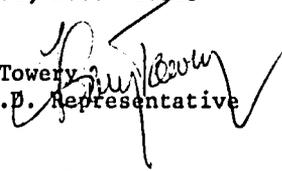


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MEMORANDUM

TO: ANE/PD/PCS
Room 3320A NS
Agency for International Development
Washington, D.C. 20523

FROM: F. Gary Towery 
U.S. A.I.D. Representative

DATE: 29 September 1986

SUBJECT: Water Resources Development Project Loan Agreement

Enclosed are eight (8) copies of the above-referenced Loan Agreement which was signed in Muscat on 24 September 1986 and ratified by the Government of Oman representative on 27 September 1986. One copy of this Loan Agreement has been pouched to the USAID Controller in Amman.

Enclosures

A.I.D. Project Number 272-0104

PROJECT
LOAN AGREEMENT

Between

THE SULTANATE OF OMAN

and

THE UNITED STATES OF AMERICA

for

WATER RESOURCES DEVELOPMENT

A.I.D. Project Number 272-0104

PROJECT LOAN AGREEMENT

Dated September 27, 1986

BETWEEN

The Sultanate of Oman ("Borrower"), represented by the Ministry of Finance and Economy, with the Ministry of Electricity and Water as implementing agency.

AND

The United States of America, acting through the Agency for International Development ("A.I.D.").

ARTICLE 1 THE AGREEMENT

The purpose of this Agreement is to set out the understandings of the parties named above ("Parties") with respect to the undertaking by the Borrower of the Project described below, and with respect to the financing of the Project by the Parties.

ARTICLE 2 THE PROJECT

SECTION 2.1. Definition of the Project

The Project, which is further described in Annex 1, will consist of design, supervision, and construction of improvements to the Capital Region's Water System and the long-term studies required to develop water and wastewater facilities in the Capital Region. Annex 1, attached, amplifies the above definition of the Project.

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Within the limits of the above definition of the Project, elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 9.3, without formal amendment of this Agreement.

SECTION 2.2. Incremental Nature of Project

A.I.D.'s contribution to the project will be provided in increments, the initial one being available in accordance with Section 3.1 of this Agreement. Subsequent increments will be subject to availability of funds to A.I.D. for this purpose, and to the mutual agreement of the Parties, at the time of a subsequent increment, to proceed.

ARTICLE 3 FINANCING

SECTION 3.1. The Loan

(a) To assist the Borrower to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to lend the Borrower under the terms of this Agreement not to exceed Fourteen Million Five Hundred and Fifty-Six Thousand United States ("U.S." Dollars (\$14,556,000) ("Loan"). The aggregate amount of disbursements under the loan is referred to as "Principal."

(b) The Loan may be used to finance foreign exchange costs, as defined in Section 7.1, and local currency costs, as defined in Section 7.2, of goods and services required for the Project.

SECTION 3.2. Borrower Resources for the Project

(a) The Borrower agrees to provide or cause to be provided for the Project all funds, in addition to the Loan, and all other resources required to carry out the Project effectively and in a timely manner.

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(b) The funds provided by Borrower for the Project will be not less than the amount disbursed from this loan, including costs borne on an "in-kind" basis.

SECTION 3.3. Project Assistance Completion Date

(a) The "Project Assistance Completion Date" (PACD), which is September 30, 1992, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the Loan will have been performed and all goods financed under the Loan will have been furnished for the Project will have been completed as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the loan for services performed subsequent to the PACD or for goods furnished for the Project, as contemplated in this Agreement, subsequent to the PACD.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in Section 8.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Borrower, may at any time or times reduce the amount of the Loan by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

ARTICLE 4 LOAN TERMS

SECTION 4.1. Interest

The Borrower will pay to A.I.D. interest which will accrue at the rate of three percent (3%) per annum for the first five years,

four percent (4%) per annum for the next five years, and six percent (6%) per annum for the remaining ten years on the outstanding balance on Principal and on any due and unpaid interest. Interest on the outstanding balance will accrue from the date (as defined in Section 8.5) of each respective disbursement, and will be payable semi-annually. The first payment of interest will be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by A.I.D.

