

No. 12023

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**INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT  
and  
MEXICO**

**Guarantee Agreement—*Ports Project* (with schedule and General Conditions Applicable to Loan and Guarantee Agreements). Signed at Washington on 17 May 1972**

*Authentic text: English.*

*Registered by the International Bank for Reconstruction and Development on 26 September 1972.*

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**BANQUE INTERNATIONALE POUR  
LA RECONSTRUCTION ET LE DÉVELOPPEMENT  
et  
MEXIQUE**

**Contrat de garantie — *Projet portuaire* (avec annexe et Conditions générales applicables aux contrats d'emprunt et de garantie). Signé à Washington le 17 mai 1972**

*Texte authentique : anglais.*

*Enregistré par la Banque internationale pour la reconstruction et le développement le 26 septembre 1972.*

## GUARANTEE AGREEMENT<sup>1</sup>

AGREEMENT, dated May 17, 1972, between UNITED MEXICAN STATES (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date herewith<sup>2</sup> between the Bank and Nacional Financiera, S.A. (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to twenty million dollars (\$20,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to undertake certain obligations in respect of such loan as hereinafter provided; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake such obligations as hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows:

### *Article I*

#### GENERAL CONDITIONS; DEFINITIONS

*Section 1.01.* The parties to this Guarantee Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969,<sup>3</sup> with the same force and effect as if they were fully set forth herein, subject, however, to the modifications thereof set forth in Section 1.01 of the Loan Agreement (said General Conditions Applicable to Loan and Guarantee Agreements, as so modified, being hereinafter called the General Conditions).

*Section 1.02.* Wherever used in this Guarantee Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in Section 1.02 of the Loan Agreement have the respective meanings therein set forth.

<sup>1</sup> Came into force on 17 August 1972, upon notification by the Bank to the Government of Mexico.

<sup>2</sup> The said Agreement entered into force on 17 August 1972. As it does not constitute an international agreement or a part of the present Agreement, it is not reproduced herein. However, it was published by the Bank as document LN 820 ME, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Guarantee Agreement.

<sup>3</sup> See p. 348 of this volume.

*Article II*

## GUARANTEE; BONDS; PROVISIONS OF FUNDS

*Section 2.01.* Without limitation or restriction upon any of its other obligations under the Guarantee Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and interest and other charges on, the Loan and the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds prior to their maturity and the punctual performance of all the other obligations of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

*Section 2.02.* The Guarantor shall endorse, in accordance with the provisions of the General Conditions, its guarantee on the Bonds to be executed and delivered by the Borrower. Nacional Financiera, S.A. and such other person or persons as it shall appoint in writing are designated as authorized representatives of the Guarantor for the purposes of Section 8.10 of the General Conditions.

*Section 2.03.* Without limitation or restriction upon the provisions of Section 2.01 of this Guarantee Agreement, the Guarantor specifically undertakes to provide, or to make arrangements satisfactory to the Bank promptly to provide or cause to be provided, upon terms and conditions satisfactory to the Bank, all such funds as shall be needed to meet the expenditures required for the carrying out of the Project.

*Article III*

## THE PROJECT

*Section 3.01.* The Guarantor shall carry out Parts A, B, C, D, F and G of the Project, all with due diligence and efficiency and in conformity with sound administrative, financial and engineering practices.

*Section 3.02.* (a) In order to assist the Guarantor in the carrying out of Part F of the Project, the Guarantor shall employ consultants acceptable to the Bank upon terms and conditions satisfactory to the Bank.

(b) Except as the Bank shall otherwise agree, the Guarantor shall employ, in accordance with paragraph (a) above, the consultants for Part F (ii) of the Project by not later than June 30, 1972 and the consultants for Part F (iii) of the Project by not later than June 30, 1973.

*Section 3.03.* Except as the Bank shall otherwise agree, the goods and services (other than services of consultants and staff training) required for the Project and to be financed out of the proceeds of the Loan, shall be procured as provided in Section 2.03 of the Loan Agreement.

*Section 3.04.* (a) The Guarantor shall furnish to the Bank, promptly upon their preparation, the plans, specifications, reports and work schedules, for the parts of the Project to be carried out by it, and any material modifications thereof or additions thereto, in such detail as the Bank shall reasonably request.

(b) The Guarantor: (i) shall maintain records adequate to record the progress of the parts of the Project to be carried out by it (including the cost thereof) and to identify the goods and services financed out of the proceeds of the Loan, and to disclose the use thereof in such parts of the Project; (ii) shall enable the Bank's representatives to inspect such parts of the Project, the goods financed out of the proceeds of the Loan, the installations and equipment of the ports affected by the Project and any relevant records and documents; and (iii) shall furnish to the Bank all such information as the Bank shall reasonably request concerning such parts of the Project, the expenditure of the proceeds of the Loan and the goods and services financed out of such proceeds.

