AG
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ORIGINAL: ARABIC

LOAN NUMBER: 867

LOAN AGREEMENT

RECONSTRUCTION OF THE MATOTOKA – SEFADU ROAD PROJECT

BETWEEN

REPUBLIC OF SIERRA LEONE

AND

KUWAIT FUND FOR ARAB ECONOMIC DEVELOPMENT

DATED: 20/3/2013

PARLIAMENT LIBRARY
TOWER HILL FREETOWN

LOAN AGREEMENT

Agreement, dated 20/3/20/3... between Republic of Sierra Leone (hereinafter called the Borrower) of the first part, and Kuwait Fund for Arab Economic Development (hereinafter called the Fund) of the second part.

Whereas, the Borrower has requested the Fund to assist in financing the Reconstruction of the Matotoka – Sefadu Road Project described in Schedule 2 to this Agreement (hereinafter called the Project) by providing a loan (hereinafter called the Loan);

Whereas, the Project shall be carried out by the Sierra Leone Roads Authority, a government agency established under the laws of the Borrower (said agency hereinafter called the Authority);

Whereas, the Borrower has obtained a loan from the African Development Bank in the amount of 3.18 million UA (equivalent to 10.11 million Kuwaiti Dinars) hereinafter called the African Development Bank Loan.

Whereas the Borrower has obtained a loan from the OPEC Fund for International Development (OFID) in the amount of 10 million US Dollars (equivalent to 2.9 million Kuwaiti Dinars) hereinafter called the OPEC Fund Loan.

Whereas, the Borrower is willing to provide all other sums in foreign and local currencies as shall be required - in addition to the Loan for, meeting the cost of the Project;

Whereas, the purpose of the Fund is to assist Arab and other developing countries in developing their economies and to provide them with loans necessary for the execution of their development projects and programmes;

Whereas, the Fund realizes the importance and usefulness of the project in developing the Borrower's economy;

Whereas, the Fund has agreed, in view of the foregoing, to provide a loan to the Borrower on the terms and conditions set forth in this Agreement;

Now therefore, the parties hereto agree as follows:

ARTICLE I

The Loan; Interest and Other Charges; Repayment; Place of Payment

SECTION 1.01. The Fund agrees to lend to the Borrower, on the terms and conditions set forth in this Agreement or herein referred to, an amount equivalent to Kuwaiti Dinars four million (K.D.4000,000/-).

SECTION 1.02. The Borrower shall pay interest at the rate of one and one half of one per cent (1.5%) per annum on the principal amount of the Loan withdrawn and outstanding from time to time. Interest shall accrue from the respective dates on which amounts shall be so withdrawn.

SECTION 1.03. An additional charge of one half of one per cent (1/2 of 1%) per annum on the amounts withdrawn from the Loan and outstanding from time to time shall be paid to meet the administrative expenses and the expenses of implementing this Agreement.

SECTION 1.04. The charge payable for special commitments entered into by the Fund, at the request of the Borrower pursuant to Section 3.02 of this Agreement, shall be at the rate of one half of one per cent (1/2 of 1%) per annum on the principal amount of any such special commitments outstanding from time to time.

SECTION 1.05. Interest and other charges shall be computed on the basis of a 360-day year of twelve 30-day months for any period less than a full one half of a year.

SECTION 1.06. The Borrower shall repay the principal of the Loan in accordance with the provisions set forth in Schedule 1 to this Agreement.

SECTION 1.07. Interest and other charges shall be payable semi-annually on March 1st and September 1st, in each year.

SECTION 1.08. The Borrower shall have the right, upon payment of all accrued interest and all other charges, and upon not less than 45 days notice to the Fund, to repay in advance of maturity: (a) all of the principal amount of the Loan at the time outstanding or (b) all of the principal amount of any one or more maturities, provided that after such prepayment there shall not be outstanding any portion of the Loan maturing after the portion to be prepaid.

SECTION 1.09. The principal of, and interest and other charges on, the Loan shall be paid at Kuwait or at such other places as the Fund shall reasonably request.

ARTICLE II

Currency Provisions

SECTION 2.01. All accounts of the financial transactions made pursuant to this Agreement shall be, and all sums falling due thereunder shall be payable, in Kuwaiti Dinars.

SECTION 2.02. The Fund will purchase, at the request of and acting as an agent for the Borrower, such currencies as may be required for payment of the cost of goods to be financed from the Loan under this Agreement, or for reimbursement of such cost in the currency in which it was actually incurred. The amount, which shall be deemed to have been withdrawn from the Loan in any such case, shall be equal to the amount of Kuwaiti Dinars, required for the purchase of the respective amount of foreign currency.

SECTION 2.03. When repayment of principal or payment of interest and other charges on the Loan is being made, the Fund may, at the request of and acting as an agent for the Borrower, purchase the amount of Kuwaiti Dinars required for such repayment or payment, as the case may be, against payment by the Borrower of the amount required for such purchase in currency or currencies, as may be acceptable from time to time to the Fund.