SECTION 4.2. Repayment

The Borrower will repay to A.I.D. the Principal within twenty (20) years from the date of the first disbursement of the Loan in twenty-one (21) approximately equal semi-annual installments of Principal and interest. The first installment of Principal will be payable nine and one-half (9½) years after the date on which the first interest payment is due in accordance with Section 4.1. A.I.D. will provide the Borrower with an amortization schedule in accordance with this Section after the final disbursement under the loan.

SECTION 4.3. Application, Currency, and Place of Payment

All payments of interest and Principal hereunder will be made in U.S. Dollars and will be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, payments will be made to the Controller, Office of Financial Management, Agency for International Development, Washington, D.C. 20523, U.S.A., and will be deemed made when received by the Office of Financial Management.

SECTION 4.4. Prepayment

Upon payment of all interest and any refunds then due, the Borrower may prepay, without penalty, all or any part of the Principal.

Unless A.I.D. otherwise agrees in writing, any such prepayment will be applied to the installments of Principal in the inverse order of their maturity.

SECTION 4.5. Renegotiation of Terms

(a) The Borrower and A.I.D. agree to negotiate, at such time or times as either may request, an acceleration of the repayment of the Loan in the event that there is any significant and continuing improvement in the internal and external economic and financial position and prospects of the Sultanate of Oman, which enables the Borrower to repay the Loan on a shorter schedule.

(b) Any request by either Party to the other to so negotiate will be made pursuant to Section 9.2, and will give the name and address of the person or persons who will represent the requesting Party in such negotiations.

(c) Within thirty (30) days after delivery of a request to negotiate, the requested Party will communicate to the other, pursuant to Section 9.2, the name and address of the person or persons who will represent the requested Party in such negotiations.

(d) The representatives of the Parties will meet to carry on negotiations no later than thirty (30) days after delivery of the requested Party's communication under Subsection (c). The negotiations will take place at a location mutually agreed upon by the representatives of the Parties, provided that, in the absence of mutual agreement, the negotiations will take place at the office of Borrower's Undersecretary of Finance of the Ministry of Finance and Economy in the Sultanate of Oman.

SECTION 4.6. Termination of Full Payment

Upon payment in full of the Principal and any accrued interest, this Agreement and all obligations of the Borrower and A.I.D. under it will cease.

ARTICLE 5 CONDITIONS PRECEDENT TO DISBURSEMENT

SECTION 5.1. First Disbursement

Prior to the first disbursement under the Loan, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Borrower will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) An opinion of counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;

(b) A statement of the name of the person holding or acting in the office of the Borrower specified in Section 9.3., and of any additional representatives, together with a specimen signature of each person specified in such statement;

(c) Evidence that the Project has been approved by the two Co-Chairmen of the Omani-American Joint Commission for Economic and Technical Cooperation established by an Agreement of August 19, 1980, between the United States of America and the Sultanate of Oman (the "Joint Commission").

SECTION 5.2. Additional Conditions for Specific Disbursements

Prior to any disbursement under the Loan, or to the

issuance by A.I.D. of documentation pursuant to which disbursement will be made, for each contract to be financed with the proceeds of the loan, the Borrower shall furnish to A.I.D. in form and substance satisfactory to A.I.D., except as A.I.D. may otherwise agree in writing, a signed contract.

SECTION 5.3. Notification

When A.I.D. has determined that the conditions precedent specified in Section 5.1 and Section 5.2 have been met, it will promptly notify the Borrower.

SECTION 5.4. Terminal Dates for Conditions Precedent

(a) If all of the conditions specified in Section 5.1 have not been met within 90 days from the date of this Agreement, or such later date as A.I.D. may agree in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Borrower.

(b) If the conditions specified in Section 5.2 have not been met within 180 days or such other dates as A.I.D. may agree to in writing, A.I.D. at its option may cancel the then undisbursed balance of the assistance to the extent not irrevocably committed to third parties and may terminate this Agreement by written notice to the Borrower. In the event of such termination the Borrower will repay immediately the Principal then outstanding and any accrued interest. On receipt of such payment in full, this Agreement and all obligations of the Parties hereunder will terminate.

