

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA
REGARDING A DEBT-FOR-NATURE SWAP TO PREPAY AND CANCEL CERTAIN DEBT OWED BY
THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA TO THE GOVERNMENT OF THE UNITED
STATES OF AMERICA**

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

Seeking to facilitate the conservation, protection, restoration, and sustainable use and management of tropical forests in Colombia, 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,

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

Further recognizing the role played by The Nature Conservancy, Conservation International Foundation, and World Wildlife Fund, Inc. in tropical forest protection in Colombia, and the success of non-governmental organizations in Colombia in conserving and managing tropical forest land in Colombia, and

In furtherance of the goals of the U.S. Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended, 22 U.S.C. 2431 et seq., and the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003, as contained in Public Law No. 108-7 (2003),

Have agreed on this 30th day of March, 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, the Forest Conservation Agreement or the Trust Agreement, then it shall have the meaning ascribed to it in the Swap Fee Contractual Agreement, the Forest Conservation Agreement or the Trust Agreement, as applicable.

(a) "Administrator" has the meaning ascribed thereto in the Forest Conservation Agreement.

- (b) "Agreement" means this Agreement between the Government of the United States of America and the Government of the Colombia Regarding a Debt-for-Nature Swap to Prepay and Cancel Certain Debt Owed by the Government of the Republic of Colombia to the Government of the United States of America, as it may be amended from time to time.
- (c) "Business Day" means any day on which the Federal Reserve Bank of New York and Central Bank of the Republic of Colombia are both open for business.
- (d) "CI" means Conservation International Foundation, a nonprofit corporation organized under the laws of the State of California in the United States of America, and any of its successors.
- (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 seven million U.S. Dollars (US\$7,000,000) 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) "Debt Service Account" has the meaning ascribed thereto in the Trust Agreement.
- (j) "Escrow Account" has the meaning set forth in Section 6.2(c).
- (k) "Excess Amount" means an amount equal to the difference between the amount due and paid by GOC on March 30, 2004 with respect to Loan 514T078 under the Outstanding Obligations and the amount due on March 30, 2004 under the New USAID Obligation.
- (l) "Forest Conservation Agreement" means the Forest Conservation Agreement among GOC, TNC, CI, WWF, and the Administrator, dated as of the date hereof, as amended from time to time.
- (m) "Forest Land" has the meaning ascribed thereto in the Forest Conservation Agreement.
- (n) "GOC" means the Government of the Republic of Colombia, represented by the Ministry of Finance or the Ministry of Environment, Housing and Territorial Development, and acting primarily in this Agreement through the

Ministry of Finance.

- (o) "New FCA Obligation" means GOC's new undertakings pursuant to this Agreement that shall replace, in part, the Outstanding Obligations and obligate GOC to make payments to the Trustee, in accordance with the terms and conditions set forth in this Agreement, the Forest Conservation Agreement and the Trust Agreement, in the amounts set forth in Schedule A.2.
- (p) "New Obligations" means, collectively, the New FCA Obligation and the New USAID Obligation, which together shall replace in their entirety the Outstanding Obligations.
- (q) "New USAID Obligation" means GOC's new undertakings pursuant to this Agreement that shall replace, in part, the Outstanding Obligations and obligate GOC to make payments to USAID in accordance with Schedule A.1 and the terms and conditions set forth herein;
- (r) "Outstanding Obligations" means Loans 514L055 and 514T078 under the agreements entitled "Loan Agreement between the Government of Colombia and the Government of the United States of America Acting through the Agency for International Development," dated May 19, 1969 and December 24, 1975, respectively.
- (s) "Oversight Committee" has the meaning ascribed thereto in the Forest Conservation Agreement.
- (t) "Party" means either USG or GOC, and "Parties" means, collectively, USG and GOC.
- (u) "Payment Due Date" has the meaning set forth in Section 6.1.
- (v) "Remaining FCA Obligations" has the meaning set forth in Section 6.3 hereof.
- (w) "Swap Fee Contractual Agreement" means the Swap Fee Contractual Agreement among USG, CI, TNC, and WWF, 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) "Trust Agreement" means the Trust Agreement by and among the Administrator, the USG, the NGOs and the initial Trustee appointed in

accordance with the terms of the Forest Conservation Agreement.

(aa) "Trustee" has the meaning ascribed thereto in the Forest Conservation Agreement.

(bb) "Unclaimed Arrears" has the meaning set forth in Section 6.3 hereof.

(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.

(gg) "WWF" means World Wildlife Fund Inc., a nonprofit corporation organized under the laws of the State of Delaware in the United States of America, and any of its successors.

