

No. 16821

**UNITED STATES OF AMERICA
and
PAKISTAN**

**Loan Agreement for Tarbela Dam Repairs. Signed at
Islamabad on 22 September 1976**

Authentic text: English.

Registered by the United States of America on 10 July 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
PAKISTAN**

**Accord de prêt relatif aux travaux de réparation du barrage
de Tarbela. Signé à Islamabad le 22 septembre 1976**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 10 juillet 1978.

LOAN AGREEMENT¹ BETWEEN THE PRESIDENT OF PAKISTAN AND THE UNITED STATES OF AMERICA FOR TARBELA DAM REPAIRS

Dated: September 22, 1976

A.I.D. Loan No. 391-P-141F

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¹ Came into force on 22 September 1976 by signature.

AGREEMENT, dated September 22, 1976, between the PRESIDENT OF PAKISTAN (hereinafter called the "Borrower"), and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT (hereinafter called "A.I.D.").

WITNESSETH:

WHEREAS the Borrower and the Government of India have signed the Indus Water Treaty 1960¹ (hereinafter called the "Treaty"), providing *inter alia* for the division and use of the waters of the Indus Basin;

WHEREAS the effective utilization by the Borrower of the water assigned to it by the Treaty will require the construction of a system of works in Pakistan;

WHEREAS the Borrower, the Governments of the Commonwealth of Australia, Canada, the Federal Republic of Germany, New Zealand, the United Kingdom of Great Britain and Northern Ireland and the United States of America and the International Bank for Reconstruction and Development (hereinafter called the "IBRD") have signed the Indus Basin Development Fund Agreement (hereinafter called the "Indus Fund Agreement") and the Indus Basin Development (Supplemental) Agreement, 1964² (hereinafter called the "Supplemental Indus Fund Agreement");

WHEREAS the Indus Fund Agreement and Supplemental Indus Fund Agreement provide for the establishment of an Indus Basin Development Fund (hereinafter called the "Indus Fund"), the purpose of which is to assist in financing the construction by the Borrower of a system of works in Pakistan which will accomplish the replacement of water supplies for irrigation canals in Pakistan which hitherto have been dependent on water supplies from the waters to be assigned by the Treaty to India and which will provide for the development of Indus water uses in Pakistan;

WHEREAS the Tarbela Development Fund Agreement, 1968,³ (hereinafter called the "Tarbela Fund Agreement") provides for the transfer and use of monies from the Indus Basin Development Fund to the Tarbela Development Fund (hereinafter called the "Tarbela Fund"), both funds being administered by the IBRD, to meet the non-rupee costs of the Tarbela Project, an integral part of the Indus Basin system of works;

WHEREAS the Tarbela Development Fund (Supplemental) Agreement, 1975⁴ (hereinafter called the "Tarbela Supplemental Agreement") provides for special contributions to the Tarbela Development Fund for the purpose of meeting the cost of the repairs of the Tarbela dam and such additional remedial works thereto as determined to be required for the prompt and safe completion of the dam ("Project" described in Section 1.02 herein);

WHEREAS the IBRD will serve as Administrator of the Indus Fund and the Tarbela Fund (hereinafter jointly called the "Fund") and will administer the Fund in accordance with the terms of the respective Fund agreements;

WHEREAS in consideration of the foregoing, and in response to calls by the IBRD for loan contribution dollars from A.I.D., Borrower and A.I.D. executed a Loan Agreement in the principal amount of twelve million United States dollars (\$12,000,000), dated May 28, 1969 (hereinafter called the "1969 Loan Agreement"), a Loan Agreement in the principal amount of thirteen million nine hundred and sixty

¹ United Nations, *Treaty Series*, vol. 419, p. 125.

² *Ibid.*, vol. 503, p. 388.

³ *Ibid.*, vol. 637, p. 41.