ARTICLE 6 SPECIAL COVENANTS

SECTION 6.1. Project Evaluation

The Parties agree to establish an evaluation program as part of the Project. Except as the Parties otherwise agree in writing, the

program will include, during the implementation of the Project and at one or more points thereafter:

- (a) evaluation of progress toward attainment of the objectives of the Project;
- (b) identification and evaluation of problem areas or constraints which may inhibit such attainment;
- (c) assessment of how such information may be used to help overcome such problems; and
- (d) evaluation, to the degree feasible, of the overall development impact of the Project.

SECTION 6.2. Water Resources Development Project - Phase II

The parties recognize that this Agreement represents the initiation of the Water Resources Development Project. The Parties agree to work together to define the goals and objectives of the Project, develop detailed plans and budgets for implementation of the Project and establish the necessary coordinating bodies to supervise implementation of the Project.

SECTION 6.3. The parties agree that the Project shall be governed by the procedures for implementation of activities (including without limitation the procurement of goods and services) formally established by the Joint Commission, as in effect from time to time.

ARTICLE 7 PROCUREMENT SOURCE

SECTION 7.1. Foreign Exchange Costs

Disbursements pursuant to Section 8.1 will be used

exclusively to finance the costs of goods and services required for the Project having with respect to goods, their source and origin, and with respect to services, their nationality in the United States (Code 000 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods or services) ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the Project Loan Standard Provisions Annex, Section C.1 (b) with respect to marine insurance. Ocean transportation costs will be financed under the loan only on vessels under flag registry of the United States or the Sultanate of Oman, except as A.I.D. may otherwise agree in writing.

SECTION 7.2. Local Currency Costs

Disbursements pursuant to Section 8.2 will be used exclusively to finance the cost of goods and services required for the Project having their source and, except as A.I.D. may otherwise agree in writing, their origin in the Sultanate of Oman ("local currency costs"). To the extent provided under this Agreement "Local Currency Costs" may also include the provision of local currency resources required for the project.

ARTICLE 8 DISBURSEMENTS

SECTION 8.1. Disbursement for Foreign Exchange Costs

(a) After satisfaction of conditions precedent, the Borrower may obtain disbursements of funds under the loan for the Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of this Agreement, by such of the following methods as may be mutually agreed upon:

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(1) by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (A) requests for reimbursement for such goods or services, or (B) requests for A.I.D. to procure commodities or services on Borrower's behalf for the Project; or

(2) by requesting A.I.D. to issue letters of Commitment for specified amounts (A) to one or more U.S. banks, satisfactory to A.I.D. committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under letter of Credit or otherwise, for such goods or services, or (B) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers for such goods or services.

(b) Banking charges incurred by Borrower in connection with letters of Commitment and Letters of Credit will be financed under the Loan unless the Borrower instructs A.I.D. to the contrary. Such other charges as the parties may agree to may also be financed under the loan.

Section 8.2. Disbursement for Local Currency Costs

(a) After satisfaction of conditions precedent, the Borrower may obtain disbursements of funds under the Loan for Local Currency Costs required for the Project in accordance with the terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursement hereunder may be obtained:

(1) by acquisition by A.I.D. with U.S. dollars by purchase;

or

(2) by A.I.D. (A) requesting the Borrower to make available

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the local currency for such costs, and (B) thereafter making available to the Borrower through the opening or amendment by A.I.D. of Special Letters of Credit in favor of the Borrower or its designee, an amount of U.S. Dollars equivalent to the amount of local currency made available by the Borrower, which dollars will be utilized for procurement from the United States under appropriate procedures described in Project Implementation Letters.

The U.S. dollar equivalent of the local currency made available hereunder will be, in the case of subsection (b) (1) above, the amount of U.S. Dollars required by A.I.D. to obtain the local currency, and in the case of subsection (b) (2) above, an amount calculated at the rate of exchange specified in the applicable Special Letter of Credit Implementation Memorandum hereunder as of the date of the opening or amendment of the applicable Special Letter of Credit.

