

Execution Copy

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE REPUBLIC OF PANAMÁ
REGARDING A DEBT-FOR-NATURE SWAP
(DARIÉN NATIONAL PARK)**

The Government of the United States of America and the Government of the Republic of Panamá,

Seeking to facilitate the conservation, protection, restoration, and sustainable use and management of tropical forests in Panamá, which provide a wide range of benefits to humankind,

Noting that rapid rates of tropical deforestation and forest degradation continue to be serious problems in many regions of the world,

Recognizing that the alleviation of external debt in the context of broader economic reforms can reduce economic pressures on countries and result in increased protection for tropical forests,

Further recognizing the Government of the Republic of Panamá's strong record in implementing market-based economic reforms including sustained efforts to liberalize its investment regime,

Wishing to ensure that resources freed from debt will be used for the conservation of tropical forests,

Further recognizing The Nature Conservancy's interest in tropical forest protection in Panamá, and the success of non-governmental organizations in Panamá in conserving and managing tropical forest land in Panamá,

Wishing to build on the success of the debt-for-nature swap transaction undertaken by the Parties in September 2003 with respect to conservation in the Chagres National Park, and

In furtherance of the goals of the U.S. Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended, and the Foreign Operations, Export Financing, and Related Programs Appropriations Act, as contained in Public Law No. 108-7 (2003).

Have agreed on this 19 day of August, 2004 and contract as follows:

**ARTICLE I
DEFINITIONS**

- 1.1. **Defined Terms.** The capitalized terms contained and used in this Agreement shall have the respective meanings ascribed to them in this Section 1.1 and elsewhere in this Agreement. If a capitalized term is not defined in this Agreement and it is defined in the

Swap Fee Contractual Agreement, then it shall have the meaning ascribed to it in the Swap Fee Contractual Agreement.

(a) "525 T041 August 2004 Payment" means the amount due on August 25, 2004 from, and paid by or on behalf of, GOP to USAID with respect to Loan 525 T041 under the Outstanding Obligations.

(b) "525 V043 August 2004 Payment" means the amount due on August 28, 2004 from, and paid by or on behalf of, GOP to USAID with respect to Loan 525 V043 under the Outstanding Obligations.

(c) "Agreement" means this Agreement between the Government of the United States of America and the Government of the Republic of Panamá Regarding a Debt-for-Nature Swap, as it may be amended from time to time.

(d) "Business Day" means any day on which the Federal Reserve Bank of New York and GOP are both open for business.

(e) "Closing" has the meaning set forth in Section 2.3.

(f) "Closing Date" has the meaning set forth in Section 2.3

(g) "Debt Reduction Payment" means the transfer of six million five hundred thousand U.S. dollars (U.S.\$ 6,500,000) by USG from the Debt Restructuring Account to the USAID Account.

(h) "Debt Restructuring Account" means the "Debt Restructuring Program Account" at the U.S. Department of the Treasury.

(i) "Escrow Account" has the meaning set forth in Section 6.2.

(j) "Excess Amount I" means an amount that would equal the difference between the 525 T041 August 2004 Payment and the amount due on August 25, 2004 under the New Obligation as described in Schedule A.1.

(k) "Excess Amount II" means an amount that would equal the difference between the 525 V043 August 2004 Payment and the amount due on August 28, 2004 under the New Obligation as described in Schedule A.1.

(l) "Forest Conservation Agreement" means the Forest Conservation Agreement to be entered into among TNC, GOP, the Fund Administrator and the Trustee with respect to the Forest Land, as amended from time to time.

(m) "Forest Land" means (a) that portion of the Darién National Park (Parque Nacional Darién) and its environs described in Exhibit 1.1 of the Forest Conservation Agreement which will be conserved, maintained and restored with funds provided pursuant to this Agreement and the Trust Agreement, and (b) any other tropical forest

land in Panamá approved for conservation, maintenance and restoration by the unanimous vote of the Permanent Voting Members of the Oversight Committee.

(n) "Fund Administrator" means, initially, Natura, or any subsequent organization agreed upon by the Oversight Committee.

(o) "GOP" means the Government of the Republic of Panamá, acting primarily through the Ministry of Finance.

