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A.I.D. Grant No. 650-K-608.B

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

Amount: \$37,000,000

Date: August 24, 1985

TABLE OF CONTENTS

	Page
ARTICLE 1: <u>The Program</u> .....	1
Section 1.1. Incremental Nature of the Program .....	1
Section 1.2. The Grant .....	1
ARTICLE 2: <u>Conditions Precedent to Disbursement</u> .....	2
Section 2.1. General Conditions Precedent .....	2
Section 2.2. Notification .....	3
Section 2.3. Terminal Date for Conditions Precedent .....	3
ARTICLE 3: <u>Procurement, Eligibility, and Utilization of Commodities</u> .....	3
Section 3.1. A.I.D. Regulation 1 .....	3
Section 3.2. Eligible Items .....	4
Section 3.3. Procurement Source .....	6
Section 3.4. Eligibility Date .....	6
Section 3.5. Procurement for Public Sector .....	6
Section 3.6. Special Procurement Rules .....	7
Section 3.7. Financing Physical Facilities .....	7
Section 3.8. Utilization of Commodities .....	8
Section 3.9. Shipping .....	10
ARTICLE 4: <u>Disbursement</u> .....	12
Section 4.1. Disbursement Procedures for Transaction of One Million Dollars or More .....	12
Section 4.2. Disbursement Procedures for Transaction of Less Than One Million Dollars.....	12
Section 4.3. Other Forms of Disbursement Authorizations.....	13
Section 4.4. Terminal Date for Requests for Disbursement Authorization .....	13
Section 4.5. Terminal Date for Disbursement .....	13
Section 4.6. Date of Disbursement .....	13
Section 4.7. Documentation Requirements .....	13
ARTICLE 5: <u>General Covenants</u> .....	14
Section 5.1. Taxation .....	14
Section 5.2. Reports and Records .....	14
Section 5.3. Completeness of Information .....	15
Section 5.4. Periodic Discussions .....	16
Section 5.5. Use of Local Currency .....	16
ARTICLE 6: <u>Special Covenants</u> .....	17

ARTICLE 7:	<u>Termination; Remedies</u>	25
Section 7.1.	Termination	25
Section 7.2.	Suspension	25
Section 7.3.	Cancellation by A.I.D.	26
Section 7.4.	Refunds	27
Section 7.5.	Nonwaiver of Remedies	28
ARTICLE 8:	<u>Miscellaneous</u>	28
Section 8.1.	Implementation Letters	28
Section 8.2.	Representatives	28
Section 8.3.	Communications	28
Section 8.4.	Information and Marking	29
Section 8.5.	Agreement Annex	30
ARTICLE 9:	<u>A.I.D. Tied Aid Credit Program</u>	30
Annex 1:	<u>The A.I.D. Tied Aid Credit Program</u>	32

COMMODITY IMPORT GRANT AGREEMENT

Dated: August 22, 1985

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 Program

Section 1.1. Incremental Nature of the Program. A.I.D.'s anticipated Seventy-One Million United States Dollars (\$71,000,0000) contribution to this Commodity Import Program will be provided in increments, the initial one being made available in accordance with Section 1.2 of this Agreement. Subsequent increments will be subject to availability of funds to A.I.D. for this purpose, and to the mutual agreement of the parties, at the time of a subsequent increment, to proceed.

Section 1.2. The Grant

To finance the foreign exchange costs of certain commodities, commodity related services ("Eligible Items") and other assistance 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 Thirty-seven Million United States Dollars (\$37,000,000) ("Grant"). Of this incremental amount, not to exceed Sixteen Million United States Dollars (\$16,000,000) may be used as a temporary guarantee for a short term commercial bank loan or loans to enable Sudan to address some of its immediate financial requirements.

Article 2: Conditions Precedent to Disbursement

Section 2.1. General 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, or his designee, 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 3.2, together with a specimen signature of each person certified as to its authenticity.

- (c) An accounting of outstanding counterpart arrears and the means and dates when these will be deposited to the special account.

