

PD-BAP-856

OFFICIAL PROJECT  
DOCUMENT

A.I.D. Project Number 650-0065

PROJECT

GRANT AGREEMENT

between

THE DEMOCRATIC REPUBLIC OF SUDAN

and the

UNITED STATES OF AMERICA

for

GEDAREF WATER SUPPLY

Appropriation : 72-1931143

Allotment : GMRA-83-21650-HG42(391-50-650-00-85-31)

Amount : \$7,500,000

## PROJECT GRANT AGREEMENT

Date: September 29, 1983

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 Agreement

The purpose of the Agreement is to set out, in the context of the Economic, Technical and Related Assistance Agreement (Bilateral Agreement) between the parties named above (Parties), dated March 31, 1958, and reaffirmed by exchange of notes June 16, 1973, the understandings of the Parties with respect to the undertaking by the Grantee of the Project described below, and with respect to the financing of the Project by the Parties.

### Article 2: The Project

Section 2.1. Definition of the Project: The Project, which is further described in Annex 1, will assist the Grantee in the provision of adequate water supplies to the refugee and Sudanese population in the Es Showak-Gedaref area in the eastern Sudan province of Kassala. The project is to rehabilitate and expand the water supply system. Within the limits of the above definition of the project, elements of the amplified project description included as Annex 1 to this agreement, may be changed by written agreement of the authorized representatives of the Parties named in Section 8.2 without formal amendment to this Agreement.

### Article 3: Financing

Section 3.1. The Grant: To assist the Grantee to meet the costs of carrying out the Project, A.I.D. pursuant to the Migration and Refugee Assistance Act of 1962, as amended, the Foreign Assistance and Related Programs Appropriation Act, Fiscal Year 1982, together with related legislation, and the Bilateral Agreement, agrees to grant the Grantee under terms of this Agreement not to exceed Seven million five hundred thousand United States (U.S.) dollars (\$7,500,000) (Grant). The Grant may be used to finance foreign exchange costs, as defined in Section 6.1. below, and local currency costs, as defined in Section 6.2. below, of goods and services required for the Project.

### Section 3.2. Grantee Resources for the Project:

(a) The Grantee agrees to provide or cause to be provided for the Project all funds, in addition to the Grant, and all other resources required to carry out the Project effectively and in a timely manner.

(b) The resources provided by Grantee for the Project will not be less than the equivalent of U.S. \$862,000.

### SECTION 3.3 Project Assistance Completion Date:

(a) The "Project Assistance Completion Date" (PACD), which is 30 January 1987 or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the Grant will have been performed and all goods financed under the Grant will have been furnished for the Project as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the Grant for services performed subsequent to the PACD or for goods furnished for the Project, as contemplated in this Agreement, subsequent to the PACD.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in Section 7.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Grantee, may at any time or times reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

### Article 4: Conditions Precedent to Disbursement

SECTION 4.1. First Disbursement: 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 statement of the name of the person holding or acting in the office of the Grantee specified in Section 8.2., and of any additional representatives, together with a specimen signature of each person specified in such statement.

SECTION 4.2. Additional Disbursement: Prior to disbursement under the grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made for Host Country contracts in excess of \$100,000, 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 copy of all contracts financed under the Grant in excess of \$100,000, including any local currency portion, prior to their execution by the Grantee.

SECTION 4.3. Notification: When A.I.D. has determined that the condition precedent specified in Sections 4.1 has been met, it will

promptly notify the Grantee.

SECTION 4.4. Terminal Dates for Conditions Precedent:

If the condition specified in Section 4.1. (a) has not been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by written notice to Grantee.

Article 5: Special Covenants

SECTION 5.1. Project Evaluation: The Parties agree to establish an evaluation program as part of the Project. Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter:

- (a) Evaluation of progress toward attainment of the objectives of the project;
- (b) Identification and evaluation of problem areas or constraints which may inhibit such attainment;
- (c) Assessment of how such information may be used to help overcome such problems; and
- (d) Evaluation, to the degree feasible, of the overall development impact of the Project.

