

FINANCE

Tropical Forests

**Agreement Between the
UNITED STATES OF AMERICA
and COSTA RICA**

Signed at San Jose September 24, 2010

with

Schedules



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

COSTA RICA

Finance: Tropical Forests

*Agreement signed at San Jose September 24, 2010;
Entered into force September 24, 2010.
With schedules.*

**SWAP FEE CONTRACTUAL AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE NATURE CONSERVANCY**

The Government of the United States of America and The Nature Conservancy, a non-profit corporation organized under the laws of the District of Columbia in the United States of America,

Seeking to facilitate the conservation, protection, restoration, and sustainable use and management of tropical forests in Costa Rica, 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 from debt restructuring will be used for the conservation of tropical forests,

Further recognizing the role played by The Nature Conservancy in tropical forest protection in Costa Rica, and the success of non-governmental organizations in Costa Rica in conserving and managing tropical forest land in Costa Rica,

Further wishing to build on work resulting from the agreements concluded in 2007 under the U.S. Tropical Forest Conservation Act, as amended, and

In furtherance of the goals of the U.S. Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended, the Department of State, Foreign Operations and Related Programs Appropriations Acts for U.S. fiscal years 2008 and 2010, contained respectively in Public Laws Nos. 110-161 and 111-117, and the Agreement between the Government of the United States of America and the Central Bank of Costa Rica Regarding a Debt-for-Nature Swap with Respect to Certain Debt Owed by the Central Bank of Costa Rica to the Government of the United States of America, dated as of the date hereof, and the Agreement Between the Government of the United States of America and the Government of the Republic of Costa Rica Regarding a Debt-for-Nature Swap Program under the U.S. Tropical Forest Conservation Act, dated as of the date hereof,

Have agreed on this 24th day of September, 2010, 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 set forth 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 Debt Swap Agreement, the Debt Swap Program Agreement, or the Forest Conservation Agreement, then it shall have the meaning set forth in the Debt Swap Agreement, the Debt Swap Program Agreement, or the Forest Conservation Agreement, as applicable.
- (a) “Administrator” has the meaning set forth in the Forest Conservation Agreement.
 - (b) “Agreement” means this Swap Fee Contractual Agreement between the Government of the United States of America and The Nature Conservancy, 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 the Central Bank of Costa Rica are both open.
 - (d) “CBCR” means the Central Bank of Costa Rica.
 - (e) “Closing” has the meaning set forth in Section 2.3 of this Agreement.
 - (f) “Closing Date” has the meaning set forth in Section 2.3 of this Agreement.
 - (g) “Debt Reduction Payment” means the transfer of nineteen million, six hundred thirty-eight thousand U.S. Dollars (US\$19,638,000.00) by the U.S. Department of the Treasury 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” shall have the meaning set forth in Section 5.1 of the Forest Conservation Agreement.
 - (j) “Debt Swap Agreement” means the Agreement between the Government of the United States of America and the Central Bank of Costa Rica Regarding a Debt-for-Nature Swap with Respect to Certain Debt Owed by the Central Bank of Costa Rica to the Government of the United States of America, dated as of the date hereof, as it may be amended from time to time.
 - (k) “Debt Swap Program Agreement” means the Agreement between the Government of the United States of America and the Government of the Republic of Costa Rica Regarding a Debt-for-Nature Swap Program under the U.S. Tropical Forest Conservation Act, dated as of the date hereof, as it may be

amended from time to time.

(l) “Effective Date” has the meaning set forth in Section 8.1 of this Agreement.

(m) “Forest Conservation Agreement” means the Forest Conservation Agreement among the Government of the Republic of Costa Rica, the Central Bank of Costa Rica, and The Nature Conservancy, dated as of the date hereof, as it may be amended from time to time.

(n) “GCR” means the Government of the Republic of Costa Rica.

(o) “Outstanding Obligations” has the meaning set forth in the Debt Swap Agreement.

(p) “Oversight Committee” has the meaning set forth in the Forest Conservation Agreement.

(q) “Party” means the USG or TNC, and “Parties” means, collectively, the USG and TNC.

(r) “Restructured TFCA Obligations” has the meaning set forth in the Debt Swap Agreement.

(s) “Swap Fee A” means an amount of one million, six hundred twenty-four thousand, five hundred and sixty-two U.S. Dollars (US\$1,624,562.00).