Prior to any disbursement for the use of funds as a temporary guarantee for a short term commercial bank loan, the GOS will provide:

- (1) the exact terms and conditions of the loan;
- (2) identification of the institution providing the loan;
- (3) a plan for repayment of the loan.

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 the 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 the Grantee in accordance with Section 8.1. of this Agreement. Commodity-related services as defined in A.I.D. Regulation 1 or otherwise agreed by A.I.D., 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 judgement such financing would be inconsistent with the purposes of the Grant or of the Foreign Assistance Act of 1961, as amended.

(b) Up to \$3 million of this Grant may be used to finance technical assistance activities directly related to commodity purchases and the special covenants in this

Agreement, which assistance may occur both prior and subsequent to procurement of such commodities according to AID CIP standard regulations.

- (c) 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 a Direct Letter of Commitment is issued in favor of the supplier.
  
- (d) If no prevalidation is required, 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 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 attached), 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 undertakes 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, tariffs, 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 judgement 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 inter-dependence, geographic proximity, and ownership, constitute a single enterprise in the judgement 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 majeure 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 the United States, other countries in Geographic Code 941, and the cooperating country.
  
- (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.

- (d) The Grantee confirms that the United States Cargo Preference requirements, as set forth above, will apply to all transactions financed under this Agreement as well as the Petroleum Initiative CIP Grant Agreement, except that if transactions retroactively financed under a conditional letter of commitment have not met these requirements, such requirement will be satisfied by increasing the requirements under the remainder of the CIP (both this Agreement and the CIP Petroleum Initiative Agreement) in an amount equal to at least 50 per cent of the gross tonnage of all such transactions financed under the conditional letter of commitment, provided however, that such additional shipping requirement shall not be construed to require an amount of shipping in excess of that possible under the remainder of the CIP. If A.I.D. determines that privately owned United States flag commercial vessels

were not available at fair and reasonable rates at the time of shipment of the petroleum under the conditional letter of commitment, in accordance with the above stated Cargo Preference requirements, such additional shipping requirements shall not be applied.

Article 4: Disbursement

Section 4.1. Disbursement Procedures for Transactions of One Million Dollars or More. 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 direct letters of commitment for specified amounts to one or more suppliers in the United States designated by Grantee and satisfactory to A.I.D. Such letters will commit A.I.D. to pay the supplier(s) on behalf of the Grantee for commodities and commodity-related services furnished under this Agreement, under direct letters of commitment or otherwise, pursuant to such documentation requirements as A.I.D. may prescribe.

Section 4.2. Disbursement Procedures for Transactions of Less Than One Million Dollars. 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 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 4.3. 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 4.4. 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 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 4.5. Terminal Date for Disbursement. No disbursement of Grant funds shall be made against documentation received by A.I.D. 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 4.6. 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, contractor or supplier pursuant to a Letter of Commitment or other form of disbursement authorization.

Section 4.7. 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 3.9 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. Periodic Discussions. Periodically, but no less than quarterly, the Grantee and A.I.D. will meet to discuss the status of the economy, associated economic issues, particularly those referred to in Article 6 below, and the relationship of the A.I.D. program thereto.

Section 5.5. Use of Local Currency

(a) Grantee will establish a Special Account in the Export-Import Bank and deposit therein currency of the Government of the Democratic Republic of the Sudan. All commodities procured under the Grant will generate local currency which will be deposited in this Special Account. Proceeds of the Special Account will go towards economic activities to be mutually agreed upon by the two Parties and to meet requirements of the United States as may be designated by A.I.D. The Parties agree to assure that all funds deposited in the Special Account will be programmed within ninety (90) days of their deposit unless in a special case, a longer period is considered appropriate by both Parties. Furthermore, the Grantee covenants that it will establish adequate staffing for the programming and management of local currency counterpart generations within three months of the date of execution of this Agreement. Staffing and related support requirements can be met by local currency counterpart generations.

(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 as prescribed in Article 6(s) of this Agreement. Programming of the uses of these local currencies also be in accordance with Article 6(s) of this Agreement.

