

CONTRACT OF LOAN

KNOW ALL MEN BY THESE PRESENTS:

This **CONTRACT**, made and entered into this ____ day of _____ at _____ by and between

NATIONAL ELECTRIFICATION ADMINISTRATION, a government corporation created under Presidential Decree No. 269, as amended, represented herein by **MARIANO T. CUENCO** with office address at #57 NEA Building, NIA Road, Government Center, Diliman, Quezon City, Metro Manila, herein after referred to as "NEA"

- and -

ELECTRIC COOPERATIVE, INC. an electric cooperative organized under existing laws with principal office address at _____ represented herein by _____, Filipino, of legal age, herein after referred to as "BORROWER". The appropriate Board Resolution authorizing him/her to appear for and on behalf of his/her principal is hereto attached as Annex "A", and made an integral part hereof;

WITNESSETH:

WHEREAS, the BORROWER has applied for a loan from NEA; (through _____)

WHEREAS, the BORROWER, having been satisfied as to the feasibility and priority of the Project described in Schedule 1 of this Contract has requested NEA to assist in the financing of the Project;

WHEREAS, NEA has agreed, on the basis of the foregoing, to extend the loan to the BORROWER upon the terms and conditions set forth in this Contract;

NOW THEREFORE, the parties hereto hereby agree as follows:

ARTICLE 1 THE LOAN

SECTION 1. NEA agrees to lend to the BORROWER, on the terms and conditions set forth or referred to hereinafter as aggregate amount of _____

(**P** _____) Philippine Currency.

SECTION 2. The amount of the loan may be withdrawn from the loan account in accordance with the provisions of Schedule 2 of this Contract for expenditures made (or, if NEA shall so agree, to be made) in respect of the reasonable cost of goods and/or services required for the project described in Schedule 1 of this Contract and to be financed out of the proceeds of the loan.

SECTION 3. Interest – The BORROWER shall pay NEA interest which shall accrue at the rate of _____ per annum on the outstanding balance of the principal and any due and unpaid interest subject to the provisions of Section 2, Article VII. Interest shall be computed on the basis of a 365-day year.

MARIANO T. CUENCO
Deputy Administrator
Corporate Resources &
Financial Services

SONIA B. SAN DIEGO
Director
Finance Services Department

President

General Manager

MARIANO T. CUENCO
Deputy Administrator
Corporate Resources &
Financial Services

SECTION 4. Repayment – The BORROWER shall repay to NEA the principal and interest within _____ years in _____ equal quarterly installments during the repayment period; provided however, that NEA may require accelerated repayment if the financial condition of the BORROWER so warrants.

Payments of principal and interest shall be deferred for not more than _____ year/s after _____. Interest accruing during the deferment period shall be capitalized and treated as principal.

Should there be default in the payment of any loan amortization, the amount in arrears shall bear penalty interest at the rate of _____ per annum.

SECTION 5. Application of Payment – All payments shall be applied in the following order:

- 5.1. Surcharges
- 5.2. Interest
- 5.3. Principal

All payments shall be made to the order of the National Electrification Administration.

SONIA B. SAN DIEGO
Director
Finance Services Department

SECTION 6. Terminal Date of Disbursement – The BORROWER shall have a period not exceeding _____ from the date of first release within which to submit all requests for disbursements and, unless otherwise agreed upon in writing, this period will pertain even in the event that this Contract is amended for an increase in the amount of the loan.

After such period, NEA may, in its discretion, by written notice to the BORROWER terminate any commitment to disburse and such action by NEA shall be conclusive.

**ARTICLE II
REQUIREMENTS PRIOR TO DISBURSEMENT**

President

SECTION 1. Requirements – The BORROWER shall furnish to NEA, prior to initial disbursement, the following:

- a. The Promissory Note, Deed of Mortgage and other Supplemental Mortgages, as may be required by NEA;
- b. Evidence of appropriate corporate action authorizing the execution and delivery of the Contract of Loan, Promissory Note, Deed of Mortgage and other Supplemental Mortgages, including the authorized signatory/ies and their specimen signature/s;
- c. Statement of the name of the person holding or acting in the office of the Borrower;
- d. Evidence that the Borrower is clear of any encumbering lawsuits and other legal restraints; and
- e. Other related documents as may be required by NEA.