*Section 3.05.* (a) The Guarantor undertakes to insure, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Loan against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable by the Guarantor to replace or repair such goods.

(b) Except as the Bank shall otherwise agree, the Guarantor shall cause all goods and services financed out of the proceeds of the Loan to be used exclusively for the Project.

*Section 3.06.* Except as the Bank shall otherwise agree, the Guarantor shall by not later than July 1, 1972:

- (a) employ qualified managerial staff for each of the following functions in the Dirección General de Operación Portuaria of Marina: office of the chief executive, port facilities and equipment, port operations, economic studies, tariffs and administration; and
- (b) at each of the Project Ports employ qualified individuals for the posts of Superintendent, Port Captain, Resident Engineer and Administrator/Accountant.

*Article IV*

## OTHER COVENANTS

*Section 4.01.* Except as the Bank shall otherwise agree, the Guarantor, in pursuance of its policy of achieving financial viability for its ports, shall from time to time make such adjustments in the port charges levied by the Guarantor in each Project Port, and shall take all other action as may be necessary to provide for each Project Port revenue sufficient to produce for the year 1974, and each year thereafter, an annual rate of return for each Project Port on the value of its net fixed assets in operation satisfactory to the Guarantor and the Bank and sufficient to enable each Project Port, out of its internally-generated Funds: (i) to meet interest and other charges on and amortization of funds provided by the Guarantor and (ii) to finance a reasonable portion, satisfactory to the Guarantor and the Bank, of future capital expenditure, including replacement of assets, all determined in accordance with the provisions of Schedule 1 to this Guarantee Agreement.

*Section 4.02.* Except as the Bank shall otherwise agree, the Guarantor shall cause the charges to port users for port services provided by Marina in each of the Project Ports to be reasonably related to the operating expenses (as defined in paragraph 2 (iv) of Schedule 1 to this Guarantee Agreement) of providing the respective service in the respective Port.

*Section 4.03.* Except as the Bank shall otherwise agree, the Guarantor shall cause the port charges referred to in Sections 4.01 and 4.02 of this Guarantee Agreement above to be applied to any and all port users, subject only to (i) exemptions required by international courtesy rules and (ii) reductions in such charges deemed necessary by the Guarantor and the Bank to offset adverse economic effects which have resulted or would result from the implementation of port charges referred to in such Sections 4.01 and 4.02. In the case of reductions in charges under clause (ii) of the foregoing sentence, port charges shall be set at not less than the level necessary to recover those costs which would be avoided if the service were not provided.

*Section 4.04.* Except as the Bank shall otherwise agree, the Guarantor shall make arrangements satisfactory to the Bank so that after January 1, 1973 Marina shall compute and invoice port charges levied by the Guarantor.

*Section 4.05.* Except as the Bank shall otherwise agree, the Guarantor shall by January 1, 1973 cause cargo-handling charges applicable to the Project Ports (except charges resulting from agreements which are not subject to regulations of the Guarantor) to be revised so as to provide

revenues to cargo-handling concessionaires adequate to cover the costs of cargo-handling services and to provide a reasonable level of profit.

*Section 4.06.* Except as the Bank shall otherwise agree, the Guarantor shall by not later than January 1, 1973 establish and maintain in effect an accounting system acceptable to the Bank within the Dirección General de Operación Portuaria of Marina and in each of the Project Ports.

*Section 4.07.* The Guarantor shall cause the works, installations and equipment used in the port operations of the Guarantor to be adequately maintained and all necessary repairs thereof promptly to be made, all in accordance with sound engineering practices.

*Section 4.08.* Except as the Bank shall otherwise agree, the Guarantor shall, promptly after completion of Part C of the Project, cause the free time period for imports under the demurrage rates at the ports of Manzanillo, Tampico and Veracruz not to exceed ten days.

*Section 4.09. (a)* It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on governmental assets.

(b) To that end, the Guarantor (i) represents that at the date of this Guarantee Agreement no lien exists on any governmental assets as security for any external debt; and (ii) undertakes that, except as the Bank shall otherwise agree, if any such lien shall be created, it will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect. The Guarantor shall promptly inform the Bank of the creation of any such lien.

(c) The foregoing representation and undertaking 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; or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

As used in this Section (a) the term "governmental assets" includes the assets of the Guarantor or of any of its political subdivisions or of any agency, and (b) the term "agency" means any agency or instrumentality of the Guarantor or of any political subdivision of the Guarantor and shall include any institution or organization which is owned or controlled directly or indirectly by the Guarantor or by any political subdivision of the Guarantor or the operations of which are conducted primarily in the interest of or for account of the Guarantor or any political subdivision of the Guarantor.

*Section 4.10.* The Guarantor shall maintain or cause to be maintained records adequate to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition in respect of the Project of the departments and agencies of the Guarantor or other entities responsible for carrying out Parts A, B, C, D, F and G of the Project.