SECTION 5.2. Other Covenants: The Government of Sudan agrees to the following undertakings, except as A.I.D. may otherwise agree in writing:

(a) In view of the government reorganization pending at the time of the signing of this agreement and the importance of having a continuing staff responsible for project implementation, the Grantee agrees that the National Administration for Water (NAW) will continue to be responsible for the Gedaref Water Utility through to project completion, except to the extent that A.I.D. may agree otherwise in writing.

(b) In recognition of the importance of compensation levels sufficient to attract and keep qualified and productive personnel, the Grantee agrees to work with the AID-financed consultant to develop and install a program of compensation financed from the project account, that will accomplish this objective and further covenants that the program will be financed from Gedaref Water Utility revenues after termination of the AID financed project.

(c) The Grantee agrees to undertake those steps essential to assure a highly improved water revenue collection system, acting through the National Administration for Water or other relevant agencies. The Grantee agrees to support actively an enforcement of an approved water revenue system, including collection of revenues for water dispersed through public standpipes and agrees to the elimination of the procedure which permits the purchase of water from the supply system at posted rates and resale at higher rates.

(d) The Grantee, acting through the NAW, agrees that it will establish a Steering Committee for the project. The functions of the Steering Committee will be as follows: assure proper coordination of activities among all agencies and parties concerned with the Gedaref Water Utility and with the status of refugees; set overall policy; solicit cooperation. The Steering Committee will be composed of representatives from the NAW, Commissioner of Refugees, UNHCR, the Regional Government, the Gedaref Town Government, the Gedaref Water Utility, Regional Health Officer and A.I.D.

(e) The Grantee agrees that, acting through the NAW and the Gedaref Water Utility, all key positions in its Gedaref Water Utility Organization will be filled with qualified personnel prior to the arrival of the consultant.

(f) The Grantee undertakes to incorporate the Tawawa Refugee Village water system within the Gedaref Water Utility organization and under the administration, operation and maintenance responsibility of the Gedaref Water Utility management.

#### Article 6: Procurement Sources

##### SECTION 6.1. Source and Origin of Commodities, Nationality of Services; Order of Preference:

(a) Except as A.I.D. may agree otherwise in writing, all goods and services financed by A.I.D. under this Agreement shall have, with respect to commodities, their source and origin, and, with respect to services, their nationality in "Special Free World Countries" (i.e., A.I.D. Geographic Code 935) in accordance with the following order of preference:

1. The United States (A.I.D. Geographic Code 000),
2. The Cooperating Country,
3. "Selected Free World" countries (A.I.D. Geographic Code 941),
4. "Special Free World" Countries (A.I.D. Geographic Code 935).

(b) Application of Order of Preference. When the Grantee procures goods and services which have their source, origin or nationality other than the United States, under the order of preference stated above, such procurement will be based on one or more of the following reasons:

1. The procurement is of an emergency nature, which will not allow for the delay attendant to soliciting U.S. sources,
2. The price differential for procurement from U.S. sources exceeds by 50% or more the delivered price from the non-U.S. source,

3. Impelling local political considerations preclude consideration of U.S. sources,
4. The goods or services are not available from U.S. sources, or
5. Procurement of locally available goods or services, as opposed to procurement of U.S. goods and services, would best promote the objectives of the U.S. Foreign Assistance Program under the grant.

(c) The procurement of goods or services of other than U.S. source, origin or nationality will be subject to the prior approval of A.I.D.

(d) Ocean transportation costs will be financed under the Grant only on vessels under flag registry of the United States or Sudan, except as A.I.D. may otherwise agree in writing. If A.I.D. determines either that there are no vessels under flag registry of Sudan generally available for ocean transportation, or that Sudan has no access to U.S. flag service, A.I.D. in a Project Implementation Letter may agree to finance under the Grant ocean transportation costs on vessels under flag registry of any country included in A.I.D. Geographic Code 941.

#### Article 7: Disbursement

##### SECTION 7.1. Disbursement for Foreign Exchange Costs:

(a) After satisfaction of conditions precedent, the Grantee may obtain disbursements of funds under the Grant for the Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of this Agreement, by such of the following methods as may be mutually agreed upon:

1. By submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (a) requests for reimbursement for such goods or services, or, (b) requests for A.I.D. to procure commodities or services in Grantee's behalf for the Project; or
2. By requesting A.I.D. to issue Letters of Commitment for specified amounts (a) to one or more U.S. Banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, (b) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers for such goods or services.