SECTION 8.3. Other Forms of Disbursement

Disbursements of the loan may also be made through such other means as the Parties may agree to in writing.

SECTION 8.4. Rate of Exchange

Except as may be more specifically provided under Section 8.2., if funds provided under the Loan are introduced into the Sultanate of Oman by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Borrower will make such arrangements as may be necessary so that such funds may be converted into currency of the Sultanate of Oman at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the Sultanate of Oman.

SECTION 8.5. Date of Disbursement

Disbursements by A.I.D. will be deemed to occur (a) on the date on which A.I.D. makes a disbursement to the Borrower or its designee, or to a bank, contractor or supplier pursuant to a Letter of Commitment, contract, or purchase order; (b) on the date on which A.I.D. disburses to the Borrower or its designee local currency obtained in accordance with Section 8.2 (b) (1); or (c) if local currency is obtained in accordance with Section 8.2 (b) (2), on the date on which A.I.D. opens or amends the Special Letter of Credit there referred to.

ARTICLE 9 MISCELLANEOUS

SECTION 9.1. Investment Guaranty Project Approval

Construction work to be financed under this Agreement is agreed to be a project approved by the Sultanate of Oman pursuant to the Agreement between it and the United States of America on the subject of investment guaranties, and no further approval by the Sultanate of Oman will be required to permit the United States to issue investment guaranties under that Agreement covering a contractor's investment in that project.

SECTION 9.2. Communications

Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such party at the following address:

To the Borrower:

Relating to all responsibilities of the Borrower under
the Loan:

Mail Address: Ministry of Finance and Economy

P.O. Box 506

Muscat, Sultanate of Oman

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Cable Address: 5333 MALIYA MB, Muscat, Oman

Relating to the implementation and technical matters:

Mail Address: Ministry of Electricity and Water

P. O. Box 4491

Ruwi, Sultanate of Oman

Cable Address: 3358 KAHROBA OM, Ruwi, Oman

To A.I.D. :

Mail Address: United States Agency for International
Development

c/o Omani-American Joint Commission

P. O. Box 6001

Ruwi, Sultanate of Oman

Attn: United States Representative

Cable Address: Omani-American Joint Commission

3785 AMEMBMUS ON, Muscat, Oman

All such communications will be in English, unless the parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

SECTION 9.3. Representatives

For all purposes relevant to this Agreement the Borrower will be represented by the individual holding or acting in the office of the Undersecretary of Finance of the Ministry of Finance and Economy. A.I.D. will be represented by the United States Representative to the Omani-American Joint Commission. Each of these may, by written notice, designate additional representatives for all purposes other than exercising the power under Section 2.1 to revise elements of the amplified project description in Annex 1. The names of the

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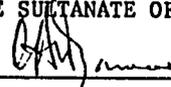
representatives of the Borrower, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation fo their authority.

SECTION 9.4. Standard Provisions Annex

A "Project Loan Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement

IN WITNESS WHEREOF, the Sultanate of Oman and the United States of America each acting through its duly authorized representatives, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

FOR THE SULTANATE OF OMAN

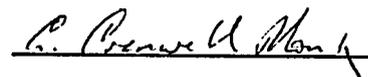
By 
Deputy Chairman
Financial Affairs Council



By 
Undersecretary for Financial Affairs
Ministry of Finance and Economy



FOR THE UNITED STATES OF AMERICA

By 
Ambassador of the United States

By 
A.I.D. Representative

Water Resources Development Project - Phase I

Detailed Project Description

A. Background

The Water Resources Development Project is a coordinated sector project for water resources development and utilization. The project addresses Oman's goal of providing a safe and reliable supply of water sufficient to meet the needs of the people and the planned development of Oman.

Phase I of the project, described in greater detail below, focuses on the improvement of the Capital Region water system and the preparation of studies required for the long term development of water and wastewater facilities in the Capital Region.

