

APPENDIX XII

THE BROWN BROTHERS CONTRACT WITH THE REPUBLIC OF NICARAGUA, 1920

(Excerpts made from the full contract. Omitted sections contain detailed agreement regarding form of bonds, method of replacing, drawing and retiring bonds, etc.)

REPUBLIC OF NICARAGUA
and
CENTRAL UNION TRUST COMPANY
OF NEW YORK
and
BROWN BROTHERS AND COMPANY AND J. AND W. SELIGMAN
AND COMPANY

BOND TRUST AND FISCAL AGENCY CONTRACT

Dated: October 5, 1920

As modified by the ratifying Act passed by the Nicaraguan Congress on December 6, 1920, and promulgated by Executive Decree on December 7, 1920.

BOND TRUST AND FISCAL AGENCY CONTRACT

Contract made at the City of New York, this fifth day of October, nineteen hundred and twenty, between the REPUBLIC OF NICARAGUA (hereinafter called the "Republic"), party of the first part; CENTRAL UNION TRUST COMPANY OF NEW YORK, a corporation organized under the laws of the State of New York (hereinafter called the "Trustee"), party of the second part; and BROWN BROTHERS AND CO. and J. & W. SELIGMAN & CO., copartnerships doing business in the City of New York (who, acting together, are hereinafter called the "Fiscal Agent"), parties of the third part;

WHEREAS, the Republic desires to obtain a Loan for the purpose

(a) Of aiding in the construction and equipment of a railroad to connect the Lake of Nicaragua with the Atlantic Coast at Monkey Point (hereinafter referred to as the "Atlantic Railroad"); and

(b) Of refunding a part of the Republic's outstanding indebtedness and for other purposes; and

WHEREAS, in order to carry out the above purposes, the Republic proposes to create and issue its Bonds to the aggregate principal amount of nine million dollars (\$9,000,000), United States gold, to be secured under this Contract and as hereinafter stated; and

WHEREAS, the Republic desires the Central Union Trust Company, of New York, to act as Trustee under this Contract, and as Transfer Agent of such Bonds; and desires Brown Brothers & Co. and J. & W. Seligman & Co. to act jointly as Fiscal Agent of the Republic in respect of the proposed Loan, with the powers and duties hereinafter prescribed:

Now, THEREFORE, in consideration of the premises and of the mutual covenants and undertakings hereinafter contained, the parties hereto covenant and agree to and with each other as follows:

ARTICLE FIRST

THE BONDS

Section 1. The Republic shall issue its Bonds to the aggregate principal amount of nine million dollars (\$9,000,000), United States gold, which shall be designated and known as the "Seven per cent. 15-Year Sinking Fund Gold Bonds of the Republic of Nicaragua," herein, for brevity, called the "Bonds of 1920" or the "Bonds." The total amount of Bonds to be issued shall not exceed the principal sum of nine million dollars (\$9,000,000).....

Section 4. The Bonds, both as to the principal and interest, shall be payable at the office of the Fiscal Agent in the City of New York; except that the Bonds payable in Pounds Sterling, if so issued, may be payable in London.....

The text of each Bond and Coupon may be either in English or in both the English and Spanish languages, as the Fiscal Agent may determine, but in each and every case the English text shall govern.....The printing and engraving of both the temporary and definitive Bonds shall be under the direction of the Fiscal Agent.....

Section 12. The Loan represented by the proposed Bonds shall constitute and is hereby declared to be a direct liability and obli-

gation to the Republic irrespective of any security provided hereunder; and the Republic hereby pledges its faith and credit for the due and punctual payment of the principal and interest of the Loan and of all amounts required for or incident to the service of the Loan, and for the performance of all the undertakings herein contained on its part to be performed.

Section 13. The expenses of printing and engraving the provisional and definitive Bonds, the cost involved in the listing of those Bonds on the Exchanges, the cost of such foreign stamp taxes as may be incurred on the issue, including any taxes which may be payable in the United States, the compensation and expenses of the Trustee for authenticating the Bonds, and the shipping and insurance expenses, if any, shall be paid by the Bankers for account of the Republic out of the moneys to be provided in accordance with subdivision (2) of Section 1 of Article Second of the Financial Plan of 1920.

