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A.I.D. Grant No. 650-K-602

GRANT AGREEMENT
BETWEEN
UNITED STATES OF AMERICA
AND THE
DEMOCRATIC REPUBLIC OF THE
SUDAN
FOR
COMMODITY IMPORTS

DATED:

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COMMODITY IMPORT GRANT AGREEMENT

Dated:

Between

the Democratic Republic of the Sudan ("Grantee")

and

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

Article 1: The Grant

To finance the foreign exchange costs of certain commodities and commodity-related services ("Eligible Items") necessary to assist the Grantee in meeting a serious foreign exchange shortage, achieving development objectives and improving the standard of living, the United States, pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant to the Grantee under the terms of this Agreement, not to exceed Fifty Million United States dollars (\$50,000,000) ("Grant").

Article 2: Conditions Precedent to Disbursement

Section 2.1. Conditions Precedent. Prior to the first disbursement under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee 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 the Attorney General of the Democratic Republic of the Sudan that this 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;

(b) A statement representing and warranting that the named person or persons have the authority to act as the representative or representatives of the Grantee pursuant to Section 7.2, together with a specimen signature of each person certified as to its authenticity.

Section 2.2. Notification. When A.I.D. has determined that the conditions precedent specified in Section 2.1. have been met, it will promptly notify the Grantee.

Section 2.3. Terminal Date for Conditions Precedent. If all the conditions specified in Section 2.1 have not been met within sixty (60) days from the date of this Agreement, or such later date as A.I.D. may specify in writing, A.I.D., at its option, may terminate this Agreement by written notice to Grantee.

Article 3: Procurement, Eligibility, and Utilization of Commodities

Section 3.1. A.I.D. Regulation 1. This Grant and the procurement and utilization of commodities and commodity-related services financed under it are subject to the terms and conditions of A.I.D. Regulation 1 as from time to time amended and in effect, except as A.I.D. may otherwise specify in writing. If any provision of A.I.D. Regulation 1 is

inconsistent with a provision of this Agreement, the provision of this Agreement shall govern.

Section 3.2. Eligible Items.

(a) The commodities eligible for financing under this Grant shall be those mutually agreed upon by the Parties and specified in the Implementation Letters and Commodity Procurement Instructions issued to Grantee in accordance with Section 7.1 of this Agreement. Commodity-related services as defined in A.I.D. Regulation 1 are eligible for financing under this Grant. Eligible Items will be subject to the requirements and Special Provisions of Parts I, II, and III of the A.I.D. Commodity Eligibility Listing which will be transmitted with the first Implementation Letter. Other commodities or services shall become eligible for financing only with the written agreement of A.I.D. A.I.D. may decline to finance any specific commodity or commodity-related service when in its judgment such financing would be inconsistent with the purposes of the Grant or of the Foreign Assistance Act of 1961, as amended.

(b) A.I.D. reserves the right in exceptional situations to delete commodity categories or items within commodity categories described in Schedule B codes on the Commodity Eligibility Listing. Such right will be exercised at a point in time no later than commodity prevalidation by A.I.D. (Form 11 approval) or, if no commodity prevalidation is required, no later than the date on which an irrevocable Letter of Credit is confirmed by a U.S. bank in favor of the supplier.

(c) If no prevalidation is required and payment is not by Letter of Credit, A.I.D. will exercise this right no later than the date on which it expends funds made available to the Grantee under this Agreement for the financing of the commodity. In any event, however, the Grantee will be notified through the A.I.D. Mission in the Democratic Republic of the Sudan of any decision by A.I.D. to exercise its right pursuant to a determination that financing the commodity would adversely affect A.I.D. or foreign-policy objectives of the United States or could jeopardize the safety or health of people in the Sudan.

Section 3.3. Procurement Source. All Eligible Items shall have their source and origin in the "Selected Free World" (Code 941 of the A.I.D. Geographic Code Book) except as A.I.D. may specify in Implementation Letters or Commodity Procurement Instructions, or as it may otherwise agree in writing.

Section 3.4. Eligibility Date. No commodities or commodity-related services may be financed under this Grant if they were procured pursuant to orders or to contracts firmly placed or entered into prior to the date of this Agreement, except as A.I.D. may otherwise agree in writing.

