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A.I.D. Loan No. 489-H-085

22p.

LOAN AGREEMENT

(KOREA - Elementary/Middle School Pilot Project)

Between

THE REPUBLIC OF KOREA

AND

THE UNITED STATES OF AMERICA

Dated: SEP 13 1972

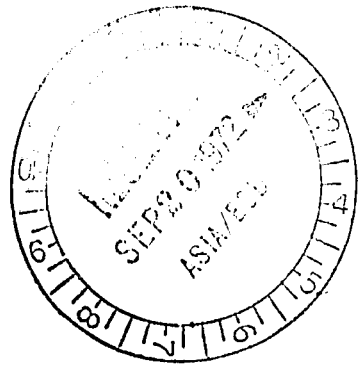


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LOAN AGREEMENT

AGREEMENT, dated SEP 13 1972 between the GOVERNMENT OF THE REPUBLIC OF KOREA (hereinafter called the "Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT (hereinafter called "A.I.D.").

1. The Loan

SECTION 1.1. The Loan. A.I.D. hereby agrees to lend to the Borrower pursuant to the Foreign Assistance Act of 1961, as amended, up to Two Million Five Hundred Thousand United States dollars (\$2,500,000) to assist in financing the reasonable foreign exchange costs of certain goods and services required for the Project as defined in Section 1.2 hereof. The proceeds of this Loan shall be made available to the Korean Ministry of Education for utilization by the Korea Educational Development Laboratory, the agency responsible for project implementation. Goods and services financed hereunder are hereinafter referred to as "Eligible Items," and the aggregate amount disbursed hereunder is hereinafter referred to as "Principal."

SECTION 1.2. Project. As used in this Agreement, the "Project" shall mean a pilot education project involving elementary and middle-school education in Korea. The basic purpose of the project is to complete the research and development of a new system of education for this level of Korean public schools. This system will be based upon the review and development by Korean scholars and leaders of current national educational goals and objectives. The new curriculum will be developed to lead to the attainment of these goals and will be consistent with modern Korean philosophies of education. The

system will include appropriate contemporary practices of instruction, teacher utilization, evaluation, school management, technology, and instructional materials.

The project is more fully described in the revised Project Loan Proposal submitted to A.I.D. by Borrower by letter dated July 27, 1972.

This Loan shall be used to finance the foreign exchange costs of educational equipment, related materials, supplies, and services, library books and materials, and related educational technical assistance, including the costs of certain international travel, needed to implement the project.

2. Borrower Repayment Terms and Interest

SECTION 2.1. Interest. Borrower will pay semiannually to A.I.D., in dollars, interest on the unrepaid Principal and on unpaid interest due. Such interest shall accrue from the dates of the respective disbursements hereunder, the first such interest payment to be due and payable no later than six (6) months after the first such disbursement on a date to be specified by A.I.D. Interest will accrue at a rate of two percent (2%) per annum for ten (10) years after the first disbursement hereunder and at a rate of three percent (3%) per annum thereafter; all interest hereunder shall be computed on the basis of a three hundred sixty-five (365) day year. Disbursements hereunder will be deemed to occur on the date on which payment by A.I.D. is made either directly to Borrower or its designee or to a banking institution pursuant to a commitment document.

SECTION 2.2. Principal. Borrower shall repay the Principal to A.I.D. in United States dollars within forty (40) years from the date of first

disbursement hereunder in sixty-one (61) level semiannual installments of principal and interest, the first installment to be due and payable nine and one-half (9-1/2) years after the first interest payment is due.

SECTION 2.3. Application and Place of Payment. All payments shall be applied first to the payment of any interest due and unpaid and then to the repayment of Principal. All payments shall be made to the Controller, United States Agency for International Development (hereinafter called "USAID"), Seoul Korea, or to such other payee or at such other address as A.I.D. may designate, and shall be deemed to have been paid when there received.

SECTION 2.4. Prepayment. The Borrower shall have the right to prepay, without penalty, on any date on which interest is due, all or any part of the Principal. Any prepayment shall be applied first to the payment of any accrued and unpaid interest and then to the remaining installments of Principal in the inverse order of their maturity.