(c) Any unencumbered balances of such 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: Special Covenants. Except as A.I.D. may otherwise agree in writing.

(a) The Government of Sudan undertakes to study the feasibility of introducing a limited nil import licensing procedure. The concept to be considered is to grant licenses for the importation by the private sector of select agricultural inputs and equipment and industrial spare parts, provided these are financed with foreign exchange arranged by the importer from external sources via a Letter of Credit issued by a bank abroad. This procedure would be in addition to financing private sector imports with Letters of Credit issued by resident

commercial banks. This study will begin in November 1985 and be in form and substance acceptable to A.I.D.

- (b) The Government of Sudan and AID will undertake a study of the parastatal sector with the view to identifying means for selling recommended public sector assets to Sudanese working abroad for foreign exchange held outside Sudan. One option to be considered will be that of converting one or more parastatals into limited liability companies with hired private sector management. Any such firm would be capitalized by the sale of common and preferred stock purchased in dollars by Sudanese working abroad. The study will incorporate a proposal for entertaining queries from Sudanese working abroad for the purchased parastatals or parts thereof. It will include some means for publicizing this possibility to the general public and for allowing private Sudanese organizations and individuals to examine the assets of parastatals.
- (c) The Grantee agrees to undertake with AID a joint study of both budget and implicit foreign exchange rate subsidies on all goods and services. The study will measure the effect of Government subsidies on the Central Government budget and impact on import demand.

- (d) The Grantee will undertake an analysis of the monetary expansion that has taken place in the economy in the eighteen months immediately prior to signing this agreement. The study will identify the means by which this expansion took place, ie, what proportion has been in the form of printing local currency, of bank credit extended to the public sector, etc. The study will identify the beneficiaries of the expansion, and the uses of this new claim on resources.
  
- (e) Within the credit ceilings agreed to by Grantee and the IMF which aim at reestablishing economic stability, the Grantee convenants to develop a plan for encouraging allocations of a portion of the credit ceilings to development activities in the outlying areas. This plan will be in form and substance acceptable to A.I.D.
  
- (f) Grantee convenants to rationalize imports by maintaining a system of import license issuance which favours essential inputs in foreign exchange allocation over non-essential consumer items. The Grantee also convenants to implement fully a plan to record on a regular basis categories of licenses actually used. The Ministry of Finance and Economic Planning will seek technical advice and expertise to develop this system through economic assistance agencies.

(g) The Government of Sudan recognizes that cotton constitutes its single most important source of export earnings. It also recognizes that this resource must be sold abroad under terms which assure the maximum in cash payment. It agrees that conditions on the international cotton market have become more competitive in recent years in which Sudan's production has suffered in quality due to honeydew caused by white fly infestation. In order to overcome these problems and test the international cotton market, the Grantee convenants to take aggressive steps to adopt new policies associated with the marketing of cotton. The decision to convert the Cotton Public Corporation into a semiautonomous body operating under the Company Law of 1925 is only the first of these. In pursuing this objective the Government of Sudan will:

- (1) Contact as many brokers as possible with a view to developing a marketing policy that reflects current prices and marketing conditions.
- (2) As a means of stimulating sales, and in recognition of the recent quality problems CPC has experiences with the cotton crop, to develop a system with dealers for guaranteeing cotton quality.

- (h) The Grantee has established and will maintain a special advisory committee including representatives of the private sector to provide advice to the Minister of Finance and Economic Planning in the following areas:
- (1) Means for increasing productivity in agriculture and industry,
  - (2) Policy measures of a financial and monetary nature to be taken as means for correcting short run problems,
  - (3) Foreign trade, including priorities for stimulating agricultural production,
  - (4) Distribution channels for internal trade to assure fair and equitable distribution of consumer and producers goods among the regions.
- (i) The private sector, and the various trade, business and producers associations thereof, will be permitted to submit to the Commodity Aid Committee of the Ministry of Finance and Economic Planning recommendations on the import requirements of the private sector and how these might be met from commodity assistance allocations.