General Manager

**ARTICLE III
EXECUTION OF THE PROJECT**

SECTION 1. The BORROWER declares its commitment to the objectives of the Project as set forth in Schedule 1 of this Contract, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate engineering, financial and public utility practices, and shall provide, promptly as needed, the counterpart funds, facilities, services and other resources required for the project.

SECTION 2. The BORROWER shall cause the SYSTEM to be constructed by contract and/or by Force Account, subject to approval of NEA.

SECTION 3. All plans and specifications for construction of the Project and any amendments thereto shall be subject to prior written approval of NEA.

SECTION 4. All line extensions, rehabilitations and additional work shall not commence until approved by NEA in writing.

SECTION 5. Bidding and construction administration shall be in accordance with NEA Construction Administration Procedures and other pertinent laws, rules and regulations.

SECTION 6. The NEA or its duly authorized representative and/or representative/s of international lending institutions, reserve the right to inspect, examine and test all the work and materials relating thereto, and the BORROWER shall provide reasonable facilities for the use of the NEA or its duly authorized representative and/or representative/s of international lending institutions.

SECTION 7. NEA shall administer all loan funds of the BORROWER.

**ARTICLE IV
PARTICULAR COVENANTS**

SECTION 1. The BORROWER shall:

- a. Deposit its funds in government Banks or any established bank duly approved by NEA.
- b. Select an auditing firm from a list of NEA accredited external auditors.
- c. Provide adequate coverage for all insurable assets.
- d. Appoint a general manager or designate an OIC subject to the confirmation of NEA, who shall not be suspended or dismissed without prior written approval of NEA.

SECTION 2. The BORROWER shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and public utility practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

SECTION 3. The BORROWER shall at all times operate and maintain its plants, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and replacements thereof, all in accordance with sound engineering, financial and public utility practices.

SECTION 4. The BORROWER shall obtain easements, authorizations and permits necessary for the construction and operation of the System. No funds shall be used by BORROWER to pay for easements without prior written approval of NEA.

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Deputy Administrator
Corporate Resources &
Financial Services

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Director
Finance Services Department

President

General Manager

MARIANO T. CUENCO
Deputy Administrator
Corporate Resources &
Financial Services

SECTION 5. The BORROWER shall establish or adopt rules and regulations, policies and such other terms and conditions affecting its extension and furnishing of services, to ensure achievement of the loan purposes, subject to prior written approval and/or revision by NEA before implementation.

SECTION 6. The BORROWER covenants that it shall not operate or energize any portion of the System until the BORROWER and the NEA shall have determined that such portion of the System has been properly constructed, completed and closed-out in accordance with prescribed procedures.

SECTION 7. The BORROWER, together with its undersigned officials, represents and warrants that no fee or commission has been or shall be paid and no agreement therefore has been or shall be entered into by the BORROWER or any of its officials, employees, agents or representatives in order to obtain the loan.

SECTION 8. The BORROWER, together with its undersigned officials, agrees and binds itself to comply with all NEA policies, letters, bulletins, memoranda, guidelines, rules and regulations, procedures and other documents issued pursuant to Presidential Decree No. 269, as amended, the Contract of Loan and Mortgaged Contract and other pertinent laws, rules and regulations.

SECTION 9. The BORROWER shall before implementation, submit all budget appropriations for approval by NEA. Cooperative funds disbursed without the written approval of NEA shall be accounted for by the accountable Cooperative officials and they shall be held liable therefore.

SECTION 10. NEA, through its authorized representative and/or representatives of international lending institutions, shall have access to and the right to inspect and require the BORROWER to submit all such books, records, accounts and plans, specifications, drawings and other documents pertaining to the management, operations and maintenance of the SYSTEM.

SECTION 11. The NEA reserves the right to be represented and to participate in all Board meetings and deliberations of the Borrower of whatever kind, nature and character, and to approve all policies and resolutions of the Board. The Borrower further hereby agrees that during the lifetime of this Contract, it shall remain under the supervision and control of NEA.

SECTION 12. The BORROWER agrees and binds itself to adopt policies, resolutions or amendments to its By-Laws in conformity with existing laws. In case of conflict among such policies, resolutions or amendments with the BORROWER'S By-Laws and the NEA policy and future issuances, the latter shall conclusively prevail.