(t) “Swap Fee B” means an amount of two million, three hundred and three thousand, and thirty-eight U.S. Dollars (US\$2,303,038.00).

(u) “TFCA Evaluation Sheet” means a measure of TFCA program effectiveness designed by the USG in its sole discretion, as it may be reasonably amended from time to time.

(v) “TNC” means The Nature Conservancy, a non-profit corporation organized under the laws of the District of Columbia in the United States of America, and any of its successors.

(w) “Tropical Forest Areas” has the meaning ascribed to it in the Forest Conservation Agreement.

(x) “Trustee” has the meaning ascribed to it in the Forest Conservation Agreement.

(y) “USAID Account” means the Debt Restructuring Financing Account #11X4137 of USAID 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.

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

(aa) "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. In consideration of the payment of Swap Fee A and Swap Fee B by TNC pursuant to the terms of this Agreement and subject to the satisfaction or waiver of the conditions set forth in Article III hereof, at the Closing, the USG shall make the Debt Reduction Payment and allow the cancellation of the Outstanding Obligations and the substitution of the Restructured TFCA Obligations for the Outstanding Obligations in accordance with the Debt Swap Agreement.
- 2.2. Obligations of TNC. At the Closing, in order for the USG to take the actions described in Section 2.1, TNC (a) shall deposit or have deposited Swap Fee A into the USAID Account by wire transfer in accordance with the wire transfer instructions substantially in the form attached hereto as Schedule 2.2, (b) shall deposit or have deposited Swap Fee B into the Debt Service Account by wire transfer in accordance with the wire transfer instructions provided by the Administrator to TNC at least fifteen (15) days before Closing, and (c) shall have provided the USG with a copy of the receipt substantially in the form attached hereto as Schedule 3.2 (b) provided by the Administrator to TNC evidencing the deposit of Swap Fee B into the Debt Service Account.
- 2.3. Closing. The consummation of transactions contemplated in this Article II shall take place simultaneously in a single act (the "Closing") on a Business Day (the "Closing Date") on or before November 12, 2010, as may be agreed among all the Parties, the CBCR, and the GCR in writing.

ARTICLE III CONDITIONS TO CLOSING

- 3.1. Conditions Precedent of the USG. The obligation of the USG hereunder to make the Debt Reduction Payment and to substitute the Restructured TFCA Obligations for the Outstanding Obligations shall be subject to the fulfillment of each of the following conditions performed to the satisfaction of the USG, or waiver of the condition by the USG, on or prior to the Closing Date:
- (a) Debt Swap Agreement. The Debt Swap Agreement shall have been executed by and delivered to the parties thereto and the closing under that agreement shall have been consummated concurrently with the Closing under this Agreement;
- (b) Forest Conservation Agreement. The Forest Conservation Agreement shall have been executed by and delivered to the parties thereto and the conditions set forth in Section 3.2 of the Forest Conservation Agreement shall have been

satisfied or waived:

(c) Debt Swap Program Agreement. The Debt Swap Program Agreement shall have been executed by and delivered to the parties thereto and the conditions to set forth in Section 2.1 of the Debt Swap Program Agreement shall have been satisfied or waived; and

(d) Other Documents. The USG shall have received from TNC such further documents, opinions, and certificates as the USG shall reasonably request.

3.2. Conditions Precedent of TNC. The obligation of TNC hereunder to pay Swap Fee A into the USAID Account and Swap Fee B into the Debt Service Account 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 (unless waived) to the satisfaction of TNC:

(a) Debt Swap Agreement. The Debt Swap Agreement shall have been executed by and delivered to the parties thereto and the closing under that agreement shall have been consummated concurrently with the Closing under this Agreement;

(b) Receipts. The USG and the Administrator shall have executed and delivered, or stand ready to execute and deliver, a receipt substantially in the form attached hereto as Schedule 3.2(b) evidencing receipt of, respectively, Swap Fee A and Swap Fee B;

(c) Forest Conservation Agreement. The Forest Conservation Agreement shall have been executed by and delivered to the parties thereto and the conditions to closing set forth in the Forest Conservation Agreement shall have been satisfied or waived;

(d) Debt Swap Program Agreement. The Debt Swap Program Agreement shall have been executed by and delivered to the parties thereto and the conditions to closing set forth in the Debt Swap Program Agreement shall have been satisfied or waived; and

(e) Other Documents. TNC shall have received from the USG such further documents, opinions, and certificates as it shall reasonably request in connection with implementation of this Agreement; provided, however, that the USG shall have no obligation to deliver any documents, opinions, and certificates that could not be obtained by TNC pursuant to a request under the U.S. Freedom of Information Act, 5 U.S.C. section 552.

