

PD-GAB 738

File

A.I.D. Project Number 272-0102

8-18-82

PROJECT

LOAN AGREEMENT

Between

THE SULTANATE OF OMAN

and

THE UNITED STATES OF AMERICA

for

WADI AL KHAWD AQUIFER RECHARGE

PROJECT LOAN AGREEMENT

Dated 18 August 1982

Between

The Sultanate of Oman ("Borrower"), represented by the Directorate General of Finance with the Ministry of Agriculture and Fisheries 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 Project. The Project, which is further described in Annex 1, will consist of providing a water retarding structure to demonstrate aquifer recharge in the Wadi Al Khawd. Annex 1, attached, amplifies the above definition of the Project.

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.

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 Seven Million Five Hundred Thousand United States ("U.S.") dollars (\$7,500,000) ("Loan"). The aggregate amount of disbursements under the Loan is referred to as "Principal".

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.

(b) The funds provided by Borrower for the Project will be not less than the amount disbursed from the A.I.D. loan.

SECTION 3.3. Project Assistance Completion Date.

(a) The "Project Assistance Completion Date" (PACD), which is June 30, 1984, 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 that all goods financed under the Loan will have been furnished for the Project 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 five percent (5%) per annum on the outstanding balance of 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 thirty-one (31) approximately equal semi-annual installments of Principal and interest. The first installment of Principal will be payable four and one-half (4-1/2) 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. Pre-Payment. Upon payments 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 out 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 the Directorate General of Finance in the Sultanate of Oman.

SECTION 4.6. Termination on 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 on 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"); and

(d) Evidence that the Borrower (i) owns, or has unencumbered use for the project purpose, of the land required for the project, and (ii) has no objection to the use of such land for the project.

SECTION 5.2. Additional Conditions for Specific Disbursements.

(a) 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 engineering services, the Borrower shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D. a signed contract for such services.

(b) 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 construction services, 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 for such services.

SECTION 5.3. Notification. When A.I.D. has determined that the conditions precedent specified in Sections 5.1 and 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 all of the conditions specified in Section 5.2 have not been met within 150 days from the date of this agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its

option, may cancel the then undisbursed balance of the Loan, 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 payments 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. Project Implementation Procedures. 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.

SECTION 6.3. Supervisory Engineering Services. The Borrower covenants that it will acquire and maintain the services of a supervisory engineering firm acceptable to A.I.D. through completion of Project construction, start-up and testing, pursuant to a contract acceptable to A.I.D.

SECTION 6.4. Testing. The Borrower covenants that it will submit a testing program satisfactory to A.I.D., and that it will initiate implementation of the program in the project area prior to Project completion including without limitation by providing the necessary budget and staff.

SECTION 6.5. Maintenance. The Borrower covenants that it will submit to A.I.D. a plan satisfactory to A.I.D. for operation and maintenance of the Project, and that it will implement such plan in a timely manner, including without limitation by providing the necessary budget and staff.

SECTION 6.6. Protection Measures. The Borrower covenants that adequate measures will be taken:

- (a) to prevent contamination of the Wadi Al Khawd Aquifer; and
- (b) to prevent in areas downstream from the structure establishment of facilities which may be subject to flooding according to "most probable flood" estimates.

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 their source and origin 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 and 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. If A.I.D. determines that there are no vessels under flag registry of the Sultanate of Oman generally available for ocean transportation, or that the Sultanate of Oman has no access to U.S. flag service, A.I.D. in a Project Implementation Letter may agree to finance under the Loan ocean transportation costs on vessels under flag registry of any country included in A.I.D. Geographic Code Book 941.

SECTION 7.2: Local Currency Costs. Disbursements pursuant to Section 8.2 will be used exclusively to finance the costs 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").

Article 8: Disbursements

SECTION 8.1. Disbursement for Foreign Exchange Costs.

(a) After satisfaction of relevant 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:

(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 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 acquired 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 guarantees 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: Directorate General of Finance

P. O. Box 506

Muscat, Sultanate of Oman

Cable Address: 3333 MALIYA MB, Muscat, Oman

Relating to implementation and technical matters:

Mail address: Ministry of Agriculture and Fisheries

P. O. Box 467

Muscat, Sultanate of Oman

Cable address: 3503 AGRIFISH MB, Muscat, 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

P. O. Box 6001, Ruwi, Sultanate of 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 the Directorate General of Finance, with the individual holding or acting in the office of Minister of Agriculture and Fisheries designated as the representative responsible for implementation of the project. 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 description in Annex 1. The names of the representatives of the Borrower, with specimen

signatures, will be provided to A.I.D., which may accept as duly authorize any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of 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.

SULTANATE OF OMAN

By [Signature]
Deputy Chairman
Financial Affairs Council

By [Signature]
Undersecretary
Directorate General of Finance

UNITED STATES OF AMERICA

By [Signature]
A.I.D. Representative

IMPLEMENTING AGENCY

By [Signature]
Minister
Ministry of Agriculture and Fisheries



I. PROJECT DESCRIPTION

The Wadi Al Khawd Aquifer Recharge Project consists of the construction of a water retarding structure approximately 4.7 kms (2.8 miles) long, 8 meters (24 feet) high and 5 meters (15 feet) wide at the top, to be constructed across the main channels of the Wadi Al Khawd to demonstrate that an estimated annual average 4 million cubic meters of storm water normally lost by run-off to the sea can be captured through percolation into the aquifer and be available for use for agricultural, urban, or industrial needs. The project will also include the provision of a monitoring system, including the digging of stilling wells and the provision of water level recording equipment to measure recharge basin inflows and outflows to determine actual recharge volumes.