SONIA B. SAN DIEGO
Director
Finance Services Department

President

**ARTICLE V
FINANCIAL COVENANTS**

General Manager

SECTION 1. (a) The BORROWER shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial situation.

(b) The Borrower shall:

- (i) have its records, accounts and financial statements each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to NEA;

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Corporate Resources &
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General Manager

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- (ii) furnish to NEA as soon as available, but in any case not later than six (6) months after the end of such year: **(A.)** certified copies of BORROWER's financial statements for such year as so audited; **(B.)** the report of such audit by said auditors, of such scope and in such detail as NEA shall have reasonably requested; and
- (iii) furnish to NEA such other information concerning said records, accounts and financial statements as well as the audit thereof as NEA may reasonably request.

SECTION 2. Each year and during Project implementation period, the BORROWER shall carry out in consultation with NEA, a review of its investment program for the succeeding five (5) years and its accomplishment report and accounting of funds for the preceding two (2) years.

SECTION 3. The Borrower shall:

- a. Upon determination of the need for rate adjustment in the annual rate review/consultation conducted by NEA, cause the immediate application of such rate adjustment, the proposal for which shall be concurred to by NEA.
- b. Secure NEA concurrence on all transactions related to rates, negotiations and power supply contracts involving with all Power Suppliers and large industrial loads prior to signing of such contracts.

ARTICLE VI
DEFAULTS, REMEDIES, AND SANCTIONS

SECTION 1. The occurrence of any of the following events shall constitute default by the BORROWER:

- a. failure to perform any term, covenant, promise, condition or agreement as set forth in the Contract of Loan, Mortgage Contract and Supplemental Mortgage(s);
- b. breach of any warranty or gross misrepresentation;
- c. violation of any policy, rules or regulations issued by NEA;
- d. Registration with the Cooperatives Development Authority (CDA), Securities and Exchange Commission (SEC) or any other agency other than NEA.
- e. occurrence of financial reverses in its operations as determined by NEA;
- f. any petition has been filed by or against BORROWER to declare BORROWER a bankrupt or to delay, reduce or modify BORROWER's debts or obligations;
- g. any assignment of BORROWER's property made for the benefit of the creditors or if a receiver or trustee is appointed for BORROWER or its property.

SECTION 2. In the event of default, NEA may, in addition to the rights, privileges, powers and remedies granted to it under Presidential Decree No. 269 as amended and other pertinent laws, including but not limited to Sections 3.5, 7 of PD 1645, exercise any or all of the following remedies:

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- a. Suspend and/or stop all types of assistance (financial, technical and institutional);
- b. Declare all unpaid obligations to be immediately due and payable;
- c. Assign or designate an Acting General Manager and/or a Project Supervisor;
- d. Take over the construction, operation, management and control of the SYSTEM;
- e. Take any other lawful remedial measure, including but not limited to the filing of the appropriate case(s) in courts, together with provisional remedies provided under the Rules of Court;
- f. Extrajudicially enforce/effect collection of BORROWER’s indebtedness pursuant to the powers granted in Section 3, hereunder:

SECTION 3. The BORROWER hereby irrevocably appoints the NEA as its attorney-in-fact with the following power and functions, to be exercised upon the occurrence of any of the events of default:

- (i) open, enter, padlock, secure, enclose or fence any or ALL of the properties of the BORROWER and/or otherwise take full and complete physical possession and control of the any or all of said properties;
- (ii) take an inventory of ALL of the properties of the BORROWER, including receivables;
- (iii) collect any or all of said receivables and extrajudicially dispose, in a public sale, so much of the said properties in a public sale/s and to apply the proceeds thereof to the payment of any liability and/or indebtedness due to the NEA from the BORROWER, including reasonable expenses incurred by the NEA in connection with such sale/s, without prejudice to the right of the NEA to collect the deficiency, if any.

The appointment of the NEA as attorney-in-fact is considered coupled with interest and hence irrevocable. It is agreed and understood that NEA shall enjoy a preferred lien on all properties of the BORROWER and any officer/employee of the BORROWER that disposes of any said property in violation or preemption of this section shall be criminally liable for estafa under Art. 315 of Act. No. 3815, as amended.

