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A.I.D. Grant No. 263-K-615

FILE

GRANT AGREEMENT

BETWEEN THE

UNITED STATES OF AMERICA

AND THE

ARAB REPUBLIC OF EGYPT

FOR

COMMODITY IMPORTS

CONFORMED COPY

Dated: JUN 25 1987

first tranche

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A.I.D. Grant No. 263-K-615

COMMODITY IMPORT GRANT AGREEMENT

Dated: 1987

Between

The Arab Republic of Egypt ("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 commodities, commodity-related services and other services ("Eligible Items") necessary to assist the Grantee to meet a foreign exchange need, the United States of America, pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant to the Grantee under the terms of this Agreement, an amount not to exceed Fifty Million United States dollars ($50,000,000) ("Grant") for a Commodity Import Program ("CIP").

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Article 2: The Program

Section 2.1. Definition of Program. The Program, which will be further defined in Implementation Letters, will consist of mutually agreed upon allocations of Grant funds for intermediate goods and consumables, including food staples, and for industrial raw materials, commodity-related and other services, and capital goods contained in the Government of Egypt budget.

Article 3: Requirements Precedent to Disbursement

Section 3.1. Requirements. Prior to any disbursement under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D., in satisfactory form and substance:

(a) a statement to the effect that a named person or persons have the authority to act as the representative or representatives of the Grantee pursuant to Section 8.2, together with a specimen signature of each such person; and

(b) a list of allocations of Grant funds provided under this Agreement.

Section 3.2. Notification. When A.I.D. has determined that the requirements precedent specified in Sections 3.1 (a) and (b) have been A.I.D. will promptly notify the Grantee.

Section 3.3. Terminal Date for Requirements Precedent. The requirement specified in Section 3.1 (a) must be met within one hundred twenty (120) days and the requirement specified in Section 3.1(b), within 180 days, from the date of this Agreement, or by such later dates as the parties may agree in writing. If these requirements are not satisfied within such times, then A.I.D., at its option, may terminate this Agreement by written notice to the Grantee.

Article 4: Procurement, Eligibility, and Utilization of Commodities

Section 4.1. 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 with respect to other than commodity related services and except as the parties may otherwise agree 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 4.2 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 8.1 of this Agreement. Commodity-

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related services as defined in A.I.D. Regulation 1 as well as other services 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 the two parties. Any specific commodity, commodity-related service or other service may be excluded from financing under this Agreement, if such financing would be inconsisteht with the purposes of the Grant or of the Foreign Assistance Act of 1961, as amended, or other legislation governing A.I.D.

(b) The parties reserve 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, this right will be exercised no later than the date on which A.I.D. expends funds made available to the Grantee under this Agreement for the financing of the commodity. In any event, however, the Grantee

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will be notified through the A.I.D. Mission in the Arab Republic of Egypt 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 Egypt.

Section 4.3. Procurement Source. All Eligible Items shall have their source and origin in the United States of America (Code 000 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 4.4. Eligibility Date. No commodities, commodity-related or other 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 the parties may otherwise agree in writing.

Section 4.5. Formal Competitive Procedures. With respect to procurement of commodities and commodity-related services under this Grant by or for the Grantee, its departments and instrumentalities, the provisions of Section 201.22 of A.I.D. Regulation 1 regarding formal competitive bid procedures will apply, except as A.I.D. and/or the parties may otherwise agree in writing. For formal procurements under Regulation 1, the importer shall use the standard Regulation 1 Invitation for Bids, unless A.I.D. otherwise agrees in writing.

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Section 4.6. Grantee Logistical and Financial Support. The Grantee will undertake to ensure that public sector end-users under this Grant establish adequate logistical 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 4.7. 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 the parties may otherwise agree in writing.

(b) None of the proceeds of this Grant will be used for financing military requirements of any kind, including the procurement of commodities or services for military purposes.