3. Conditions Precedent

SECTION 3.1. Conditions Precedent to Financing Other Than Procurement

(b) The names of the persons who will act as the representatives of the Borrower pursuant to Section 9.1 hereof, together with evidence of their authority and a specimen signature of each such person, certified as to its authenticity by either the person rendering the legal opinion pursuant to Section 3.1(a) or the person executing this Loan Agreement;

(c) An undertaking by Borrower to provide all the Korean won required for this Project. In support of this undertaking, Borrower will also submit a financial plan, or other evidence, demonstrating the source, and the timely availability of the Korean won required for the Project. Borrower's obligation to provide said Korean won shall be met to the extent such proceeds are available, from the won proceeds of A.I.D.'s Rice Loan No. 489-H-084, dated March 16, 1972, otherwise it shall be met in the manner indicated in the financial plan.

(d) A draft contract between Borrower, or the Ministry of Education and a contractor for the technical advisory services for the Project. The terms and conditions of said contract and the selection of said contractor shall be in accordance with the A.I.D. Capital Projects Guidelines for professional services.

SECTION 3.2. Conditions Precedent to Financing Procurement. Unless A.I.D. otherwise agrees in writing, prior to the issuance of letters of

(a) A plan covering procurement arrangements for equipment and materials for the Project satisfactory to A.I.D. which shall provide for selection of contractors, contract terms and conditions, and A.I.D. approvals where required, all in accordance with the A.I.D. Capital Projects Guidelines and implementation letters to be issued hereunder.

SECTION 3.3. Terminal Date for Fulfillment of Conditions Precedent.

Except as A.I.D. may otherwise agree in writing, if the conditions required by Section 3.1 have not been satisfied within 3 months after the date of execution of this Loan Agreement, or if the conditions required by Section 3.2 have not been satisfied within 6 months after the date of the execution of this Loan Agreement, A.I.D. may at any time thereafter terminate this Agreement by giving notice to the Borrower. Upon such termination, and notwithstanding any other provisions of this Loan Agreement, Borrower shall repay to A.I.D. the unpaid Principal, if any, and any accrued interest. Upon full payment in accordance with the foregoing, all other obligations of the Borrower and A.I.D. under this Agreement shall cease.

SECTION 3.4. Notification of Meeting of Conditions Precedent. A.I.D. shall notify the Borrower upon its determination that the conditions precedent specified in Section 3.1 and 3.2 have been met.

4. Disbursements

SECTION 4.1. Requests for Letters of Commitment. To obtain disbursements, the Borrower may from time to time request A.I.D. to issue, and subject to the provisions of this Loan Agreement A.I.D. shall issue, letters of commitment to one or more banks in the United States designated by the Borrower and

satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made, through letters of credit or otherwise, to the Borrower or any designee of the Borrower, pursuant to such documentation or requirements as A.I.D. may specify.

SECTION 4.2. Other Forms of Disbursement. Disbursements may also be made through such other means as the Borrower and A.I.D. may agree in writing.

SECTION 4.3. Terminal Date for Requests for Commitment Documents and for Disbursements. Except as A.I.D. may otherwise agree in writing, no letters of commitment or other commitment documents shall be issued in response to requests received by A.I.D. after 48 months, and no disbursements shall be made against documentation received after 60 months, from the date of execution of this Loan Agreement.

5. Particular Covenants and Warranties Concerning the Project

SECTION 5.1. Borrower's Covenants. Except as A.I.D. may otherwise agree in writing, the Borrower covenants and agrees that it shall:

(a) Carry out the Project, or cause the Project to be carried out, with due diligence and efficiency, and in conformity with sound educational, financial, administrative and management practices and in general conformity with the Project plan as described in Borrower's revised Project Loan Proposal submitted to A.I.D. by letter dated July 27, 1972 and the Management Plan submitted to A.I.D. by letter dated August 7, 1972. Proposed deviations from this plan in carrying out the Project shall receive the prior approval of A.I.D. Borrower shall further carry out the Project, or cause the Project to be carried out in accordance

with any contracts and procurement arrangements, and modifications thereto, approved by A.I.D. pursuant to this Agreement.

(b) Except as A.I.D. shall otherwise specify in implementation letters, submit to A.I.D. for its approval:

1) All bid documents and documents concerning the solicitation of proposals relating to the goods and services financed under the Loan, and any modifications thereof, prior to their issuance;

2) All contracts financed under the Loan, and any modifications thereof, prior to their execution.

(c) Adequately maintain, repair and operate, in accordance with sound educational and operational practices, all equipment financed by the loan.

(d) Carry out an appropriate public information program concerning the Project.

(e) Adhere to the financial plan for Korean won requirements submitted in satisfaction of Section 3.1(c) of this Loan.