Phase II of the project will include a variety of activities related to water resources planning and management and the provision of water and wastewater facilities in towns and villages. The Omani-American Joint Commission and the Government of Oman will discuss and reach agreement on the scope and financing of Phase II activities. Subject to mutual agreement and the availability of funds, Phase II of the project will be financed by A.I.D. and the Government of Oman beginning in 1987.

B. Project Description

1. Capital Region Water System Improvements

Under Phase I of the Project, improvements to the Capital Region water system which are included in the Third Five-Year Plan will be designed and constructed. The improvements will increase the supply of water available to the system, strengthen and expand water system transmission and storage capacity.

The proceeds of the loan will be used to finance the engineering services required to prepare detailed plans and designs, prepare construction tender documents, assist in the selection of construction contractors and supervise construction.

The Government of Oman, acting through the Ministry of Electricity and Water (MEW) will finance the cost of construction. The Government of Oman will also provide or rent office space for the engineering consultant, assign personnel to oversee the work of the engineering consultant and assist the consultant in carrying out project activities.

Table 1 lists two broad categories of improvements from which specific activities will be selected for inclusion in the project. The final selection of improvements will be made as engineering designs are prepared, priorities refined and funds for construction firmly allocated to MEW.

Table 1

CAPITAL REGION WATER SUPPLY IMPROVEMENT

<u>CATEGORY</u>	<u>PURPOSE</u>
New Water Sources for the Capital Region	Identify, design and construct one or more sources of water (from both desalination and groundwater) to meet projected demand.
Other Water System Improvements	Replacement of ageing and inaccessible pipelines; expansion of system storage capacity; expansion of water supplies to new or growing communities

2. Water and Wastewater Masterplan for the Capital Region

This activity will be implemented by the MEW, the Directorate General of Technical Affairs of the Diwan for Royal Court Affairs (the Diwan) and the Joint Commission. Consultants will be employed to prepare a masterplan for the environmentally sound and socially acceptable, long-term development of water and sewerage facilities in the Capital Region at least overall cost. The plan will integrate water and wastewater facilities to minimize construction costs and permit the maximum reuse of treated wastewater. To assure that the plan is environmentally sound, a 12 to 14 month oceanographic study will be conducted to provide information on the impact of disposing of treated wastewater which can not be reused in the sea. An independent environmental evaluation of the proposed plan will also be conducted and an Environmental Impact Statement prepared.

In addition to planning for the physical development of the Capital Region's water and wastewater systems, the masterplan will also study and recommend a program for strengthening the institutions which are responsible for the operation and maintenance of the systems. This element of the study will include a detailed assessment of financial aspects such as tariffs and accounting systems. The study will recommend alternative organizational arrangements, tariff schedules and a training program.

The proceeds of the loan will be used to finance the consultants required to prepare the masterplan and associated studies. The Government of Oman will provide or rent office space for the consultants and assign personnel to oversee the work of the consultant and to assist the consultant, as required, to carry out the study.

C. Implementation Plan

1. Water System Improvements

MEW will contract with U.S. engineering firms selected in accordance with Joint Commission procurement procedures. The Commission and MEW will first reach agreement on a detailed scopes of work for the contractors. This will be included in a Request for Technical Proposals (RFP) which will be issued to prequalified firms. The prequalification process may be carried on simultaneously with the preparation of the scopes of work and RFP. The specific procurement procedures to be followed will be contained in an implementation letter.

2. Masterplan for Water and Wastewater Facilities and Associated Studies.

Under the direction of the Ministry of Finance and Economy, the Joint Commission, MEW and the Office of the Deputy President of Technical Affairs of the Diwan for Royal Court Affairs will develop a plan for preparing the masterplan and associated studies. The plan will identify the contracting agency, include detailed scopes of work and financing arrangements. It will also include procedures for overseeing the work of the contractor which assures that all reports (whether in draft or final) are promptly reviewed, commented upon and ultimately approved by all concerned parties.