(c) All international ocean and air shipments financed under this Grant will be on carriers holding U.S. certification to perform the service, unless service of such carriers is determined unavailable in accordance with A.I.D. Regulation 1. The Grantee must certify to the facts in the vouchers or other documents retained as part of the Grant records.

(d) 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.

Section 4.8. Financing Physical Facilities. Not more than $1,000,000 from the proceeds of this Grant may 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 specific, prior A.I.D. approval, additional to the approvals required by A.I.D. Regulation 1, except as the parties 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 4.9. 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;

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(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 cleared from the port of arrival in Egypt or fifteen (15) months from arrival in Egypt, whichever occurs first, unless a longer period can be justified to the satisfaction of both parties by reason of force majeure or special market conditions or other circumstances.

(b) Grantee will assure that commodities financed under this Grant may be reexported only after substantial processing or incorporation into finished goods, unless specifically authorized by agreement of both parties.

(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 both parties.

Section 4.10. Minimum Size of Transactions. No foreign exchange allocation or letter of credit issued pursuant to this Agreement shall be in an amount less than Ten Thousand Dollars ($10,000), except as A.I.D. may otherwise agree in writing.

Article 5: Disbursement

Section 5.1. 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 5.2. Letters of Commitment to Banks. After satisfaction of the requirements precedent, the Grantee shall 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 Letters 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 5.3. 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 5.4. Terminal Date for Requests for Disbursement Authorizations. No Letter of Commitment or other disbursement authorization will be issued in response to a request received after thirty (30) months from the date the Grantee satisfies the Requirements Precedent in Section 3.1, except as the parties may otherwise agree in writing.

Section 5.5. 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 5.1. after thirty-six (36) months from the date the Grantee satisfies the Requirements Precedent in Section 3.1, except as the parties may otherwise agree in writing.

Section 5.6. 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 advise importers to maintain records adequate to establish that commodities financed hereunder have been utilized in accordance with Section 4.8 of this Agreement. Additional documentation requirements may be set forth in Implementation Letters.

Article 6: General Covenants

Section 6.1. Taxation. This Agreement documentation and the grant funds will be free from any taxation or fees imposed under laws in effect in the Arab Republic of Egypt. No Grant amounts shall be used to pay taxes or other fees related to the importation of commodities funded under this Agreement.

Section 6.2. Follow-up. In addition to the requirements in A.I.D. Regulation 1, the Grantee will:

(a) furnish A.I.D. a statement relating to the goods and services financed by this Grant and indicating that the Grantee has met its obligations under this Agreement;

(b) advise entities financed under this Grant to maintain books and records relating to this Grant as may be prescribed in Implementation Letters. Such books and records shall be maintained and made available to both parties or their authorized representatives for such periods and at such times as may reasonably be required, during three years after the date of last disbursement under this Grant; and

(c) advise those entities to permit both parties or their authorized representatives at all reasonable times during that three-year period to check on commodities financed under this Grant.

Section 6.3. 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 6.4. 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 and that Egyptian laws prohibit such payments. A.I.D. and the Grantee shall take action to protect against improper payments by suppliers in connection with this Grant.

Section 6.5. Periodic Discussions. Periodically, but no less than twice annually, the Grantee and A.I.D. will continue to meet to discuss the status of the Commodity Import Program and associated economic issues.

Section 6.6. Special Account.

(a) Grantee will establish a Special Account in the Central Bank of Egypt and deposit therein currency of the Government of the Arab Republic of Egypt in amounts equal to proceeds accruing to the Grantee or any

authorized agency thereof as a result of the sale or importation of Eligible Items, except as the parties may otherwise agree in writing

(b) Funds deposited in the Special Account pursuant to this Agreement may be used for such purposes as are described in the Memorandum of Understanding Regarding the Special Account, dated June 30, 1980, as amended, provided that a portion of such deposits, as may be agreed by the parties, shall be made available to A.I.D. to meet part of its local currency administrative requirements in Egypt.