- (j) The Grantee will use at least fifteen (15) percent of the grant proceeds for procurement of agricultural commodities or agricultural-related products from the United States.
- (k) At least \$5,000,000 of imports funded under this grant shall be allocated to private agriculturally-oriented enterprises for rehabilitation of the rainfed agricultural areas, principally Kordofan and Darfur. The funds will be used for such agricultural inputs and agribusiness facilities as cold storage, sorghum mills, groundnut and sesame oil refineries, farm implements and tractors. A local currency grant, sufficient to cover counterpart costs of this sum, shall be programmed for loans to be facilitated through the Agricultural Bank of the Sudan (ABS) or the Industrial Bank of the Sudan (IBS). This grant shall be in addition to other currently proposed capital grants or loans made through these banks. Upon agreement by A.I.D. and the Grantee, private banks may also be used to implement this credit facility. These funds shall be loaned to private sector agricultural enterprises according to practices acceptable to A.I.D. and the Grantee. The Grantee covenants that these lending institutions will supply a report to MFEP and A.I.D. on the disposition of these funds and the recovery of loans.

- (1) The Grantee agrees to advertise in the local press the availability of A.I.D. Commodity Import Program (CIP) foreign exchange for export-promoting and import-substituting activities undertaken by the private sector. The advertisements will invite private importers and end-users to apply for allocations of CIP funds at the Ministry of Commerce, Cooperation and Supply (MCCS). To this end, MCCS will develop a standard application form to facilitate requests for CIP funds by the private sector. This application form will be in form of and substance acceptable to A.I.D.
- (m) Commodities procured under this grant may not be used in the production of palm oil or citrus products.
- (n) Recognizing the need to assure supply of electricity to the economy, the current program undertaken by NEC to improve the management system financed by A.I.D. and World Bank will be continued. A review and evaluation by NEC/Harza will be made prior to December 1985 and provided to USAID prior to January 15, 1986. Based on that review, measures will be taken with regard to staff recruitment, staff training, staff testing and certification, staff reduction, personnel compensation packages, reduction of electricity losses, improve the commercial operations-customer-services offices, improve

billing and collection procedures, and matters related to receiving, storing, issuing, operating and maintaining CIP-supplied goods.

(o) The Grantee will, except as A.I.D. may otherwise agree in writing, repay any loan guaranteed in whole or in part with grant funds, in accordance with the terms of, and at the time specified, in, the applicable loan agreement.

(p) The Grantee covenants to deposit local currencies equivalent to US \$40 million into a Special Account in the National Export/Import Bank within sixty (60) calendar days of receipt by the private oil marketing companies of the commodity paid for directly under the A.I.D. Letter of Commitment. For purposes of this Agreement, the amount of local currencies generated will be calculated at the commercial bank foreign exchange rate of LS 3.3 to the U.S. dollar. The difference between this rate and the official rate, which is LS 2.5 to the U.S. dollar, will be deposited in a sub-account to be used by GOS to meet recurrent budgetary requirements. The Local Currency generated up to the 2.5 amount will be programmed for economic activities mutually agreed upon by the parties concerned. Both accounts will be disbursed with agreement of USAID and their prior approval.

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 deliberate 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 that the purposes of the Grant will be attained; or
- (d) An event occurs that makes it improbable that the Grantee will be able to perform its obligations under this Agreement; or
- (e) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or

(f) 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 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 committed 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 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 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 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 individual holding or acting in the office of the Minister of Finance and Economic 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 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 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 Finance and Economic Planning  
P.O. Box 2092  
Khartoum, Sudan  
Cable Address: ECONOMY, Khartoum  
Telex: 400 KM

To A.I.D.:

Mail Address: United States Agency for International Development  
American Embassy  
P.O. Box 699  
Khartoum, Sudan  
Telex No.: 22033 USAID SD

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 8.4. Information and Marking. The Grantee will give appropriate publicity to the Grant as a program to which the United States has contributed, and require that goods financed by A.I.D., be appropriately marked as prescribed in Implementation Letters.

