



Contract No: 047

Contract for Consultant's Services

Fixed Price

For the provision of

**Project Management, Supervision of Design and Construction Supervision
for the Connectivity Project on The Northern Transnational Highway**

between

**Fondo del Milenio (MCA El Salvador)
El Salvador**

and

**Wilbur Smith Associates Inc.
in association with
Técnica y Proyectos, S.A. (TYP SA)**

September 29, 2008

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I. Agreement

This CONTRACT AGREEMENT (this "Contract") made as of the 29 of September, 2008, between Fondo del Milenio - FOMILENIO (MCA El Salvador) (the "MCA Entity"), on the one part, and Wilbur Smith Associates Inc. (the "Consultant") in association with Técnica y Proyectos, S.A. (TYPESA), on the other part, each of which will be jointly and severally liable to the MCA Entity for all of the Consultant's obligations under this Contract and is deemed to be included in any reference to the term "Consultant."

RECITALS

WHEREAS,

- (a) The Millennium Challenge Corporation ("MCC") and the Government of El Salvador (the "Government") have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in El Salvador on November 29, 2006 (the "Compact") in the amount of approximately US\$ 460.9 millions ("MCC Funding"). The Government, acting through the MCA Entity, intends to apply a portion of the proceeds of MCC Funding to eligible payments under this Contract. Payments made under this Contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use, and conditions to disbursement, of MCC Funding. No party other than the Government and the MCA Entity shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding; and
- (b) The MCA Entity has requested the Consultant to provide certain consulting services as described in Appendix A to this Contract; and
- (c) The Consultant, having represented to the MCA Entity that it has the required professional skills, and personnel and technical resources, has agreed to provide such services on the terms and conditions set forth in this Contract.

NOW THEREFORE, the Parties to this Contract agree as follows:

1. In consideration of the payments to be made by the MCA Entity to the Consultant as set forth in this Contract, the Consultant hereby covenants with the MCA Entity to perform the Services in conformity in all respects with the provisions of this Contract.
2. Subject to the terms of this Contract, the MCA Entity hereby covenants to pay the Consultant, in consideration of the performance of the Services, the Contract Price (as defined below) or such other sum as may become payable pursuant to the provisions of this Contract at the times and in the manner prescribed by this Contract.
3. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - a) General Conditions of Contract
 - b) Special Conditions of Contract

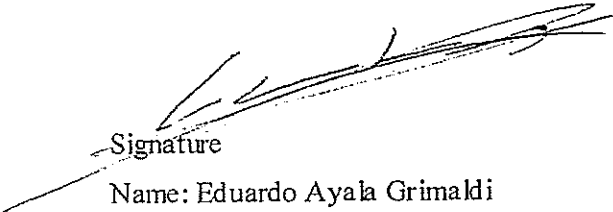
c) The following Appendices:

- Appendix A: Description of Services
- Appendix B: Reporting Requirements
- Appendix C: Key Professional Personnel
- Appendix D: Breakdown of Contract Price in US\$
- Appendix D1 - Breakdown of Man-Month for Phase I in US\$
- Appendix E: Payment Schedule
- Appendix F: Services and Facilities to be Provided by FOMILENIO
- Appendix G: Additional Provisions
- Appendix H: The RFP and its Amendments 1 and 2, as well as the Clarifications 1 and 2
- Appendix I: The Technical and Financial Proposals presented by Wilbur Smith/TYPSA and additional clarifications presented during the contract negotiation
- Appendix J: The negotiation minutes

IN WITNESS whereof the Parties hereto have caused this Contract to be executed in accordance with the laws of El Salvador as of the day, month and year first indicated above.

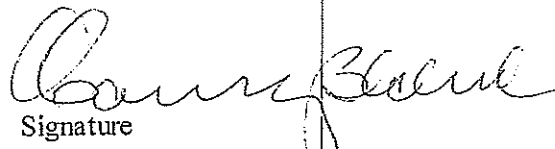
For Fondo del Milenio (MCA El Salvador):

For Wilbur Smith- TYPSA:



Signature

Name: Eduardo Ayala Grimaldi



Signature

Name: Maria del Carmen Becerra

II. General Conditions of Contract

1. General Provisions

1.1 Definitions

Capitalized terms used in this Contract and not otherwise defined have the meanings given such terms in the Compact or related document. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) "Applicable Law" means the laws and any other instruments having the force of law in El Salvador, as they may be issued and in force from time to time.
- (b) "coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract.
- (c) "collusive practice" means a scheme or arrangement between two or more parties, with or without the knowledge of the MCA Entity, designed to establish prices at artificial, non-competitive levels or to otherwise deprive the MCA Entity of the benefits of free and open competition.
- (d) "Compact" has the meaning given the term in the recital clauses to this Contract.
- (e) "Consultant" has the meaning given the term in the initial paragraph to this Contract.
- (f) "Contract" means this agreement entered into between the MCA Entity and the Consultant, to provide the Services, and consists of the Contract Agreement, these GCC, the SCC, and the Appendices (each of which forms an integral part of this agreement), as the same may be amended, modified, or supplemented from time to time in accordance with the terms of this agreement.
- (g) "Contract Price" means the price to be paid for the performance of the Services, in accordance with GCC Clause 6.
- (h) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including the MCA Entity and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution or the making of any payment to any third party, in connection

with or in furtherance of a contract, in violation of (A) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a et seq.) ("FCPA"), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (B) any applicable law in El Salvador.

- (i) "Effective Date" has the meaning given the term in GCC Clause 2.2.
- (j) "Force Majeure" has the meaning given the term in GCC Clause 2.5.
- (k) "fraudulent practice" means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation.
- (l) "GCC" means these General Conditions of Contract.
- (m) "Government" has the meaning given the term in the recital clauses to this Contract.
- (n) "Key Professional Personnel" means the Personnel listed in Appendix C to this Contract.
- (o) "Local Currency" means US\$
- (p) "MCA Entity" has the meaning given the term in the initial paragraph to this Contract.
- (q) "MCC" has the meaning given the term in the recital clauses to this Contract.
- (r) "Member" means any of the entities that make up a joint venture or other association; and "Members" means all these entities.
- (s) "obstructive practice" means
 - (i) destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, coercive, collusive, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and
 - (ii) acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact and related agreements.
- (t) "Party" means the MCA Entity or the Consultant, as the case may be, and "Parties" means both of them.

- (u) "Personnel" means persons hired by the Consultant or by any Sub-Consultants and assigned to perform the Services or any part thereof.
- (v) "prohibited practice" means any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions) of Appendix G to this Contract.
- (w) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented.
- (x) "Services" means the activities to be performed by the Consultant pursuant to this Contract, as described in Appendix A to this Contract.
- (y) "Sub-Consultant" means any person or entity to whom/which the Consultant subcontracts any part of the Services.
- (z) "Substantial Modifications" means modifications which:
 - (i) increase the value of the Contract; or
 - (ii) change the scope of Services or duration of the Contract by more than ten percent (10%).
- (aa) "Tax" and "Taxes" have the meanings given the terms in the Compact or related agreement.
- (bb) "US Dollars" means the currency of the United States of America.

1.2 Relationship Between the Parties

Nothing contained in this Contract shall be construed as establishing a relationship of master and servant or of principal and agent as between the MCA Entity and the Consultant. The Consultant, subject to this Contract, has complete charge of Personnel and Sub-Consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf in connection with this Contract.

1.3 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

1.4 Language

This Contract has been executed in English. This English language version shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.5 Interpretation

Unless otherwise indicated, throughout this Contract:

- (a) "confirmation" means confirmation in writing;
- (b) "in writing" means communicated in written form (e.g., by mail, e-mail, or facsimile) delivered with proof of

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receipt;

(c) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;

(d) the feminine means the masculine and vice versa; and

(e) the headings are for reference only and shall not limit, alter or affect the meaning of this Contract.

1.6 Notices

1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC, or sent by confirmed facsimile or electronic email, if sent during normal business hours of the recipient Party, unless the giving of notice is otherwise governed by Applicable Law.

1.6.2 A Party may change its address for receiving notice under this Contract by giving the other Party notice in writing of such change to the address specified in the SCC.

1.7 Location

1.7.1 The Services shall be performed at such locations as are specified in Appendix A to this Contract and, where the location of a particular task is not so specified, at such locations, whether in El Salvador or elsewhere, as the MCA Entity may approve.

1.8 Authority of Member in Charge

1.8.1 In case the Consultant consists of a joint venture or other association of more than one entity, the Members hereby authorize the entity specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations toward the MCA Entity under this Contract, including without limitation the receiving of instructions and payments from the MCA Entity.

1.9 Authorized Representatives

1.9.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the MCA Entity or the Consultant may be taken or executed by the officials specified in the SCC.