(f) Provide all other resources, in addition to this Loan and the Korean won requirements, necessary for the punctual and effective carrying out of the Project.

6. General Covenants, Warranties and Agreements

SECTION 6.1. Utilization of Eligible Items. Except as A.I.D. may agree otherwise in writing, all Eligible Items shall be used exclusively in carrying out the Project. This restriction shall apply only until such time as such goods can no longer be usefully employed for the Project,

provided that no goods financed hereunder shall be exported from the Republic of Korea without the prior written approval of A.I.D., and provided further that no Eligible Items shall at any time be used to promote or assist any project or activity associated with or financed by any country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such projected use except with the prior written consent of A.I.D.

SECTION 6.2. Information and Marking. The Borrower shall give publicity to the Loan provided for herein and the Project as a program of United States aid and mark goods financed under such Loan as prescribed in Implementation Letters.

SECTION 6.3. Notice of Material Developments. The Borrower represents and warrants that it has disclosed to A.I.D. all circumstances which may materially affect the Project or the discharge of its obligations under this Loan Agreement, and shall inform A.I.D. of any conditions which may constitute a default hereunder or which interfere, or which it is reasonable to believe may interfere, with the Project or the discharge of any of its obligations hereunder.

SECTION 6.4. Inspections. The authorized representatives of A.I.D. shall have the right at all reasonable times, whether prior to completion of the Project or subsequent thereto, to inspect the Project, the utilization of all Eligible Items, the books and records referred to in Section 6.10 and any other documents, correspondence, memoranda, or records relating to the Loan provided for herein or to the Project. The Borrower shall cooperate

with A.I.D. to facilitate such inspections and shall afford a reasonable opportunity for authorized representatives of A.I.D. to visit any part of the Republic of Korea for any purpose related to the Loan provided for herein.

SECTION 6.5. Taxes and Duties. The Borrower covenants and agrees that this Loan Agreement and the Loan provided for herein shall be free from, and the Principal and interest shall be paid to A.I.D. without deduction for and free from, any taxation or fees imposed under any laws or decrees in effect within the Republic of Korea or any such taxes or fees so imposed or payable shall be reimbursed by the Borrower.

SECTION 6.6. Commissions, Fees and Other Payments. The Borrower warrants and covenants that in connection with obtaining the Loan provided for herein or taking any action under or with respect to this Loan Agreement it has not paid and will not pay or agree to pay nor to the best of its knowledge has there been paid or will there be paid or agreed to be paid by any other person or entity, commissions, fees or other payments of any kind, except as regular compensation to the Borrower's full-time officers and employees or as compensation for bona fide professional, technical or other comparable services. The Borrower shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical or comparable services to which it is a party or of which it has knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable by A.I.D., the party concerned shall cause a reduction satisfactory to A.I.D. to be made therein.

SECTION 6.7. Renegotiation of Terms. The Borrower agrees that at any time or times when it is required to do so by A.I.D., but not sooner than six (6) months prior to the date the first repayment of Principal is due, it will negotiate with A.I.D. with respect to acceleration of the repayment of Principal by the Borrower. It is agreed that the Borrower and A.I.D. shall mutually determine to what extent repayment of such Principal should be accelerated on the basis of one or more of the following criteria:

(a) Significant improvement in the internal economic and financial situation of the Republic of Korea;

(b) Favorable trends in the balance of payments and foreign exchange holdings of the Republic of Korea;

(c) Ability of the Republic of Korea to make future repayment of A.I.D. loans without interfering with the service of debts owing to any United States Government agency or any international organization of which the United States is a member.

SECTION 6.8. Insurance. Borrower covenants that it will maintain prudent insurance coverage issued by responsible underwriters in such amounts and against such risks as is considered to be in accordance with good commercial practice.

SECTION 6.9. Maintenance and Audit of Records. The Borrower shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and to this Loan Agreement. Such books and records shall, without limitation, be adequate to show:

- (a) The receipt and use made of Eligible Items;
- (b) The progress of the Project;
- (c) Current data covering operation.

Such books and records shall be regularly audited, in accordance with sound auditing standards, for such period and at such intervals as A.I.D. may require, and shall be maintained for five years after the date of the last disbursement by A.I.D. or until all sums due A.I.D. under this Loan Agreement have been paid, whichever date shall first occur.

SECTION 6.10. Reports. The Borrower will furnish A.I.D. with such information and reports relating to the Project, Eligible Items, and the Loan provided for herein as A.I.D. may reasonably request.