One consultant will be selected to prepare the masterplan and conduct the oceanographic study and another, independent, specialized, consultant will be employed to study the environmental impact of the plan and prepare the Environmental Impact Statement. The consultants will be selected in accordance with Joint Commission procurement procedures which will be described in an implementation letter.

The detailed scopes of work for the studies will be incorporated into a Request for Technical Proposals. Prequalification of firms and the preparation of the short-list of firms who will receive the RFP may be carried on simultaneously with preparation of the scopes of work and RFP.

The Ministry of Environment and Water Resources will be closely consulted on the scope of work for the environmental study and will be requested to participate in the review of the consultant's work and reports.

D. Implementation Schedule

Table 2 contains a list of major actions and the projected timetable for implementing them. This schedule assumes the Loan Agreement is signed and ratified by 30 September 1986 and conditions precedent to disbursement, per Section 5.1 and 5.2 of the Loan Agreement, are met by 30 November 1986. The timetable includes an expedited schedule for the Barka Desalination Plant.

Table 2

IMPLEMENTATION TIMETABLE

<u>Major Actions</u>	<u>Begin</u>	<u>End</u>
1. Water System Improvements		
a. Prepare and issue RFP	1/10/86	31/12/86
b. Prequalify firms and prepare shortlist	1/10/86	31/12/86
c. Receive and evaluate proposals, and select firm	1/1/87	28/2/87
d. Negotiate and execute contract	1/3/87	15/4/87
e. Contract implementation period	1/5/87	30/5/90
2. Water and Wastewater Masterplan		
a. Prepare and issue RFP	1/10/86	31/12/86
b. Prequalify firms and prepare shortlist	1/10/86	31/12/86
c. Receive and evaluate proposals, and select firm	1/1/87	28/2/87
d. Negotiate and execute contract	1/3/87	15/4/87
e. Contract implementation period		
Masterplan	1/5/87	31/8/88
Environmental Impact Study	1/11/87	30/4/88

E. Financial Plan

Set forth below in Table 3 is an estimate of the cost of the activities which may be financed. The estimated cost of services to be financed from the U.S. contribution exceeds the amount available in the loan. Also, the estimated cost of constructing all water system improvements may exceed the amount which the Government of Oman can make available. It is, therefore, understood that the number of activities included in Phase I of the project will be increased or decreased as necessary to fit within available funding.

The amount included for the Government of Oman's contribution to the cost of the various contracts for engineering and consultant services represents an estimate of the value of office space and the cost of personnel assigned to oversee and assist the contractors to carry out their tasks. It is assumed that these contributions will be made "in-kind."

Table 3

ESTIMATED COST OF PHASE I ACTIVITIES
(\$ million)

<u>Activity</u>	<u>Total</u>	<u>Oman</u>	<u>U.S.</u>
Water System Improvements	<u>181.83</u>	<u>169.70</u>	<u>11.82</u>
- Engineering	13.13	1.31	11.82
- Construction	168.70	168.70	0.00
Water and Wastewater Masterplan and Environmental Study	<u>6.43</u>	<u>0.43</u>	<u>6.00</u>
Grand Total	196.77	178.52	18.25

Loan No. 272-0103

Project Loan Standard

Provisions Annex

Definitions: As used in this Annex, the "Agreement" refers to the Project Loan Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

ARTICLE A. Project Implementation Letters

To assist Borrower in the implementation of the Project, A.I.D., from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The parties may also use jointly agreed-upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in Annex 1.

ARTICLE B. General Covenants

Section B.1. Consultation

The Parties will cooperate to assure that the purpose of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on the progress of the Project, the performance of obligations under this Agreement, the performance of any consultants, contractors, or suppliers engaged on the Project, and other matters relating to the Project.

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Section B.2. Execution of Project

The Borrower will:

(a) carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules, or other arrangements, and with any modifications therein, approved by A.I.D. pursuant to this Agreement; and

(b) provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

Section B.3. Utilization of Goods and Services

(a) Any resources financed under the Loan will, unless otherwise agreed in writing by A.I.D., be devoted to the Project until the completion of the Project, and thereafter will be used so as to further the objectives sought in carrying out the Project.