⁴ *Ibid.*, vol. 988, p. 13.

thousand dollars (\$13,960,000) dated May 27, 1971, and amended November 12, 1971 (hereinafter called the "1971 Loan Agreement"), a Loan Agreement in the principal amount of six million seven hundred and seventy thousand dollars (\$6,770,000) dated March 30, 1972 (hereinafter called the "March 1972 Loan Agreement"), a Loan Agreement in the principal amount of five million five hundred and sixty-one thousand seven hundred and twenty-two dollars (\$5,561,722) dated September 12, 1972 (hereinafter called the "September 1972 Loan Agreement"), a Loan Agreement in the principal amount of six million four hundred thirty-eight thousand two hundred and seventy-eight dollars (\$6,438,278) dated January 10, 1973 (hereinafter called the "January 1973 Loan Agreement"), a Loan Agreement in the principal amount of four million two hundred ninety thousand five hundred and seventy-one dollars (\$4,290,571) dated February 28, 1973, and amended June 29, 1973 (hereinafter called the "February 1973 Loan Agreement"), a Loan Agreement in the principal amount of two million dollars (\$2,000,000) dated February 25, 1974 (hereinafter called the "February 1974 Loan Agreement"), and a Loan Agreement in the principal amount of one hundred ninety thousand four hundred and twenty-nine dollars (199,429) dated April 29, 1975 (hereinafter called the "April 1975 Loan Agreement") providing for disbursement of dollars by A.I.D. to the Fund to be used for the purposes and in the manner specified in the Indus Fund Agreement and Supplemental Indus Fund Agreement;

WHEREAS under the Foreign Assistance and Related Programs Appropriations Act, 1976, the Congress of the United States has appropriated additional monies to A.I.D. to be loaned to the Fund for the purposes of Indus Basin Development and Tarbela Dam Repairs;

WHEREAS the Tarbela Supplemental Agreement calls for a loan contribution in dollars from A.I.D. which exceeds in amount the outstanding balance of funds available under the 1969, 1971, March 1972, September 1972, January 1973, February 1973, February 1974, and April 1975 Loan Agreements, such dollars to be disbursed directly to the Tarbela Fund and to be used for the purposes and in the manner specified in the Tarbela Supplemental Agreement;

WHEREAS the establishment of such a loan, in addition to the 1969, 1971, March 1972, September 1972, January 1973, February 1973, February 1974 and April 1975 Loan Agreements, will assist the development of the Indus Basin through a program of cooperation among South Asian and other nations of the free world in order to promote economic growth and political stability in South Asia and will assist, on the basis of self-help and mutual cooperation, the development of the economic resources and productive capabilities of Pakistan; and

WHEREAS such a loan will be in furtherance of the purpose and policies of the legislation governing A.I.D.:

NOW, THEREFORE, the Borrower and A.I.D. hereby agree as follows:

Article I. THE LOAN

Section 1.01. THE LOAN. A.I.D. agrees to lend to the Borrower, pursuant to Section 302 of the Foreign Assistance Act of 1961, as amended, and pursuant to Section 1.01 of the Tarbela Supplemental Agreement, an amount not to exceed ten million United States dollars (\$10,000,000) (the "Loan") to assist in financing the project described in Section 1.02 of this Agreement.

Section 1.02. DISBURSEMENTS FOR THE PROJECT. Disbursements under this Loan will be made directly to the Fund and will be made in the manner provided in

the Tarbela Fund Agreement and in the amounts and at the times specified by the IBRD in notices made pursuant to the Tarbela Fund Agreement and Tarbela Supplemental Agreement. Such disbursements will be made in order to finance the cost of equipment, supplies, other property and services required to repair the Tarbela dam and perform such remedial works thereto as the Administrator of the Fund had determined as of the date of the Tarbela Supplemental Agreement to be required for the prompt and safe completion of the dam (such repairs and remedial works hereinafter called the "Project"). Such disbursements will be used in accordance with the requirements, standards and procedures established by the Administrator pursuant to the respective Fund agreements.

Article II. LOAN TERMS

Section 2.01. INTEREST. The Borrower shall pay to A.I.D. interest which shall accrue at the rate of two percent (2%) per annum for ten years following the date of first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement, and shall be computed on the basis of a 365-day year. Interest shall be payable semi-annually. The first payment of interest shall 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 2.02. REPAYMENT. The Borrower shall repay to A.I.D. the Principal within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semiannual installments of Principal and interest. The first installment of Principal shall be payable nine and one-half (9 1/2) years after the date on which the first interest payment is due in accordance with Section 2.01. A.I.D. shall provide the Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

Section 2.03. APPLICATION, CURRENCY AND PLACE OF PAYMENT. All payments of interest and Principal hereunder shall be made in United States dollars and shall 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, all such payments shall be made to the Controller, Agency for International Development, Washington, D.C., USA, and shall be deemed made when received by the Office of the Controller.

