



The Opec Fund for International Development

LOAN NO. 492P

EAST-WEST HIGHWAY (CA-9 NORTH)
RECONSTRUCTION PROJECT

LOAN AGREEMENT

BETWEEN

THE REPUBLIC OF
GUATEMALA

AND

THE OPEC FUND FOR
INTERNATIONAL DEVELOPMENT

DATED

OCTOBER 24, 1989

The Opec Fund for International Development

AGREEMENT, dated October 24, 1989 between the Republic of Guatemala (hereinafter called the Borrower) and the OPEC Fund for International Development (hereinafter called the Fund).

Whereas OPEC Member Countries, being conscious of the need for solidarity among all developing countries and aware of the importance of financial cooperation between them and other developing countries, have established the Fund to provide financial support to the latter countries on concessional terms, in addition to the existing bilateral and multilateral channels through which OPEC Member Countries extend financial assistance to other developing countries;

Whereas the Borrower has requested assistance from the Fund in the financing of the Project described in Schedule 1 to this Agreement;

Whereas the Borrower has also requested the Inter-American Development Bank (IADB) to assist in the financing of the Project by extending a loan for which the loan agreement has been signed;

Whereas the Governing Board of the Fund has approved the extension of a loan to the Borrower in the amount of Four Million US Dollars (US\$ 4,000,000) upon the terms and conditions set forth hereinafter, and has further approved that IADB be entrusted with the task of the administration of the loan provided under this Agreement;

Now, therefore, the parties hereto hereby agree as follows:

Article 1 DEFINITIONS

1.01 Wherever used in this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

The Opec Fund for International Development

- a) "Fund" means the OPEC Fund for International Development established by the States Members of the Organization of the Petroleum Exporting Countries (OPEC) by virtue of the Agreement signed in Paris on January 28, 1976, as amended.
- b) "Fund Management" means the Director-General of the Fund or his authorized representative.
- c) "Loan Administrator" means IADB or such other agency as the Borrower and the Fund Management may agree upon.
- d) "Loan" means the loan provided by virtue of this Agreement.
- e) "Dollars" and the sign "\$" mean the currency of the United States of America.
- f) "Project" means the project or program for which the Loan is granted as described in Schedule 1 to this Agreement and as the description thereof may be amended from time to time by agreement between the Borrower and the Fund Management.
- g) "Goods" means equipment, supplies and services required for the Project. Reference to the cost of goods shall be deemed to include also the cost of importing such goods in the territories of the Borrower.

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Article 2

THE LOAN

2.01 A Loan in the amount of Four Million Dollars (\$ 4,000,000) is hereby extended by the Fund to the Borrower on the terms and conditions set forth in this Agreement.

2.02 The Borrower shall pay interest at the rate of four and one quarter per cent (4.25 %) per annum on the principal amount of the Loan withdrawn and outstanding from time to time.

2.03 The Borrower shall pay from time to time a service charge at the rate of one per cent (1%) per annum on the principal amount

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of the Loan withdrawn and outstanding, to meet the expenses of administering the Loan.

2.04 Interest and service charges shall be paid in Dollars semi-annually on May 15 and November 15 in each year into an account of the Fund designated for this purpose by the Fund Management.

2.05 After this Agreement has been declared effective pursuant to Section 7.01, and unless the Borrower and the Fund shall otherwise agree, the proceeds of the Loan may be withdrawn from time to time to meet expenditures made after November 18, 1987 or to be made on later dates in respect of the reasonable cost of goods required for the Project which are to be financed out of the Loan proceeds as outlined in Schedule 2 to this Agreement and in the amendments of such a Schedule duly approved by the Fund Management.

2.06 Except as the Fund Management shall otherwise agree, withdrawals from the Loan may be made in the currencies in which the expenditures referred to in Section 2.05 have been paid or are payable. In case payment shall be requested in a currency other than Dollars, such payment shall be effected on the basis of the actual Dollar cost incurred by the Fund in meeting the request. The Fund Management shall act in the purchase of currencies as the Borrower's agent. Withdrawals in respect of expenditures in the currency of the Borrower, if any, shall be made in Dollars according to the official rate of exchange at the time of withdrawal, and in the absence of such a rate, according to a reasonable rate as the Fund Management shall, from time to time, decide upon.

