

No. 19913

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**UNITED STATES OF AMERICA**  
**and**  
**JORDAN**

**Project Loan Agreement concerning a potash plant (with annexes). Signed at Amman on 28 August 1978**

**First Amendment to the above-mentioned Agreement. Signed at Amman on 25 January 1979**

*Authentic texts: English.*

*Registered by the United States of America on 10 June 1981.*

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**ÉTATS-UNIS D'AMÉRIQUE**  
**et**  
**JORDANIE**

**Accord de prêt pour un projet relatif à une usine de potasse (avec annexes). Signé à Amman le 28 août 1978**

**Première Modification à l'Accord susmentionné. Signée à Amman le 25 janvier 1979**

*Textes authentiques : anglais.*

*Enregistrés par les États-Unis d'Amérique le 10 juin 1981.*

# PROJECT LOAN AGREEMENT<sup>1</sup> BETWEEN THE HASHEMITE KINGDOM OF JORDAN AND THE UNITED STATES OF AMERICA FOR POTASH PLANT

Date: August 28, 1978

A.I.D. Loan Number 278-K-021  
Project Number 278-0210

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A.I.D. Project No. 278-0210

PROJECT LOAN AGREEMENT dated August 28, 1978, between the HASHEMITE KINGDOM OF JORDAN ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

<sup>1</sup> Came into force on 28 August 1978 by signature.

### 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 the construction by the Arab Potash Company Ltd. ("APC") of production facilities for 1.2 million tons of potash (potassium chloride) of standard fertilizer grade (containing 60% to 62% K<sub>2</sub>O) annually, including the construction of storage facilities, a steam plant, fresh water supply systems and a township and the furnishing of a truck fleet; the project also includes technical assistance, including engineering and construction supervision, accounting and financial management assistance and plant operation and management training. Annex 1, attached, amplifies the above definition of the Project.

### 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 five million United States ("U.S.") dollars (\$5,000,000) ("Loan") to finance the foreign exchange costs of design engineering services. The aggregate amount of disbursements under the Loan is referred to as "Principal."

(b) An incremental loan of \$33,000,000 is expected to be made for the Project subject to the availability of funds to A.I.D. for this purpose. Such incremental loan is expected to be made by amendment to this agreement.

(c) The Loan and any incremental loan for the Project will be repaid by the Borrower to the Arab Potash Company.

The Loan may be used only to finance foreign exchange costs, as defined in Section 7.1, 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 resources provided by Borrower for the Project will be not less than the equivalent of U.S. \$100 million consisting of equity contributions to APC and deferrals of interest differential.

*Section 3.3. ELIGIBILITY DATE.* Notwithstanding the provisions in C.2 of Standard Provisions Annex, disbursements made or to be made under the contract for design engineering services dated November 5, 1977 are eligible for financing under the Loan.

*Section 3.4. PROJECT ASSISTANCE COMPLETION DATE.* (a) The "Project Assistance Completion Date" (PACD), which is March 31, 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 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 two percent (2%) per annum for ten (10) years following the date of the 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 will accrue from the date (as defined in Section 8.3) of each respective disbursement, and will be payable semiannually. 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 forty (40) years from the date of the first disbursement of the Loan in sixty-one (61) approximately equal semiannual installments of Principal and interest. The first installment of Principal will 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 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 to their maturity.

*Section 4.5. RENEGOTIATION OF TERMS.* (a) The Borrower and A.I.D. agree to negotiate, at such 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 Jordan, which enable 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 the National Planning Council in Amman, Jordan.

*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 OF THE LOAN*

*Section 5.1. FIRST DISBURSEMENT.* Prior to any disbursement under the Loan or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made under the Loan, 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) A firm financing plan for the Project including but not limited to a confirmation of the amounts to be provided by each participating donor institution;
- (d) A legal opinion from both APC and the Borrower that APC has undertaken all such action as required to permit the increase of the share capital of APC to Jordanian Dinar 63 million;
- (e) A copy of an executed and delivered Reloan Agreement between the Borrower and APC by which the Borrower agrees to make available to APC the proceeds of the Loan for the purposes stated in Section 2.1 and Annex 1 herein.