7. Covenants Concerning Procurement

SECTION 7.1. Procurement Source and Origin.

(a) Except as A.I.D. may otherwise agree in writing and except as provided in Section 7.6 herein for marine insurance, all Eligible Items, including transportation services, shall have both their source and origin in those countries noted as eligible under Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into for such Eligible Items. Transportation services shall be deemed to have their source and origin in such countries if procured from a flag carrier registered in any of such countries.

(b) All other goods and services obtained for the Project but not financed by A.I.D., except transportation services, shall have their source and origin in countries included in Code 935 of the A.I.D. Geographic Code

Book as in effect at the time such goods or services are procured. In addition to the ocean shipment requirement of Section 7.5 hereunder, all Eligible Items shall be transported to Korea on carriers of countries included in the said Code 935 as in effect at the time such transportation is procured. This covenant shall be construed in accordance with A.I.D. regulations as from time to time amended.

SECTION 7.2. Date of Procurement. Except as A.I.D. may otherwise agree in writing, no goods or services may be financed hereunder which arise out of orders or contracts firmly placed or entered into prior to the date of this Loan Agreement.

SECTION 7.3. Port Charges. With respect to transportation services that constitute Eligible Items, A.I.D. will finance under the Loan ninety percent (90%) of all ocean freight costs of each shipment, and ninety-eight percent (98%) of such costs on any shipment under freeout terms. The remaining ten percent (10%), or two percent (2%) of freeout shipments, represent port charges in the Republic of Korea and Borrower covenants that it shall make available foreign exchange to finance said port charges in accordance with such rules and procedures as A.I.D. may prescribe in Implementation Letters.

SECTION 7.4. Small Business Notification. In order that American small business shall have the opportunity to participate in furnishing Eligible Items, unless A.I.D. shall otherwise agree in writing, Borrower shall, prior to ordering or contracting for any Eligible Item estimated to have a unit cost more than the equivalent of Five Thousand United States

dollars (\$5,000) as A.I.D. may specify, cause to be received by A.I.D. such information concerning Eligible Items as A.I.D. may require.

SECTION 7.5. Ocean Shipment. At least fifty percent (50%) of the gross tonnage of all Eligible Items (computed separately for dry bulk carriers, dry cargo liners, and tankers) which shall be transported on ocean vessels shall be transported on privately owned United States flag commercial vessels, unless A.I.D. shall determine that such vessels are not available at fair and reasonable rates for United States-flag commercial vessels. In addition, at least fifty percent (50%) of the gross freight revenue generated by all shipments financed under the Loan and transported on dry cargo liners shall be paid to or for the benefit of privately-owned United States-flag commercial vessels. No goods may be financed hereunder which are transported on any ocean vessel or aircraft (a) designated by A.I.D. as ineligible to carry A.I.D.-financed commodities or (b) which has been chartered for the carriage of A.I.D.-financed commodities unless such charter has been approved in advance by A.I.D.

SECTION 7.6. Marine Insurance.

(a) Marine insurance may be financed under the Loan provided (i) such insurance is placed at the lowest available competitive rate in the Republic of Korea or any country noted as eligible under Code 941 of the A.I.D. Geographic Code Book as in effect at the time of placement, and (ii) claims thereunder are payable in United States dollars or other freely convertible currency.

(b) If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance

to other nations, the Republic of Korea, by statute, decree, rule or regulation, favors any insurance company of any country over any marine insurance company authorized to do business in any state of the United States, goods financed hereunder shall during the continuance of such discrimination be so insured in the United States with a company or companies authorized to do a marine insurance business in any state of the United States of America.

SECTION 7.7. Employment of Contract Personnel. The employment of personnel to perform services under contracts financed hereunder, in whole or in part, will be subject to all applicable United States legislation and such regulations as A.I.D. may from time to time promulgate or specify, including security clearances and limitations on the employment of nationals of countries other than the Republic of Korea and countries noted as eligible under Code 941 of the A.I.D. Geographic Code Book, as in effect at the time orders are placed or contracts are entered into for such personnel; and, except as A.I.D. may otherwise direct, all such contracts shall include provisions necessary to implement such legislation and regulations.