(p) "Natura" means Fundación Natura, a non-profit organization, legally constituted on March 21, 1991 under the laws of the Republic of Panamá.

(q) "New Obligation" means GOP's new undertakings pursuant to this Agreement that shall replace the Outstanding Obligations and obligate GOP (i) to make the payments to USAID in accordance with Schedule A.1 and the terms and conditions set forth herein and in accordance with USAID's loan management guidelines, and (ii) to make the payments to the Trustee in the amounts set forth in Schedule A.2.

(r) "Outstanding Obligations" means Loans 525T041 and 525V043 under the agreements entitled "Loan and Grant Agreement between the Government of Panamá and the Government of the United States of America Acting through the Agency for International Development for Economic Stabilization," dated November 13, 1974 and November 19, 1975, respectively, that obligate GOP to repay principal and interest on debt whose outstanding aggregate principal amounts to nine million four hundred twenty-eight thousand, two hundred and seventeen U.S. Dollars (\$9,428,217), as of August 1, 2004.

(s) "Oversight Committee" means the oversight committee formed and operated pursuant to the Forest Conservation Agreement.

(t) "Party" means either the USG or GOP, and "Parties" means, collectively, the USG and GOP.

(u) "Payment Due Date" has the meaning set forth in Section 6.1.

(v) "Permanent Voting Members" has the meaning set forth in the Forest Conservation Agreement.

(w) "Swap Fee Contractual Agreement" means that certain Swap Fee Contractual Agreement between the USG and TNC, dated as of the date hereof.

(x) "TFCA" means the U.S. Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended.

(y) "TNC" means The Nature Conservancy, a nonprofit corporation organized under the laws of the District of Columbia in the United States of America, and any of its successors.

(z) "Tropical Forest Conservation Trust" means the trust created pursuant to the Trust Agreement and the Trust Law of the Republic of Panamá (Ley No. 1 del 5 de enero de 1984), as it may be amended from time to time.

(aa) "Trust Agreement" means the irrevocable Trust Agreement created by GOP as trustor, USG and TNC, as principal donors, and a corporation licensed to perform services as a trustee under the laws of Panamá, as initial trustee, dated as of the Closing Date, as it may be amended from time to time.

(bb) "Trustee" means, initially, the entity serving as trustee under the Trust Agreement as of the Closing Date, or another Panamanian corporation licensed to perform services as a trustee under the laws of Panamá and subsequently designated by the Oversight Committee pursuant to Section 7.1 of the Forest Conservation Agreement, or any successor to any of the foregoing.

(cc) "USAID" means the U.S. Agency for International Development.

(dd) "USAID Account" means the Debt Restructuring Liquidating Account #11X4137 at the U.S. Agency for International Development in the name of "Controller, Office of Financial Management, Agency for International Development", ALC # 72000001, on the books of the Federal Reserve Bank of New York.

(ee) "U.S. Dollar" means the legal tender of the United States of America.

(ff) "USG" means the Government of the United States of America, acting primarily through the U.S. Department of the Treasury.

ARTICLE II CLOSING

- 2.1. Obligations of the USG. Pursuant to the terms and subject to the conditions hereof, at the Closing USG shall (a) make the Debt Reduction Payment, thereby prepaying a portion of the amounts due and unpaid under the Outstanding Obligations, and concurrently canceling all remaining amounts due and unpaid thereunder, and (b) substitute the New Obligation for the Outstanding Obligations.
- 2.2. Obligations of GOP. Pursuant to the terms and subject to the conditions hereof, at the Closing GOP shall (a) substitute the New Obligation for the Outstanding Obligations, and (b) unless otherwise provided in Section 5.4 below, make the first payment due to the Trustee in accordance with the terms of the Forest Conservation Agreement.
- 2.3. Closing. The consummation of the transactions contemplated in this Article II shall take place simultaneously in a single act (the "Closing") on (a) August 25, 2004, or (b) such other Business Day as may be agreed by the Parties and TNC in writing (the "Closing Date").