The inputs into the project are (1) construction services, (2) engineering services, and (3) commodities. A construction contractor, pursuant to a contract with the Ministry of Agriculture and Fisheries will erect the water retarding structure and construct the monitoring system. Engineering services will be provided by an engineering firm pursuant to a contract with the Ministry of Agriculture and Fisheries, which will be in two phases, the first covering the tendering for the construction, and the second covering supervision of construction of the structure and the monitoring wells. Commodities, which primarily consist of equipment for the monitoring system, will be procured by the engineering contractor.

To complement the project, it is anticipated that a program of technical assistance, which would encompass the institutionalization of an expanded monitoring phase, technical consultants, and short-term technical/professional training in the U.S. and the Sultanate of Oman, would be developed with funds from the Project Grant Agreement signed September 29, 1980, between the Sultanate of Oman and A.I.D. (the "Grant") and amendments thereto, subject to approval of the Sub-Activity in accordance with the Grant and signing of a Subgrant Agreement between the Grantee and the Ministry of Agriculture and Fisheries.

II. BUDGET

The total cost of the project is \$15,000,000, with A.I.D. providing \$7,500,000 in loan funds and the Government of the Sultanate of Oman matching the amount of the loan funds.

(FX = Foreign Exchange; LC = Local Currency)

FIGURES IN THOUSANDS OF U. S. DOLLARS

	A.I.D. (LOAN)		Government of Oman		TOTAL
	FX	LC	FX	LC	
Engineering	650	--	--	250	900
Construction					
Structure	6,700	--	600	6,300	13,600
Monitoring	150		--	350	500
TOTAL	7,500	--	600	6,900	15,000

(Note: Exchange rate of U.S. \$1.00 = R. O. .345)

Costs may be shifted among line items, and between U. S. Dollar and Omani Rial costs, as necessary. However, funds provided by A.I.D. will first be applied to all U.S. dollar costs of the project.

If the total U.S. Dollar cost is less than one-half of the total project cost, A.I.D. funds will then be used to finance the Omani Rial costs of construction, so that the total A.I.D. contribution equals the total Borrower contribution.

Technical Assistance Program Budget: Additionally, the estimated cost of the technical assistance program to be funded under the Grant is U.S. \$1,000,000, subject to approval of the Activity and signing of a Sub-Grant Agreement.

A.I.D. (GRANT)

FIGURES IN THOUSANDS

	<u>U.S. \$</u>
Monitoring and Evaluation	580
Water Resource Data Plan	250
Training	<u>170</u>
TOTAL	1,000

III. IMPLEMENTATION

An Invitation for Bid for the construction work will be issued to prequalified construction contractors. It is anticipated that an

engineering services contract will be signed by the Ministry of Agriculture and Fisheries shortly after the Loan Agreement is signed. Phase I of this contract, approximately 2 months in duration, will provide assistance to the Ministry in tendering for the construction contract, while Phase 2, approximately 18 months in duration, will provide supervision of construction services. It is anticipated that the construction contract, approximately 16 months in duration, will be tendered by the Ministry of Agriculture and Fisheries upon signing of the engineering contract, and executed 2 or 3 months later, with construction starting shortly thereafter.

The technical assistance program will be carried out under a Grant-funded contract between the Government of the Sultanate of Oman and a contractor over an estimated period of three years. The details of the program will be developed and a contract signed during the six months following the start of construction.

<u>IMPLEMENTATION PLAN</u>	<u>TARGET DATES</u>
1. Loan Agreement signed.	July 1982
2. Initial conditions precedent met.	July 1982
3. Engineering Supervision Services Contract signed. (Phase I starts)	July 1982
4. IFB for Construction issued.	July 1982
5. Construction Contract signed.	September 1982
6. Phase II Engineering Contract (supervision services) begins.	September 1982

<u>IMPLEMENTATION PLAN</u>	<u>TARGET DATES</u>
7. Construction started.	October 1982
8. Technical Assistance Subgrant signed.	December 1982
9. Technical Assistance Contract signed.	March 1983
10. Baseline Evaluation Data gathered.	April 1983
11. Construction completed.	February 1984
12. Engineering Contract completed.	March 1984
13. Project completed.	June 1984
14. Terminal date for disbursement of loan.	March 1985
15. First Project Evaluation begins.	November 1984
16. Technical Assistance Program completed.	March 1986
17. Final Evaluation.	January 1986

IV. EVALUATION

The Borrower with the collaboration of the Joint Commission and A.I.D. will establish an evaluation program as part of the Project which will cover both the construction and the technical assistance program. The program will include, during the implementation of the Project and at one or more points thereafter: (a) evaluation of progress towards 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.

The Evaluation Program will include the design and construction, the quantitative and qualitative aspects of the water, including the status existing prior to completion of the dam and the results achieved after completion and the socio-economic and environmental effects of the project.

ANNEX II

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 I.

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.

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 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;

(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 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 Foreign Exchange Costs under this Agreement provided:

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

(2) claims thereunder are payable in 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.

(b) Except as A.I.D. may otherwise agree in writing, the Borrower will insure, or caused 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 with wherever practicable United States Government-owned excess personal 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:

(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 off-loaded 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 payments in full of all Principal and accrued interest hereunder.

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 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.