Section 8.5. Agreement Annex. An Annex 1, relating to the Tied Aid Credit Program, is attached to and forms part of this Agreement.

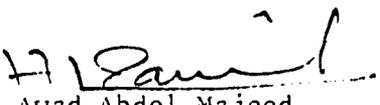
Article 9: A.I.D. Tied Aid Credit Program

- (a) Notwithstanding any other provision of this Agreement, and pursuant to Section 645 of the Trade and Development Enhancement Act of 1983 ("Act"), Public Law 98-181, A.I.D. may direct that all or a portion of the funds made available under Article 1 of this Agreement be used to establish a Tied A.I.D. Credit Program ("Program") with the Grantee on terms and conditions which are consistent with both the provisions of the Act and this Agreement. Funds under the Program will be used to provide contributions in connection with the financing of eligible transactions under this Agreement.
- (b) All funds provided under the Program shall be for the account of the Grantee.
- (c) Until such time and unless the funds made available in this Agreement are used under the Program as contributions in connection with the financing of eligible transactions, those funds remain available to the Grantee to finance the purchase of commodities and commodity-related services as prescribed in Articles 1 and 3 of this Agreement.

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

UNITED STATES OF AMERICA

BY:   
Awad Abdel Majeed

BY:   
Melvin VanDoren

TITLE: Minister of Finance and  
Economic Planning

TITLE: Acting Director, USAID/S

DATE: 24th. August 1985

DATE: Aug 24, 1985

THE A.I.D. TIED AID CREDIT PROGRAM

I. Purpose

The Tied Aid Credit Program ("Program") has been established to provide grants for eligible transactions where the grants will be used in connection with the importation of U.S. exports.

Grants made available under this Program may be used when the Grantee or any public or private entity issues an international tender for the purchase of commodities to be imported into the Sudan in response to which a U.S. supplier submits a bid which offers the lowest price for the commodities, but a non-U.S. supplier submits the lowest overall bid because concessional financing terms are being offered in support of the foreign bid. In each such transaction, funds under the Program are available to be used to equalize the concessional financing terms of the U.S. bid with those offered by the non-U.S. bid.

II. Eligible Transactions

Except as the Parties may otherwise agree in writing:

- (1) Grants are available only to match concessional credit terms offered by or arranged for in support of a tender of a non-U.S. supplier in an international tender competition in which a U.S. supplier, as defined in A.I.D. Handbook 1, Supplement B, has submitted a bid.

- (2) Concessional credit is defined as credit that has a grant element, as defined by the Development Assistance Committee of the Organization for Economic Cooperation and Development, greater than zero. However, the grant element of an official export credit extended on credit terms that are in accordance with the credit norms of the OECD arrangement shall be considered as zero for purposes of determining the applicability of the Program.
- (3) Funds shall not be available under the Program in cases in which the concessional financing in support of a non-U.S. supplier has a grant element that meets the minimum threshold for designation as official development assistance, after adjustment for price differences between the U.S. supplier and the non-U.S. supplier.
- (4) Funds shall not be available under the Program to finance price differences between the U.S. supplier and the non-U.S. supplier.
- (5) The purchaser of the U.S. exports may be a public or private entity.
- (6) The international tender, in order to be an eligible transaction, must allow for a clear determination of the lowest responsive bidder on the basis of fixed price.

- (7) A U.S. supplier or firm, as defined in A.I.D. Handbook 1, must be the lowest responsive bidder but for the concessional financing terms of the non-U.S. bid.
  
- (8) The international tender must be for the purchase of eligible items, as defined in Section 3.3 of the Grant Agreement between the Democratic Republic of the Sudan and the United States of America, dated August 20, 1985 A.I.D. Grant No. 650-K-608.

### III. Amount of Funding

The amount of funding available under the Program for each transaction shall not exceed the sum required to provide for the difference between the discounted present value (DPV) of the U.S. financing package and that of the non-U.S. supplier. The computation of the DPVs shall be made using the Development Assistance Committee, Organization for Economic Cooperation and Development, annual discount rate of 10 percent for repayments that are made on an annual basis.