**ARTICLE III
PAYMENT OF NEW OBLIGATIONS**

- 3.1. Payments of Principal and Interest. GOP shall (a) make payments of principal and interest to USAID in U.S. Dollars in accordance with Schedule A.1 and in accordance with the payment conditions and default provisions of the Outstanding Obligations, but without regard to any prepayment provisions contained therein, and (b) make payments in U.S. Dollars to the Trustee in accordance with Schedule A.2. All payments made to USAID shall be deposited in the USAID Account by wire transfer in accordance with the wire transfer instructions set forth in Schedule B.
- 3.2. Overdue Payments. Interest shall accrue, at an interest rate of three percent (3.00%) per annum, on any overdue and unpaid installment of either principal or interest payable to USAID under the New Obligation for the period from and including the applicable payment due date to but excluding the date the overdue amount is paid in full. GOP shall make any such overdue payments in U.S. Dollars in accordance with the payment instructions set forth in Section 3.1 and in accordance with the payment conditions and default provisions of the Outstanding Obligations.
- 3.3. No Assignment. GOP shall not assign, delegate or otherwise transfer any obligations under the New Obligation or this Agreement to any third party without the prior written consent of USG.

**ARTICLE IV
CONDITIONS TO CLOSING**

- 4.1. Conditions Precedent of the USG. The obligation of the USG hereunder to make the Debt Reduction Payment at the Closing shall be subject to the fulfillment or waiver on or prior to the Closing Date of the following conditions, each of which shall be performed to the satisfaction of the USG:
- (a) Swap Fee Contractual Agreement. TNC shall have executed and delivered the Swap Fee Contractual Agreement, such agreement shall be in full force and effect as of the Closing Date, and TNC shall have duly performed and complied in all material respects with all agreements, covenants and conditions required to be performed or complied with by it under the Swap Fee Contractual Agreement as of the Closing Date;
- (b) Forest Conservation Agreement. The Forest Conservation Agreement shall have been executed and delivered by the parties thereto and the transactions contemplated thereunder shall have been consummated prior to, or concurrently with, the Closing, or the conditions to closing set forth in the Forest Conservation Agreement shall have been satisfied or waived;
- (c) Trust Agreement. The Trust Agreement shall have been executed and delivered by the parties thereto and the transactions contemplated thereunder shall have been consummated prior to, or concurrently with, the Closing, or the conditions to closing set forth in the Trust Agreement shall have been satisfied or waived;

(d) Wire Transfer Instructions. In the event the Closing occurs after August 25, 2004, USAID will have received from Trustee wire transfer instructions with respect to the refund of the Excess Amount I and Excess Amount II, as applicable (which wire transfer instructions shall include (i) name of bank and address, (ii) attention, (iii) ABA number of Trustee's bank, and (iv) any other information that may be requested by USAID);

(e) 525 T041 August 2004 Payment. In the event the Closing occurs after August 25, 2004, GOP shall have paid in full the 525 T041 August 2004 Payment;

(f) 525 V043 August 2004 Payment. In the event the Closing occurs after August 28, 2004, GOP shall have paid in full the 525 V043 August 2004 Payment; and

(g) Other Documents. The USG shall have received from GOP such further documents, opinions and/or certificates as the USG shall reasonably request.

ARTICLE V ADDITIONAL COVENANTS OF THE PARTIES

- 5.1. Imposition of Taxes. GOP agrees to take no action, including the imposition of any taxes, levies, fees or other charges, that could reasonably be expected to interfere with or reduce any of the payments required to be made by GOP pursuant to the Forest Conservation Agreement. A breach of this provision will constitute a material breach of this Agreement by GOP.
- 5.2. Consultation. GOP agrees to consult with the USG and TNC before undertaking any action that could reasonably be expected to affect the activities of Fund Administrator or the Tropical Forest Conservation Trust.
- 5.3. Financial Reports. GOP agrees to forward to the USG, within thirty (30) days of receipt, all annual activity reports, financial audits and other reports from the Fund Administrator required by the Forest Conservation Agreement relating to the use of payments received pursuant to the Forest Conservation Agreement. USG acknowledges that reports received from the Trustee or the Fund Administrator will fulfill GOP's requirement of providing those reports to USG.
- 5.4. Payment Adjustments Required by Changes to the Closing Date.
- (a) If the Closing occurs after August 25, 2004 but on or prior to August 28, 2004, then USG shall transfer the Excess Amount I to the Trustee on the later of (i) the date that is fourteen (14) Business Days after the Closing Date, and (ii) the date that USAID has received the 525 T041 August 2004 Payment.
- (b) If the Closing occurs after August 28, 2004, then, in lieu of the payment specified in Section 5.4(a) above, USG shall transfer the Excess Amount I and the Excess Amount II to the Trustee on the later of (i) the date that is fourteen (14) Business Days after the Closing Date, and (ii) the date that USAID has received (y) the 525 T041 August 2004 Payment, and (z) the 525 V043 August 2004 Payment.]