ARTICLE II CLOSING

- 2.1. Obligations of the USG. Pursuant to the terms and subject to the conditions hereof, USG shall (a) at the Closing, 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 hereunder; (b) at the Closing, substitute the New Obligations for the Outstanding Obligations; (c) within 14 Business Days of the Closing Date or of the date of receipt of full payment due on Loan 514T078 on March 30, 2004, from GOC, whichever date is later, transfer the Excess Amount to the Debt Service Account.
- 2.2. Obligations of the GOC. Pursuant to the terms and subject to the conditions hereof, GOC shall (a) at Closing, substitute the New Obligations for the Outstanding Obligations; (b) if the Closing Date coincides with a Payment Due Date, make the payment due to the Trustee on such Payment Due Date under the New FCA Obligation in accordance with the terms of this 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) May 30, 2004 or (b) such

other later Business Day as may be agreed by the Parties, CI, TNC, and WWF in writing (the "Closing Date").

ARTICLE III PAYMENT OF NEW OBLIGATIONS

- 3.1. Payments of Principal and Interest. GOC shall (a) make payments of principal and interest to USAID in U.S. Dollars on the New USAID Obligation in accordance with the payment schedule of Schedule A.1 (which payments shall be subject to the same terms and conditions governing payments under the Outstanding Obligations), and (b) make payments in U.S. Dollars to the Trustee in accordance with the New FCA Obligation as specified in 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. Refund of the Excess Amount. The Parties agree as follows:
- (a) GOC shall make a payment in U.S. Dollars to USAID on March 30, 2004, in accordance with the Outstanding Obligations with respect to Loan 514T078. Such payment shall be credited against the New USAID Obligation payment owed on March 30, 2004, and the applicable Excess Amount shall be transferred by USAID to the Trustee as set forth in Section 2.1.
 - (b) GOC hereby instructs USAID to transfer the Excess Amount to the Trustee. The Parties hereby acknowledge that any transfer of the Excess Amount made by USAID to the Trustee shall be considered a payment made by GOC to the Trustee.
- 3.3. Overdue Payments. Interest shall accrue, at an interest rate of three percent (3.0%) per annum, on any overdue and unpaid installment under the New FCA Obligation for the period from and including the applicable payment due date to but excluding the date the overdue amount is paid in full.
- 3.4. Business Day Adjustment. Except as otherwise expressly provided herein, where the day on or by which a payment is due to be made is not a Business Day, such payment shall be made on or by the next succeeding Business Day. Interest, fees and charges (if any) thereon shall continue to accrue for the period from the due date that is not a Business Day to that next succeeding Business Day.
- 3.5. Voluntary Prepayments
- (a) GOC may prepay without any cost, premium or penalty all or any portion of the New FCA Obligation on not less than thirty (30) days' prior notice to the Oversight Committee.
 - (b) Application of prepayments shall be decided by the Oversight

Committee, provided, however, that prepayment allocations shall be consistent with allocations specified in Schedule 1(b) of the Forest Conservation Agreement with respect to the FCA Endowment Account, FCA Grants Account, and FCA Reserve Account.

- 3.6. Payment Obligations Absolute. The obligation of GOC to make Payments under the New FCA Obligation shall constitute direct, unconditional and general obligations of GOC. The full faith and credit of GOC are pledged for the payment of the New FCA Obligation as the same shall become due.
- 3.7. No Assignment. GOC shall not assign, delegate or otherwise transfer any obligations under the New Obligations to any third party without the prior written consent of USG. In addition, USG shall not assign, delegate, or otherwise transfer any rights under the New USAID Obligation to any third party without the prior written consent of GOC.

ARTICLE IV CONDITIONS TO CLOSING

- 4.1. Conditions Precedent of USG. The obligation of 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. The Swap Fee Contractual Agreement shall have been executed and delivered by the Parties thereto and the transactions contemplated there under shall have been consummated prior to, or concurrently with, the Closing, or the conditions to closing set forth in the Swap Fee Contractual Agreement shall have been satisfied or waived (except for the condition of the Swap Fee Contractual Agreement becoming effective);
 - (b) Forest Conservation Agreement. The Forest Conservation Agreement shall have been executed and delivered by the parties thereto and 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 conditions to closing set forth in the Trust Agreement shall have been satisfied or waived;
 - (d) Payment under Loan 514T078. GOC shall have paid in full the amount due under the Outstanding Obligations with respect to Loan 514T078 on March 30, 2004.
 - (e) Wire Transfer Instructions. USAID shall have received from Trustee wire transfer instructions with respect to the refund of the Excess Amount substantially

in the form of Schedule C.

(f) Other Documents. USG shall have received from GOC such further documents, opinions and/or certificates as USG shall reasonably request.