Any payment to the Fund required under this Agreement shall not be deemed to have been effected except from the time and to the extent that Kuwaiti Dinars have actually been received by the Fund.

SECTION 2.04. Whenever it shall be necessary for the purposes of this Agreement to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Fund.

ARTICLE III

Withdrawal and Use of Proceeds of the Loan

SECTION 3.01. The Borrower shall be entitled to withdraw from the Loan amounts expended or to be expended for the Project in accordance with the provisions of this Agreement.

Except as the Fund may otherwise agree, no amount shall be withdrawn from the Loan on account of expenses incurred prior to 1/11/2012.

SECTION 3.02. Upon the Borrower's request and upon such terms and conditions as shall be agreed upon between the Borrower and the Fund, the Fund may enter into special commitments in writing to pay amounts to the Borrower or others in respect of the cost of goods to be financed under this Agreement notwithstanding any subsequent suspension or cancellation.

SECTION 3.03. When the Borrower shall desire to withdraw any amount from the Loan or to request the Fund to enter into a special commitment pursuant to Section 3.02, the Borrower shall deliver to the Fund a written application in such form, and containing such statements, agreements and other documents as the Fund shall reasonably request. Applications for withdrawal, with the necessary documentation as hereinafter in this Article provided, shall, except as the Borrower and the Fund shall otherwise agree, be made promptly in relation to expenditures for the Project.

SECTION 3.04. The Borrower shall furnish to the Fund such documents and other evidence in support of the application for withdrawal, as the Fund shall reasonably request, whether before or after the Fund shall have permitted any withdrawal requested in the application.

SECTION 3.05. Each application for withdrawal and the accompanying documents and other evidence must be sufficient in form and substance to satisfy the Fund that the Borrower is entitled to withdraw from the Loan the amount applied for and that the amount to be withdrawn from the Loan is to be used only for the purposes specified in this Agreement.

SECTION 3.06. The Borrower shall apply the proceeds of the Loan exclusively to financing the reasonable cost of goods required to carry out the Project described in Schedule 2 to this Agreement. The specific goods to be financed out of the proceeds of the Loan and the methods and procedures for procurement of such goods shall be determined by agreement between the Borrower and the Fund, subject to modification by further agreement between them.

SECTION 3.07. The Borrower shall cause all goods financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

SECTION 3.08. Payment by the Fund of amounts, which the Borrower is entitled to withdraw from the Loan, shall be made to or on the order of the Borrower.

SECTION 3.09. The right of the Borrower to make withdrawals from the Loan shall terminate on 31/12/2016 or such other date as may from time to time be agreed upon between the Borrower and the Fund.

ARTICLE IV

Particular Covenants

SECTION 4.01. The Borrower shall make the proceeds of the Loan available to the Authority - or any successor entity acceptable to the Fund - which shall be entrusted with carrying out the Project.

SECTION 4.02. The Borrower shall make or cause to be made available promptly as needed all other sums which shall be required, in addition to the Loan for carrying out the Project, all such sums to be made available on terms and conditions satisfactory to the Fund.

SECTION 4.03. The Borrower shall cause the Authority to furnish to the Fund, promptly upon their preparation, the studies of, and the plans and specifications for, the Project, the schedules of its execution and any material modifications subsequently made therein, in such detail as the Fund may from time to time request.

SECTION 4.04. The Borrower shall cause the Authority to carry out the Project with due diligence and efficiency and in conformity with sound engineering, administrative and financial practices.

SECTION 4.05. In carrying out the Project the Borrower shall cause the Authority to employ engineering consultants acceptable to, and upon terms and conditions satisfactory to the Fund.

SECTION 4.06. The awarding of the contracts for the execution of the Project, which are to be financed from the Loan, and any amendments thereto shall be subject to the Fund's approval.

SECTION 4.07. The Borrower shall cause the Authority to maintain records adequate to identify the goods financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof), and to reflect in accordance with consistently maintained sound accounting practices the operations and financial position of the Authority, shall afford all reasonable opportunity for accredited representatives of the Fund to make visits for purposes related to the Loan, and to inspect the Project, the goods and any relevant records and documents, and shall furnish the Fund all such information as the Fund shall reasonably request concerning the expenditure of the proceeds of the Loan, the Project, the goods and the operations and financial position of the Authority in respect of the Project.

SECTION 4.08. The Borrower shall cause the Authority to insure with responsible insurers all goods financed out of the proceeds of the Loan. Such insurance

shall cover such marine, transit and other hazards incident to purchase and importation of the goods into the territories of the Borrower and delivery thereof to the site of the Project, and shall be for such amounts as shall be consistent with sound commercial practices. Such insurance shall be payable in the currency in which the cost of the goods insured thereunder shall be payable, or in freely convertible currency.