2.07 Applications for withdrawal shall be submitted to the Loan Administrator, with a copy to the Fund Management, by the representative of the Borrower designated in, or in accordance with, Section 8.02. Each application submitted to the Loan Administrator shall be accompanied with such documents and other evidence sufficient in form and substance to satisfy the Loan Administrator that the Borrower is entitled to withdraw from the Loan the amount applied for and that the amount to be withdrawn will be used exclusively for the purposes specified in this Agreement.

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2.08 Upon the Borrower's request and on such terms and conditions as shall be agreed upon by the Borrower, the Fund Management and the Loan Administrator, the Fund Management may issue or authorize the Loan Administrator to issue, on behalf of and for the account of the Fund, guarantees to commercial banks for letters of credit requested by the Borrower in favour of the Project's contractors, or to enter into other qualified or special commitments with third parties to pay amounts in respect of expenditures to be financed under the Loan. Under a qualified commitment, the obligation of the Fund to pay shall cease immediately upon any subsequent suspension or cancellation of the Loan. Under a special commitment, the obligation of the Fund shall not be affected by any subsequent suspension or cancellation. In case of issuance of a special commitment, the Borrower shall pay a commitment charge at the rate of one half of one per cent ($\frac{1}{2}$ of 1%) per annum, payable in Dollars, from time to time on the principal amount of the special commitment entered into and outstanding.

2.09 The Borrower shall repay the principal of the Loan in Dollars, or in any other freely convertible currency acceptable to the Fund Management in an amount equivalent to the Dollar amount due, according to the market exchange rate prevailing at the time and place of repayment. Repayment shall be effected in twenty-four semi-annual instalments commencing on November 15, 1994 after a grace period running up to that date, and thereafter in accordance with the Amortization Schedule annexed to this Agreement. Each instalment shall be in the amount of One Hundred and Sixty-Six Thousand Six Hundred and Sixty Dollars (\$ 166,660) except for the last and twenty-fourth instalment which shall be in the amount of One Hundred and Sixty Six Thousand Eight Hundred and Twenty Dollars (\$ 166,820). All such instalments shall be transferred on the date of repayment to the Fund's Account as requested by the Fund Management.

2.10 (a) The Borrower undertakes to ensure that no other external debt shall have priority over this Loan in the allocation, realization or distribution of foreign exchange held under the control or for the benefit of the Borrower. To that end, if

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any lien shall be created on any public assets (as defined in Section 2.10(c)), as security for any external debt, which will or might result in a priority for the benefit of the creditor of the external debt in the allocation, realization or distribution of foreign exchange, the lien shall, ipso facto and at no cost to the Fund, equally and ratably secure the principal of, and the charges on, the Loan, and the Borrower, in creating or permitting the creation of such lien, shall make express provision to that effect; provided, however, that, if for any constitutional or other legal reason that provision cannot be made with respect to any lien created on assets of any of its political or administrative subdivisions, the Borrower shall promptly and at no cost to the Fund secure the principal of, and the charges on, the Loan by an equivalent lien on other public assets satisfactory to the Fund.

(b) The foregoing undertaking shall not apply to:

- (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of that property; and
- (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

(c) As used in this Section, the term "public assets" means assets of the Borrower, of any political or administrative subdivision thereof or of any entity owned or controlled by, or operating for the account or benefit of, the Borrower or any such subdivision, including gold and other foreign exchange assets held by any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for the Borrower.

2.11 The Borrower's right to make withdrawals from the loan proceeds shall terminate on June 30, 1993 or such later date as shall be established by the Fund Management. The Fund Management shall promptly inform the Borrower of such later date.

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Article 3

EXECUTION OF THE PROJECT; PROCUREMENT

3.01 The Borrower shall abide vis-a-vis the Fund by all such conditions related to the execution and administration of the Project as the Borrower accepts in its loan agreement signed with IADB for the partial financing of the Project, references to IADB in such agreement being deemed for the purposes of this clause to be references to the Fund.

3.02 The Borrower shall consult the Fund before agreeing with IADB on amendments of the conditions related to the execution or administration of the Project as referred to in Section 3.01. No such amendments shall be deemed to be incorporated in this Agreement without the prior approval of the Fund.

3.03 In full recognition of the role of the Loan Administrator in the supervision of the implementation of the Project, including the review and approval of the Project contracts and the approval of procurements and of withdrawal applications, the Borrower shall cooperate fully with the Loan Administrator to ensure that the purposes of the Loan will be accomplished and shall from time to time:

- (a) exchange views with the Loan Administrator with regard to the progress of the Project, the benefits derived therefrom and the performance of the Borrower's obligations under this Agreement, as well as other matters relating to the purposes of the Loan;
- (b) promptly inform the Loan Administrator of any condition which interferes with, or threatens to interfere with, the progress of the Project or the performance by the Borrower of its obligations under this Agreement.