*Section 5.2. ADDITIONAL DISBURSEMENT.* Prior to any disbursement under an incremental loan or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made for any amount under an incremental loan,

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) Executed and delivered agreements by the Borrower and/or APC with all lenders other than A.I.D. and commercial lenders in an aggregate amount equivalent to not less than \$142,000,000;
- (b) Evidence that substantially all the shares to be issued to bring APC's capital to not less than Jordanian Dinar 63 million have been subscribed to;
- (c) Copies of executed contracts with firms acceptable to A.I.D. for the supply of technical advisory and of accounting and financial services;
- (d) Evidence that a firm acceptable to A.I.D. has been selected with which APC will enter into a contract for supplying operating management and training assistance;
- (e) A plan by the Borrower acceptable to A.I.D. for financing, constructing and operating potash storage and loading facilities at the Port of Aqaba;
- (f) A written undertaking by the Borrower and the Jordan Electricity Authority (JEA) to construct transmission and related power supply facilities and all other facilities necessary to furnish an average of 10MW and a maximum of 17MW of electricity to APC's potash plant beginning March 1, 1981 and to take whatever other measures are necessary to provide the plant with adequate and timely supply of power to enable APC to operate its facilities efficiently; and
- (g) Evidence that APC has appointed a qualified marketing executive.

*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 to in writing, A.I.D., at its option, may terminate this Agreement by written notice to 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. DEBT/EQUITY RATIO.* Borrower agrees that APC's debt/equity ratio shall not be higher than 60/40 during project execution nor higher than 55/45 after project completion.

*Section 6.2. LIMITATION ON PAYMENT OF DIVIDENDS AND ON EXPENDITURES.* Unless otherwise agreed by A.I.D., until APC's plant included in the Project shall have produced an aggregate of 1,080,000 metric tons of fertilizer grade potash equivalent to 90% of rated capacity during a period of twelve

consecutive months or until December 31, 1985, whichever is the later, the Borrower shall cause APC not to:

- (i) Pay any dividend or make any other distribution with respect to its capital shares (other than dividends or distributions payable solely in such capital shares) or purchase, redeem or otherwise acquire, directly or indirectly for any consideration, any of such capital shares or prepay part, or all, of the principal amount outstanding of any debt of APC, or make or incur any financial commitment to any of its subsidiaries, if any;
- (ii) Make any expenditures, or commitments for expenditures, for fixed or capital assets (including investments in or loans to other business entities) except expenditures, or commitments for expenditures, on account of:
  - (A) Repair, maintenance or replacement of assets;
  - (B) Investments in short-term marketable securities solely for the purpose of temporarily employing its idle funds;
  - (C) Expenditures, or commitments for expenditures, required for the carrying out of the Project; and
  - (D) Other expenditures, or commitments for expenditures, not exceeding in the aggregate the equivalent of \$1,000,000 in any fiscal year.

*Section 6.3. INDEBTEDNESS.* Except as A.I.D. shall otherwise agree, Borrower shall cause APC not to incur any indebtedness, other than for money borrowed for financing the Project:

- (i) If, after the incurring of any such indebtedness, APC's ratio of indebtedness incurred and outstanding to equity would exceed 55/45; and
- (ii) If after the incurrence thereof and including the indebtedness to be incurred, APC's projected debt service coverage ratio would fall below 1.5:1 for any fiscal year after the PACD.

*Section 6.4. PORT FACILITIES.* Unless otherwise agreed by A.I.D. in writing, the Borrower shall construct or cause to be constructed facilities for the storage of 150,000 tons of bulk potash, screening and bagging facilities, storage of bagged potash and for the loading for overseas shipment of potash. Such facilities shall be completed by December 31, 1981.

