

No. 14380

**UNITED NATIONS
(UNITED NATIONS
CAPITAL DEVELOPMENT FUND)
and
MALI**

**Grant Agreement – *Nioro du Sahel Water Supply Project*
(with annexes). Signed at Bamako on 15 October 1975**

Authentic text: French.

Registered ex officio on 15 October 1975.

**ORGANISATION DES NATIONS UNIES
(FONDS D'ÉQUIPEMENT DES NATIONS UNIES)
et
MALI**

**Accord de don – *Projet d'approvisionnement d'eau pour
Nioro du Sahel* (avec annexes). Signé à Bamako le
15 octobre 1975**

Texte authentique : français.

Enregistré d'office le 15 octobre 1975.

[TRANSLATION — TRADUCTION]

GRANT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF MALI (hereinafter called the Government) AND THE
UNITED NATIONS CAPITAL DEVELOPMENT FUND (hereinafter
called the UNCDF)

Project Number: MLI/74/C31
Project Title: Water Supply for Niore du Sahel

Approved:

[FOUNEKE KEITA]
For the Government
Date: 15 October 1975

[JEAN PIERRE SCHELLENBERG]
For UNCDF
Date: 15 October 1975

Article I. THE GRANT

Section 1.01. The UNCDF agrees to make a grant (hereinafter called the Grant) available to the Government, upon the terms and conditions set forth or referred to in this Agreement, in the amount of one million four hundred and twenty-nine thousand United States dollars (\$US 1,429,000) as a financial contribution to the project (hereinafter called the Project) described in annex I to this Agreement.

Section 1.02. (a) The UNCDF shall open a grant account (hereinafter called the Grant Account) on its books in the name of the Government, and shall credit the Grant Account with the amount of the Grant.

(b) The table below sets forth the categories of items to be financed out of the proceeds of the Grant and the allocations of the amounts to each category.

<i>Categories</i>	<i>Amount of the Grant Allocated (In US dollars)</i>
(1) Equipment for the town water-supply system	496,000
(2) Buildings for generators, laboratory, etc.	258,000
(3) Reservoir and water column supply pipe	126,000
(4) Conduit connexion with the water-supply system	131,000
(5) Installation of the system (including civil engineering)	318,000
(6) Spare parts.....	100,000
TOTAL	1,429,000

(c) Disbursements shall be made from the Grant Account and the Project shall be administered in accordance with the conditions and provisions and by the organizations set forth or referred to in an Administration Agreement, which shall be agreed and signed by the UNCDF and the organizations executing the Project.

¹ Came into force on 15 October 1975 by signature, in accordance with article VI.

A model Administration Agreement, marked annex II, is attached to this Agreement.

(d) Notwithstanding the provisions of paragraph (c) of this section, no disbursements shall be made in respect of:

- (i) any expenditures prior to the date of this Agreement;
- (ii) payments for taxes and other charges imposed under the law of the Government or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof; and
- (iii) any expenditures except in cases where the prior conditions stipulated in paragraph (e) of this section are fulfilled.

(e) The prior conditions for any disbursement from the Grant Account are stipulated in annex III to this Agreement, it being agreed that the UNCDF may, by notice to the Government, declare this Agreement to be null and void if the prior conditions are not fulfilled by 31 December 1975.

Section 1.03. If the UNCDF has reasonably estimated that the portion of the Grant allocated to any category will be insufficient to finance the expenditures in that category, the UNCDF may, by notice to the Government, transfer to such category amounts allocated to any other category as in the opinion of the UNCDF are not required to meet other expenditures.

Section 1.04. If the UNCDF has reasonably estimated that the purchase of any goods and services included in any category is inconsistent with the procedures set forth or referred to in this Agreement, any expenditures borne for the payment of such goods and services shall not be financed out of the proceeds of the Grant and the UNCDF may, without prejudice to any other right, power or remedy to which it is entitled under the Grant Agreement cancel, by notice to the Government, such portion of the Grant as in the reasonable opinion of the UNCDF represents the amount of the expenditures that would otherwise have been eligible for financing out of the proceeds of the Grant.

Section 1.05. The UNCDF may by notice to the Government terminate the right of the Government to withdraw from the Grant Account any amount not withdrawn by 31 December 1977, or by such other date as shall be agreed between the Government and the UNCDF.