(c) Deposits to the Special Account in local currency will be made in accordance with payment procedures agreed upon in writing by the parties and described in circulars issued by the representatives of the Grantee named in Section 8.2.

(d) Except as A.I.D. may otherwise agree in writing, the Grantee shall make such deposits at the highest rate of exchange prevailing and declared for foreign exchange currency by the competent authorities of the Arab Republic of Egypt.

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

(f) The Grantee will maintain and use fully, in monitoring Special Account deposits and balances, the accounting system developed and installed in fulfillment of Requirement Precedent 3.2(a) under the Fiscal Year 1984 Commodity Import Program.

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(g) The Grantee will exert its best efforts to reach agreement with A.I.D., as soon as practicable after execution of this Agreement, on an amendment to the Memorandum of Understanding regarding the Special Account to include Egyptian pounds to be generated under this Grant.

Section 6.7. Set Asides. The parties shall mutually agree upon and set forth in Implementation Letters any set asides or extraordinary allocations of funds for transactions which will not result in the accrual of proceeds to the Grantee and hence not require the deposit of counterpart funds into the Special Account.

Section 6.8. Allocation of Special Account Deposits. As soon as practical after execution of this Agreement, the Grantee will forward to A.I.D. a proposed allocation of Special Account deposits, for the Egyptian Fiscal Year commencing July 1, 1988, for use in A.I.D.-financed development projects, as stipulated in Item 1 of the Memorandum of Understanding Regarding the Special Account.

Section 6.9. Ratification. The Grantee will take all necessary action to complete all legal procedures necessary to ratification of this Agreement and will notify A.I.D. as promptly as possible of the fact such ratification.

Article 7: Termination; Remedies

Section 7.1. 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 7.2. 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 other 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 Arab Republic of Egypt.

Section 7.3. Cancellation by A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 7.2, 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 commited to third parties.

Section 7.4. 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 made or used in accordance with this Agreement, or is in violation of United States law, 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 7.5. 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 8: Miscellaneous

Section 8.1. 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 setting forth Program details and 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 8.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the Deputy Prime Minister - Minister of Planning and International Cooperation and/or the Administrator of the Department for Economic Cooperation with U.S.A., and

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A.I.D. will be represented by the individual holding the office of, or acting as, Director, USAID, Cairo, Egypt, 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 8.3. 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 telex, and will be deemed duly given or sent when delivered to such party at the following address:

To the Grantee:

Mail Address: Ministry of Planning
and International Cooperation
8 Adly Street, 7th Floor
Cairo, Egypt

Cable Address: 8 Adly Street
Cairo, Egypt

To A.I.D.:

Mail Address: United States Agency for International
Development
c/o U.S. Embassy
Cairo, Egypt

Cable Address: U.S. Embassy
Cairo, Egypt

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.

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Section 8.4. Information and Marking. The Grantee will give appropriate publicity to the Grant as a program to which the United States has contributed. Goods financed by A.I.D. will be marked as described in Implementation Letters.

Section 8.5. Language of the Agreement. This Agreement is prepared in both English and Arabic. In the event of ambiguity or conflict between the two versions, the English language version shall control.

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.

ARAB REPUBLIC OF EGYPT

BY : K. A. El-Ganzoury

NAME : Kamal Ahmed El-Ganzoury

TITLE: Deputy Prime Minister and Minister of Planning and International Cooperation

UNITED STATES OF AMERICA

BY : Frank G. Wisner

NAME : Frank G. Wisner

TITLE: American Ambassador

ARAB REPUBLIC OF EGYPT

BY : Ahmad Abdel Salam.

NAME : Ahmad Abdel Salam Zaki

TITLE: Administrator of the Department for Economic Cooperation with U.S.A.

UNITED STATES OF AMERICA

BY : [illegible]

NAME : Arthur M. Handly

TITLE: Acting Director, USAID/Egypt