1.10 Taxes and Duties

(a) Except as may be exempted pursuant to the Compact or another agreement related to the Compact, available in English at [\[http://mca.gob.sv/administrador/archivos/0/archivo145.pdf\]](http://mca.gob.sv/administrador/archivos/0/archivo145.pdf), the Consultant, the Sub-Consultants, and their

respective Personnel may be subject to certain Taxes on amounts payable by the MCA Entity under this Contract in accordance with Applicable Law (now or hereinafter in effect). The Consultant, each Sub-Consultant and their respective Personnel shall pay all Taxes levied under Applicable Law. In no event shall the MCA Entity be responsible for the payment or reimbursement of any Taxes. In the event that any Taxes are imposed on the Consultant, any Sub-Consultant or their respective Personnel, the Contract Price shall not be adjusted to account for such Taxes.

- (b) The Consultant, the Sub-Consultants and their respective Personnel, and their eligible dependents, shall follow the usual customs procedures of El Salvador in importing property into El Salvador.
- (c) If the Consultant, the Sub-Consultants or any of their respective Personnel, or their eligible dependents, do not withdraw but dispose of any property in El Salvador upon which customs duties or other Taxes have been exempted, the Consultant, the Sub-Consultants or such Personnel, as the case may be, (i) shall bear such customs duties and other Taxes in conformity with Applicable Law, or (ii) shall reimburse such customs duties and Taxes to the MCA Entity if such customs duties and Taxes were paid by the MCA Entity at the time the property in question was brought into El Salvador.
- (d) Without prejudice to the rights of the Consultant under this clause, the Consultant, the Sub-Consultants and their respective Personnel will take reasonable steps as requested by the MCA Entity or the Government with respect to the determination of the Tax status described in this GCC Clause 1.10.
- (e) If the Consultant is required to pay Taxes that are exempt under the Compact or a related agreement, the Consultant shall promptly notify the MCA Entity (or such agent or representative designated by the MCA Entity) of any Taxes paid, and the Consultant shall cooperate with, and take such actions as may be requested by the MCA Entity, MCC, or either of their agents or representatives, in seeking the prompt and proper reimbursement of such Taxes.
- (f) The MCA Entity shall use reasonable efforts to ensure that the Government provides the Consultant, the Sub-Consultants, and their respective Personnel the exemptions from taxation applicable to such persons or

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entities, in accordance with the terms of the Compact or related agreements. If the MCA Entity fails to comply with its obligations under this paragraph, the Consultant shall have the right to terminate this Contract in accordance with GCC Clause 2.7.2(d).

1.11 Fraud and
Corruption
Requirements

1.11.1 MCC requires that the MCA Entity and any other beneficiaries of MCC funding, including any bidders, suppliers, contractors, subcontractors and consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts.

Measures to
be Taken

1.11.2 MCC may cancel the portion of MCC Funding allocated to this Contract if it determines at any time that representatives of the MCA Entity, the Consultant or any other beneficiary of the MCC Funding were engaged in corrupt, fraudulent, collusive, coercive, prohibited or obstructive practices during the selection process or the execution of this Contract, without the MCA Entity, the Consultant or such other beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.

1.11.3 MCC and the MCA Entity may pursue sanction of the Consultant, including declaring the Consultant ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if it at any time determines that the Consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, prohibited or obstructive practices in competing for, or in executing, this Contract or another MCC-funded contract.

1.11.4 The MCA Entity may terminate (and MCC may cause the MCA Entity to terminate) this Contract in accordance with the terms of GCC Clause 2.7.1(d) if it determines that the Consultant has, directly or through an agent, engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for, or in the performance of, this Contract or another MCC-funded contract.

1.12 Commissions
and Fees

The Consultant shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or execution and performance of this Contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

1.13 Entire Agreement

This Contract contains all of the covenants, stipulations and provisions agreed to by the Parties. No agent or representative of either Party has the authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth in this Contract.

2. Commencement, Completion, Modification and Termination of Contract

2.1 Contract Entry into Force

This Contract shall come into full force, and be legally binding on the Parties in all respects, on the date this Contract is signed by the Parties or such other date as may be stated in the SCC.

2.2 Effective Date and Commencement of Services

The Consultant shall commence the Services on the date specified in the SCC, which shall be defined as the "Effective Date."