The Borrower shall cause the Authority to take out and maintain, with responsible insurers, insurance against risks related to the implementation of the Project in such amounts as shall be consistent with sound commercial practices.

SECTION 4.09. The Borrower and the Fund shall cooperate fully to ensure that the purposes of the Loan will be accomplished. To that end, the Borrower shall cause the Authority to furnish to the Fund every three months from the date of this Agreement periodic reports on the execution of the Project and the general status of the Loan as well as all other information as the Fund shall reasonably request in relation to the Project and the Loan.

The Borrower and the Fund shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Borrower shall promptly inform the Fund of any condition which interferes or threatens to interfere with the accomplishment of the purposes of the Loan (including substantial increase in the cost of the Project) or the maintenance of the service thereof.

SECTION 4.10. (a) The Borrower shall take or cause to be taken all action which shall be necessary on its part to execute the Project and shall not take, or permit to be taken, any action which would prevent or interfere with the execution or operation of the Project or the performance of any of the provisions of this Agreement.

(b) The Borrower shall take or cause to be taken all actions which shall be necessary to acquire, as and when needed, in accordance with the implementation programme of the project, all such lands and rights in respect of land as shall be required for carrying out the Project. The Borrower shall ensure that any one affected by such action shall be compensated.

SECTION 4.11. (a) The Borrower shall at all time make available to the Authority a sufficient number of qualified and experienced technical personnel required to maintain its efficiency. In particular the borrower shall ensure that the Project Management Unit shall have the necessary human and financial resources as well as the equipment required to enable it to discharge its responsibilities.

(b)The Borrower shall prepare and present to the Fund before 31st December 2012 a training program for the personnel of the Authority for the Fund's review and approval.

SECTION 4.12. The Borrower shall adequately maintain and repair or cause to be adequately maintained and repaired, the Project's Road and roads leading to its both ends in accordance with appropriate engineering standards and with due regard to financial and economic requirements, and shall provide promptly as needed, the funds, facilities, services and other resources required for the purpose.

SECTION 4.13. The Borrower shall continue to ensure that the dimensions and axle loads of vehicles using its roads shall be consistent with the structural and geometric design standards of these roads. To that end the Borrower shall continue to maintain an effective axle load control system and enforce the prescribed axle load regulations.

SECTION 4.14. The Borrower shall take all necessary action for the protection of the environment and to ensure that the Project is carried out and operated in accordance with ecological and environmental practices appropriate to its site and conditions.

SECTION 4.15. The Borrower shall cause the Authority to maintain its financial management system and prepare project financial statements in accordance with International Accounting Standards. The Authority shall submit to the Fund audited financial reports no later than six months after the close of each fiscal year. In addition the Authority shall submit to the fund unaudited financial reports 45 days after the end of each calendar quarter.

SECTION 4.16. The Borrower shall cause the Authority to operate and maintain the Project, and operate and maintain structures and other works and facilities not included in the Project but necessary for the proper and efficient operation thereof, in accordance with sound engineering, financial and administrative practices.

SECTION 4.17. The Borrower shall ensure that the Authority, or any successor entity acceptable to the Fund, will function at all times under rules and regulations and have such powers, management, administration, personnel and financial resources as are necessary for the diligent and efficient carrying out and operation of the Project.

The Borrower shall in the spirit of good cooperation prevailing between the two parties inform the Fund of any proposed action which would materially affect the nature or constitution of the Authority and shall afford the Fund all reasonable opportunity, in advance of the taking of such action, to exchange views with the Borrower with respect thereto.

SECTION 4.18. It is the mutual intention of the Borrower 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 Borrower undertakes that, except as the Fund shall otherwise agree, if any lien shall be created on any assets of the Borrower as security for the 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 Borrower' as used in this Section includes assets of the Borrower or of any of its political subdivisions or of any entity owned or controlled by the Borrower or by any such political subdivisions, including the Central Bank of the Borrower 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.

SECTION 4.19. The principal of, and interest on the Loan and all other charges shall be paid without deduction for, and free from any tax in force under the laws of the Borrower or laws in effect in its territories or shall be in effect in the future.

SECTION 4.20. This Agreement shall be free from any taxes, imposts, levies, fees and dues of any nature that shall be imposed under the laws of the Borrower or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof and the Borrower shall pay or cause to be paid all such taxes, imposts, levies and dues, if any, imposed under the laws of the country or countries in whose currency the Loan is payable or laws in effect in the territories of such country or countries.

SECTION 4.21. 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 Borrower or laws in effect in its territories.

SECTION 4.22. All Fund documents, records, correspondence and similar material shall be considered by the Borrower as confidential matters. The Borrower shall accord the Fund full immunity from censorship and inspection of publications.