Section 2.04. PREPAYMENT. Upon payment of all interest and refunds then due, the Borrower may prepay, without penalty, all or any part of the Principal. Any such prepayment shall be applied to the installments of Principal in the inverse order of their maturity.

Section 2.05. RENEGOTIATION OF THE TERMS OF THE LOAN. The Borrower agrees to negotiate with A.I.D., at such time or times as A.I.D. may request, an acceleration of the repayment of the Loan in the event that there is any significant improvement in the internal and external economic and financial position and prospects of the country of the Borrower.

Article III. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.01. CONDITIONS PRECEDENT TO ANY DISBURSEMENT. Prior to the first disbursement or to the issuance of the first Letter of Commitment under the Loan, 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) An opinion of the Minister of Law of Pakistan or of other counsel acceptable to A.I.D. that this Agreement has been duly authorized 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; and
- (b) A statement of the names of the persons holding or acting in the office of the Borrower specified in Section 8.02, and a specimen signature of each person specified in such statement.

Section 3.02. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENTS. If the conditions specified in Section 3.01 shall not have been met within fifteen (15) 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 giving written notice to the Borrower. Upon giving of such notice, this Agreement and all obligations of the parties thereunder shall terminate.

Section 3.03. NOTIFICATION OF MEETING OF CONDITIONS PRECEDENT TO DISBURSEMENT. A.I.D. shall notify the Borrower upon determination by A.I.D. that the conditions precedent to disbursement have been met.

Article IV. SPECIAL COVENANT AND WARRANTY

Section 4.01. RECOVERIES OF PROCEEDS. Any amounts received by the Borrower (or its Agencies) from contractors, suppliers, insurers, sureties or others on account of expenditures incurred as a result of the damage to the Tarbela dam shall be paid by the Borrower to the Tarbela Fund to be credited in accordance with Section 1.08 of the Tarbela Supplemental Agreement.

Article V. GENERAL COVENANTS AND WARRANTIES

Section 5.01. PERFORMANCE OF OBLIGATIONS. The Borrower shall duly and punctually perform all actions and obligations required of it under the Indus Fund Agreement, Supplemental Indus Fund Agreement, Tarbela Fund Agreement and Tarbela Supplemental Agreement. Without limitation of the foregoing, the Borrower, in the procurement of all equipment, material, supplies and services to be financed by the Fund shall comply with all of the requirements, standards and procedures established by the IBRD as Administrator of the Fund.

Section 5.02. TAXATION. This Agreement, the Loan and any evidence of indebtedness issued in connection herewith shall be free from, and the Principal and interest shall be paid without deduction for and be free from, any taxation or fees imposed under the laws in effect within the country of the Borrower. As, and to the extent that (a) any contractor including any consulting firm, financed hereunder, any personnel of such contractor and any property or transactions relating to such contracts, and (b) any commodity procurement transaction financed hereunder are not exempt from identifiable taxes, tariffs, duties and other levies imposed under laws in effect in the country of the Borrower, the Borrower, except as Borrower, contractors and A.I.D. may otherwise agree, shall pay or reimburse the same with funds other than those provided under the Loan.

Section 5.03. UTILIZATION OF GOODS AND SERVICES. (a) Goods and services financed under the Loan shall be used exclusively for the Project, except as A.I.D. may otherwise agree in writing.

(b) Except as A.I.D. may otherwise agree in writing, no goods or services financed under the Loan shall be used to promote or assist any foreign aid project or

activity associated with or financed by any country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section 5.04. DISCLOSURE OF MATERIAL FACTS AND CIRCUMSTANCES. The Borrower represents and warrants that all facts and circumstances that it has disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Loan are accurate and complete, and that it has disclosed to A.I.D. accurately and completely, all facts and circumstances that might materially affect the Project and the discharge of its obligations under this Agreement. The Borrower shall promptly inform A.I.D. of any facts and circumstances that may hereafter arise that might materially affect, or that it is reasonable to believe might materially affect, the Project or the discharge of the Borrower's obligations under this Agreement.

