

PD-ABB-939

A.I.D. Program No. 391-0492
Dollar Appropriation No. 72-110/11037
Budget Plan Code: QES0-90-37391-KG-39
Project Agreement No. 90-21

FIRST AMENDATORY AGREEMENT

TO

PROGRAM GRANT AGREEMENT

BETWEEN

THE PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

AND THE

UNITED STATES OF AMERICA

FOR

AGRICULTURAL SECTOR SUPPORT PROGRAM

DATED: August 30, 1990

A.I.D. Program No. 391-0492
Dollar Appropriation No. 72-110/11037
Budget Plan Code: QESO-90-37391-KG-39
Project Agreement No. 90-21

FIRST AMENDATORY AGREEMENT TO PROGRAM GRANT AGREEMENT FOR THE
AGRICULTURAL SECTOR SUPPORT PROGRAM

Dated: August 30, 1990

Between

The President of the Islamic Republic of Pakistan (hereinafter referred to as the "Grantee")

and

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

Article 1: Purpose of Amendment

The purpose of this First Amendment is to set out the understandings of the parties named above ("Parties") with respect to the undertaking by the Grantee of the Agricultural Sector Support Program as described in: (1) the Project Grant Agreement for the Project Component of the Agricultural Sector Support Program, dated September 24, 1987 and subsequent Amendments dated September 29, 1987, April 16, 1989, September 27, 1989 and June 10, 1990; (2) the Program Grant Agreement for the Sectoral Assistance Component of the Agricultural Sector Support Program, dated August 4, 1988; (3) the Commodity Import Grant Agreement

for the Agricultural Sector Support Program, dated August 4, 1988 and its subsequent Amendments dated April 16, 1989 and April 17, 1989, and (4) the Program Grant Agreement for the Agricultural Sector Support Program, dated September 27, 1989 and with respect to the financing of the Program by the Parties.

This First Ammendatory Agreement to Program Grant Agreement No. 391-0492 dated September 27, 1989, is hereby entered into between the parties above named to: (a) grant the Grantee an additional Twenty Five Million United States ("U.S.") dollars (\$25,000,000) under this Program, (b) add U.S. FY90 Benchmarks, (c) add new Articles for Conditions Precedent, Special Covenants and Disbursement Procedures for dollar utilization of the Sector Assistance Grant, and (d) modify Annex 1 Page 1 consistent therewith.

Article 2: Financing

Section 3.1 of the original Program Agreement is hereby deleted and the following substituted in its stead:

"SECTION 3.1. The Grant

To assist the Grantee to meet the costs of carrying out the Program, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Grantee, under the terms of this First Ammendatory Agreement, an additional Twenty-Five Million United States ("U.S.") Dollars (\$25,000,000). The total Grant funds available for the

Program, comprising the original Agreement, this First Amendatory Agreement and funds separately obligated under the Agreements referred to in Article 1 of this Amendatory Agreement, are Two Hundred Thirty Million U.S. Dollars (\$230,000,000) ("Grant").

The Grant may be used to finance foreign exchange costs and local currency costs of goods and services required for the Program in accordance with procedures prescribed by A.I.D.

Any disbursement by A.I.D. hereunder, as between Program components, shall be at the sole discretion of A.I.D. in accordance with the Agreements specified in Article 1, above."

Article 3: New Article 4A:

A new Article 4A is hereby added after Article 4 of the original Program Grant Agreement.

"Article 4A: Grantee Agreement to Policy Benchmarks

Except as A.I.D. may otherwise agree in writing, prior to any disbursement under this Amendatory Agreement for purposes of carrying out the Sector Assistance Program, the Grantee agrees to accomplish a set of policy benchmarks, each by the date indicated, as described in Annex 2A of this First Amendatory Agreement."

Article 4: New Article 6:

The following new Article 6 is hereby added after Article 5 of the original Program Agreement for new Conditions Precedent to Disbursement of Dollar Sector Grant.

"Article 6: Conditions Precedent

SECTION 6.1 Conditions Precedent to Disbursement under the Sector Assistance Grant

Except as A.I.D. may otherwise agree in writing, prior to the disbursement of all or any part of the Sector Grant under the First Amendatory Agreement or to the issuance by A.I.D. of documentation pursuant to which such disbursement will be made, the Grantee shall furnish or have furnished to A.I.D., in form and substance satisfactory to A.I.D.:

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

(b) a list of specified U.S. debts to be repaid with the proceeds of the Sector Grant together with a schedule of disbursement including amounts and dates;

(c) a designation of the bank and the dollar account, with name and number, into which the U.S. dollar Sector Assistance Grant is to be deposited by A.I.D., together with the Grantee's statement that such account is established and will be maintained in the manner required by Sections 7.1, 7.3, and 7.4 of this Amendatory Agreement. Such account is referred to herein as the "Separate Account" which is the last non-commingled separate account where funds remain prior to disbursement for eligible uses and/or transactions by the Grantee.

