

**SWAP FEE CONTRACTUAL AGREEMENT
AMONG
THE GOVERNMENT OF THE UNITED STATES OF AMERICA, CONSERVATION INTERNATIONAL
FOUNDATION, AND
THE NATURE CONSERVANCY**

The Government of the United States of America, Conservation International Foundation, a non-profit corporation organized under the laws of California in 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, sustainable use and management of tropical forests in Guatemala, 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 Conservation International Foundation and The Nature Conservancy in tropical forest protection in Guatemala, and the success of non-governmental organizations in Guatemala in conserving and managing tropical forest land in Guatemala, and

In furtherance of the goals of the U.S. Tropical Forest Conservation Act of 1998, Public Law No. 105-214, as amended, the Foreign Operations, Export Financing, and Related Programs Appropriations Acts for U.S. fiscal year 2004, Public Law No. 108-199 and the Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Regarding a Debt-for-Nature Swap to Prepay and Cancel Certain Debt Owed by the Government of the Republic of Guatemala to the Government of the United States of America, dated as of even date herewith,

Have agreed on this 8th day of September, 2006, 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 Debt Swap Agreement or the Forest Conservation Agreement, then it shall have the meaning ascribed to it in the Debt Swap Agreement or the Forest Conservation Agreement, as applicable.

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

(b) "Agreement" means this Swap Fee Contractual Agreement among the USG, CI and TNC, 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 Bank of Guatemala 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 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 fifteen million one hundred eighty-two thousand U.S. Dollars (US\$15,182,000) by the USG from the Debt Restructuring Account to the USAID Account.

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

(i) "Debt Swap Agreement" means the Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Regarding a Debt-for-Nature Swap to Prepay and Cancel Certain Debt Owed by the Government of the Republic of Guatemala to the Government of the United States of America, dated as of even date herewith, as it may be amended from time to time.

(j) "Effective Date" has the meaning set forth in Section 8.1 of this Agreement.

(k) "Forest Conservation Agreement" means the Forest Conservation Agreement among the GOG, CI, and TNC, dated as of the date hereof, as it may be amended from time to time.

- (l) "Forest Land" has the meaning ascribed to it in the Forest Conservation Agreement.
- (m) "GOG" means the Government of the Republic of Guatemala, represented by the Ministry of Public Finance.
- (n) "New Obligations" has the meaning ascribed to it in the Debt Swap Agreement.
- (o) "Outstanding Obligations" has the meaning ascribed to it in the Debt Swap Agreement.
- (p) "Party" means the USG, CI, or TNC, and "Parties" means, collectively, the USG, CI and TNC.
- (q) "Swap Fee" means an aggregate amount of two million and three U.S. dollars (US\$2,000,003.00).
- (r) "TFCA Evaluation Sheet" means a measure of program effectiveness designed by USG in its sole discretion, as it may be reasonably amended from time to time.
- (s) "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.
- (t) "Trustee" has the meaning ascribed to it in the Forest Conservation Agreement.
- (u) "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.
- (v) "USG" means the Government of the United States of America, acting primarily through the U.S. Department of the Treasury.
- (w) "U.S. Dollar" means the legal tender of the United States of America.

ARTICLE II
CLOSING

- 2.1. **Obligations of USG.** In consideration of the payment of the Swap Fee paid by CI and 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 allow the substitution of the New Obligations for the Outstanding Obligations and make the Debt Reduction Payment in accordance with Section 2.1 of the Debt Swap Agreement.
- 2.2. **Obligations of CI and TNC.** In order to induce the USG to take the actions described in Section 2.1 hereof and pursuant to the terms and subject to the conditions hereof, at the Closing, CI and TNC shall deposit or have deposited the Swap Fee into the USAID Account by wire transfer in accordance with the wire transfer instructions attached hereto as Schedule 2.2.
- 2.3. **Closing.** The consummation of transactions contemplated in this Article II shall take place simultaneously in a single act (the "Closing") on: (a) September 18, 2006 or (b) such other later Business Day on or before September 29, 2006 as may be agreed among all the Parties and the GOG in writing (the "Closing Date").

ARTICLE III
CONDITIONS TO CLOSING

- 3.1. **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) **Debt Swap Agreement.** The Debt Swap Agreement shall have been executed and delivered by the parties thereto and the closing thereunder shall have been consummated concurrently with the Closing hereunder;
 - (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; and
 - (c) **Other Documents.** The USG shall have received from CI and TNC such further documents, opinions and certificates as USG shall reasonably request.

3.2. **Conditions Precedent of CI and TNC.** The obligations of CI and TNC hereunder to pay the Swap Fee into the USAID 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 CI and TNC:

(a) **Debt Swap Agreement.** The Debt Swap Agreement shall have been executed and delivered by the parties thereto and the closing thereunder shall have been consummated concurrently with the Closing hereunder;

(b) **Receipt.** The USG shall have executed and delivered, or stand ready to execute and deliver, a receipt substantially in the form attached as Schedule 3.2(b);

(c) **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; and

(d) **Other Documents.** CI and TNC shall have received from the USG such further documents, opinions and certificates as they shall reasonably request; *provided, however,* that the USG shall have no obligation to deliver any documents, opinions and/or certificates that could not be obtained by CI or TNC, pursuant to a Freedom of Information Act request.