Section 5.05. COMMISSIONS, FEES AND OTHER PAYMENTS. (a) Borrower warrants and covenants that in connection with obtaining the Loan, or taking any action under or with respect to this Agreement, it has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid nor will there be paid or agreed to be paid by any other person or entity, commissions, fees or other payments of any kind, except as regular compensation for bona fide professional, technical or comparable services. The Borrower shall promptly report to A.I.D. any payment or agreements to pay for such bona fide professional, technical or comparable services to which it is a party of which it has knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable by A.I.D., the same shall be adjusted in a manner satisfactory to A.I.D.

(b) The Borrower warrants and covenants that no payments have been or will be received by the Borrower, or any official of the Borrower, in connection with the procurement of goods and services financed hereunder, except fees, taxes or similar payments legally established in the country of the Borrower.

(c) A.I.D. from time to time may issue binding instructions concerning the eligibility for financing hereunder of commissions, including brokerage commissions and commissions paid to sales agents or suppliers, and allowances to purchasing agents or importers. Borrower agrees to comply with such instructions, to promptly report to A.I.D. any payment or allowance, or agreement to pay or permit any commissions or allowances, covered by such instructions of which it has knowledge and to reimburse A.I.D. on request, in the amount of any payment or allowance made or permitted contrary to such instructions; provided, however, that this paragraph shall apply only to commissions or allowances arising from contracts or orders made or placed after the receipt by Borrower of notice of such instructions.

Section 5.06. MAINTENANCE AND AUDIT OF RECORDS. The Borrower shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and to this Agreement. Such books and records shall, without limitation, be adequate to show:

- (a) The receipt and use made of goods and services acquired with funds disbursed pursuant to this Agreement;
- (b) The nature and extent of solicitations of prospective suppliers or goods and services acquired;
- (c) The basis of the award of contracts and orders to successful bidders; and
- (d) The progress of the Project.

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

Section 5.07. REPORTS. The Borrower shall furnish to A.I.D. such information and reports relating to the Loan and to the Project as A.I.D. may request.

Section 5.08. INSPECTIONS. The authorized representatives of A.I.D. shall have the right at all reasonable times to inspect the Project, the utilization of all goods and services financed under the Loan, and the Borrower's books, records and other documents relating to the Project and the Loan. The Borrower shall cooperate with A.I.D. to facilitate such inspections and shall permit representatives of A.I.D. to visit any part of the country of the Borrower for any purpose relating to the Loan.

Article VI. PROCUREMENT

Section 6.01. GOODS AND SERVICES NOT FINANCED UNDER LOAN. Goods and services procured for the Project but not financed under the Loan shall have their source and origin in countries included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

Article VII. CANCELLATION AND SUSPENSION

Section 7.01. EVENTS OF DEFAULT; ACCELERATION. If any one or more of the following events ("Events of Default") shall occur:

- (a) The Borrower shall have failed to pay when due any interest or installment of Principal required under this Agreement;
- (b) The Borrower shall have failed to comply with any other provision of this Agreement;
- (c) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and A.I.D. or any of its predecessor agencies;

then A.I.D. may, at its option, give to the Borrower notice that all or any part of the unrepaid Principal shall be due and payable sixty (60) days thereafter, and, unless the Event of Default is cured within such sixty days:

- (i) Such unrepaid Principal and any accrued interest hereunder shall be due and payable immediately, and
- (ii) The amount of any further disbursements made under then outstanding irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

Section 7.02. SUSPENSION OF DISBURSEMENTS. In the event that at any time:

- (a) An Event of Default has occurred;
- (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 would be in violation of the legislation governing A.I.D.;
- (d) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement or any other agreement between the Borrower or any of its

agencies and the Government of the United States of America or any of its agencies;

then A.I.D. may at its option:

- (i) Suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit, in which event A.I.D. shall give notice to the Borrower promptly thereafter;
- (ii) Decline to make disbursements other than under outstanding commitment documents;
- (iii) Decline to issue additional commitment documents, and
- (iv) At A.I.D.'s expense, direct that title of goods financed under the Loan shall be transferred to A.I.D. if the goods are from a source outside the country of the Borrower, are in a deliverable state and have not been off-loaded in ports of entry of the country of the Borrower. Any disbursement made or to be made under the Loan with respect to such transferred goods shall be deducted from Principal.