8. Remedies of A.I.D.

SECTION 8.1. Events of Default; Acceleration. If any one or more of the following events ("Events of Default") shall occur:

(a) The Borrower shall fail to pay in full any interest payment or installment of Principal required under this Agreement when the same shall become payable by it;

(b) The Borrower shall fail to comply with any other provision contained herein applicable to it;

(c) Any representation or warranty made by or on behalf of the Borrower with respect to obtaining the Loan provided for herein or made or required to be made hereunder is incorrect in any material respect;

(d) A material default shall have occurred after the date hereof, and not been remedied after notice, under any other loan agreement between the Borrower and A.I.D.;

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

SECTION 8.2. Termination of Disbursements; Transfer of Goods to A.I.D.

In the event that at any time:

(a) An Event of Default has occurred and has not been remedied as provided above; or

(b) An event occurs that A.I.D. determines to be an extraordinary situation which makes it improbable that the purposes of the Loan provided for herein will be attained or that the Borrower will be able to or will perform its obligations hereunder; or

(c) Any disbursement would be in violation of the legislation governing A.I.D.;

then A.I.D. at its option, after notice to the Borrower, may (i) decline to issue further letters of commitment or other commitment documents, (ii)

suspend or cancel outstanding letters of commitment or other commitment documents to the extent that they have not been utilized through the issuance of irrevocable letters of credit or through bank payments made other than under irrevocable letters of credit, giving notice to the Borrower thereof, (iii) decline to make other disbursements; and (iv) at A.I.D.'s expense, direct that title to goods financed under disbursements hereunder shall be transferred to A.I.D. at cost to the Borrower, provided the goods are from a source outside the Republic of Korea, are in a deliverable state and have not been off-loaded in ports of entry of the Republic of Korea. To the extent that any costs connected with the purchase and transportation of these goods have been financed hereunder, these amounts shall be deducted from Principal.

SECTION 8.3. Refunds. If A.I.D. determines that any disbursement is not supported by valid documentation in accordance with the terms of this Loan Agreement, or is not made or used in accordance with the terms of this Loan Agreement, or was at the time of disbursement in violation of the legislation governing A.I.D., A.I.D., at its option, may, notwithstanding the availability of any other remedy provided for under this Loan Agreement or the exercise of the remedy provided for in Section 8.1, require the Borrower to pay to A.I.D. in United States dollars within thirty (30) days after receipt of a request therefor, an amount not to exceed the amount of such disbursement; provided that such request by A.I.D. shall be made not later than five (5) years after the date of the final disbursement hereunder. Any such refund received by A.I.D. shall be applied first to any accrued

interest, and then to installments of Principal in inverse order of their maturity.

SECTION 8.4. Waivers. No delay in exercising or omission to exercise any right, power or remedy accruing to A.I.D. under this Loan Agreement shall be construed as a waiver of any such right, power or remedy.

SECTION 8.5. Expenses of Collection. All reasonable costs incurred by A.I.D. (other than salaries of its staff) after an Event of Default has occurred, in connection with the collection of amounts due under this Loan Agreement, may be charged to the Borrower and reimbursed as A.I.D. shall specify.

9. Miscellaneous

SECTION 9.1. Designation of Representatives.

(a) All actions required or permitted to be performed or taken under this Loan Agreement by the Borrower, or A.I.D. may be performed by their respective duly authorized representatives.

(b) The Borrower hereby designates the Minister, Economic Planning Board, as its respective representative with authority to designate in writing other representatives in their dealings with A.I.D. The representatives designated in or pursuant to the preceding sentence, unless A.I.D. is given notice otherwise, shall have authority to agree, on behalf of the Borrower respectively, to any modification of this Loan Agreement. Until receipt by A.I.D. of written notice of revocation of the authority of any such representative, A.I.D. may accept the signature of such representative on any instrument as conclusive evidence that any action effected by such instrument is authorized by the party on whose behalf

such representative purports to act.

SECTION 9.2. Implementation Letters. A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Loan Agreement.

SECTION 9.3. Communications. Any communication or document given, made or sent by the Borrower or A.I.D. pursuant to this Loan Agreement shall be in writing and shall be deemed to have been duly given, made or sent to the party to which it is addressed when it shall be delivered by hand or by mail, telegram, cable or radiogram to such party at its following address:

To the Borrower:

Mail Address: Minister of Economic Planning Board
Government of the Republic of Korea
Seoul, Korea

To A.I.D.:

Mail Address: Director
United States Agency for International Development
Seoul, Korea

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

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

Executed at Seoul, Korea, on the date first above written.

UNITED STATES OF AMERICA

By: /S/ W. L. DAVIS
ACTING DIRECTOR

Title: USAID

THE REPUBLIC OF KOREA

By: /S/ TAE. WAN-SON
MINISTER

Title: E.P.B.