Section 3.5. Procurement for Public Sector.

(a) With respect to procurement under this Grant by or for Grantee, its departments and instrumentalities, the provisions of Section 201.22 of A.I.D. Regulation 1 regarding formal competitive bid procedures will apply unless A.I.D. otherwise agrees in writing.

(b) Grantee will undertake to assure that public sector end-users under this Grant establish adequate logistic management facilities and that adequate funds are available to pay banking charges, customs, duties and other commodity-related charges in connection with commodities imported by public sector end-users.

Section 3.6. Special Procurement Rules

(a) None of the proceeds of this Grant may be used to finance the purchase, sale, long-term lease, exchange or guaranty of a sale of motor vehicles unless such motor vehicles are manufactured in the United States, except as A.I.D. may otherwise agree in writing.

(b) 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.

(c) All international air shipments financed under this Grant will be on carriers holding U.S. certification to perform the service, unless shipment would, in the judgment of the Grantee, be delayed an unreasonable time awaiting a U.S.-flag carrier either at point of origin or transshipment. The Grantee must certify to the facts in the vouchers or other documents retained as part of the Grant records.

Section 3.7. Financing Physical Facilities. Not more than \$1,000,000 from the proceeds of this Grant shall be used for the purchase of commodities or commodity-related services for use in the construction, expansion, equipping, or alteration of any physical facility or related physical facilities without prior A.I.D. approval, additional to the

approvals required by A.I.D. Regulation 1, except as A.I.D. may otherwise agree in writing. "Related physical facilities" shall mean those facilities which, taking into account such factors as functional interdependence, geographic proximity, and ownership, constitute a single enterprise in the judgment of A.I.D.

Section 3.8. Utilization of Commodities.

(a) Grantee will assure that commodities financed under this Grant will be effectively used for the purposes for which the assistance is made available. To this end, the Grantee will use its best efforts to assure that the following procedures are followed:

(i) accurate arrival and clearance records are maintained by customs authorities; commodity imports are promptly processed through customs at ports of entry; such commodities are removed from customs and/or bonded warehouses within ninety (90) calendar days from the date the commodities are unloaded from the vessel at the port of entry, unless the importer is hindered by force majeure or A.I.D. otherwise agrees in writing;

(ii) proper surveillance and supervision are maintained to reduce breakage and pilferage in ports resulting from careless or deliberately improper cargo handling practices, as specified in detail in Implementation Letters; and

(iii) the commodities are consumed or used by the importer not later than one (1) year from the date the commodities are removed

from customs, unless a longer period can be justified to the satisfaction of A.I.D. by reason of force majeurs or special market conditions or other circumstances.

(b) Grantee will assure that commodities financed under this Grant will not be reexported in the same or substantially the same form, unless specifically authorized by A.I.D.

(c) Grantee shall use its best efforts to prevent the use of commodities financed under this Agreement to promote or assist any 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 projected use, except with the prior written consent of A.I.D.

Section 3.9. Shipping

(a) Commodities which are to be transported to the territory of the Grantee may not be financed under this Grant if transported either: (1) on an ocean vessel or aircraft under flag registry 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 Grantee has designated as ineligible, or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Unless otherwise authorized, A.I.D. will finance only those transportation costs incurred on aircraft or ocean vessels under flag registry of a country included in the Geographic Code authorized in Section 3.3 of the Agreement, except that when Code 941 is authorized, A.I.D. will finance only those transportation costs incurred on aircraft or ocean vessels under flag registry of the United States and the cooperating country. When

Code 941 is authorized and there is a general unavailability of cooperating country flag aircraft or ocean vessels, A.I.D. will specifically authorize in Implementation Letters the financing of transportation costs incurred on aircraft or ocean vessels of any country included in Code 941.

(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 Sudan 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 both cargo transported from U.S. ports and cargo transported from non-U.S. ports, computed separately.

Article 4: Disbursement

Section 4.1. Letters of Commitment to Banks. After satisfaction of the conditions precedent, the Grantee may obtain disbursements of funds under this Grant by submitting Financing Requests to A.I.D. for the issuance of letters of commitment for specified amounts to one or more banking institutions in the United States designated by Grantee and satisfactory to A.I.D. Such letters will commit A.I.D. to reimburse

the bank or banks on behalf of the Grantee for payments made by the banks to suppliers or contractors, under letter of credit or otherwise, pursuant to such documentation requirements as A.I.D. may prescribe. Banking charges incurred in connection with letters of commitment and disbursements shall be for the account of Grantee and may be financed by this Grant.