(c) The Parties acknowledge and agree that the payments made by USG to the Trustee, if any, pursuant to this Section 5.4 shall be deemed to be payments made by GOP to the Trustee, in accordance with Schedule A.2.

(d) The Parties acknowledge and agree that, if Closing occurs after August 25, 2004, payment by GOP of the 525 T041 August 2004 Payment, and, if applicable, the 525 V043 August 2004 Payment shall be deemed to be in full and complete satisfaction of the payments then due and payable to USAID under the New Obligation as described in Schedule A.1 (for the August 25, 2004 and, if applicable, August 28, 2004 payments) and payments then due and payable to the Trustee under the New Obligation as described in Schedule A.2 (for the August 25, 2004 and, if applicable, August 28, 2004 payments).

(e) USG's calculation of the payments due under this Section 5.4 shall be final and binding in the absence of manifest error.

ARTICLE VI FAILURE TO MAKE PAYMENTS TO THE TRUSTEE

6.1. Payment Default. In the event GOP does not make full payment of any installment in accordance with Schedule A.2 of the New Obligation to the Trustee when due under this Agreement (each such due date, a "Payment Due Date"), GOP shall immediately commence discussions with USG to resolve such payment default (and in no event shall such discussions be commenced later than seven (7) Business Days after the respective Payment Due Date). GOP and USG agree to use their best efforts to find a mutually acceptable resolution.

6.2. Remedies of USG. In the event the GOP and USG are unable to agree to a mutually acceptable solution to the payment default within sixty (60) days following the applicable Payment Due Date, the following procedures shall apply:

(a) USG shall require the GOP to pay immediately in U.S. Dollars any overdue or unpaid installment of either principal or interest payment in accordance with Schedule A.2 of the New Obligation to the Trustee for distribution in accordance with the Forest Conservation Agreement; and

(b) USG may, in its sole discretion, declare all, or any part of, future payments under Schedule A.2 of the New Obligation due and payable immediately in U.S. Dollars, in which case, such amounts shall be paid to the Trustee for distribution in accordance with the Forest Conservation Agreement; and

(c) If Oversight Committee determines, in a resolution approved by a majority of its members, that the Trustee is unable to carry out its responsibilities under the Trust Agreement, amounts due to the Trustee shall be deposited into an escrow account designated by USG (the "Escrow Account"). Funds in the Escrow Account shall be distributed at the direction of the Oversight Committee for use in carrying out the purposes of the TFCA in accordance with the Forest Conservation Agreement.

**ARTICLE VII
CONSULTATION**

Upon the written request of either Party, the Parties shall consult concerning the implementation or interpretation of this Agreement. These consultations shall take place within thirty (30) days after a request for consultations is received from the other Party.

**ARTICLE VIII
AMENDMENT AND NOTIFICATION**

8.1. Amendment; Waiver. This Agreement may be amended with the written consent of both Parties. No provision of this Agreement may be waived orally, but only by a written instrument signed by the Party against whom enforcement of such waiver is sought. A failure or delay in exercising any right, power or privilege in respect of this Agreement shall not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege shall not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

8.2. Notice. All notifications, consents, requests, approvals, reports and other communications provided for under the Agreement shall be in writing and delivered as follows:

(a) To the USG:

Deputy Assistant Secretary for International
Debt and Trade Finance Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220 U.S.A.
(202) 622-0154 (telephone)
202-622-9212 (facsimile)

(b) To GOP:

Ministry of Economy & Finance
Directorate of Public Credit
Via España, Edif. Ogawa, 4th Floor
Panamá, Rep. of Panamá
(507) 269-4992 (telephone)
(507) 223-1405 (facsimile)
crpmp@Bloomberg.net
Attn: Aracelly Mendez
Director of Public Credit

8.3. Counterparts. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts, each of which shall be deemed an

original and all of which, taken together, shall constitute one instrument. This Agreement shall not be effective unless and until signed by each Party hereto.