Section 14. The Bonds shall always be exempt both as to principal and interest, from any and all imposts, contributions or other taxes now or hereafter levied or collected by or in the Republic, whether they be on said Bonds, the income derived therefrom or on the holder thereof; and whether the latter be a Nicaraguan citizen or a citizen of a State friendly or hostile to the Republic of Nicaragua. The Republic shall furthermore pay and discharge any and all imposts or other taxes now leviable or collectible, or which may hereafter be levied or collected, on said Bonds by the Republic or by any political authority within the Republic; whether such impost or tax be on said Bonds, the income derived therefrom, or on the holder thereof; and whether the latter by a Nicaraguan citizen or a citizen of a State friendly or hostile to the Republic of Nicaragua.

All stamp or other duties and taxes to which this Contract and all other documents, whether public or private, and whether executed in the Republic of Nicaragua or in the United States of America under the terms of this Contract, or in execution thereof, may be subject, as well as all notarial, registry and other expenses connected with the execution and recording of said instruments, shall be paid by the Republic out of the portion of its Surplus Revenues available for public works and other expenses . . .

ARTICLE SECOND

SECURITY

Section 1. The principal and interest of the Bonds, the instalments of the Sinking Fund hereinafter provided for, and all other

amounts required for or incident to the service of the Loan, as also the performance by the Republic of all of its obligations under this Contract, shall be secured as follows:

(a) By a lien and charge, hereby constituted, upon all customs duties receivable by or for the Republic on and after the date of the Bonds to be issued hereunder, whether such customs duties be imposed upon exports or imports, subject only to the prior liens referred to in subdivisions (1) to (4) inclusive of Section 1 of Article Second of the Financial Plan of 1920, and excepting from said lien and charge that portion of the customs revenues known as the "12½% Surtax."

(b) By a first pledge of such of the Republic's bonds of 1909 as may be acquired by the Republic, or for its account, under the terms of an Agreement bearing even date herewith between the Republic and Brown Brothers & Co. and J. & W. Seligman & Co. (hereinafter referred to as "Bankers Agreement of 1920"), which Bonds the Republic will deposit or cause to be deposited with the Trustee as and when so acquired;

(c) By a mortgage and lien upon all the property and earnings of the Ferrocarril del Pacifico de Nicaragua, including its franchises, concessions, equipment and other appurtenances, subject only to a prior mortgage and lien thereon in favor of the Treasury Bills, Series A, as set forth in the Treasury Bills, Series A, Trust and Fiscal Agency contract bearing even date herewith. In order that said mortgage and lien may be duly constituted, the Republic, as soon as it shall have acquired all of the stock of the Ferrocarril del Pacifico de Nicaragua, as provided in the Bankers Agreement of 1920, and in any event on or before December 15, 1920, shall cause that company to execute and duly record in favor of the Trustee, a mortgage in form satisfactory to the Trustee and deliver to the Trustee a duly certified copy thereof.

It shall be provided in said mortgage that, so long as any of the Treasury Bills of 1920, Series A or Series B, referred to in the Bankers Agreement of 1920, shall be outstanding, and until the completion of the proposed Atlantic Railroad, the earnings of the Ferrocarril del Pacifico de Nicaragua (after setting aside for betterments and improvements such sum as the Railroad Commission referred to in the Bankers Agreement of 1920 may determine, and after setting aside from any dividends declared the sum of 12,500 cardobas semi-annually, or such portion thereof as may be necessary to pay for transportation services rendered to the Republic by the Ferrocarril del Pacifico de Nicaragua), shall, either directly or as dividends, be devoted first, to the payment of the principal and interest of Treasury Bills, Series A, and thereafter

to the payment of principal and interest of Treasury Bills, Series B, and / or to the construction of said proposed Atlantic Railroad; but it shall also be provided in said mortgage that the right to utilize said earnings for the retirement of Treasury Bills, Series B, and / or said railroad construction shall be subject to the prior lien in favor of the Republic's Bonds of 1920 if the customs revenues shall be insufficient to meet the charges on the loan represented by those Bonds, it being the intention that said customs revenues shall be primarily liable to meet those charges.

(d) By a first mortgage and lien upon all the property and earnings of the Atlantic Railroad, as and when constructed including its franchises, concessions, equipment and other appurtenances.

.....
 (e) By mortgages upon all improvements, extensions, additions and equipments which may hereafter be made on or added to the existing Pacific Railroad, subject only as to the former to prior mortgages and liens in favor of Treasury Bills, Series A.