(d) the name of the bank and the account name and number for each interim account through which the Sector Assistance dollars may pass before reaching the Separate Account (and where transfer process to the Separate Account will take longer than two business days) together with the Grantee's statement that such account(s) is/are established and will be maintained in the manner required by Section 7.2 of this Amendatory Agreement.

SECTION 6.2 Terminal Dates for Conditions Precedent

If the conditions specified in Section 6.1 have not been met within sixty (60) days from the date of the First Amendatory 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 the Grantee.

SECTION 6.3. Notification

When A.I.D. has determined that the Conditions Precedent specified in Section 6.1 have been met, A.I.D. will promptly so notify the Grantee.

SECTION 6.4. Disbursement of Sector Assistance Grant

Upon satisfaction of the Conditions Precedent to Disbursement set forth in Section 6.1, upon accomplishment of FY 89 policy benchmarks as set forth in the Project Implementation Letter No. 13 dated October 19, 1989 to A.I.D.'s satisfaction, and upon the written request of the Grantee, A.I.D. will deposit the full dollar Sector Grant amount for Fiscal Year 1990 in the Separate Account designated by the Grantee pursuant to Section 6.1."

Article 5: New Article 7

The following new Article 7 for Special Covenants for Utilization of Dollar Sector Assistance Grant is hereby added to the original Program Grant Agreement.

"Article 7: Special Covenants for Utilization of Sector Assistance Grant

SECTION 7.1. Accounting for Utilization of Separate Account Dollars

The Grantee covenants and agrees that the Separate Account, established pursuant to Section 6.1, will be used exclusively for the

receipt of the Sector Assistance dollars from A.I.D. and such proceeds will not be commingled with any other funds from any source. The non-commingled Separate Account shall be an interest bearing account, and any interest so earned on the dollars while they are in the Separate Account shall be programmed as principal (i.e., the Grant) received under the terms of this Amendment. Except as A.I.D. otherwise agrees in writing, the Grantee covenants and agrees to use all dollars in the Separate Account exclusively for the purposes set forth in Section 7.4, below. The Grantee further covenants that no dollars shall be disbursed from the account without prior A.I.D. approval.

SECTION 7.2. Accounting for Sector Assistance Dollars during the Transfer Process

The Grantee covenants that the Sector Assistance dollars, after being disbursed by A.I.D., will not be commingled before they reach the Separate Account nor be accessed in the interim account(s) for any purpose except for their ongoing transfer to the Separate Account. If Sector Assistance dollars require more than two business days to reach the Separate Account, then both parties must ensure that interest is being earned on the balance of the disbursement and that this interest is being transferred with the principal to the final Separate Account.

SECTION 7.3 Reports, Records, Inspections, Audit of Dollar Separate Account

(a) The Grantee covenants and agrees that the Agency designated by the GOP to be responsible for managing the dollar Separate Account will maintain

or cause to be maintained, in accordance with generally accepted accounting principles and practices, consistently applied, books and records relating to the dollar Separate Account adequate to show, without limitation, the receipt and use of the dollar Grant and to enable A.I.D. to verify all reports submitted by the managing Agency to A.I.D. concerning deposits to, and withdrawals and disposition of dollars from the Separate Account. The managing Agency will provide reports, through the Economic Affairs Division (EAD) on the status of the Separate Account activity to A.I.D., with appropriate supporting documents to include at least copies of applicable ledgers and bank statement of accounts. Such reports should be provided on a calendar quarter basis.

(b) the Grantee covenants that the Separate Account shall be audited at least once a year in accordance with the procedures agreed to by the parties in Project Implementation Letters; and further agrees to provide representatives of A.I.D., at all reasonable times, all records and supporting documentation with regard to the dollar Separate Account, to examine and verify compliance with this Agreement.

SECTION 7.4. Purposes for Which Dollar Grant May Be Utilized

(a) **Planned Uses of the Dollars:** The Grantee agrees that the dollar Sector Assistance Grants shall be used to repay U.S. debt.

(b) **Prohibited Uses:** The dollar Sector Grant may not be used for financing military or para-military requirements of any kind, including the procurement of training, commodities or services for such purposes. The

Grant may not be used for financing nuclear technology related activities of any kind, including training, commodities or services for such purposes; support of any kind to police or law enforcement activities, abortion commodities or uses; luxury goods; commodities or activities of communist countries; or servicing of military sales debts of any kind.