Section 4.2. Other Forms of Disbursement Authorizations. Disbursements of the Grant may also be made through such other means as the parties may agree to in writing.

Section 4.3. Terminal Date for Requests for Disbursement Authorizations. No letter of commitments or other disbursement authorization will be issued in response to a request received after twelve (12) months from the date the Grantee satisfies the Conditions Precedent in Section 2.1, except as A.I.D. may otherwise agree in writing.

Section 4.4. Terminal Date for Disbursement. No disbursement of Grant funds shall be made against documentation received by A.I.D. or any bank described in Section 4.1 after twenty four (24) months from the date the Grantee satisfies the Conditions Precedent in Section 2.1, except as A.I.D. may otherwise agree in writing.

Section 4.5. Date of Disbursement. Disbursements by A.I.D. shall be deemed to occur on the date on which A.I.D. makes a disbursement to the Grantee, or its designee, or to a bank, contractor or supplier pursuant to a Letter of Commitment or other form of disbursement authorization.

Section 4.6. Documentation Requirements. A.I.D. Regulation 1 specifies in detail the documents required to substantiate disbursements under this Agreement by Letter of Commitment or other method of financing. The document number shown on the Letter of Commitment or other disbursing authorization document shall be the number reflected on all disbursement documents submitted to A.I.D. In addition to the above, the Grantee shall maintain records adequate to establish that commodities financed hereunder have been utilized in accordance with Section 3.8 of this Agreement. Additional documents may also be required by A.I.D. with respect to specific commodities, as may be set forth in detail in Implementation Letters.

Article 5; General Covenants

Section 5.1. Taxation. This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in the Democratic Republic of the Sudan.

Section 5.2. Reports and Records. In addition to the requirements in A.I.D. Regulation 1, the Grantee will:

- (a) furnish A.I.D. such reports and information relating to the goods and services financed by this Grant and the performance of Grantee's obligations under 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, such

books and records relating to this Grant as may be prescribed in Implementation Letters. Such books and records shall be made available to A.I.D. or any of its authorized representatives for such periods and at such times as A.I.D. may reasonably require, and shall be maintained for three years after the date of last disbursement by A.I.D. under this Grant; and

(c) permit A.I.D. or any of its authorized representatives at all reasonable times during the three-year period to inspect the commodities financed under this Grant at any point, including the point of use.

Section 5.3. Completeness of Information. The Grantee 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 Grant, are accurate and complete, and include all facts and circumstances that might materially affect the Grant and the discharge of responsibilities under this Agreement; and

(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 Grant or the discharge of responsibilities under this Agreement.

Section 5.4. Other Payments. Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Grant, except fees, taxes, or similar payments legally established in the country of the Grantee.

Section 5.5. Periodic Discussions. Periodically, but no less than annually, the Grantee and A.I.D. will meet to discuss the status of the economy, associated economic issues and the relationship of the A.I.D. program to those concerns.

Section 5.6. Private Sector. The Grantee covenants to take all necessary steps to make available to the private sector no less than fifty (50) percent of the proceeds of the Grant.

Section 5.7. Use of Local Currency.

(a) Grantee will establish a Special Account in the Bank of Sudan and deposit therein currency of the Government of the Democratic Republic of the Sudan in amounts equal to proceeds accruing to the Grantee or any authorized agency thereof as a result of the sale or importation of the Eligible Items. Funds in the Special Account may be used for such purposes as are mutually agreed upon by A.I.D. and the Grantee, provided that such portion of the funds in the Special Account as may be designated by A.I.D. shall be made available to meet the requirements of the United States.

(b) Deposits to the Special Account shall become due and payable quarterly upon advice from A.I.D. as to disbursements made under the Agreement. Grantee shall make such deposits at the highest rate of exchange prevailing and declared for foreign exchange currency by the competent authorities of the Democratic Republic of the Sudan.

(c) Any unencumbered balances of funds which remain in the Special Account upon termination of assistance hereunder shall be disbursed for such purposes as may, subject to applicable law, be agreed to between Grantee and A.I.D.