For the purpose of making the securities provided in this paragraph and paragraphs (c) and (d) above more effective, and so long as such securities shall exist, the Republic shall be obliged to maintain in full force, the provisions of Article I of Law of November 29, 1920, which provides: "Property devoted to a service which cannot be paralyzed without prejudice to the public, such as railroads, tramways or municipal light, drinking water or draining enterprises, etc., may be attached but the attachment shall not interfere with the continuance of the functioning of said service."¹

(f) By a pledge of the entire capital stock of the Ferrocarril del Pacifico de Nicaragua, or its successor, subject to the prior rights of the Treasury Bills, Series A, and by a pledge of the entire capital stock of the Ferrocarril del Atlantico de Nicaragua.

Section 2. In order to fully protect the value of the various mortgages, liens and pledges mentioned in Section 1 above, the Republic hereby reaffirms the provisions of Section 3 of Article Seventh of the Concession granted by the Republic to the Ferrocarril del Pacifico de Nicaragua, dated June 19, 1912, whereby the Republic agreed that it would under no pretext grant concessions to construct any other railroad, to other persons or companies, within a zone of twenty miles on each side of the company's lines, without the company's consent. In compliance with said provision, the Republic hereby agrees that a concession recently solicited

¹ As modified by the ratifying Act passed by the Nicaraguan Congress on Dec. 6, 1920, and promulgated by Executive Decree of Dec. 7, 1920.

by one Keilhauer to construct a railway from Chinandega to the Gulf of Fonseca via El Viejo will be refused.

Section 3. The Annual Budget of the Republic shall be paid as provided in the Financial Plan of 1920, a copy of which marked "Schedule D" is annexed to and forms a part of the Bankers Agreement of 1920; and the liens at present existing or created hereunder and simultaneously herewith on the Customs Revenues, Internal Revenues and other internal taxes of the Republic, and upon the 12½ per cent Customs Surtax in favor of the Guaranteed Customs Bonds of the Republic shall continue in effect; but, except for the charge of said Annual Budget, and except for said liens, the Customs revenues, Customs surtax, the Internal Revenues, and all other taxes of the Republic shall, so long as any of the Republic's Bonds of 1920 shall be outstanding, be and continue free and clear of all liens, charges or encumbrances; and no such liens, charges or encumbrances shall be placed thereon except with the consent of the High Commission and of the Secretary of State of the United States; and even then only in case that a preferential lien upon such revenues and taxes shall first be created in favor first of the Treasury Bills, Series A, and second, of the Bonds of 1920. The Republic accordingly covenants not to permit any liens or charges to be placed on such revenues so long as any of its Bonds of 1920 are outstanding, except as aforesaid. If, at any time, the Customs revenues and the dividends of the Ferrocarril del Pacifico de Nicaragua, or of its successor, and of the proposed Ferrocarril del Atlantico de Nicaragua, should be insufficient to meet the service of the 1920 Bonds, any sum which may be required to make up the deficit shall be provided by the Republic out of such of its Surplus Revenues as are not subject to prior charges.

ARTICLE THIRD

COLLECTION OF CUSTOMS

Except as may otherwise be expressly provided under the Financial Plan of 1920, the Customs duties of the Republic shall continue to be collected and administered by the Collector General of Customs in manner and form as provided in Agreement dated September 1, 1911, between the Republic of Nicaragua and Brown Brothers & Co. and J. & W. Seligman & Co.; and such collection and administration shall continue until the payment in full of the Loan represented by the Republic's Bonds of 1920 and until the full discharge of all the obligations of the Republic under this Contract.

ARTICLE FIFTH

EXPENSES AND COMPENSATION OF FISCAL AGENT AND
TRUSTEE

At the end of each six months during the life of this Contract, on the written request of the Trustee and of the Fiscal Agent respectively made to Brown Brothers & Co. and J. & W. Seligman & Co. as Bankers under the Financial Plan of 1920, and as Fiscal Agent of the Republic, there shall be paid to them respectively out of the moneys to be provided under subdivision (2) of Section 1 of Article Second of said Financial Plan, all expenses incurred by them or either of them in good faith in the service of the Loan, or in the performance of any duty imposed upon them, or either of them, under this Contract, and also such further amounts as either of them shall estimate may be required by them respectively to meet all expenses reasonably incident to the immediate further service of the Loan, or to the discharge of said duties, which expenses shall be paid by the Bankers out of said moneys against proper vouchers. The reasonable and customary compensation of the Trustee and of the Fiscal Agent for all services rendered by them or either of them hereunder shall likewise be paid by the Bankers out of said expense fund at the end of each six months during the life of this Contract.