SECTION 7.5.: Refund of and Redeposit to the Separate Account Funds

(a) Refund of Dollar Grants: In the case of any utilization of the dollar sector Grant which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. dollars to A.I.D. within sixty (60) days after receipt of a request therefor. The right to request a refund will continue, notwithstanding any other provision of this Agreement, for three (3) years from the date of the disbursement by A.I.D. of any Sector Grant under this Agreement.

(b) Redeposit of Dollars: In the event that the dollars in the Separate Account are disbursed by the Grantee in a manner inconsistent with the procedures established in this Agreement, or are disbursed by the Grantee for ineligible uses and/or transactions, A.I.D. may, by written notice to the Grantee, require that dollars equivalent to the amount so disbursed be redeposited by the Grantee into the Separate Account

established as a result of Section 6.1 above, and any funds so redeposited shall be reprogrammed and disbursed in accordance with all of the procedures set forth in this Agreement and subsequent amendments thereto."

Article 6: Annex 1 - Page 1

Annex 1 - Page 1 of the original Program Grant Agreement is hereby deleted and the attached Annex 1 - Page 1 (Amendment 1) substituted in its stead.

Article 7: Other Terms and Conditions

Except as amended hereby, all other terms and conditions of the original Program Grant Agreement shall remain in full force and effect.

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

FOR AND ON BEHALF OF THE
GOVERNMENT OF PAKISTAN

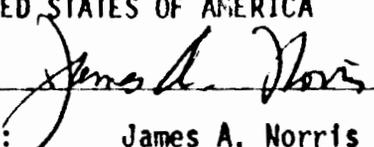
BY: 

NAME: Saad Ashraf

TITLE: Joint Secretary

Economic Affairs Division

FOR AND ON BEHALF OF THE
UNITED STATES OF AMERICA

BY: 

NAME: James A. Norris

TITLE: Mission Director

USAID/Pakistan

ILLUSTRATIVE

SUMMARY OF COSTS FOR ASSP
BY EXPENSE CATEGORY AND SOURCE OF FUNDING
 (000s)

Annex 1
 Page 1 (Amendment 1)

| Project Component | Cumulative FY 87, FY 88, FY 89, and FY90 To date | | Funding for each Component Over the Life of Project 1/ | |
|-------------------|--|--------------|--|--------------|
| | A.I.D. Grant (In \$) | GOP (In Rs.) | A.I.D. Grant (In \$) | GOP (In Rs.) |
| 1. SG/CIP 2/ | 190,000 | - | 270,000 | - |
| 2. TATA | 40,000 | - | 40,000 | - |
| TOTAL | 230,000 | - | 310,000 | - |

- 1/ Subject to the availability of funds to A.I.D. for this purpose, and to the mutual agreement of both parties to proceed at the time of each subsequent increment.
- 2/ The additional \$25,000,000 for FY 1990 obligation shall be provided as follows: \$5,000,000 for Sector Assistance Grant (SG) and \$20,000,000 for Private Sector Commodity Import Program (CIP).

ASSP POLICY BENCHMARKS FOR FY 1990

Policy reforms and other actions negotiated under the ASSP sector grant program deal with important developmental concerns. The Government of Pakistan (hereinafter referred to as "Government") and A.I.D. agree that these reforms are appropriate. A.I.D. considers such reforms permanent until changes in underlying economic conditions warrant adjustments.

A. Policy Area: Fertilizer

FY 1990 Benchmark Number 1: By October 31, 1990, the Government shall increase the retail prices of phosphatic fertilizers by 10% over their prices in May, 1990, and those of potassic fertilizers by 20% over their prices in October, 1989, with a view to eliminating the economic subsidy on phosphatic fertilizer by October, 1991 and on potassic fertilizer by October, 1995.

FY 1990 Benchmark Number 2: A. The Government shall from October, 1990 allow any and all private sector enterprises to import fertilizer and distribute this privately-imported fertilizer in any part of the country.

B. The Government, its agencies, and public sector corporations shall within one year after eliminating subsidies on the distribution of imported fertilizer (that is, for phosphatic fertilizer by October, 1992 and potassic fertilizer by October, 1996) end its involvement in the importation of fertilizer, except for the purpose of maintaining a non-subsidized strategic reserve to cushion the effect of unusually high international prices, the unavailability of a particular grade, or to serve isolated markets not served by two or more private sector firms.

FY 1990 Benchmark Number 3: The Government will by September 30, 1990, develop and approve the terms of reference of a study of the feasibility of debottlenecking, disinvesting, and/or privatizing one or more plants of the National Fertilizer Corporation. The study will be completed by March 31, 1991. The Government shall consider the feasible recommendations of the study and take appropriate actions. USAID will fund this study if requested to do so.