(b) Banking charges incurred by Grantee in connection with Letters of Commitment and Letters of Credit will be financed under the Grant unless Grantee instructs A.I.D. to the contrary. Such other charges as the Parties may agree to may also be financed under the Grant.

SECTION 7.2. Disbursement for Local Currency Costs:

(a) The local currency needed for such disbursements may be obtained by acquisition by A.I.D. with U.S. dollars by purchase or from local currency already owned by the U.S. Government.

SECTION 7.3. Other Forms of Disbursement: Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

SECTION 7.4. Rate of Exchange: Except as may be more specifically provided elsewhere, if funds provided under the Grant are introduced into Sudan by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into the currency of Sudan at the highest rate of exchange, which at the time the conversion is made, is not unlawful in Sudan.

Article 8: Miscellaneous

SECTION 8.1. 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 addresses:

To the Grantee:	Under-Secretary for Planning Ministry of Finance and Economic Planning Khartoum, Sudan
To A.I.D.:	U.S. Agency for International Development American Embassy P.O. Box 699 Khartoum, Sudan

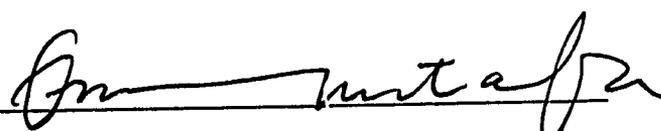
All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice. The Grantee, in addition, will provide the USAID Mission with a copy of any communications sent to A.I.D./Washington.

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 Under-Secretary for Planning, Ministry of Finance and Economic Planning. A.I.D. will be represented by the individual holding or acting in the office of A.I.D. Director, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1. to revise elements of the amplified description in Annex I. 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. Standard Provisions Annex: A Project Grant Agreement Standard Provisions Annex (Annex II) is attached to and forms part 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.

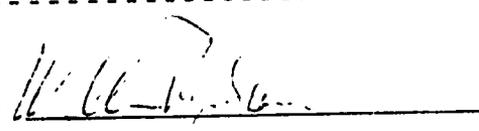
THE DEMOCRATIC REPUBLIC OF THE SUDAN

BY: 

TITLE: Under-Secretary for Planning  
Ministry of Finance and Economic  
Planning

DATE: 9/29/83

THE UNITED STATES OF AMERICA

BY: 

TITLE: Director, USAID

DATE: 9/30/83

## ANNEX I

### I. Amplified Project Description

A. Description: The long-term goal of the project is to increase the potential for productive economic activities in the Gedaref area. This goal will be accomplished, in part, by assisting the Government of Sudan in providing a reliable, adequate supply of potable water for refugees and local Sudanese in the Gedaref-Es Showak area. It is anticipated that, by the end of the project, the institutional and financial capability to manage, operate and maintain the water supply system on a self-sufficient basis will have been developed. Specially, the project will include the following system improvements and additions:

- 1) A pipeline from the new water well constructed by UNHCR to the Tawawa refugee settlement plus chlorination equipment.
- 2) An elevated storage reservoir with 45 m<sup>3</sup> capacity,
- 3) Submersible pumps for water wells at Abu Naga,
- 4) Rehabilitate Abu Naga pump station, install new motor-pump units and chlorination equipment,
- 5) Re-install temporary 200 mm pipeline from Abu Naga pump station to main reservoir in Gedaref,
- 6) Install new collector piping from well to pump station,
- 7) Construct and equip infiltration wells adjacent to Atbara River at Showak and install collection pipeline from wells to the pump station,

- 8) Replace 2 pump-motor units at Showak pump station with three smaller slower speed units,
- 9) A new booster pump station midway along Showak-Gedaref pipeline,
- 10) Install public taps in the Tawawa refugee settlement and pockets of refugees in and around Gedaref,
- 11) Provide and install new water meters on all permanent service connections and standpipes,
- 12) Provide communication between all important operating features of the water transmission distribution system,
- 13) Provide training and technical assistance to improve the institutional, management and operational capabilities, provide continuous water and fiscal soundness.