Article II. GENERAL PROVISIONS CONCERNING THE EXECUTION OF THE PROJECT

Section 2.01. The Government shall carry out the Project or, if another organization is designated for this purpose in this Agreement or in the attached annex, cause the Project to be carried out by such organization with due diligence and efficiency and in conformity with appropriate administrative, technical and financial practices, and shall provide, as needed, all funds, facilities, services and other resources required therefor.

Section 2.02. (a) Contracts for the goods and services required for the Project and to be financed out of the proceeds of the Grant shall be awarded under the procedures set forth in the Administration Agreement, marked annex II, attached to this Agreement.

(b) The UNCDF may in agreement with the Government take steps to ensure that, for the procurement of the goods and services needed for the Project, the Government is provided with aid that is compatible with the policy of the UNCDF.

Section 2.03. Except as the Government and the UNCDF shall otherwise decide, the Government shall cause all goods and services financed out of the proceeds of the Grant to be used exclusively for the Project.

Section 2.04. The Government undertakes to insure, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Grant against all hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable by the Government to replace or repair such goods.

Section 2.05. The Government shall:

- (a) maintain records adequate to show the progress of the Project (including the cost thereof) and to identify the property and services financed out of the proceeds of the Grant, and to disclose the use thereof in the Project;
- (b) have such records audited every year and furnish to the UNCDF such records and the report of the audit thereof not later than six months after the end of the fiscal year of the Government;
- (c) enable the UNCDF's representatives to visit the facilities and construction sites included in, or relevant to, the Project, and to examine the property financed out of such proceeds and any relevant records and documents; and
- (d) furnish to the UNCDF all such information as the UNCDF may reasonably request concerning the Project, the expenditure of the proceeds of the Grant and the property and services financed out of such proceeds.

Section 2.06. Except as the Government and the UNCDF shall otherwise decide, the Government shall not create or permit to be created any encumbrance, mortgage, pledge, charge or lien of priority of any kind on the goods financed out of the proceeds of the Grant, provided, however, that the foregoing provisions of this section shall not apply to any lien created on property, at the time of purchase of such goods, solely as security for the payment of the purchase price of such property.

Article III. CO-OPERATION AND INFORMATION

Section 3.01. (a) The Government and the UNCDF shall co-operate fully to ensure that the purposes of the Grant will be accomplished. To that end, the Government and the UNCDF shall, at the request of any one of them:

- (i) exchange views through their representatives with regard to the progress of the Project, the benefits derived therefrom and the performance of their respective obligations under this Agreement and other matters relating to the purposes of the Grant; and
- (ii) furnish to the other Party all such information as it may reasonably request with regard to the progress of the Project, the benefits derived therefrom and the general status of the Grant.

(b) The Government and the UNCDF shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the progress of the Project, the accomplishment of the purposes of the Grant, or the performance by any one of them of its obligations under this Agreement.

(c) After the completion of the Project, the Government shall make available to the UNCDF all such information as the UNCDF may reasonably request with regard to the benefits derived from the Project, including information necessary for the UNCDF to evaluate the Project or its assistance to the Government.

Article IV. SUSPENSION OR TERMINATION OF ASSISTANCE

Section 4.01. The UNCDF may by written notice to the Government suspend its assistance under this Agreement if in the judgement of the UNCDF any circumstance

arises which interferes with or threatens to interfere with the successful completion of the Project or the accomplishment of its purposes. The UNCDF may, in the same or in a subsequent written notice, indicate the conditions under which it is prepared to resume its assistance under this Agreement. Any such suspension shall continue until such conditions are accepted by the Government and the UNCDF shall have given written notice to the Government that it is prepared to resume its assistance under this Agreement.

Section 4.02. If any situation referred to in section 4.01 shall occur and continue for a period of thirty days after notice thereof shall have been given by the UNCDF to the Government, then at any time thereafter during the continuance thereof, the UNCDF may by written notice to the Government terminate its assistance under this Agreement and require that the Government reimburse to the UNCDF the amount of the Grant disbursed from the Grant Account. The Government shall promptly reimburse such amount to the UNCDF upon receipt of such request.

Section 4.03. The provisions of this article shall be without prejudice to any other rights or remedies that the UNCDF may have in the circumstances, whether under the general principles of law, the laws in effect in the territories of the Government, or other legislation.