ARTICLE SEVENTH

ENFORCEMENT OF PLEDGE OF RAILROAD STOCK UPON DEFAULT

In case default shall be made in the payment of any bond or default shall be made in the due performance of any of the other covenants of the Republic hereunder, and such last mentioned default shall continue for a period of thirty (30) days after written notice thereof and demand of performance, the Trustee may and, if thereunto requested by the holders of a majority in amount of the Bonds issued and outstanding hereunder, and if indemnified to its satisfaction for its costs and expenses in so doing, shall proceed to sell the shares then held by it hereunder.
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ARTICLE EIGHTH

CONCERNING THE TRUSTEE AND THE FISCAL AGENT

Section 1. The Republic hereby appoints Central Union Trust Co. of New York, Trustee for the Bondholders and Transfer

Agents of the Bonds, and hereby appoint Brown Brothers and Co. and J. & W. Seligman & Co., jointly, Fiscal Agent of the Republic hereunder, in the United States of America and in Europe, with full power to appoint agents, in the United States and in Europe or elsewhere, to act for it in respect hereof; and the Central Union Trust Co. of New York and Brown Brothers & Co. and J. & W. Seligman & Co., respectively, accept such appointments. The Republic covenants that, during the life of the Bonds, the Republic will at all times maintain in the City of New York, United States of America, a Fiscal Agency, and also a Transfer Agency of the Bonds, and any successor to the Central Union Trust Company of New York, as Trustees, shall always be a trust company organized under the laws of the State of New York and carrying on business in the Borough of Manhattan, in said city, and having a capital and surplus aggregating at least two million dollars.

Section 2. The Trustee and the Fiscal Agent, respectively, in the execution of the trusts and duties incumbent upon them hereunder shall be under full legal liability except as in this Contract provided. They respectively may at any time, instead of acting personally, employ and appoint such agent or agents, and attorney or attorneys, as they may deem desirable.

Section 3. Neither the Trustee nor the Fiscal Agent shall be answerable for the default or misconduct of any agent, attorney, bank or banker appointed or selected by them or either of them in pursuance hereof, if such agent, attorney, bank or banker shall have been selected with reasonable care; or for anything whatever in connection with this trust, except for their own wilful misconduct.

Section 4. The Trustee and the Fiscal Agent, or either of them, may at any time, and from time to time, take such steps as they may deem proper for the enforcement of the provisions hereof and for the protection of the rights of the Bondholders hereunder.

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ARTICLE TENTH

GENERAL PROVISIONS

Section 4. In case any controversy, question, dispute or difficulty whatsoever shall arise regarding the interpretation, performance or otherwise in connection with this agreement, such controversy, question, dispute or difficulty so arising shall, unless otherwise provided in this Contract or in the Financial Plan of 1920, immediately be referred by any of the parties hereto to the

Secretary of State of the United States for determination, decision and award and any such determination, decision and award when made after such reference shall be accepted by the parties hereto as final and conclusive.

Section 5. This Contract has been submitted to the Secretary of State of the United States who perceives no objection thereto from the standpoint of the Department of State of the United States. Within 10 days after the ratification of this Contract by the Executive and the Congress of the Republic, the Republic shall file with the Department of State of the United States of America an original executed counterpart of this contract.

Section 6.¹ This Contract shall take effect and become operative when ratified and approved by the Executive and Congress of the Republic.

IN WITNESS WHEREOF, the REPUBLIC OF NICARAGUA has caused this Contract to be subscribed on its behalf by Señor Don Octaviano Cesar, Minister of Finance and Financial Agent of the Republic of Nicaragua; the CENTRAL UNION TRUST COMPANY OF NEW YORK has caused this Contract to be subscribed in its name by one of its Vice-Presidents, and its corporate seal to be hereunto affixed and attested by one of its Assistant Secretaries; and said BROWN BROTHERS & CO. and said J. & W. SELIGMAN & CO. have hereunto set their hands and seals the day and year first above written.

This contract is executed in quadruplicate.

OCTAVIANO CESAR

Minister of Finance and Financial Agent of
the Republic of Nicaragua

CENTRAL UNION TRUST COMPANY OF NEW YORK

By F. J. FULLER

Vice-President

(Corporate Seal)

Attest:

C. P. STALKNECHT

Assistant Secretary

BROWN BROTHERS & Co. (L.S.)

J. & W. SELIGMAN & Co. (L.S.)

¹ As modified by the ratifying Act passed by the Nicaraguan Congress on Dec. 6, 1920 and promulgated by Executive Decree of Dec. 7, 1920.