SECTION 4.23. All Fund assets and income shall be exonerated from nationalization, confiscation and seizure.

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ARTICLE V

Cancellation and Suspension

SECTION 5.01. The Borrower may by notice to the Fund cancel any amount of the Loan which the Borrower shall not have withdrawn prior to the giving of such notice, except that the Borrower may not so cancel any amount of the Loan in respect of which the Fund shall have entered into a special commitment pursuant to Section 3.02 of this Agreement.

SECTION 5.02. If any of the following events shall have happened and be continuing, the Fund may by notice to the Borrower suspend in whole or in part the right of the Borrower to make withdrawals from the Loan:

(a) A default shall have occurred in the payment of principal or interest or any other payment required under this Agreement or any other Loan Agreement between the Borrower and the Fund;

(b) A default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower under this Agreement;

(c) The Fund shall have suspended in whole or in part the right of the Borrower to make withdrawals under any other loan agreement between the Borrower and the Fund because of a default on the part of the Borrower;

(d) Unless the Fund otherwise agrees, the right of the Borrower to withdraw from the proceeds of any loan made to the Borrower for the financing of the Project shall have been suspended, cancelled or terminated in whole or in part pursuant to the terms of the agreement providing therefor, or any such loan shall have become due and payable prior to the agreed maturity thereof and the Borrower shall have failed to secure adequate funds for the Project from other source on terms and conditions consistent with obligations of the Borrower under this Agreement;

(e) An extraordinary situation shall have arisen which shall make it improbable that the Borrower will be able to perform its obligations under this Agreement.

Any event occurring after the date of this Agreement and prior to the effective date which would have entitled the Fund to suspend the Borrower's right to make withdrawals if this Agreement had been effective on the date such event occurred, will entitle the Fund to suspend withdrawals under the Loan exactly as if it had occurred after the effective date.

The right of the Borrower to make withdrawals under the Loan shall continue to be suspended in whole or in part, as the case may be, until the

event or events which gave rise to such suspension shall have ceased to exist or until the Fund shall have notified the Borrower that the right to make withdrawals has been restored; provided, however, that in the case of any such notice of restoration the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall affect or impair any right, power or remedy of the Fund in respect of any other subsequent event described in this Section.

SECTION 5.03. If any event specified in paragraph (a) of Section 5.02 shall occur and shall continue for a period of thirty days after notice thereof shall have been given by the Fund to the Borrower, or if any event specified in paragraphs (b), (c) and (d) and (e) of Section 5.02 shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Fund to the Borrower, then at any subsequent time during the continuance thereof, the Fund at its option, may declare the principal of the Loan to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in this Agreement to the contrary notwithstanding.

SECTION 5.04. If (a) the right of the Borrower to make withdrawals from the Loan shall have been suspended with respect to any amount of the Loan for a continuous period of thirty days, or (b) the date specified in Section 3.09 as the Closing Date an amount of the Loan shall remain unwithdrawn, the Fund may by notice to the Borrower terminate the right of the Borrower to make withdrawals with respect to such amount. Upon the giving of such notice such amount of the Loan shall be cancelled.

SECTION 5.05. No cancellation or suspension by the Fund shall apply to amounts subject to any special commitment entered into by the Fund pursuant to Section 3.02 except as expressly provided in such commitment.

SECTION 5.06. Except as the Fund may otherwise agree any cancellation shall be applied pro rata to the several installments of the principal amount of the Loan maturing after the date of such cancellation.

SECTION 5.07. Notwithstanding any cancellation or suspension, all the provisions of this Agreement shall be continued in full force and effect except as in this Article specifically provided.

ARTICLE VI

Enforceability of this Agreement; Failure to Exercise Rights; Arbitration

SECTION 6.01. The rights and obligations of the Fund and the Borrower under this Agreement shall be valid and enforceable in accordance with their terms notwithstanding any local law to the contrary. Neither the Borrower 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 6.02. 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 6.03. Any controversy between the parties to this Agreement and any claim by either party against the other arising out of this Agreement shall be determined by agreement of the parties, and failing such agreement the controversy or claim shall be submitted to arbitration by an Arbitral Tribunal as provided in the following Section.

SECTION 6.04. The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Borrower; the second arbitrator shall be appointed by the Fund; and the third arbitrator (hereinafter sometime called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice at the request of either party. If either of the parties shall fail to appoint an arbitrator, such arbitrator shall be appointed by the President of the International Court of Justice upon the request of the adverse party. 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 arbitrator, 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 the party instituting such proceedings to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be 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 adverse party shall notify the party instituting the proceedings of the name of the arbitrator appointed by such adverse party.

If within sixty days after the giving of such notice instituting the arbitration proceedings the parties shall not have agreed upon an Umpire, either party may request the appointment of an Umpire as provided in the first paragraph of this Section.

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