Technical assistance will be provided in such areas as (1) utility management and organizational procedures; (2) financial management including accounting, budgeting and planning; (3) operations and maintenance procedures including spare parts inventory and storekeeping. Special emphasis will be placed on the development of an effective preventive maintenance program.

I. ILLUSTRATIVE BUDGET

A. USAID

	<u>Total Cost</u> <u>Dollars</u>	<u>Dollars</u>	<u>Local Cost</u> <u>Component</u>
1. Tawawa Water Supply and Distribution-100 mm transmission pipeline, additional elevated storage capacity, improved distribution network, public standpipes and appurtenances.	273,623	186,700	LS 113,000

2. Abu Naga Well Field Supply-six new submersible pumps plus 12 new control panels, restore and equip booster pump station, reinstall recently installed 200 mm PVC transmission pipelines and install well field collection pipeline.	1,483,846	1,136,000	452,
3. Improvements at main reservoir new chlorination equipment.	15,615	13,000	3,
4. Atbara River Supply-drill and equip infiltration wells, install electric service and auxiliary power at infiltration wells, install collection piping, replace motor pump units at Es Showak pump station, provide chlorination equipment, new booster station at mid-point at Es Showak-Gedaref pipeline with electric service and auxiliary power, and miscellaneous equipment and appurtances.	1,553,577	1,280,500	355,
5. Showak Town System-New service pump and miscellaneous appurtances.	46,385	20,000	34,
6. Metering and Waste Control - 10,000 new 5/8 X 3/4 inch domestic and 400 1 inch and larger water meters.	581,615	540,000	54,
7. Communications-Reestablish telephone and provide radio communications equipment.	57,000	50,000	9,
8. Operating equipment and materials-vehicles and equipment.	91,615	90,000	2,
Total construction cost	4,103,276	3,316,200	1,023,
Miscellaneous Training Cost	16,000	15,000	1,
10% Contingencies	411,966	333,120	102,
	<u>4,531,243</u>	<u>3,664,320</u>	<u>1,127,</u>
Inflation Contingency	877,292	549,648	425,

Final engineering, training and construction management services	2,085,600	2,085,600	--
	<hr/>	<hr/>	<hr/>
TOTAL	7,494,135	6,299,568	1,552,937
ROUNDED	\$ 7,500,000	6,304,498	LS 1,554,152

B. GOS

LS 830,000	Site Location Supplement
LS 290,000	For training and monitoring program
<hr/>	
LS 1,120,000	Total (From CIP generated local currency)
\$ 862,000	(Converted at LS 1.3 = \$1)

GEDAREF WATER SUPPLY

IMPLEMENTATION SCHEDULE

Months

	1983	1984	1985	1986	1987
Item					
1. Project Review and Approval	—				
2. Select and Negotiate Consultant Contract		—————			
3. Design Review and Approval		—————			
4. Procurement of Material and Equipment			—————		
5. Elect and Negotiate Construction Contractor			—————		
6. Consultant provide Institutional and Management and Operational and Maintenance Training			—————	—————	
7. Construction of Improvements				—————	

### III. IMPLEMENTATION

The project will be implemented under the National Administration for Water (NAW). NAW will be responsible for coordinating the project activities with other agencies, such as Commissioner of Refugees and the Regional Government. The coordination will be done primarily through a steering committee formed by NAW. The steering committee will provide overall policy, coordination and solicit cooperation.

It will consist of representatives from NAW, UNHCR, Regional Government, Gedaref Water Utility, Gedaref Town Government, Regional Health Officer and USAID.

Design: The design of all facilities are being completed by the consultant scheduled for completion in November, 1983. These activities include designing of the physical improvements and preparation of all tender documents for the procurement of equipment and construction services.

Construction: The tender documents prepared by the consultant during the design phase may be used to invite bids for foreign and local construction firms to execute the project. There are local firms and international firms located in Sudan capable of execution of the various elements of the project. A foreign consultant will be contracted by AID to provide the technical expertise for the procurement of most of the foreign materials and equipment needs for the project. This will include tendering, receiving bids, reviewing the proposals and recommending to AID the successful bidder to furnish the various elements of the project. He will also provide similar services in selecting the construction firm or firms. During the construction

phase, the consultant will perform construction, management services, i.e. inspection, verify completion and contractor invoices, and keep a daily construction record for the construction contractor. Parallel with and for a period after construction completion, the consultant will provide institutional, management, operations and maintenance training to the employees of the water system.