Article 6: Termination; Remedies

Section 6.1. Termination. This Agreement may be terminated by mutual agreement of the Parties at any time. Either Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

Section 6.2. Suspension. If at any time:

(a) Grantee shall fail to comply with any provisions of this Agreement; or

(b) Any representation or warranty made by or on behalf of Grantee with respect to obtaining this Grant or made or required to be made under this Agreement is incorrect in any material respect; or

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

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

(e) A default shall have occurred under any agreement between Grantee or any of its agencies and the Government of the United States or any of its agencies; Then, in addition to remedies provided in A.I.D. Regulation 1, A.I.D. may:

(1) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through irrevocable commitments to third parties or otherwise, or to the extent that A.I.D. has not made direct reimbursement to the Grantee thereunder, giving prompt notice to Grantee thereafter;

(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 Grant be vested in A.I.D. if the goods are in a deliverable state and have not been offloaded in ports of entry of the Democratic Republic of the Sudan.

Section 6.3. Cancellation by A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 6.2, the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Grant that is not then disbursed or irrevocably committed to third parties.

Section 6.4. Refunds.

(a) In addition to any refund otherwise required by A.I.D. pursuant to A.I.D. Regulation 1, if A.I.D. determines that any disbursement is not supported by valid documentation in accordance with this Agreement, or is in violation of United States law, or is not made or used in accordance with the terms of this Agreement, A.I.D. may require the Grantee to refund the amount of such disbursement in U.S. dollars to A.I.D. within thirty (30) days after receipt of request therefor. Refunds paid by the Grantee to A.I.D. resulting from violations of the terms of this Agreement shall be considered as a reduction in the amount of A.I.D.'s obligation under the Agreement and shall be available for reuse under the Agreement if authorized by A.I.D. in writing.

(b) 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.

Section 6.5. Nonwaiver of Remedies. No delay in exercising or omitting to exercise any right, power, or remedy accruing to A.I.D.

under this Agreement will be construed as a waiver of such rights, powers, or remedies.

Article 7: Miscellaneous

Section 7.1. Implementation Letters. From time to time, for the information and guidance of both parties, A.I.D. will issue Implementation Letters and Commodity Procurement Instructions describing the procedures applicable to the implementation of the Agreement. Except as permitted by particular provisions of this Agreement, Implementation Letters will not be used to amend or modify the text of this Agreement.

Section 7.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the offices of the Minister of National Planning and the State Minister of National Planning and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID, Khartoum, Sudan each of whom, by written notice, may designate additional representatives. The names of the representatives of the Grantee, 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 7.3. Communications. Any notice, request, document or other communication submitted by either Party to the other under this Agreement

will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such party at the following address:

To the Grantee:

Mail Address: Ministry of National Planning
P.O. Box 2092
Khartoum, Sudan

Cable Address: EIMAR, Khartoum

Telex No: 324

To A.I.D.:

Mail Address: United States Agency for International
Development
American Embassy
P.O. Box 699
Khartoum, Sudan

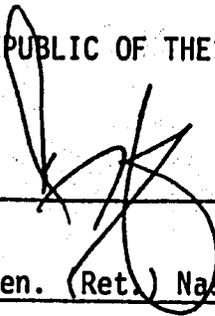
Telex No: 619 AMEMBASSY KM.

All such communications will be in English unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon giving of notice. The Grantee, in addition, will provide the USAID Mission with a copy of each communication sent to A.I.D.

Section 7.4. Information and Marking. The Grantee will give appropriate publicity to the Grant as a program to which the United States has contributed, and mark goods financed by A.I.D., as described in Implementation Letters.

IN WITNESS WHEREOF, the Grantee 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.

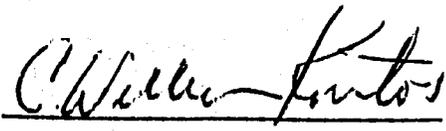
DEMOCRATIC REPUBLIC OF THE SUDAN

BY:  _____

NAME: Maj. Gen. (Ret.) Nasr Al Din Mustafa

TITLE: Minister of National Planning

UNITED STATES OF AMERICA

BY:  _____

NAME: C. William Kontos

TITLE: Ambassador