**ARTICLE IV
ADDITIONAL UNDERTAKINGS OF TNC**

- 4.1. Reports. During the term of the Forest Conservation Agreement, TNC shall promptly provide the USG with any written report or audit it receives from the Administrator, Trustee, or auditor pursuant to the Forest Conservation Agreement that details the activities, operations, or planned activities under the Forest Conservation Agreement, including annual financial or institutional audits, program audits, or evaluations. The USG acknowledges that reports and audits received from the Administrator, Trustee, or auditor will fulfill TNC's requirement of providing those reports and audits to the USG.
- 4.2. Notice of Breach of the Forest Conservation Agreement. During the term of the Forest Conservation Agreement, TNC shall promptly notify the USG of any material breach by any party to the Forest Conservation Agreement of its covenants or obligations, or any act or omission by any such party to the Forest Conservation Agreement that is known by TNC and that, in the opinion of TNC, is reasonably likely to give rise to a material breach of such agreement.
- 4.3. Notice of Termination. TNC shall promptly notify and consult with the USG concerning any desire to terminate the Forest Conservation Agreement in accordance with its terms.
- 4.4. Notice of Amendment. TNC shall promptly notify the USG of, and receive its approval of, any proposed amendment to the Forest Conservation Agreement.
- 4.5. Audits and Evaluations. TNC agrees to assist the USG in the satisfactory performance of any audits and evaluations of this program deemed necessary by the USG in its sole discretion. Such audits and evaluations may be in addition to any audits and evaluations required under the Forest Conservation Agreement. TNC further agrees to assist the USG in obtaining any information requested by the USG for purposes of such audits and evaluations (such as the TFCA Evaluation Sheet). TNC also agrees to assist the USG in remedying any deficiencies identified by the USG in the performance of this program through any such audits and evaluations (including the TFCA Evaluation Sheet). The USG agrees to consult with the Oversight Committee established under the Forest Conservation Agreement on the existence of deficiencies identified through such audits and evaluations (including the TFCA Evaluation Sheet) and on the solutions to such deficiencies.

**ARTICLE V
ADDITIONAL UNDERTAKINGS OF THE USG**

- 5.1. Notice of Breach of Debt Swap Agreement. The USG shall promptly notify TNC of any material breach by: (a) the CBCR of any of its covenants or obligations under the Debt Swap Agreement; (b) the GCR of any of its covenants or obligations under the Debt Swap Program Agreement; or (c) any act or omission by the CBCR or the GCR that

comes to the attention of the USG and that is reasonably likely to give rise to a material breach of such agreements.

- 5.2 Audits. The USG hereby agrees to pay the costs of any audit conducted by, or on behalf of, the USG, provided, however, that the USG shall not be responsible for the costs of completing the TFCA Evaluation Sheet.
- 5.3 Payment Breach by the CBCR. In the event the CBCR fails to comply with the payment obligations set forth in the Debt Swap Agreement in accordance with the terms of the Debt Swap Agreement, TNC shall have the right to seek enforcement of the Restructured TFCA Obligations in accordance with Section 9.5.1 of the Forest Conservation Agreement, but only as permitted pursuant to Section 6.3 of the Debt Swap Agreement.
- 5.4 Notice of Amendment. The USG shall promptly notify TNC of, and receive its approval of, any proposed amendment to the Debt Swap Agreement affecting the Restructured TFCA Obligations. The USG shall promptly notify TNC of any proposed amendment to the Debt Swap Program Agreement.
- 5.5 Public Availability. The USG and TNC agree that this Agreement and the Forest Conservation Agreement, including all annexes, schedules, and appendices thereof, may be made available to the public.