B. Policy Area: Wheat

FY 1990 Benchmark Number 4: Subject to the quantity of 1991 wheat harvested, the Government shall target a wheat release/procurement price ratio of 115 percent in 1991. The new release price will be decided and approved at the same time as procurement price.

FY 1990 Benchmark Number 5: The Government shall by October 31, 1990 establish a national committee or working group on grain quality and marketing standards. The functions of the group will include: a) soliciting producer, consumer, and industry opinions on grain quality and any proposed grade standards, b) studying the technical and economic aspects of grain grading and pricing systems based on quality differentials, c) determining the legal status of grain standards, grading and pricing systems, d) consider recommending federal and provincial legislation to establish national grain quality standards and a grading and inspection system, and e) establishing a standard for declaring certain stored wheat unfit for human consumption and an accounting procedure for removing such wheat from the Government's books. The committee shall submit its report by October 1, 1991. The Government shall review the report and take appropriate actions.

FY 1990 Benchmark Number 6: The Government in conjunction with the Storage Technology Development and Transfer (STDT) project shall in May, 1990 begin a pilot project on bulk and bag handling that will test the feasibility of sampling and grading. Based on the results of the pilot project, the Government shall recommend a schedule for pilot testing grade-related pricing by May, 1991.

FY 1990 Benchmark Number 7: Beginning with the 1990-91 wheat marketing year, the Government shall release (sell) wheat in bulk wherever it is available in this form to any person or firm requesting bulk transfer, with no requirement for the person or firm to purchase bags. The Government shall by October 1, 1990 constitute a national working group on bulk handling of grain, with initial focus on wheat. The functions of the group would include: 1) coordinating plans and activities of public agencies and the private sector, 2) establishing minimum design standards for bulk handling equipment and storage facilities to promote free access and interchangeability of bulk delivery and receiving systems, and 3) reviewing current government strategy for the location and expansion of bulk handling facilities and recommending an integrated national strategy and schedule. The lifespan of the group shall be no longer than three years.

C. Policy Area: Agricultural Business and Exports

FY 1990 Benchmark Number 8: By March, 1991, the Government shall, with the exception of those commodities on the negative (sensitive) list, eliminate all export bans, quantitative restrictions, and export duties on the following horticultural and animal products: live animals, meat, animal fat, oilcakes and meals, fruits, vegetables, spices, and herbs. The Government shall specify the commodities on the negative (sensitive) list by the start of each fiscal year (July 1) and shall not add commodities to the list during the fiscal year.

FY 1990 Benchmark Number 9: The Government shall by June 30, 1990 establish and operate an agribusiness cell in the Ministry of Food, Agriculture, and Cooperatives to facilitate the development of the agribusiness sector.

D. Policy Area: Edible Oil

FY 1990 Benchmark Number 10: The Government with the assistance of USAID will by October 31, 1990, develop and approve the terms of reference of a study of the feasibility of disinvesting and/or financially restructuring all or part of the Ghee Corporation of Pakistan. The study will include but not be limited to analyses of: 1) the legal, financial, and other problems of disinvestment and denationalization, 2) options for privatization for each plant selected for analysis, with reasons for their selection as most appropriate for disinvestment, and 3) estimates of the likely impact on employment of the recommended options and recommendations for minimizing adverse effects on employees.

The study will be completed by April 15, 1991 and will take into account the results of currently ongoing studies under the USAID projects Analysis of Corporate Sector Constraints in Agriculture (ACSCA) and Agriculture Policy Analysis Project (APAP). USAID will fund the study if requested to do so. The Government shall consider the recommendations of the study and take appropriate actions.

E. Policy Area: Policy Analysis, Consistency, and Coordination

FY 1990 Benchmark Number 11: The Government shall in the interest of policy coordination, review procedural changes required by the Ministry of Food, Agriculture and Cooperatives, including Agriculture Prices Commission (APCOM), the Food and Agriculture Division, and other agencies of the Ministry, in order to make simultaneous input and output price recommendations that would be forwarded to policymakers. The Government shall review with USAID the results of this evaluation by January, 1991. If requested, USAID will provide technical support for the review and recommendations.

F. Policy Area: Seed

FY 1990 Benchmark Number 12: The Government shall by December, 1990 promulgate a revised seed law or amend the Seed Act so as to 1) make adequate provision for the functioning of private sector seed companies and 2) provide standards and methods supporting and regulating the use of certified and other grades of seed.

ONGOING FY 1989 BENCHMARKS

Policy Area: Agricultural Credit

FY 1989 Benchmark No. 10: By December 31, 1990, with the assistance of USAID/Islamabad, complete a study to determine the impact of changes in mark-up rate on the flow of credit to small farmers.