Section 4.04. No delay in exercising, or omitting to exercise, any right or remedy of the UNCDF under this Agreement shall be construed as a waiver thereof.

Article V. INTERPRETATION AND SETTLEMENT OF DISPUTES

Section 5.01. The provisions of this Agreement shall be interpreted in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations and any relevant matter for which no provision is made in this Agreement shall be settled by the Parties thereto in keeping with the said resolutions and decisions, each Party giving full and sympathetic consideration to any proposal advanced by the other Party under this section.

Section 5.02. Any dispute between the UNCDF and the Government arising out of or relating to this Agreement which is not settled by negotiations or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman of the arbitration tribunal. If within thirty days after the request for arbitration either Party has not appointed an arbitrator or if within fifteen days after the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article VI. DATE OF ENTRY INTO FORCE; TERMINATION

Section 6.01. This Agreement shall enter into force on the date of signature by the last Party.

Section 6.02. The obligations of the Parties under this Agreement shall terminate on a date three years after the date set forth in section 1.05 of this Agreement or three years after such other date as shall be agreed between the Government and the UNCDF in accordance with the provisions of the said section.

Article VII. REPRESENTATIVES OF THE PARTIES; ADDRESSES

Section 7.01. The Director-General for Co-operation, Ministry of Foreign Affairs, is designated as representative of the Government for the purpose of taking any action required or permitted to be taken under this Agreement on behalf of the Government.

Section 7.02. The UNCDF may by notice to the Government designate a person or persons as representative of the UNCDF for the purpose of receiving any documentation which is to be furnished to the UNCDF or of performing any act required or permitted to be performed by the UNCDF in accordance with the terms of this Agreement.

Section 7.03. The following addresses are specified for the purpose of transmitting any notice or request required or permitted to be given or made under this Agreement.

For the Government:

The Minister for Foreign Affairs
and Co-operation,
Bamako, Mali

For the UNCDF:

United Nations Capital Development Fund
c/o Resident Representative of the United Nations
Development Programme
B.P. 120
Bamako, Mali

IN WITNESS WHEREOF the Parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names and on the respective dates written above.

A N N E X I

DESCRIPTION OF THE PROJECT

Nioro du Sahel, with its 18,000 inhabitants, is the commercial centre for the Kaarta region. The town has been particularly affected by the drought, especially since many farmers and nomads come to the town to obtain their supplies, thereby placing an additional burden on an already overloaded water-supply system. Twenty-six holes have been bored, 14 of which are currently being verified under UNDP Project MLI/74/001. The results indicated that there are sufficient resources to provide 2,000 cubic metres of water per day.

In the first phase of the Project, the proceeds of the Grant will be used to purchase pipes, pump valves and other equipment for the town water-supply system (\$496,000). In the second phase (after the specifications of the system for linking the water supply system and the pumping equipment have been finally determined), the proceeds of the Grant will be used to finance the buildings for generators, laboratory, etc. (\$258,000), the reservoir and water column supply pipe (\$126,000), the conduit connexion with the water supply system (\$131,000), the installation of the system (including civil engineering) (\$318,000) and spare parts (\$100,000).

The Water and Energy Department (DHE) will construct the system. That Department, which employs 11 engineers and 13 technicians in its water section, is currently executing similar projects in three towns and has prepared files for tenders for four other towns.

The system will be maintained by two mechanics stationed at Nioro, placed at the disposal of the Project either by the Government or by the town authorities. The suppliers of the equipment or UNDP will provide them with the necessary training.

ANNEX II
ADMINISTRATION AGREEMENT

Reference is made to the Grant Agreement dated between the Government of the Republic of Mali and the United Nations Capital Development Fund (UNCDF) concerning the financing in two phases of the expansion of the water supply for the town of Niore du Sahel as well as the distribution system within the town itself. The purpose of this Administration Agreement is to stipulate the conditions for implementing the Grant Agreement by specifying the respective responsibilities of the Water and Energy Department (DHE), the Administrator of United Nations Development Programme Project MLI/74/001 (the Administrator) and the UNDP Resident Representative (RESREP).

A. Responsibilities of the «RESREP»

1. The RESREP shall deposit with the Treasury the amount of \$496,000 for the account of DHE as soon as the prior conditions stipulated in annex III, paragraphs 1 and 2, to the Grant Agreement have been fulfilled, the suppliers of the equipment referred to in category 1 of section 1.02 (b) of the Grant Agreement have been selected and the *pro forma* invoices equivalent to 20 per cent of that category of expenditure have been submitted to him, duly certified by the Administrator and accompanied by certificates of conformity type A, a model of which is attached hereto, signed by an authorized representative of DHE.