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Article 4

EXEMPTIONS

4.01 This Agreement and any supplementary agreement between the Parties to it shall be free from any taxes, levies or duties levied by, or in the territory of, the Borrower on or in connection with the execution, delivery or registration thereof.

4.02 The principal of, the interest and the service charges on, the Loan shall be paid without deduction for, and free from, any charges and restrictions of any kind imposed by or in the territory of, the Borrower.

4.03 All Fund documents, records, correspondence and similar material shall be considered as confidential by the Borrower, unless otherwise agreed by the Fund.

4.04 The Fund and its assets shall not be subject to any measures of expropriation, nationalization, sequestration, custody or seizure in the territory of the Borrower.

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Article 5

ACCELERATION OF MATURITY; SUSPENSION AND CANCELLATION

5.01 If any of the following events shall occur and shall continue for the period specified below, then at any subsequent time during the continuance of that event, the Fund Management may by notice to the Borrower declare the principal of the Loan then outstanding to be due and payable immediately together with the interest and service charges thereon and in that case the principal, together with the interest and all charges, shall become due and payable immediately:

- (a) A default shall occur and continue for a period of thirty days in the payment of any instalment of the principal or the interest or of the service charges under this Agreement or under any other loan agreement by virtue of which the Borrower has or shall have received a loan from the Fund;

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(b) A default shall occur in the performance of any other obligation on the part of the Borrower under this Agreement or under the Project Agreement, if any, and such default shall continue for a period of sixty days after notice thereof shall have been given by the Fund or the Loan Administrator to the Borrower;

5.02 The Borrower may by notice to the Fund cancel any amount of the Loan which the Borrower shall not have withdrawn prior to the giving of such notice. The Fund may by notice to the Borrower suspend or terminate the Borrower's right to make withdrawals from the loan if any of the events mentioned in Section 5.01(a) and (b) shall occur or if the Borrower's right to make withdrawals under the IADB loan referred to in the Preamble to this Agreement shall have been suspended or cancelled or if any other extraordinary situation shall have arisen which shall make it improbable for the Project to be successfully carried out or for the Borrower to be able to perform its obligations under this Agreement.

5.03 Notwithstanding the acceleration of maturity of the Loan pursuant to Section 5.01 or its suspension or cancellation pursuant to Section 5.02, all the provisions of this Agreement shall continue in full force and effect except as specifically provided in this Article.

5.04 No cancellation or suspension shall apply to amounts subject to any special commitment entered into pursuant to Section 2.08 except as expressly provided for in such commitment.

5.05 Any cancellation shall be applied pro rata to the several maturities of the principal amount of the Loan which shall mature after the date of such cancellation.

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Article 6

ENFORCEABILITY, TERMINATION OF FUND, ARBITRATION

6.01 The rights and obligations of the Parties to this Agreement shall be valid and enforceable in accordance with their terms notwithstanding any local law to the contrary. No party to this Agreement shall be entitled under any circumstances to assert any claim that any provision of this Agreement is invalid or unenforceable for any reason.

6.02 The Fund Management shall promptly inform the Borrower whenever any decision is taken for the dissolution of the Fund in accordance with the Agreement Establishing the Fund. In the event of such dissolution, this Loan Agreement shall remain in force and the Fund Management shall advise the Borrower of any substitute arrangements for the repayment of the Loan as may be devised by the appropriate authority of the Fund on such occasion.

6.03 The Parties to this Agreement shall endeavour to settle amicably all disputes or differences between them, arising out of this Agreement or in connection therewith. If the dispute or difference cannot be amicably settled, it shall be submitted to arbitration by the Arbitral Tribunal as hereinafter provided:

- (a) Arbitration proceedings may be instituted by the Borrower against the Fund or vice versa. In all cases, arbitration proceedings shall be instituted by a notice given by the complainant party to the respondent party.
- (b) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one by the claimant party, a second by the respondent party and the third (hereinafter called the Umpire) by agreement of the two arbitrators. If within thirty days after notice of the institution of arbitration proceedings the respondent party fails to appoint an arbitrator, such arbitrator shall be appointed by the President of the International Court of Justice upon the request of the party instituting the proceedings. If the two arbitrators fail to agree on the Umpire within sixty days after the date of the appointment of the second arbitrator, such Umpire shall be appointed by the President of the Inter-



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national Court of Justice.