ARTICLE IV

ADDITIONAL UNDERTAKINGS OF CI AND TNC

- 4.1. Reports. During the term of the Forest Conservation Agreement, CI or 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 CI and 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, CI or TNC shall promptly notify the USG of any material breach by any party to the Forest Conservation Agreement of its covenants or obligations thereunder, or any act or omission by any such party to the Forest Conservation Agreement that is known by CI or TNC and that, in the opinion of CI or TNC, is reasonably likely to give rise to a material breach of such agreement.
- 4.3. Notice of Termination. CI and 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. CI and 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. CI and TNC agree to assist USG in the satisfactory performance of any audits and evaluations of the Guatemala TFCA program deemed necessary by USG in its sole discretion. Such audits and evaluations may be in addition to any audits and evaluations required under the Forest Conservation Agreement. CI and TNC further agree to assist USG in obtaining any information requested by USG for purposes of such audits and evaluations (such as the TFCA Evaluation Sheet). CI and TNC also agree to assist USG in remedying any deficiencies identified by USG in the performance of the Guatemala TFCA program through any such audits and evaluations (including the TFCA Evaluation Sheet). USG agrees to consult with the Oversight Committee 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. USG shall promptly notify CI and TNC of any material breach by the GOG of any of its covenants or obligations under the Debt

Swap Agreement, or any act or omission by the GOG that comes to the attention of the USG and that is reasonably likely to give rise to a material breach of such agreement.

- 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 USG shall not be responsible for the costs of completing the TFCA Evaluation Sheet.
- 5.3 **Payment Breach by the GOG.** In the event the GOG fails to comply with the payment obligations set forth in the Debt Swap Agreement in accordance with the terms of the Debt Swap Agreement, CI or TNC shall have the right to seek enforcement of the New FCA 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 CI and TNC of, and receive their approval of, any proposed amendment to the Debt Swap Agreement affecting the New FCA Obligations.

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 GOG and the Administrator under the Forest Conservation Agreement. Such cooperation shall include reasonable efforts to: (a) facilitate site visits by the Parties to the Forest Land; (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 GOG 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; 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 Parties):

(a) If to USG:

Deputy Assistant Secretary for International Development Policy
and Debt
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW.
Washington, DC 20220 U.S.A.
(202) 622-0070
(202) 622-0658

(b) If to CI, to:

Conservation International Foundation
1919 M Street, NW
Washington, DC 20036
(202) 912-1000 (telephone)
(202) 912-3851 (facsimile)
Attn: General Counsel
With a copy to:

CI – Guatemala
Avenida Reforma 12-01
Edificio Reforma Montufar Oficina 1105 Nivel 11
Zona 10
Ciudad de Guatemala, Guatemala
(502) 2334-1055
Attn: Country Director

(c) If to TNC, to:

The Nature Conservancy
4245 North Fairfax Drive, Suite 100
Arlington, VA 2203-1606
(703) 841-4593 (telephone)

(703) 841-0128 (facsimile)
Attn: Office of the General Counsel
With a copy to:
The Nature Conservancy
12 Avenida 14-41
Colonia Oakland
Zona 10
Guatemala, Guatemala
Attn: Country Program Director

ARTICLE VIII EFFECTIVE DATE AND TERMINATION

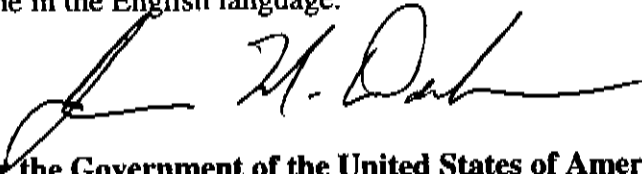
- 8.1 **Entry into Force.** This Agreement shall enter into force on the date of the last signature below ("**Effective Date**").
- 8.2 **Termination.**
- (a) This Agreement shall automatically terminate upon the termination of the Forest Conservation Agreement, in which case the USG promptly shall notify CI and TNC of such termination in accordance with Section 7.2.
 - (b) The Agreement may be terminated (i) by a Party by providing written notice to the other Party in the event that the Closing has not taken place on or before September 29, 2006, or (ii) by the mutual written consent of both 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 of 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 |
- 9.4 **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, but all of which together shall constitute one and the same document. Copies of executed counterparts transmitted by facsimile or other electronic transmission service shall be considered original executed counterparts for purposes of this Section 9.4.

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: *Sept 2006*



For Conservation International Foundation:

Date: *SEPTEMBER 5, 2006*



For The Nature Conservancy:

Date: *SEPTEMBER 5, 2006*

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 that certain Swap Fee Contractual Agreement among Conservation International Foundation ("CI"), The Nature Conservancy ("TNC") and the Government of the United States of America (the "Agreement"), dated as of September 8, 2006, the Government of the United States of America hereby acknowledges receipt from TNC and CI the sum of two million and three U.S. Dollars (US\$2,000,003.00) in satisfaction in full of CI's and TNC's obligations pursuant to Section 2.2 of the Agreement.

IN WITNESS WHEREOF, the Government of the United States of America has, for the benefit of CI and TNC, executed this Receipt as of this ___ day of _____, 2006.

**THE GOVERNMENT OF THE UNITED
STATES OF AMERICA**

By: _____

Name:

Title:

U.S. Department of Treasury

* * *