(b) Goods or services financed under the Loan, except as A.I.D. may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section B.4. Taxation

(a) This Agreement and the Loan will be free from, and the Principal and interest will be paid free from, any taxation or fees imposed under laws in effect in the territory of the Borrower.

(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Loan, and any property or transactions relating to such contracts and (2) any commodity procurement transaction financed under the Loan are not exempt from identifiable taxes, tariffs, duties, or other levies imposed under laws in effect in the territory of the Borrower, the Borrower will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Loan.

Section B.5. Reports, Records, Inspections, Audit

The Borrower will:

(a) furnish A.I.D. such information and reports relating to the Project and to this Agreement as A.I.D. may reasonably request;

(b) maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show, without limitation the receipt and use of goods and services acquired under the Loan. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and

(c) afford authorized representatives of a Party the opportunity at all reasonable times to inspect the Project, the utilization

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of goods and services financed by such Party, and books, records, and other documents relating to the Project and the Loan.

Section B.6. Completeness of Information

The Borrower confirms:

(a) that the facts and circumstances of which it has informed A.I.D., or caused A.I.D. to be informed, in the course of reaching agreement with A.I.D. on the Loan, are accurate and complete, and include all facts and circumstances that might materially affect the Project and the discharge of responsibilities under this Agreement;

(b) that it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Project or the discharge of responsibilities under this Agreement.

Section B.7. Other Payments

Borrower affirms that no payments have been or will be received by any official of the Borrower in connection with the procurement of goods or services financed under the Loan except fees, taxes, or similar payments legally established in the country of the Borrower.

Section B.8. Information and Marking

The Borrower will give appropriate publicity to the Loan and the Project as a program to which the United States has contributed, identify the Project site, and mark goods financed by A.I.D., as described in Project Implementation Letters.

ARTICLE C. Procurement Provisions

Section C.1. Special Rules

(a) The source and origin of ocean and air shipping will

be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(b) Premiums for marine insurance placed in the territory of the Borrower will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C.7. (a).

(c) Any motor vehicles financed under the Loan will be of United States manufacture, except as A.I.D. may otherwise agree in writing.

Section C.2. Eligibility Date

No goods or services may be financed under the Loan which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

Section C.3. Plans, Specifications, and Contracts

In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Borrower will furnish to A.I.D. upon preparation:

(1) any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Loan, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished A.I.D. on preparation;

(2) such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services which, though not financed under the Loan, are deemed by A.I.D. to be of major importance to the Project. Aspects of the Project involving matters under this subsection (a) (2) will be identified in Project Implementation Letters;

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(b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Loan will be approved by A.I.D. in writing prior to their issuance, and their terms will include United States standards and measurements;

(c) Contracts and contractors financed under the Loan for engineering and other professional services, for construction services, and for such other services, equipment, or materials as may be specified in Project Implementation Letters, will be approved by A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution; and

(d) Consulting firms used by the Borrower for the Project but not financed under the Loan, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Borrower for the Project but not financed under the Loan shall be acceptable to A.I.D.

Section C.4. Reasonable Price

No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Loan. Such items will be procured on a fair and, to the maximum extent practicable, on a competitive basis.

Section C.5. Notification to Potential Suppliers

To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Loan, the Borrower will furnish A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Project Implementation Letters.

Section C.6. Shipping

(a) Goods which are to be transported to the territory of the Borrower may not be financed under the Loan if transported either:

(1) on an ocean vessel or aircraft under the flag of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment; or

(2) on an ocean vessel which A.I.D., by written notice to the Borrower has designated as ineligible; or

(3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Loan, if such goods or persons are carried:

(1) on an ocean vessel or aircraft under the flag of a country not, at the time of shipment, identified under the paragraph of the Agreement entitled "Procurement Source: Foreign Exchange Costs," without prior written A.I.D. approval; or

(2) on an ocean vessel which A.I.D., by written notice to the Borrower, has designated as ineligible; or

(3) under an ocean vessel or air charter which has not received prior A.I.D. approval.

