

AN ACT TO RATIFY THE GUARANTEE AGREEMENT BETWEEN THE REPUBLIC OF LIBERIA AND KUWAIT FUND FOR ARAB ECONOMIC DEVELOPMENT

GUARANTEE AGREEMENT

AGREEMENT, dated 7/12/2012 between the Republic of Liberia (hereinafter referred to as the Guarantor) and Kuwait Fund for Arab Economic Development (hereinafter called the Fund).

Whereas by an agreement of even date herewith between the Fund and the National Port Authority (hereinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement, the Fund has agreed to make to the Borrower a loan in the amount of Kuwait Dinars Four Million (K.D. 4,000,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided; and

Whereas the Guarantor, in consideration of the Fund's entering into the Loan Agreement with the Borrower, has agreed to guarantee such obligations of the Borrower;

ARTICLE I

SECTION 1.01. The Guarantor accepts all the provisions of the Loan Agreement with the same force and effect as if they were fully set forth herein.

ARTICLE II

SECTION 2.01. Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, and the punctual performance of all the covenants and agreements of the Borrower, all as set forth in the Loan Agreement.

ARTICLE III

SECTION 3.01. It is the mutual intention of the Guarantor and the Fund that no other external debt shall enjoy any priority over the Loan by way of a lien hereafter created on governmental assets. To that end, the Guarantor undertakes that, except as the Fund shall otherwise agree, if any lien shall be created on any assets of the Guarantor as security for any external debt, such lien shall be created on any assets of the Guarantor as security for any external debt, such lien will ipso facto equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to:

- (i) any lien created on property at the time of purchase thereof, solely as security for the payment of the purchase price of such property;
- (ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of the sale of such commercial goods; or
- (iii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

The term 'assets of the Guarantor' as used in this Section includes assets of the Guarantor or of any agency of the Guarantor, including the Central Bank of the Guarantor or any other institution performing the functions of a Central Bank; and the term "lien" includes mortgages, pledges, charges, privileges and priorities of any kind.

ARTICLE IV

SECTION 4.01. The Guarantor shall take or cause to be taken all action which shall be necessary on its part to enable the Borrower to continue to execute the Project with due diligence and efficiency and in conformity with sound engineering, financial and administrative practices, and the Guarantor shall not take, or permit to be taken, any action which would prevent or interfere with the execution of the Project or the performance of any of the provisions of the Loan Agreement.

SECTION 4.02. The Guarantor shall take the necessary measures to ensure that the road and bridge leading to the Port of Greenville are continuously maintained in accordance with sound engineering financial and administrative

practices. The Borrower shall also ensure that all utilities, not forming part of the Project but required for its operation, are also maintained in accordance with sound engineering financial and administrative practice.

SECTION 4.03. The Guarantor shall afford all reasonable opportunities to the accredited representatives of the Fund to make visits related to the Loan.

ARTICLE V

SECTION 5.01. The principal of, and interest and other charges on, the Loan shall be paid without deduction for, and free from, any taxes or fees imposed under the laws of the Guarantor or laws in effect in its territories.

ARTICLE VI

SECTION 6.01. The principal of, and interest and other charges on, the Loan shall be paid free from all restrictions, including exchange restrictions, imposed under the Laws of the Guarantor or laws in effect in its territories.

ARTICLE VII

SECTION 7.01. All Fund documents, records, correspondence and similar material shall be considered by the Guarantor as confidential matters and the Guarantor shall accord the Fund in respect thereof full immunity from censorship and inspection.

SECTION 7.02. All Fund assets and income shall be exonerated from nationalization, confiscation and seizure.

ARTICLE VIII

SECTION 8.01. The rights and obligations of the Guarantor and the Fund under this Agreement shall be valid and enforceable in accordance with their terms notwithstanding any local law to the contrary. Neither the Guarantor nor the Fund shall be entitled under any circumstances to assert any claim that any provision of this Agreement is invalid or unenforceable for any reason.

SECTION 8.02. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Agreement upon any default shall impair any such right, power or remedy, or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

SECTION 8.03. Any controversy between the parties to this Agreement and any claim by either such party against the other arising under this Agreement shall be determined by agreement of the parties.

If no agreement is reached the controversy or claim shall be submitted to arbitration by an Arbitral Tribunal as provided in the following Section.

SECTION 8.04. The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Guarantor; the second arbitrator shall be appointed by the Fund; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as hereinbefore prescribed for the appointment of the original and such successor, shall have all the powers and duties of such original arbitrator.