*Section 6.5. ROAD MAINTENANCE.* Borrower agrees to cause the Safi-Aqaba highway and all facilities and bridges related thereto to be adequately maintained and to cause all necessary repairs thereof to be made, all in accordance with sound engineering practices, and to provide, promptly as needed, the funds, facilities, equipment services and other resources required for the purpose.

*Section 6.6. MANAGEMENT AND TRAINING.* Unless otherwise agreed by A.I.D., the Borrower shall cause APC to undertake:

- (i) To contract by March 31, 1979 with a firm acceptable to A.I.D. for assistance in the management of the potash production facilities and for training of APC's technical management and operating personnel; and
- (ii) To continue employing advisors in production management until its ability to operate the plant successfully without such advisors can be demonstrated.

*Section 6.7. CREDIT FACILITIES AND SOURCES.* Unless otherwise agreed by A.I.D., Borrower agrees to cause APC to submit to A.I.D. by June 30, 1979,

an analysis of credit facilities needed to finance its sales in accordance with its marketing plan, together with an analysis of credit sources which may be needed, in addition to its own working capital, to finance such sales.

*Section 6.8. COMPACTING AND OTHER FACILITIES.* Unless otherwise agreed by A.I.D., Borrower agrees to cause APC to submit to A.I.D. by March 31, 1979, its analysis of the advisability of installing compacting facilities and facilities for the production of potassium sulphate, together with relevant cost estimates and preliminary construction schedules in the event that installation of such facilities appears warranted.

*Section 6.9. FRESH WATER RESOURCES.* Borrower agrees to cause APC to continue its consultations with the Jordan Valley Authority (the "Authority") to ensure that plans for supplying the plant and township with fresh water are consistent with the Authority's plans for the development of water resources in the project area.

#### *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 countries included in Code 941 of 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.

#### *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;

- (i) 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 in Borrower's behalf for the Project; or
- (ii) 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. 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 8.3. DATE OF DISBURSEMENT.* Disbursements by A.I.D. will be deemed to occur 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.

#### *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 Borrower pursuant to the agreement between it and the United States of America on the subject of investment guaranties, and no further approval by Jordan will be required to permit the United States to issue investment guaranties under the agreement covering a contractor's investment in that project.

*Section 9.2. COMMUNICATIONS.* (a) 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:

Mail address:

Alternate address for telegrams:

To A.I.D.:

Mail address:

Alternate address for telegrams:

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.

(b) To expedite communication on details of project implementation, the Borrower authorizes A.I.D. and APC to communicate directly on all such matters; A.I.D. will furnish copies of written communications to the Borrower.

*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 President, National Planning Council and A.I.D. will be represented by the individual holding or acting in the Office of Mission Director, each of whom, by written notice, may 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 authorized 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 Borrower and the United States of America, each acting through its duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

The Hashemite Kingdom of Jordan

[Signed]

By: Dr. HANNA ODEH

Title: President, National Planning Council

United States of America

[Signed]

By: ROSCOE S. SUDDARTH

Title: Chargé d'affaires a.i.

#### ANNEX 1. PROJECT DESCRIPTION

1. *Objective.* The objective at which the Project aims is a substantial increase in foreign exchange earnings by the Hashemite Kingdom of Jordan. Such increased earnings are expected to result from the export of approximately 1.2 million tons of fertilizer grade potash annually (potassium chloride containing 60 to 62 percent of  $K_2O$ ).

2. *Project Components.* The Project, located near Safi at the Southern end of the Dead Sea, has the following physical facilities and elements of technical assistance as components:

- (a) Construction of a solar evaporation system, consisting (i) of about 58 kilometers of dikes enclosing evaporation ponds which cover an area of approximately 70 square kilometers; and (ii) the pumps and related equipment and facilities necessary to transfer brine from the Dead Sea into the evaporation ponds and between those ponds;
- (b) A carnallite harvesting system designed to remove carnallite from the bottom of the carnallite ponds and to transport it to the processing plant (refinery);
- (c) Construction of a refinery based on the hot-leach/crystallization process, together with all the required equipment, to produce annually approximately 1.2 million tons of fertilizer grade potash, as defined in paragraph 1, above, from the harvested carnallite;
- (d) Construction and equipment of water supply systems to provide the refinery and the township described below with process and potable water;
- (e) Steam and power generating facilities to supply the refinery with the required process steam and to generate about 15 megawatts of electric power;
- (f) Construction of a township consisting of about 380 housing units and the required roads, water and power supply facilities and other required infrastructure;
- (g) A fleet of trucks of a size and design necessary to transport the output of the refinery by road to the Port of Aqaba;
- (h) Truck loading facilities at the site of the refinery designed to handle the output of the refinery and storage facilities for about 60,000 tons of potash;

- (i) All engineering services required to design all of the facilities enumerated above and to supervise their construction, the installation of all equipment and the testing and start-up of all the production and ancillary facilities;
- (j) Technical advisory services needed to assist APC in the management of the design and construction activities;
- (k) Financial advisory services needed to assist APC in the establishment of the required systems and procedures for accounting and financial control and reporting;
- (l) Operations management assistance required to assist APC in the start-up and operation of the production and related facilities and in training its personnel for the management and operation of such facilities.

3. *Cost Estimate and Financial Arrangements.* (a) The total cost of the Project as described in paragraph 2, above, is estimated at approximately \$429 million, including contingencies, escalation and interest during construction.

(b) The cost of the Project is expected to be financed as follows:

	<i>\$Millions</i>	<i>Percent of Total</i>
APC Equity .....	193	45
Debt .....	218	51
APC Cash Generations .....	<u>18</u>	<u>4</u>
TOTAL	\$429	100

(c) Debt financing, including the expected final amount of this loan, is expected to be provided from the following sources:

	<i>\$Millions</i>
AID .....	38
IBRD .....	35
Kuwait Fund .....	35
Other Arab Sources .....	72
Commercial Institutions .....	20
Government of Jordan (deferral of interest differential) .....	<u>18</u>
TOTAL	\$218

4. *Project Schedule.* (a) The following are estimated dates for the completion of construction for major elements of the Project:

- Solar Evaporation System: March 1982;
- Power Plant: July 1981;
- Refinery: December 1981;
- Township: June 1980.

(b) The following are estimated dates for major events during start-up and initial operations:

- (i) Deposition of Carnallite begins
  - in pan C-1: August 1981;
  - in pan C-2: August 1982;
  - in pan C-3: August 1983;
- (ii) Refinery start-up: July 1982;
- (iii) Production tests
  - 75% of capacity: January 1983;
  - 100% of capacity: October 1983;

## (iv) Production targets

	<i>Percentage of Plant Capacity</i>
August 1982 to July 1983 .....	20
August 1983 to July 1984 .....	56
August 1984 to July 1985 .....	88
Thereafter .....	100

## [ANNEX 2]. 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.

*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. (See Handbook 18, Appendix D.)

*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 or 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 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 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 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. GOVERNMENT-OWNED EXCESS PROPERTY.* The Borrower agrees that 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 or 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.

*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 constructed as a waiver of such right or remedy.

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# FIRST AMENDMENT<sup>1</sup> TO LOAN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE HASHEMITE KINGDOM OF JORDAN FOR POTASH PLANT<sup>2</sup>

Date: January 25, 1979

A.I.D. Loan Number 278-K-021A  
A.I.D. Project Number 278-0210

Date: January 25, 1979

*Between:* The Hashemite Kingdom of Jordan ("Borrower") and the United States of America, acting through the Agency for International Development ("A.I.D.")

WHEREAS, on August 28, 1978, the Hashemite Kingdom of Jordan and A.I.D. entered into an Agreement known as A.I.D. Loan Number 278-K-021 ("the Agreement")<sup>2</sup> providing for a loan of five million United States dollars (\$5,000,000) ("the Loan") to assist the Hashemite Kingdom of Jordan to meet project costs of carrying out the construction by the Arab Potash Company Ltd. ("APC") of production facilities for 1.2 million tons of potash annually.