2. As soon as the prior condition stipulated in annex III, paragraph 3, to the Grant Agreement has been fulfilled, the balance of the proceeds of the Grant (\$933,000) shall be released to the Government for the account of DHE as and when the certificates of conformity are received from DHE as well as the corresponding certificates of conformity from the Administrator. For the purchase of equipment (categories of expenditure 3, 4 and 6 provided for in section 1.02 (b) of the Grant Agreement), DHE shall use the certificates of conformity type A, and for public works (categories of expenditure 2 and 5), DHE shall use the certificates of conformity type B, a model of which is also attached hereto.

B. Responsibilities of DHE

1. DHE shall have over-all responsibility for the execution of the Project.
2. DHE shall provide the RESREP with the following documentation:
 - (a) the Procurement Programme for all the equipment to be financed out of the Grant Agreement;
 - (b) the Procurement Programme for the building materials;
 - (c) the Construction Programme;
 - (d) for the purchases of equipment (which shall be carried out by means of international competitive bidding), DHE shall submit to the RESREP for his prior approval the certificates of conformity type A, a model of which is attached hereto, as well as the other documentation referred to in that certificate; within 30 days after the end of every six months, DHE shall also provide the detailed records covering every purchase of equipment made during the preceding six months.
 - (e) for the purchase of building material, DHE shall submit to the RESREP the related invoices accompanied by certificates of conformity type B and shall also provide, within 30 days after the end of every six months, the detailed records covering every purchase of building material made during the preceding six months;
 - (f) within 30 days after the end of every six months, a record of all completed public works and all equipment installed during the preceding six months.

C. Responsibilities of the Administrator

The Administrator shall be responsible for:

- (a) certifying to the RESREP any expenditure to be financed out of the proceeds of the Grant;

- (b) advising the RESREP as to the fulfillment of the prior condition stipulated in annex III, paragraph 3, to the Grant Agreement.

Approved:

The Government of the Republic of Mali
[FOUNEKE KEITA]
For the Government
Date: 15 October 1975

Water and Energy Department
[ALI DEMBELE]
For DHE
Date:

United Nations Capital Development Fund
[JEAN PIERRE SCHELLENBERG]
Permanent Representative of the United Nations
Development Programme (UNDP)
Date: 29 September 1975
[LOUIS MOULLARD]
Administrator of UNDP
Project MLI/74/001
Date:

CERTIFICATE OF CONFORMITY TYPE A

I the undersigned (*insert the title of the signer*), of the Water and Energy Department (DHE), hereby certify that the purchase of equipment referred to in annex A to this certificate will be in conformity with the procurement rules and methods normally applied by the Government of the Republic of Mali, which include the following points:

- (a) invitation to competitive international tender;
- (b) choice of the lowest tender which fulfils the terms of the invitation to tender.

Please find attached the *pro forma* invoices of the supplier chosen, his reply to the invitation to tender and the three other most competitive tenders. Where the supplier chosen is not the one who submitted the lowest tender, an explanatory note is also attached hereto.

.....
Signature

CERTIFICATE OF CONFORMITY TYPE B

I the undersigned (*insert the title of the signer*), of the Water and Energy Department (DHE), hereby certify that the purchase made by DHE, the invoices for which are attached hereto, using funds provided by the United Nations Capital Development Fund, was in strict conformity with the procurement rules and methods normally applied by DHE.

.....
Signature

A N N E X III

The prior conditions for payment of the first tranche of the Grant (\$496,000) to which the RESREP shall state his agreement are given in paragraphs 1 and 2 below.

The prior condition for a disbursement from the balance of the proceeds of the Grant to which the RESREP shall state his agreement is given in paragraph 3 below.

1. That satisfactory arrangements, including those relating to the staff, the budget and warehouse facilities, shall be made in order to establish a maintenance service at Nioro du Sahel, comprising at least two mechanics;
 2. That the arrangements stipulated above shall include appropriate training for the two mechanics;
 3. For the second phase of the Project, the final plan shall be revised in order to include the precise specifications of the pumps, linkage pipes and other equipment required for the new wells.
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