of the roads within the Urban Transport Program and Inter-urban Transport Program, the amounts set forth in Schedule 6 to this Agreement and the amounts required to reimburse local taxes applicable to foreign consultants hired under the Project; and
 - (ii) furnish to the Bank, by no later than thirty days after the annual budget for the year in question has been approved, a certified copy of such approved budget reflecting the amounts referred to in subparagraph (i) above.

Section 3.06. (a) The Borrower shall operate and maintain until completion of the Project, a Project coordination unit and an environmental unit, both within MOP, with functions and responsibilities satisfactory to the Bank.

(b) The Borrower shall ensure that UECP and UA are at all times headed by a project coordinator and an environmental expert, respectively, assisted by competent staff in adequate numbers, all with experience and qualifications satisfactory to the Bank.

Section 3.07. The Borrower shall, by no later than December 31, 1994, furnish to the Bank, for its review and approval, draft environmental guidelines. After Bank approval, the Borrower shall apply such environmental guidelines in:

- (a) carrying out the environmental assessment of the Urban Subprojects and Inter-urban Subprojects (including the Eligible Urban Subprojects and Eligible Inter-urban Subprojects); and
- (b) monitoring the execution of all such Subprojects.

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Section 3.08. Without limitation upon the provisions of Section 3.03 of this Agreement, and prior to the initiation of the bidding process for the works to be carried out under the Inter-urban Subproject for the Quebrada Aguacate-Canitas-Bayano Area or prior to the initiation of such works (if no bidding process is envisaged in accordance with the provisions of Schedule 4 to this Agreement), the Borrower shall:

- (a) furnish to the Bank a plan, satisfactory to the Bank, to protect the indigenous population of such area including, inter alia, a timetable for its implementation that specifies the actions to be undertaken prior to the initiation of any work, all in accordance with the terms of reference set forth in the letter from the Borrower to the Bank of even date herewith; and
- (b) upon the Bank's approval, carry out such plan in accordance with its terms.

Section 3.09. (a) By no later than December 31, 1994, the Borrower shall operate and maintain until completion of the Project, a transport sector coordination unit with functions and responsibilities satisfactory to the Bank, including, inter alia,

the coordination of the Borrower's investments and policies in the transport sector.

(b) The Borrower shall ensure that the CST Unit is at all times headed by a transport sector coordinator, assisted by competent staff in adequate numbers, all with experience and qualifications satisfactory to the Bank.

Section 3.10. Without limitation upon the provisions of Section 9.07 of the General Conditions, the Borrower, through UECP, shall by no later than June 30 and December 31 of each year of Project implementation, starting in June 1994, prepare and furnish to the Bank a report, of such scope and in such detail as the Bank may reasonably request, on the progress achieved by the Borrower in the carrying out of the Project.

Section 3.11. (a) Without limitation upon the provisions of Section 9.01 of the General Conditions, the Borrower shall review jointly with the Bank, by no later than September 30 of each year, starting in 1994, excepting 1996, the progress made by the Borrower in carrying out the Project and in achieving its objectives during the previous year. Such review shall focus, inter alia, on:

- (i) the matters referred to in the letter of even date herewith from the Borrower to the Bank (the Implementation Letter) with regard to annual reviews;
- (ii) the progress reports referred to in Section 3.10 of this Agreement for the respective year period; and
- (iii) the relevant Annual Programs.

(b) If as a result of any of the reviews referred to in paragraph (a) above, the Bank determines that the progress achieved by the Borrower in carrying out the Project is not satisfactory, the Bank may: (i) require that the Borrower prepare and furnish to the Bank an action plan, satisfactory to the Bank, to make adjustments in Project implementation; or (ii) not approve for Bank financing the Annual Program for the subsequent calendar year.

(c) If the Bank decides to exercise the option referred to in paragraph (b) (i) above, the Borrower shall furnish to the Bank such action plan by no later than thirty days after the conclusion of the review in question and shall thereafter carry out such action plan in accordance with its terms.

(d) The Borrower shall review jointly with the Bank the overall execution of the Project and the achievement of its

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objectives, by no later than September 30, 1996. Such review shall focus, inter alia, on:

- (i) the matters referred to in the Implementation Letter with regard to the mid-term review; and
- (ii) the progress reports referred to in Section 3.10 of this Agreement, for all the preceding years.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall maintain records and separate accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of the Project of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

- (b) The Borrower shall:
 - (i) have the records and accounts referred to in paragraph (a) of this Section including those for the Special Account and the Project 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 months after the end of each such year, 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 and accounts and 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 expenditure, the Borrower shall:

- (i) maintain, in accordance with paragraph (a) of this Section, records and separate accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Bank has received the audit report for the fiscal year in which the last withdrawal from the Loan Account or payment out of the Special 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.