- (c) The Arbitral Tribunal shall convene at the time and place fixed by the Umpire. Thereafter, it shall determine where and when it shall sit. The Arbitral Tribunal shall determine all questions of procedure and questions relating to its competence.
- (d) All decisions of the Arbitral Tribunal shall be reached by majority vote. The award of the Tribunal, which may be rendered even if one party defaults, shall be final and binding on both parties to the arbitration proceedings.
- (e) Service of any notice or process in connection with any proceedings under this Section or in connection with any proceedings to enforce any award rendered pursuant to this Section shall be made in the manner provided in Section 8.01.
- (f) The Arbitral Tribunal shall decide on the manner in which the cost of arbitration shall be borne by either or both parties to the dispute.

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Article 7

EFFECTIVE DATE; TERMINATION OF THIS AGREEMENT

7.01 This Agreement shall become effective on the date upon which the Fund dispatches to the Borrower notice of its acceptance of the evidence required by Sections 7.02 and 7.03.

7.02 The Borrower shall furnish the Fund with satisfactory evidence that:

- (a) the execution and delivery of this Agreement on behalf of the Borrower have been duly authorized and ratified according to the constitutional requirements of the Borrower; and
- (b) the loan agreement with the IADB referred to in the Preamble of this Agreement has been declared effective or will be declared effective concurrently with this Agreement.

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7.03 In keeping with Section 7.02, the Borrower shall also furnish the Fund with a certificate issued by the Minister of Justice, or the Attorney General, or the Government's competent legal department showing that this Agreement has been duly authorized and ratified by the Borrower and constitutes a valid and binding obligation of the Borrower in accordance with its terms.

7.04 If this Agreement shall not have come into force and effect by January 31, 1990, this Agreement and all obligations of the parties hereunder shall terminate, unless the Fund, after consideration of the reasons for the delay, shall establish a later date for the purposes of this Section.

7.05 When the entire principal amount of the Loan shall have been repaid and the interest and all charges which shall have accrued on the Loan shall have been paid, this Agreement and all obligations of the parties thereunder shall forthwith terminate.

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Article 8

NOTICE; REPRESENTATION, MODIFICATION

8.01 Any notice or request required or permitted to be given or made under this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it has been delivered by hand, mail, cable, telex or telefax to the party to which it is required to be given or made, at the party's address specified below or at any other address as the party shall have specified in writing to the party giving the notice or making the request.

8.02 Any action required or permitted to be taken, and any documents required or permitted to be executed under this Agreement on behalf of the Borrower shall be taken or executed by the Minister of Finance of the Borrower or another officer authorized by him in writing.

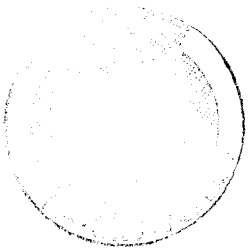
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8.03 Any modification of the provisions of this Agreement may be agreed to on behalf of the Fund by the Chairman of the Fund's Governing Board and on behalf of the Borrower by written instrument executed on behalf of the Borrower by the representative designated by, or pursuant to, Section 8.02; provided, that in the opinion of such representative the modification is reasonable in the circumstances and will not substantially increase the obligations of the Borrower under this Agreement. The Fund may accept the execution by such representative of any such instrument as conclusive evidence that in the opinion of the Borrower the modification or amplification requested by such instrument will not substantially increase the obligations of the Borrower thereunder.

8.04 Any document delivered pursuant to this Agreement shall be in the English language. Documents in any other language shall be accompanied by an English translation thereof certified as being an approved translation and such approved translation shall be conclusive between the parties hereto.

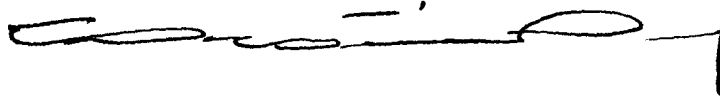
In witness whereof the parties hereto acting through their duly authorized representatives, have caused this Agreement to be signed and delivered at Vienna in six copies in the English language, each considered an original and all to the same and one effect as of the day and year first above written.