ARTICLE VI CONSULTATION AND MONITORING

- 6.1. Consultation. Upon the written request of any Party to this Agreement, all 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 consultation is received.
- 6.2. Monitoring. The Parties shall cooperate with each other in their ongoing efforts to monitor the performance of the CBCR, the GCR, and the Administrator under the Forest Conservation Agreement. Such cooperation shall include reasonable efforts to: (a) facilitate site visits by the Parties to the Tropical Forest Areas; (b) arrange meetings or conference calls among personnel of the Parties and the Administrator to discuss issues arising under the Forest Conservation Agreement; (c) make available for public inspection documents that are related to the performance of the CBCR, the GCR, and the Administrator under the Forest Conservation Agreement; and (d) undertake such other cooperative activities as the Parties hereto shall determine to be in furtherance of the goals of the Forest Conservation Agreement.

ARTICLE VII AMENDMENT AND NOTIFICATION

- 7.1. Amendment and Waiver. This Agreement may be amended only by a written instrument signed by the 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 failure or delay in exercising 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.

7.2. Notices. All notices, consents, requests, instructions, approvals, and other communications provided for herein shall be in writing and shall be deemed validly given: (a) on the date of delivery when delivered by hand; (b) on the date of transmission when sent by facsimile transmission during normal business hours with telephone confirmation of receipt; or (c) on the date of receipt in accordance with the records of receipt of a reputable overnight courier that maintains records of receipt, all addressed as set forth below (or to such other address as any Party shall have designated by notice in accordance with this Section 7.2 to the other Party).

(i) If to the USG:

Deputy Assistant Secretary
Environment and Energy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220 U.S.A.
(202) 622-2000 (telephone)
(202) 622-0037 (facsimile)

(ii) If to TNC:

The Nature Conservancy
4245 North Fairfax Drive, Suite 100
Arlington, VA 22203-1606
(703) 841-4593 (telephone)
(703) 841-0128 (facsimile)
Attn: Office of the General Counsel

With a copy to:

The Nature Conservancy
Costa Rica Country Program
Ubicacion: Un kilometro al oeste de Pops Sabana, ultima casa a
Mano derecha, frente a los semaforos
San Jose, Costa Rica
(506) 220-2552 (telephone)
(506) 220-2551 (facsimile)
Attn: Country Program Director

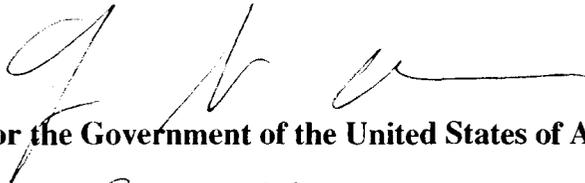
**ARTICLE VIII
EFFECTIVE DATE AND TERMINATION**

- 8.1. Entry into Force. This Agreement shall become effective on the date of the last signature below (“Effective Date”). If this Agreement shall not have entered into force on or before September 30, 2010, entry into force shall be precluded. Once in force, this Agreement shall remain in force unless terminated in accordance with the provisions of Section 8.2 of this Agreement.
- 8.2. Termination. This Agreement shall terminate: (a) on November 12, 2010, if the Closing has not taken place on or before that date; or (b) upon mutual written consent of the Parties.

**ARTICLE IX
OTHER PROVISIONS**

- 9.1. Rules of Construction. The words “include” and “including” shall be deemed to be followed by the phrase “without limitation.”
- 9.2. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed as giving any person or entity, other than the Parties hereto and their successors and permitted assigns, any right, remedy or claim under or in respect to this Agreement or any provision hereof.
- 9.3. Schedules. The following schedules are part of this Agreement:
- | | |
|-----------------|----------------------------|
| Schedule 2.2 | Wire Transfer Instructions |
| Schedule 3.2(b) | Form of Receipt |

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement, done in the English language.



For the Government of the United States of America:

Date: *Spt 24, 2010*

For The Nature Conservancy:

Date: *Sept 24, 2010*

SCHEDULE 2.2
Wire Transfer Instructions

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

Questions: Federal Reserve Bank /New York (212) 720-5840.

* * *

SCHEDULE 3.2(b)
Form of Receipt

RECEIPT

In connection with the closing of the transactions contemplated by the Swap Fee Contractual Agreement between the Government of the United States of America and The Nature Conservancy ("TNC") (the "Agreement"), dated as of September 24, 2010, _____ hereby acknowledges receipt from TNC of the sum of _____ U.S. Dollars (US\$ _____) in satisfaction in full of TNC's obligations pursuant to Section 2.2 of the Agreement.

IN WITNESS WHEREOF, _____, for the benefit of TNC, executed this Receipt as of this ____ day of _____, 2010.

By: _____

Name:

Title:

* * *