ARTICLE V ADDITIONAL COVENANTS OF GOC

- 5.1. Imposition of Taxes. GOC 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 GOC pursuant to this Agreement. A breach of this provision will constitute a material breach of this Agreement by GOC.
- 5.2. Consultation. GOC agrees to consult with USG, CI, TNC, and WWF before undertaking any action that could reasonably be expected to affect the activities of the Administrator or the Trustee.
- 5.3. Financial Reports. GOC, through the Ministry of Environment, Housing and Territorial Development, agrees to forward to USG, within thirty (30) days of receipt, all annual activity reports, financial audits and other reports from the Administrator required by the Forest Conservation Agreement. USG acknowledges that reports received from the Trustee or the Administrator will fulfill GOC's requirement of providing those reports to USG.

ARTICLE VI FAILURE TO MAKE PAYMENTS UNDER NEW FCA OBLIGATION

- 6.1. In the event GOC does not make full payment of any installment under the New FCA Obligation when due under this agreement (each such due date, a "Payment Due Date"), GOC 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). GOC and USG agree to use their best efforts to find a mutually acceptable solution.
- 6.2. In the event the GOC and USG are unable to find a mutually acceptable solution within sixty (60) days following the applicable Payment Due Date, the following procedures shall apply:
 - (a) USG shall continue to require the GOC to pay immediately in U.S. Dollars any arrears under the New FCA Obligation, including any accrued interest, to the Trustee for distribution in accordance with the Trust Agreement and the Forest Conservation Agreement;

(b) USG may, in its sole discretion, declare all, or any part of, future payments under the New FCA 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 Trust Agreement and Forest Conservation Agreement; and

(c) If, in the opinion of the Oversight Committee, the Trustee is unable to carry out its responsibilities, amounts due 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.

6.3 If, after one hundred twenty (120) days from the Payment Due Date, the GOC still has not paid all arrears under the New FCA Obligation, and one or more of the following events has or have occurred:

(a) USG has decided not to exercise its rights under Section 6.2 above;

(b) USG has exercised its rights under Section 6.2(a), but opted not to make a claim for the full amount in arrears, (such unclaimed amounts referred to as "Unclaimed Arrears"); or

(c) USG has exercised its rights under Section 6.2(b), but opted not to declare any or all future payments under the New FCA Obligations due and payable (such unaccelerated future payments referred to as "Remaining FCA Obligations");

then CI, TNC, and WWF shall have the right to seek the enforcement of the New FCA Obligations in accordance with Article IX of 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)622-2536 (facsimile)

(b) To the GOC:

Ministry of Finance

Palacio de los Ministerios
Plaza San Agustin
Carrera 7A, Numero 6-45, Piso 3
Bogota, D.C.. Colombia

571 350-1233/1234 (telephone)
571 350-9344 (facsimile)

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 Entry into Force. This Agreement shall enter into force thirty (30) days following the date of signature below ("Effective Date"). Each Party's signature below evidences that all necessary domestic legal requirements for entry into force of the Agreement shall be fulfilled under the respective Party's laws on the date that this Agreement enters into force.

9.2 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 GOC of all amounts due under this Agreement. In addition, a Party hereto may terminate this Agreement upon the termination of the Forest Conservation Agreement, the Swap Fee Agreement, or the Trust Agreement, provided that the Party intending to terminate this Agreement is not in default under this Agreement, the Forest Conservation Agreement, the Swap Fee Agreement, or the Trust Agreement.

**ARTICLE X
OTHER PROVISIONS**

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

| | |
|--------------|--|
| Schedule A.1 | Payment Schedule for New USAID Obligation |
| Schedule A.2 | Payment Schedule to the Trustee for New FCA Obligation |
| Schedule B | Wire Transfer Instructions for New USAID Obligation |
| Schedule C | Wire Transfer Instructions for Refund of Excess Amount to Trustee |

[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 Bogota, in the English language, this 30th day of March, 2004.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF
COLOMBIA:



William Braucher Wood
Ambassador of the United States of
America



Gloria Ines Cortes Arango
Deputy Minister of Finance and Public
Credit in charge of the duties of the Minister
of Finance and Public Credit's Office