Section 7.03. CANCELLATION BY A.I.D. Following any suspension of disbursement pursuant to Section 7.02, if the cause or causes for such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to irrevocable Letters of Credit.

Section 7.04. CONTINUED EFFECTIVENESS OF AGREEMENT. Notwithstanding any cancellation, suspension of disbursement or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of all Principal and any accrued interest hereunder.

Section 7.05. REFUNDS. (a) In the case of any disbursement not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement not made or used in accordance with the terms of this Agreement, A.I.D., notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement, may require the Borrower to refund such amount in United States dollars to A.I.D. within ninety days after receipt of a request therefor. Such amount shall be made available first for the cost of goods and services procured for the Project hereunder, to the extent justified; the remainder, if any, shall be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursement under the Loan shall continue for five years following the date of such disbursement.

(b) In the event that A.I.D. receives a refund from any contractor, supplier, or banking institution, or from any other third party connected with the Loan, with respect to goods or services financed under the Loan, and such refund relates to an unreasonable price for goods or services, or goods that did not conform with specifications, or to services that were inadequate, A.I.D. shall first make such refund available for the cost of goods and services procured for the Project hereunder, to the extent justified, the remainder to be applied to the installments of Principal in the inverse order of their maturity, and the amount of the Loan shall be reduced by the amount of such remainder.

Section 7.06. EXPENSES OF COLLECTION. All reasonable costs incurred by A.I.D., other than salaries of its staff, in connection with the collection of any refund or in connection with amount due A.I.D. by reason of the occurrence of any of the events specified in Section 7.02 may be charged to the Borrower and reimbursed to A.I.D. in such manner as A.I.D. may specify.

Section 7.07. NON-WAIVER OF REMEDIES. No delay in exercising or omission to exercise any right, power, or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any such rights, powers, or remedies.

Article VIII. MISCELLANEOUS

Section 8.01. COMMUNICATIONS. Any notice, request, document or other communication given, made or sent by the Borrower or A.I.D. pursuant to this Agreement shall be in writing or by telegram, cable or radiogram and shall be deemed to have been duly given, made or sent to the party to which it is addressed when it shall be delivered to such party by hand or by mail, telegram, cable or radiogram at the following addresses:

[To Borrower:]

Mail Address: Secretary to the Government of Pakistan
Economic Affairs Division
Ministry of Finance, Planning and Economic Affairs
Islamabad, Pakistan

Cable Address: ECONOMIC
Islamabad

To A.I.D.:

Mail Address: United States Agency for International Development
Islamabad, Pakistan

Cable Address: USAIDPAK
Islamabad

Other addresses may be substituted for the above upon the giving of notice. All notices, requests, communications and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

Section 8.02. REPRESENTATIVES. For all purposes relative to this Agreement, the Borrower will be represented by the individual holding or acting in the offices of the Secretary, Joint Secretary and Deputy Secretary, Economic Affairs Division and A.I.D. will be represented by the individual holding or acting in the office of Director, US AID Mission to Pakistan. Such individuals shall have the authority to designate by written notice additional representatives. In the event of any replacement or other designation of a representative hereunder, Borrower shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. Until receipt by A.I.D. of written notice of revocation of the authority of any of the duly authorized representatives of the Borrower designated pursuant to this Section, it may accept the signature of any such representative or representatives on any instrument as conclusive evidence that any action effected by such instrument is duly authorized.

Section 8.03. IMPLEMENTATION LETTERS. A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Agreement.

Section 8.04. PROMISSORY NOTES. At such time or times as A.I.D. may request, the Borrower shall issue promissory notes or such other evidence of indebtedness with respect to the Loan, in such form, containing such terms and supported by such legal opinions as A.I.D. may reasonably request.

Section 8.05. TERMINATION UPON FULL PAYMENT. Upon payment in full of the Principal and of any accrued interest, this Agreement and all obligations of the Borrower and A.I.D. under this Loan Agreement shall terminate.

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

Government of Pakistan:

By: [Signed]

Name: AFTAB AHMAD KHAN

Title: Secretary, Economic Affairs Division

United States of America:

By: [Signed]

Name: HENRY A. BYROADE

Title: The Ambassador of the United States of America