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The Opec Fund for International Development

FOR THE BORROWER:



Name: H.E. Lic. Eduardo Castillo Arriola
Ambassador of Guatemala to Austria

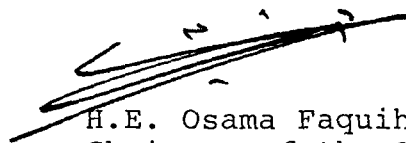
Address: Ministry of Finance
Guatemala City
Republic of Guatemala

Cable:

Telex: 9207 MINFIP GU

Telefax:

FOR THE OPEC FUND FOR INTERNATIONAL DEVELOPMENT:



Name: H.E. Osama Faquih
Chairman of the Governing Board

Address: The OPEC Fund for International Development
P.O. Box 995
A-1011 Vienna
Austria

Cable: OPECFUND

Telex: 131734 FUND A

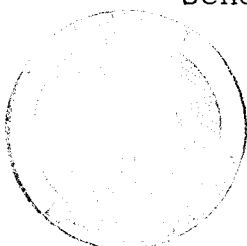
Telefax: (222) 513 92 38

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ANNEXES

- Schedule 1: Description of the Project
- Schedule 2: Loan Allocation
- Schedule 3: Amortization Schedule

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EAST-WEST HIGHWAY (CA-9 NORTH) RECONSTRUCTION PROJECT

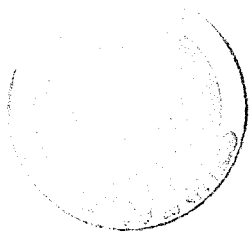
SCHEDULE 1

DESCRIPTION OF THE PROJECT

The Project is for the reconstruction of the East-West Highway CA-9 North (part of the Central American Highway System) which links the large departments of the north and east with the Atlantic ports in the Borrower's territories into a modernized two-lane route. The reconstruction will cover four road sections between Rio Hondo and Santo Tomas de Castilla while the Project works consist of improving the existing roads by reconstructing the rolling surface and shoulders with an asphalt base and surface, rebuilding their bridges and drainage works as well as improving signalization. The physical investment categories include:

- (a) provision of engineering services relating to the hiring of firms to assist the executing agency, the Ministry of Communciations, Transport and Public Works acting through the Direccion General de Caminos (General Directorate of Works), in the preparation of tender documents and construction supervision;
- (b) provision of administrative services relating to the executing agency's technical and administrative personnel assigned to the Project; and
- (c) direct costs related to the construction expenditures for the highway together with the cost of facilitating public transport during the construction period and compensation for rights-of-way.

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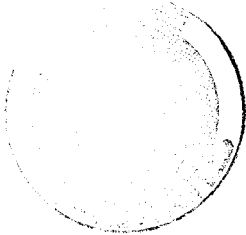
EAST-WEST HIGHWAY (CA-9 NORTH) RECONSTRUCTION PROJECT

SCHEDULE 2

LOAN ALLOCATION

1. Unless otherwise agreed between the Borrower and the Fund Management, the Loan proceeds of US\$ 4.0 million shall be utilized towards financing 76.7 % of the total expenditures (including contingencies) related to the engineering and supervision category as described in paragraph (a) of Schedule 1 to this Agreement.
2. Notwithstanding the allocation of the Loan proceeds or the disbursement percentage set forth in paragraph 1 above, if the Fund Management has reasonably estimated that the amount of the Loan then allocated to the category specified above will be insufficient to finance the agreed percentage of all expenditures for that component, the Fund Management may, by notice to the Borrower, reduce the disbursement percentage then applicable to such expenditure in order that further withdrawals in respect of that category may continue until all expenditures thereunder shall have been made.

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EAST-WEST HIGHWAY (CA-9 NORTH) RECONSTRUCTION PROJECT

SCHEDULE 3
AMORTIZATION SCHEDULE

<u>Date of Repayment</u>	<u>Amount Due</u>
	(Expressed in US Dollars)
November 15, 1994	166,660
May 15, 1995	166,660
November 15, 1995	166,660
May 15, 1996	166,660
November 15, 1996	166,660
May 15, 1997	166,660
November 15, 1997	166,660
May 15, 1998	166,660
November 15, 1998	166,660
May 15, 1999	166,660
November 15, 1999	166,660
May 15, 2000	166,660
November 15, 2000	166,660
May 15, 2001	166,660
November 15, 2001	166,660
May 15, 2002	166,660
November 15, 2002	166,660
May 15, 2003	166,660
November 15, 2003	166,660
May 15, 2004	166,660
November 15, 2004	166,660
May 15, 2005	166,660
November 15, 2005	166,660
May 15, 2006	166,660
November 15, 2006	166,820
Total:	<u>4,000,000</u> =====