WHEREAS, the Parties hereto now wish to amend that Loan Agreement to provide the additional amount of thirty-three million United States dollars (\$33,000,000) for a total loan amount of thirty-eight million United States dollars (\$38,000,000).

NOW, THEREFORE, the Parties do hereby agree that:

1. The Loan Agreement is amended as follows:

(a) Section 3.1 (a) is amended by deleting the words "five million United States ("U.S.") dollars (\$5,000,000) ("Loan") to finance the foreign exchange costs of design engineering services," and substituting therefor the words "thirty-eight million United States ("U.S.") dollars (\$38,000,000) ("Loan") to finance the foreign exchange costs of the Project."

(b) The following sentence is hereby added to Section 3.1 (a) after the word "Principal":

"Specific reference to the original loan shall be to 'the \$5,000,000 Loan' and specific reference to the amount of the loan provided by this First Amendment shall be to 'the amount in Excess of \$5 million'."

(c) Section 3.1 (b) is amended by deleting the paragraph in its entirety and substituting therefor as follows:

"Section 3.1 (b). The entire proceeds of the Loan shall be relented by the Borrower to the Arab Potash Company. The Loan may be used only to

<sup>1</sup> Came into force on 25 January 1979 by signature.

<sup>2</sup> See p. 356 of this volume.

finance foreign exchange costs, as defined in Section 7.1, of goods and services required for the Project.”

(d) Section 3.1 (c) is deleted in its entirety.

(e) Section 3.3 is amended by deleting the paragraph in its entirety and substituting therefor the following:

“Section 3.3. ELIGIBILITY DATES. Notwithstanding the provisions of C.2 of the Project Loan Standard Provisions Annex, disbursements made or to be made under the contract for design engineering services dated November 5, 1977 (the “Contract”) are eligible for financing under the Loan. Disbursements made for the Project other than under the Contract shall be made in accordance with the provisions of C.2 of the Project Loan Standard Provisions Annex.”

(f) Section 5.1 is amended by deleting the first full paragraph beginning with the word “Section” and ending with the word “A.I.D.” and substituting the following:

“Section 5.1. DISBURSEMENT FOR \$5,000,000 LOAN. Prior to any disbursement under the \$5,000,000 Loan, or to the issuance of documentation pursuant to which disbursement will be made under the \$5,000,000 Loan, 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.”

(g) Section 5.2 is amended by deleting the first full paragraph beginning with the word “Section” and ending with the word “A.I.D.” and substituting the following:

“Section 5.2. DISBURSEMENT OF ANY AMOUNT IN EXCESS OF \$5 MILLION. Prior to any disbursement for the Project for any amount in excess of \$5 million or to issuance by A.I.D. of documentation pursuant to which disbursement for the Project will be made for any amount in excess of \$5 million, 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.”

(h) Section 5.2. is amended by adding new subparagraph (h) as follows:

“(h) An opinion of counsel acceptable to A.I.D. that this First Amendment to the Loan 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.”

(i) Section 5.2. is amended by adding new subparagraph (i) as follows:

“(i) Confirmation by the Borrower that results of tests carried out to the date of this First Amendment confirm that the design criteria used for establishing the quantity of carnallite deposition are adequate to meet the proposed production of 1.2 million metric tons of potash annually.”

2. Except as specifically amended hereby, the Loan Agreement dated August 28, 1978 between Borrower and A.I.D. shall remain in full force and effect.

IN WITNESS WHEREOF, the Hashemite Kingdom of Jordan and the United States of America, each acting through its duly authorized representative, have caused this First Amendment to the Loan Agreement to be signed in their names and delivered as of the date and year first above written.

Hashemite Kingdom of Jordan:

*By:* [Signed]

HANNA ODEH

*Title:* President, National Planning Council

United States of America:

*By:* [Signed]

NICHOLAS A. VELIOTES

*Title:* Ambassador

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