Disbursements: AID funding will be disbursed by USAID Sudan utilizing AID procedures for effecting foreign exchange and local currency in accordance with procedures set forth in contracts or other AID implementing documents.

#### IV. EVALUATION

There will be two scheduled independent evaluations. One after construction begins and one after the completion of construction. The evaluations will be arranged by the USAID Project Officer, and the Mission Evaluation Officer. They will be conducted by an independent member (AID/W or contractor) and representatives from USAID, NAW and the Institute of Environmental Studies (IES). The mid-term evaluation will focus primarily on actual physical progress in relation to the implementation schedule, consultant or contractor performance in relation to their contracts, progress in institutional development, fulfillment of GOS obligations in relation to the Project Grant Agreement covenants and environmental concerns. The final evaluation will be made by a team similar to that for the mid-term evaluation except that it will also have as members, a health officer and a social scientist. It will evaluate the same

factors as for the mid-term evaluation in addition to the status of the refugees in terms of their participation in the project purpose and the health benefits to the extent that a comparison can be made of the health statistical records just before and at the end of the project.

Project Grant StandardProvisions Annex

Definitions: As used in this Annex, the "Agreement" refers to the Project Grant Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

Article A: Project Implementation Letters

To assist Grantee in the implementation of the Project, A.I.D., from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The parties may also use jointly agreed-upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in Annex 1.

Article B: General Covenants

SECTION B.1. Consultation. The Parties will cooperate to assure that the purpose of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on the progress of the Project, the performance of obligations under this Agreement, the performance of any consultants, contractors, or suppliers engaged on the Project, and other matters relating to the Project.

SECTION B.2. Execution of Project. The Grantee will:

(a) carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules or other arrangements, and with any modifications therein, approved by A.I.D. pursuant to this Agreement; and

(b) provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

Article B: General Covenants (Continued)

SECTION B.3. Utilization of Goods and Services.

(a) Any resources financed under the Grant will, unless otherwise agreed in writing by A.I.D., be devoted to the Project until the completion of the Project, and thereafter will be used so as to further the objectives sought in carrying out the Project.

(b) Goods or services financed under the Grant, except as A.I.D. may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

SECTION B.4. Taxation.

(a) This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in the territory of the Grantee.

(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Grant, and any property or transaction relating to such contracts and (2) any commodity procurement transaction financed under the Grant, are not exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in the territory of the Grantee, the Grantee will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Grant.

SECTION B.5. Reports, Records, Inspections, Audit.

The Grantee will:

(a) furnish A.I.D. such information and reports relating to the Project and to 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, books and records relating to the Project and to this Agreement, adequate to show, without limitation, the receipt and use of goods and services acquired under the Grant. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and

**Article B: General Covenants (Continued)**

(c) afford authorized representatives of a Party the opportunity at all reasonable times to inspect the Project, the utilization of goods and services financed by such Party, and books, records, and other documents relating to the Project and the Grant.

**SECTION B.6. Completeness of Information.** The Grantee confirms:

(a) that the facts and circumstances of which it has informed A.I.D., or cause 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 Project and the discharge of responsibilities under this Agreement;

(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 Project or the discharge of responsibilities under this Agreement.

**SECTION B.7. 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 B.8. Information and Marking.** The Grantee will give appropriate publicity to the Grant and the Project as a program to which the United States has contributed, identify the Project site, and mark goods financed by A.I.D., as described in Project Implementation Letters.

**Article C: Procurement Provisions**

**SECTION C.1. Special Rules.**

(a) 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.

(b) Premiums for marine insurance placed in the territory of the Grantee will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C. 7(a)

(c) Any motor vehicles financed under the Grant will be of United States manufacture, except as A.I.D. may otherwise agree in writing.

4.

# BEST AVAILABLE DOCUMENT

## Article C: Procurement Provisions (Continued)

(d) Transportation by air, financed under the Grant, of property or persons, will be on carriers holding United States certification, to the extent service by such carriers is available. Details on this requirement will be described in a Project Implementation Letter.