### *Article V*

#### CONSULTATION AND INFORMATION

*Section 5.01.* The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end the Guarantor and the Bank shall from time to time, at the request of either party: (i) exchange views through their representatives with regard to the performance of their respective obligations under the Guarantee Agreement and other matters relating to the purposes of the Loan; and (ii) furnish to the other all such information as it shall reasonably request with regard to the performance of their respective obligations under this Guarantee Agreement and the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor, including its balance of payments, and the external debt of the Guarantor, of any of its political subdivisions and of any agency of the Guarantor or of any such political subdivision.

*Section 5.02.* (a) The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(b) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

### *Article VI*

#### TAXES AND RESTRICTIONS

*Section 6.01.* The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the foregoing shall not apply to taxation of payments under any Bond to a holder thereof other than the Bank when

such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

*Section 6.02.* The Guarantee Agreement, the Loan Agreement, any instrument made pursuant to Section 4.09 of this Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

*Section 6.03.* The payment of the principal of, and interest and other charges on, the Loan and the Bonds shall be free from all restrictions, regulations, controls or moratoria of any nature imposed under the laws of the Guarantor or laws in effect in its territories.

### *Article VII*

#### REPRESENTATIVE OF THE GUARANTOR; ADDRESSES

*Section 7.01.* Nacional Financiera, S.A. is designated as representative of the Guarantor for the purposes of Section 10.03 of the General Conditions.

*Section 7.02.* The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Guarantor:

United Mexican States  
c/o Nacional Financiera, S.A.  
Isabel La Católica 51  
México 1, D.F. México

For the Bank:

International Bank for Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America



IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

United Mexican States,  
*by* Nacional Financiera, S.A.:

*By* MANUEL CALDERÓN DE LA BARCA  
Authorized Representative

International Bank for Reconstruction and Development:

*By* J. BURKE KNAPP  
Vice President

### SCHEDULE 1

#### PROVISIONS FOR DETERMINING FINANCIAL PERFORMANCE OF PROJECT PORTS UNDER SECTION 4.01

1. This Schedule supplements Section 4.01 of this Guarantee Agreement and sets forth certain definitions and other provisions to clarify and amplify the requirements of Section 4.01.

2. For the purposes of Section 4.01 and of this Schedule:

- (i) the rate of return shall be calculated by relating the Guarantor's net operating revenue at each Project Port for the year in question to the average of the value of the Guarantor's net fixed assets in operation at the respective Project Port at the beginning and at the end of such year;
- (ii) the term "value of the net fixed assets in operation" shall mean the gross book value of such assets, less the amount of accumulated depreciation, as revalued from time to time by the Guarantor in accordance with sound accountancy principles;
- (iii) the term "net operating revenue" shall mean the difference between:
  - (A) gross operating revenues from port service and other charges accruing from the Guarantor's port services and use of its port installation; and
  - (B) operating expenses of the Guarantor for port services, including adequate maintenance and depreciation, but excluding interest and other charges on funds provided by the Guarantor;
- (iv) the term "operating expenses" shall mean:
  - (A) working expenses of the port manager office, port captaincy, resident engineer office, and administrative unit, in each Project Port but excluding expenses related to the registration and certification of craft;

- (B) operating expenses of the Dirección General de Operación Portuaria of Marina in Mexico City directly related to port operations and apportioned among all ports on the basis of costs under subparagraph (A) above;
- (C) maintenance and depreciation of the Guarantor's port installations; and
- (D) operating expenses, including depreciation of dredging equipment, of the Dirección General de Dragado in Marina apportioned among all ports in accordance with sound accountancy principles;
- (v) the term "depreciation" shall mean depreciation on assets in operation, calculated on the basis of the replacement cost of such assets and their useful life, in accordance with sound accountancy principles consistently applied;
- (vi) the term "internally-generated funds" shall mean net operating revenue plus depreciation; and
- (vii) the term "funds provided by the Guarantor" shall mean the funds used for port investments in the respective Project Port on or after January 1, 1972 in excess of the respective Project Port's accumulated internally-generated funds after January 1, 1972 less the accumulated interest and other charges on and amortization of funds provided by the Guarantor.

3. Funds provided by the Guarantor shall be charged by the Guarantor to the respective Project Port on terms and conditions satisfactory to the Bank.

4. The Guarantor shall by not later than January 1, 1973 establish and maintain within the Dirección General de Operación Portuaria of Marina an account for each Project Port in which will be recorded at least annually the internally-generated funds, the funds provided by the Guarantor and the interest and other charges on and amortization of funds provided by the Guarantor, of the respective Project Port.

#### INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

#### GENERAL CONDITIONS, DATED 31 JANUARY 1969

#### GENERAL CONDITIONS APPLICABLE TO LOAN AND GUARANTEE AGREEMENTS

[Not published herein. See *United Nations, Treaty Series*, vol. 691, p. 300.]