(c) Unless A.I.D. determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels,

(1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo

liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels, and

(2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported to the territory of the Borrower on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to any cargo transported from U.S. ports and also any cargo transported from non-U.S. ports, computed separately.

Section C.7. Insurance

(a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Borrower may be financed as a Foreign Exchange Cost under this Agreement provided,

(1) such insurance is placed at the lowest available competitive rate, and

(2) claims thereunder are payable in U.S. Dollars or, as A.I.D. may agree in writing, the currency in which such goods were financed or in any freely convertible currency. If the Borrower (or government of Borrower), by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Borrower financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

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(b) Except as A.I.D. may otherwise agree in writing, the Borrower will insure, or cause to be insured, goods financed under the Loan imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Borrower under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Borrower for the replacement or repair of such goods. Any such replacement will be of source and origin of countries listed in A.I.D. Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

Section C.8. U.S. Government-Owned Excess Property

The Borrower agrees that wherever practicable United States Government-owned excess property, in lieu of new items financed under the Loan, should be utilized. Funds under the Loan may be used to finance the costs of obtaining such property for the Project.

ARTICLE D Termination; Remedies

Section D.1. Cancellation by Borrower

The Borrower may, by giving A.I.D. 30 days written notice, cancel any part of the Loan which has not been disbursed or committed for disbursement to third parties.

Section D.2. Events of Default; Acceleration

It will be an "Event of Default" if Borrower shall have failed:

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(a) to pay when due any interest or installment of Principal required under this Agreement, or

(b) to comply with any other provision of this Agreement, or

(c) to pay when due any interest or installment of Principal or other payment required under any other loan, guaranty or other agreement between the Borrower or any of its agencies and A.I.D. or any of its predecessor agencies. If an Event of Default shall have occurred, then A.I.D. may give the Borrower notice that all or any part of the unrepaid Principal will be due and payable sixty (60) days thereafter, and unless such Event of Default is cured within that time:

(1) such unrepaid Principal and accrued interest hereunder will be due and payable immediately, and

(2) the amount of any further disbursements made pursuant to then outstanding commitments to third parties or otherwise will become due and payable as soon as made.

Section D.3. Suspension

If at any time:

(a) An Event of Default has occurred; or

(b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement; or

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

(d) The Borrower shall have failed to pay when due any interest, installment of principal or other payment required under any

other loan, guaranty, or other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies;

Then A.I.D. may:

(1) suspend or cancel outstanding commitment documents to the extent they have not been utilized through irrevocable commitments to third parties or otherwise, giving prompt notice thereof to the Borrower;

(2) decline to issue additional commitment documents or to make disbursements other than under existing ones; and

(3) at A.I.D.'s expense, direct that title to goods financed under the Loan be transferred to A.I.D. if the goods are from a source outside Borrower's country, are in a deliverable state and have not been offloaded in ports of entry of Borrower's country. Any disbursement made under the Loan with respect to such transferred goods will be deducted from Principal.

Section D.4. Cancellation by A.I.D.

If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section D.3., the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Loan that is not then disbursed or irrevocably committed to third parties.

Section D.5. Continued Effectiveness of Agreement

Notwithstanding any cancellation, suspension of disbursements, or acceleration of repayment, the provisions of this Agreement will continue in effect until the payment in full of all Principal and accrued interest hereunder.

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Section D.6. Refunds

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies provided for under this Agreement, may require the Borrower to refund the amount of such disbursement in United States Dollars to A.I.D. within sixty (60) days after receipt of a request therefor. The right to require such a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three (3) years from the date of the last disbursement under this Agreement.

(b)

(1) Any refund under the preceding subsection, or

(2) any refund to A.I.D. from a contractor, supplier, bank, or other third party with respect to goods or services financed under the Loan, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will,

A. be made available first for the cost of goods and services required for the Project, to the extent justified, and

B. the remainder, if any, will be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan reduced by the amount of such remainder.

Section D.7. Nonwaiver of Remedies

No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.