ARTICLE V

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Remedies of the Bank

Section 5.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional event is specified, namely:

- (a) subject to subparagraph (b) of this paragraph:
 - (i) the right of the Borrower to withdraw the proceeds of the IDB Loan shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the IDB Loan Agreement; or
 - (ii) the IDB Loan shall have become due and payable prior to the agreed maturity thereof.
- (b) subparagraph (a) shall not apply if the Borrower establishes to the satisfaction of the Bank that: (i)

such suspension, cancellation, termination or pre-maturing is not caused by the failure of the Borrower to perform any of its obligations under the IDB Loan Agreement; and (ii) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 5.02. Pursuant to Section 7.01 (h) of the General Conditions, the following additional event is specified, namely, that the event specified in paragraph (a) (ii) of Section 5.01 of this Agreement shall occur, subject to the proviso of paragraph (b) of such Section.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Loan Agreement within the meaning of Section 12.01 (c) of the General Conditions:

- (a) that the UECP shall have been established and staffed in a manner satisfactory to the Bank;
- (b) that the Project Account shall have been opened and an amount equivalent to \$2,000,000 shall have been deposited therein; and
- (c) that the CST Unit shall have been created and its personnel and functions determined, in a manner satisfactory to the Bank.

Section 6.02. The date April 13, 1994 is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. The Minister of Planning and Economic Policy of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministerio de Planificacion y Politica Economica
Via Espana y Calle 52 Este
Apartado Postal 2694
Panama 3, Republica de Panama

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

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.

REPUBLIC OF PANAMA

By /s/ Jose A. Dominguez
Authorized Representative
INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Sriram Aiyer
Acting Regional Vice President
Latin America and the Caribbean

Ratified

By /s/ Luis Benjamin Rosas V.
Deputy Controller General

SCHEDULE 1

Withdrawal of the Proceeds of the Loan

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Loan, the allocation of the amounts of the Loan to each Category and the percentage of expenditures for items so to be financed in each Category:

Category	Amount of the Loan Allocated (Expressed in Dollar Equivalent)	% of Expenditures to be Financed
(1) Works	47,400,000	72%
(2) Maintenance pilot program under Parts A and B of the Project	500,000	80%
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(3) Goods under Parts A and B of the Project	1,200,000	70%
(4) Technical Assistance and Training under Part C of the Project	5,500,000	100%
(5) Unallocated	5,400,000	
TOTAL	<u>60,000,000</u> =====	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

(a) payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not to exceed \$4,000,000, may be made in respect of Categories (1) through (4) of the table in paragraph 1 of this Schedule on account of payments made for expenditures before that date but after June 30, 1993;

(b) payments made for expenditures under Part A of the Project, except for an Eligible Urban Subproject; and

(c) payments made for expenditures under Part B of the Project, except for an Eligible Inter-urban Subproject.

3. The Bank may require withdrawals from the Loan Account to be made on the basis of statements of expenditure for expenditures under contracts for works, goods and consultants' services below \$500,000, \$100,000 and \$100,000 equivalent, respectively, under such terms and conditions as the Bank shall specify by notice to the Borrower.

SCHEDULE 2 Description of the Project

The objectives of the Project are to: (a) increase competition in the road transport industry and to provide the foundation for future regulatory reforms; (b) improve the management of the transport sector through the coordination of investments and the formulation of policies; (c) continue strengthening the administration and maintenance of roads, through: (i) support to MOP in pavement management; and (ii) private sector's participation in road maintenance; (d) assist MOP in removing the existing road maintenance backlog and preventing its future occurrence through the implementation of a well-coordinated rehabilitation and maintenance program; and (e) reduce the traffic congestion and provide more efficient, safe and reliable passenger transport services in the city of Panama and other major cities within the Borrower's territory.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Bank may agree upon from time to time to achieve such objectives:

Part A: Urban Development

Carrying out of Urban Subprojects.

Part B: Inter-urban Roads

Carrying out of Inter-Urban Subprojects and a maintenance pilot program for inter-urban roads.

Part C: Policy Reform and Institutional Strengthening

1. Institutional strengthening of MOP, MIPPE and MGJ, by:
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- (a) improving the management and efficiency of the Borrower's agencies within the transport sector; and
- (b) coordinating all the investments in the transport sector.

2. Institutional strengthening of MOP by:

- (a) addressing and resolving environmental issues within the transport sector, including the training of the staff required therefor;
- (b) increasing the participation of the private sector in the Borrower's transport sector; and
- (c) preparing future transport sector projects.

3. Implementation and evaluation of the Borrower's Law 14 of May 26, 1993, on urban passenger transport.

* * *

The Project is expected to be completed by March 31, 2000.

SCHEDULE 3

Amortization Schedule

Payment of Principal

Date Payment Due	(expressed in dollars)*
On each March 15 and September 15 beginning September 15, 1999 through September 15, 2010	2,500,000
And on March 15, 2011	2,500,000