SECTION C.2. Eligibility Date. No goods or services may be financed under the Grant which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

SECTION C.3. Plans, Specifications, and Contracts. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Grantee will furnish to A.I.D. upon preparation,

(1) any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Grant, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished A.I.D. on preparation;

(2) such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services, which, though not financed under the Grant, are deemed by A.I.D. to be of major importance to the Project. Aspects of the Project involving matters under this subsection (a)(2) will be identified in Project Implementation Letters;

(b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Grant will be approved by A.I.D. in writing prior to their issuance, and their terms will include United States standards and measurements;

(c) Contracts and contractors financed under the Grant for engineering and other professional services, for construction services, and for such other services, equipment or materials as may be specified in Project Implementation Letters, will be approved by A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution; and

Article C: Procurement Provisions (Continued)

(d) Consulting firms used by the Grantee for the Project but not financed under the Grant, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Grantee for the Project but not financed under the Grant, shall be acceptable to A.I.D.

SECTION C.4. Reasonable Price. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Grant. Such items will be procured on a fair and, to the maximum extent practicable, on a competitive basis.

SECTION C.5. Notification to Potential Suppliers. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Grant, the Grantee will furnish A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Project Implementation Letters.

SECTION C.6. Shipping.

(a) Goods which are to be transported to the territory of the Grantee may not be financed under the Grant if transported either: (1) on an ocean vessel or aircraft under the flag 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) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Grant, if such goods or persons are carried: (1) on an ocean vessel under the flag of a country not, at the time of shipment, identified under the paragraph of the Agreement entitled "Procurement Source: Foreign Exchange Costs," without prior written A.I.D. approval; 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 vessel or air charter which has not received prior A.I.D. approval.

(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 the territory of the

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Article C: Procurement Provisions (Continued)

Grantee 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 any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

**SECTION C.7. Insurance.**

(a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Grantee may be financed as a Foreign Exchange Cost under this Agreement provided (1) such insurance is placed at the lowest available competitive rate, and (2) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Grantee (or government of Grantee), by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D. - financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Grantee financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(b) Except as A.I.D. may otherwise agree in writing, the Grantee will insure, or cause to be insured, goods financed under the Grant imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Grantee under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Grantee for the replacement or repair of such goods. Any such replacements will be of source and origin of countries listed in A.I.D. Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

**SECTION C.8. U.S. Government-Owned Excess Property.** The Grantee agrees that wherever practicable, United States Government-owned excess personal property, in lieu of new items financed under the Grant, should be utilized. Funds under the Grant may be used to finance the costs of obtaining such property for the Project.

**Article D: Termination; Remedies.**

**SECTION D.1. Termination.** Either Party may terminate this Agreement by giving the other Party 30 days written notice. Termination of this Agreement will terminate any obligations of the Parties to provide financial or other resources to the Project pursuant to this Agreement, except for payment which they are committed to make pursuant to noncancellable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at A.I.D.'s expense, direct that title to goods financed under the Grant be transferred to A.I.D. if the goods are from a source outside Grantee's country, are in a deliverable state and have not been offloaded in ports of entry of Grantee's country.

**SECTION D.2. Refunds.**

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. Dollars to A.I.D. within sixty (60) days after receipt of a request therefor.

(b) If the failure of Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed under the Grant are not used effectively in accordance with this Agreement, A.I.D. may require the Grantee to refund all or any part of the amount of the disbursements under this Agreement for such goods or services in U.S. Dollars to A.I.D. within sixty days after receipt of a request therefor.

(c) The right under subsection (a) or (b) to require a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.

(d) (1) Any refund under subsection (a) or (b), or (2) any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Grant, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the cost of goods and services required for the Project, to the extent justified, and (B) the remainder, if any, will be applied to reduce the amount of the Grant.

Article D: Termination; Remedies (Continued)

(e) Any interest or other earnings on Grant funds disbursed by A.I.D. to the Grantee under this Agreement prior to the authorized use of such funds for the Project will be returned to A.I.D. in U.S. Dollars by the Grantee.

SECTION D.3. Nonwaiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.

SECTION D.4. Assignment. The Grantee agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. Dollar contract with A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.

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