SECTION 4. Every right, privilege, power or remedy herein or in the Notes or in the Mortgage or in any Supplemental Mortgage conferred upon or reserved to NEA or any holder thereof or holders of the Notes shall be cumulative and in addition to every other right, privilege, power and remedy now or hereafter existing in law or in equity or by statute. The pursuit of any right, privilege, power or remedy shall not be construed as an election of the foregoing.

**ARTICLE VII
MISCELLANEOUS**

SECTION 1. This Contract may be revised or amended by mutual written consent of the parties.

SECTION 2. NEA reserves the right to increase or decrease, with notice to the BORROWER, the rate of interest on the loan pursuant to such policy as it may adopt from time to time during the pendency of the loan.

SECTION 3. The BORROWER shall not assign to a third party any of the rights arising from this Contract.

SECTION 4. The BORROWER shall hold NEA and its officers/agents free and harmless from any obligation, suit and/or claim arising from any act of the BORROWER or its officers, employees or agents in implementing this loan contract, including any and all actions of NEA or its officers/agents for the purpose of performing its rights to REVIEW, APPROVE, CONCUR, SUPERVISE or CONTROL any or all of the BORROWER’s actions/operations as provided in this Contract of Loan.

SECTION 5. Should any part of this Contract be declared invalid, such declaration shall not affect the validity and enforceability of the other provisions set forth herein.

SECTION 6. It is agreed that the venue of any and all court actions arising by reason of this contract shall be with the appropriate courts in Quezon City, to the exclusion of all other courts.

IN WITNESS WHEREOF, the parties have affixed their signatures on the date and place first above written.

**NATIONAL ELECTRIFICATION
ADMINISTRATION**

ELECTRIC COOPERATIVE, INC.

By:

By:

MARIANO T. CUENCO
Deputy Administrator
Corporate Resources &
Financial Services

President

WITNESSES:

SONIA B. SAN DIEGO
Director
Finance Services Department

General Manager

ACKNOWLEDGMENT

MARIANO T. CUENCO
Deputy Administrator
Corporate Resources &
Financial Services

REPUBLIC OF THE PHILIPPINES)
_____)

BEFORE ME, a Notary Public for an in _____ Philippines, on this _____ day of _____ 20____ personally appeared _____ with Residence Certificate No. A/B _____ issued at _____ on _____ and MARIANO T. CUENCO with Residence Certificate No. A/B _____ issued at _____ on _____ representing the _____ ELECTRIC COOPERATIVES, INC. and the NATIONAL ELECTRIFICATION ADMINISTRATION, respectively, known to me and to me known to be the same persons who executed the foregoing Contract of Loan and who acknowledged to me that the same is their true and voluntary act and deed and the true and voluntary act and deed of the Offices they respectively represent.

I CERTIFY that this Contract consists of ten (10) pages including this one, each page duly signed by the PARTIES and their instrumental witnesses at the left hand margin except page Seven (7) which is signed at the foot thereof and wherein this Acknowledgment is written.

IN WITNESS WHEREOF, I have hereunto affixed my signature and my official seal on the date and at the place first above-written.

SONIA B. SAN DIEGO
Director
Finance Services Department

NOTARY PUBLIC
My Commission expires on _____
PTR NO. _____

President

Doc. No. _____
Page No. _____
Book No. _____
Series of 20 _____

General Manager

SCHEDULE 1

PROJECT DESCRIPTION

A. REHAB OF LINES

B. SYSTEM UPGRADING

C. REHAB / UPGRADING

D. EXPANSION OF LINES

Three Phase Line _____ Kms.

Two Phase Line _____ Kms.

Single Phase Line _____ Kms.

Open Secondary Line _____ Kms.

Underbuilt Secondary Line _____ Kms.

E. ADD ONS

Connections of about _____ customers to existing lines.

F. LOGISTICS

MARIANO T. CUENCO
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President

General Manager

SCHEDULE 2

MARIANO T. CUENCO
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Corporate Resources &
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SONIA B. SAN DIEGO
Director
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President

General Manager

BREAKDOWN OF LOAN FACILITY

- A. REHAB**
- B. SYSTEM UPGRADING**
- C. REHAB / UPGRADING**
- D. EXPANSION**
- E. ADD-ONS**

SUB-TOTAL

- F. LOGISTICAL SUPPORT**

TOTAL