**Schedule A.1
Payment Schedule of New USAID Obligation**

| Schedule of Payments to USAID under New USAID Obligation | | | | | |
|---|--------------------------------|-------------------------------|----------------------|--------------------------------|-------------------------------|
| USAID 514T078 | | | USAID 514L055 | | |
| | Scheduled Principal | Scheduled Interest | | Scheduled Principal | Scheduled Interest |
| 3/30/2004 | US\$ - | US\$ - | 9/8/2004 | US\$188,481.28 | US\$160,355.00 |
| 9/30/2004 | US\$ - | US\$ - | 3/8/2005 | US\$188,481.28 | US\$145,777.00 |
| 3/30/2005 | US\$ - | US\$ - | 9/8/2005 | US\$188,481.28 | US\$131,200.00 |
| 9/30/2005 | US\$ - | US\$ - | 3/8/2006 | US\$188,481.27 | US\$116,622.00 |
| 3/30/2006 | US\$ - | US\$ - | 9/8/2006 | US\$188,481.27 | US\$102,044.00 |
| 9/30/2006 | US\$ - | US\$ - | 3/8/2007 | US\$188,481.27 | US\$87,466.00 |
| 3/30/2007 | US\$ - | US\$ - | 9/8/2007 | US\$188,481.27 | US\$72,889.00 |
| 9/30/2007 | US\$ - | US\$ - | 3/8/2008 | US\$188,481.27 | US\$58,311.00 |
| 3/30/2008 | US\$ - | US\$ - | 9/8/2008 | US\$188,481.27 | US\$43,733.00 |
| 9/30/2008 | US\$ - | US\$ - | 3/8/2009 | US\$188,481.27 | US\$29,155.00 |
| 3/30/2009 | US\$ - | US\$ - | 9/8/2009 | US\$188,481.27 | US\$14,576.00 |
| 9/20/2009 | US\$ - | US\$ - | | | |
| 3/30/2010 | US\$ - | US\$ - | | | |
| 9/30/2010 | US\$ - | US\$ - | | | |
| 3/30/2011 | US\$ - | US\$ - | | | |
| 9/30/2011 | US\$ - | US\$ - | | | |
| 3/30/2012 | US\$ - | US\$ - | | | |
| 9/30/2012 | US\$ - | US\$ - | | | |
| 3/30/2013 | US\$ - | US\$ - | | | |
| 9/30/2013 | US\$ - | US\$ - | | | |
| 3/30/2014 | US\$ - | US\$ - | | | |
| 9/30/2014 | US\$ - | US\$ - | | | |
| 3/30/2015 | US\$ - | US\$ - | | | |
| 9/30/2015 | US\$ - | US\$ - | | | |
| 3/30/2016 | US\$ - | US\$ - | | | |
| 9/30/2016 | US\$ - | US\$ - | | | |
| TOTAL | US\$ 0 | US\$ 0 | TOTAL | US\$2,073,294.00 | US\$962,130.00 |

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

| Payment Date | Payment Amount |
|---|----------------------------|
| closing Within 14 Business Days after Closing* | US\$ 0.00 |
| | US\$54,927.00 |
| 9/15/2004 | US\$838,294.72 |
| 3/15/2005 | US\$838,294.72 |
| 9/15/2005 | US\$838,294.72 |
| 3/15/2006 | US\$838,294.73 |
| 9/15/2006 | US\$838,294.73 |
| 3/15/2007 | US\$838,294.73 |
| 9/15/2007 | US\$838,294.73 |
| 3/15/2008 | US\$838,294.73 |
| 9/15/2008 | US\$838,294.73 |
| 3/15/2009 | US\$838,294.73 |
| 9/15/2009 | US\$838,294.73 |
| 3/15/2010 | US\$ 54,927.00 |
| 9/15/2010 | US\$ 54,927.00 |
| 3/15/2011 | US\$ 54,927.00 |
| 9/15/2011 | US\$ 54,927.00 |
| 3/15/2012 | US\$ 54,927.00 |
| 9/15/2012 | US\$ 54,927.00 |
| 3/15/2013 | US\$ 54,927.00 |
| 9/15/2013 | US\$ 54,927.00 |
| 3/15/2014 | US\$ 54,927.00 |
| 9/15/2014 | US\$ 54,927.00 |
| 3/15/2015 | US\$ 54,927.00 |
| 9/15/2015 | US\$ 54,927.00 |
| 3/15/2016 | US\$ 54,927.00 |
| 9/15/2016 | US\$ 54,927.00 |
| Total | US\$10,045,147. |

*or within 14 days of receipt of March 30, 2004 payment on Loan S147076, whichever date is later

SCHEDULE B
Wire Transfer Instructions

1. 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.

SCHEDULE C
Wire Transfer Instructions
For Refund of Excess Amount to Trustee

The following information shall be included in wire transfer instructions:

1. ABA # of Trustee's bank
2. Name of Bank and Address
3. Attention:
4. US Dollar Amount (Amount of payment due on March 30, 2004, with respect to Loan 514T078)
5. Detail concerning purpose of payment (TFCA Debt Swap Agreement between GOC and USG signed March 30, 2004).