**ARTICLE IX
ENTRY INTO FORCE AND TERMINATION**

- 9.1. Termination. This Agreement shall terminate (a) on September 30, 2004 if the Closing shall not have occurred before that date, or (b) if the Closing has occurred, upon the payment by GOP of all amounts due under the Forest Conservation Agreement. In addition, a Party hereto may terminate this Agreement upon the termination of the Forest Conservation Agreement, Swap Fee Agreement or Trust Agreement; provided that the Party terminating this Agreement is not in default under the Forest Conservation Agreement, Swap Fee Agreement or Trust Agreement.
- 9.2. Entry Into Force. This Agreement shall enter into force immediately upon signature by the Parties. Each Party's signature below evidences that all necessary domestic legal requirements for entry into force of the Agreement have been fulfilled under the respective Party's laws on the date of signature.

**ARTICLE X
OTHER PROVISIONS**

- 10.1. Schedules. The following schedules are part of this Agreement:

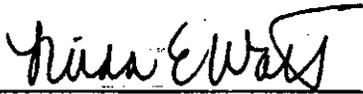
Schedule A.1	Payment Schedule to USAID under New Obligation
Schedule A.2	Payment Schedule to the Trustee
Schedule B	Wire Transfer Instructions

[End of text, signature page follows]

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Government, have executed and delivered this Agreement.

DONE at Panamá City, in duplicate in the English language, this 19 day of August, 2004.

**FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:**



Name: Linda E. Watt
Title: Ambassador of the United States
of America for the Government of
the United States of America

**FOR THE GOVERNMENT OF THE
REPUBLIC OF PANAMÁ:**



Name: Norberto Delgado Durán
Title: Minister of Economy and Finance

COUNTERSIGNED BY:



Name: Alvin Weeden Gamboa
Title: Controller General Republic of Panamá

SCHEDULE A.2
Schedule of Payments to Trustee under the New Obligation

Payment Date	Payment Amount
Closing Date	US\$459,128.09
2/28/2005	US\$459,127.17
8/28/2005	US\$459,128.17
2/28/2006	US\$459,129.09
8/28/2006	US\$459,129.09
2/28/2007	US\$459,128.09
8/28/2007	US\$459,129.09
2/28/2008	US\$459,128.09
8/28/2008	US\$459,128.17
2/28/2009	US\$459,129.09
8/28/2009	US\$459,127.17
2/28/2010	US\$459,128.10
8/28/2010	US\$459,129.09
2/28/2011	US\$459,127.17
8/28/2011	US\$459,128.09
2/28/2012	US\$459,129.09
8/28/2012	US\$459,129.09
2/28/2013	US\$459,127.17
8/28/2013	US\$459,128.17
2/28/2014	US\$459,128.17
8/28/2014	US\$459,129.09
2/28/2015	US\$459,129.09
8/28/2015	US\$276,496.00
2/28/2016	US\$276,497.00
8/28/2016	US\$276,496.00
TOTAL	\$10,930,312.63

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SCHEDULE B
Wire Transfer Instructions

US Dollar wire transfers to USAID must be made from a foreign central bank to a U.S. bank which is "on-line" with the Federal Reserve. The Federal Reserve only deals with foreign central banks. The receiving U.S. bank must have an on-line connection with the Federal Reserve.

2. The information supplied on the wire transfer must include:
 - a. USAID ABA No. = **021030004**.
 - b. *Federal Reserve Foreign Dept.*
Type Code = **15** = *Payments from Foreign Central Banks*
Type Code = **10** = *Payments from Commercial Banks*
 - c. ABA (Account) No. of sender.
 - d. US Dollar Amount
 - e. USAID Agency Location Code (ALC) = **72000001**
 - f. Detail concerning purpose of payment
3. Questions: Federal Reserve/New York (212) 720-5840.

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