Arbitration proceedings may be instituted under this Section upon notice by either party to the other. Such notice shall contain a statement setting forth the nature of the controversy or claim the submitted to arbitration, the nature and extent of the relief sought, and the name of the arbitrator appointed by the party instituting such proceedings.

Within thirty days after the giving of such notice the other party shall notify the party instituting the proceedings of the name of the arbitrator appointed by such other party and failing this, such arbitrator shall be appointed by the President of the International Court of Justice upon the request of the party instituting the proceedings.

If within sixty days after the giving of the notice instituting the arbitration proceedings the parties shall not have agreed upon the Umpire, either party may request the President of the International Court of Justice to appoint the Umpire.

The Arbitral Tribunal shall convene for the first time at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

Subject to the provision of this Section and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure so as to afford a fair hearing to

each party and shall determine the matters submitted to it whether both parties appear before it or in default of appearance of either of them. Decisions of the Arbitral Tribunal shall be by majority vote and it shall render its award in writing. Such award shall be signed at least, by a majority of the members of the Arbitral Tribunal and a signed counterpart thereof shall be transmitted to each party. The award of the Arbitral Tribunal rendered in accordance with the provisions of this Section shall be final and binding upon the parties who shall abide by, and comply with such award.

The parties shall fix the amount of remuneration or fees of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by the parties. Any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs shall be determined by the Arbitral Tribunal.

The Arbitral Tribunal shall apply the principles common under the current laws of the Guarantor and the State of Kuwait, as well as the principles of justice.

SECTION 8.05. The provisions for arbitration set forth in the previous Section shall be in lieu of any other procedure for the determination of controversies between the parties to this Agreement and any claim by either party against the other party arising thereunder.

SECTION 8.06. Service of any notice or process in connection with any proceedings under this Article may be made in the manner provided in Section 9.01. The parties to this Agreement may waive any and all other requirements for the service of any such notice or process.

ARTICLE IX

SECTION 9.01. Any notice or request required or permitted to be given or made under this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telex, fax, telegram or cable to the party to which it is required or permitted to be given or made at such party's address specified in this Agreement, or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

SECTION 9.02. The Guarantor shall furnish to the Fund sufficient evidence of the authority of the person or persons who will, on behalf of the Guarantor, take any action or execute any documents required or permitted to be taken or executed by the Guarantor under this Agreement, and the authenticated specimen signature of each such person.

SECTION 9.03. Any action required or permitted to be taken, any documents required or permitted to be executed, under this Agreement on behalf of the Guarantor may be taken or executed by the Minister of Finance or any person thereunto authorized in writing by him.

Any amendment of the provisions of this Agreement may be agreed to on behalf of the Guarantor by written instrument executed on behalf of the Guarantor by a duly authorized representative thereof.

ARTICLE X

SECTION 10.01. This Agreement shall come into force after the execution and delivery thereof have been duly authorized and ratified in accordance with the applicable legal requirements in the state of the Guarantor.

ARTICLE XI

SECTION 11.01. If and when the entire principal of the Loan and all interest and other charges which shall have accrued on the Loan shall have been paid, this Agreement and all obligations of the parties thereunder shall forthwith terminate.

[Please see pdf for addresses of the Guarantor and Fund]

IN WITNESSETH WHEREOF the parties hereto acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in Arabic in their respective names and delivered in Monrovia, in three copies each considered an original and all to the same and one effect as of the day and year first above written.

[Please see pdf for signatures]

It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

SECTION I: That from and immediately upon passage of this Act, "AN ACT TO RATIFY THE GUARANTEE AGREEMENT BETWEEN THE REPUBLIC OF LIBERIA AND KUWAIT FUND FOR ARAB ECONOMIC DEVELOPMENT" as herein recited below word for word in the authentic English version be and the same is hereby ratified to give full force and effect to the provision as contained herein.

SECTION II: SHORT TITLE: That Act to ratify the Loan Agreement shall also be cited as "THE GUARANTEE AGREEMENT"

SECTION III: That any and all obligations, covenants, terms and conditions as contained in the above mentioned "AN ACT TO RATIFY THE GUARANTEE AGREEMENT BETWEEN THE REPUBLIC OF LIBERIA AND KUWAIT FUND FOR ARAB ECONOMIC DEVELOPMENT" shall be carried into full completion unless otherwise modified, amended or repealed.

Section V: This Act shall take effect immediately upon the publication into handbills.

ANY LAW TO THE CONTRARY NOTWITHSTANDING

Approved: August 12, 2014
Published: September 2, 2014