2.3 Expiration of Contract

Unless terminated earlier pursuant to GCC Sub-Clause 2.7, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

2.4 Modifications or Variations

2.4.1 Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to GCC Sub-Clause 7.2, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

2.4.2 In cases of Substantial Modifications, the prior written consent of MCC is required.

2.5 Force Majeure Definition

2.5.1 For the purposes of this Contract, "Force Majeure" means an event or condition that (a) is not reasonably foreseeable and is beyond the reasonable control of a Party, and is not the result of any acts, omissions or delays of the Party relying on such event of Force Majeure, (or of any third person over whom such Party has control, including any Sub-Consultant), (b) is not an act, event or condition the risks or consequence of which such Party has expressly agreed to assume under this Contract, (c) could not have been prevented, remedied or cured by such Party's reasonable diligence, and (d) makes such Party's performance of its obligations under this Contract impossible or so impractical as to be considered impossible.

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under the circumstances.

No Breach of Contract

2.5.2 The failure of a Party to fulfil any of its obligations under this Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as practicable (and in no event later than five (5) days after the occurrence) about the occurrence of an event giving rise to a claim of Force Majeure.

Measures to be Taken

2.5.3 Subject to GCC Sub-Clause 2.5.6, a Party affected by an event of Force Majeure shall continue to perform its obligations under this Contract as far as is reasonably practical, and shall take all reasonable measures to minimize and otherwise mitigate the consequences of any event of Force Majeure.

2.5.4 A Party affected by an event of Force Majeure shall provide evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

2.5.5 Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.6 During the period of its inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the MCA Entity, shall either:

(a) demobilize, in which case the Consultant shall be reimbursed for additional costs reasonably and necessarily incurred and, if the Consultant is required by the MCA Entity to reactive its performance of the Services at the time of restoration of normal conditions, the additional costs the Consultant reasonably and necessarily incurred as part of such reactivation; or

(b) continue with the Services to the extent possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

2.5.7 In the case of disagreement between the Parties as to the

existence or extent of an event of Force Majeure, the matter shall be settled in accordance with GCC Clause 8.

2.6 Suspension

The MCA Entity may, by giving thirty (30) days' written notice to the Consultant, suspend all payments to the Consultant under this Contract if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (a) shall specify the nature of the failure, and (b) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

2.7 Termination

By the MCA Entity

- 2.7.1 Without prejudice to any other remedies that may be available to it for breach of this Contract, the MCA Entity may, upon written notice to the Consultant, terminate this Contract in case of the occurrence of any of the events specified in sub-paragraphs (a) through (i) of this GCC Sub-Clause 2.7.1, and in the case of the occurrence of any of the events specified in paragraphs (h) or (i) of this GCC Clause 2.7.1, the MCA Entity may suspend this Contract.
- (a) If the Consultant, in the judgment of the MCA Entity or MCC, fails to perform its obligations relating to the use of funds set out in Appendix G. Termination under this provision shall (i) become effective immediately upon delivery of the notice of termination and (ii) require that the Consultant repay any and all funds so misused within a maximum of thirty (30) days after termination.
 - (b) If the Consultant does not remedy a failure in the performance of its obligations under this Contract (other than failure to perform obligations relating to use of funds as set forth in GCC Clause 2.7.1(a) of this Contract, which such failure shall not be entitled to a cure period) within thirty (30) days after delivery of the notice of termination or within any further period of time approved in writing by the MCA Entity. Termination under this provision shall become effective immediately upon the expiration of the thirty (30) days (or such further period as may have been approved by the MCA Entity) or on such later date as may be specified by the MCA Entity.
 - (c) If the Consultant (or any Member or Sub-Contractor) becomes insolvent or bankrupt, and/or fails to exist or is dissolved. Termination under this provision shall.

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become effective immediately upon delivery of the notice of termination or on such other date as may be specified by the MCA Entity in such notice of termination.

- (d) If the Consultant (or any Member or Sub-Contractor), in the judgment of the MCA Entity has engaged in coercive, collusive, corrupt, prohibited, obstructive or fraudulent practices in competing for or in the performance of this Contract or another MCC funded contract. Termination under this provision shall become effective immediately upon delivery of the notice of termination.
- (e) If, as the result of an event of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination or on such later date as may be specified by the MCA Entity.
- (f) If the MCA Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination or on such later date as may be specified by the MCA Entity.
- (g) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to GCC Clause 8. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination or on such later date as may be specified by the MCA Entity.
- (h) If the Compact expires, is suspended or terminates in whole or in part in accordance with the terms of the Compact. Suspension or termination under this provision shall become effective immediately upon delivery of the notice of suspension or termination, as the case may be, in accordance with the terms of the notice. If this Contract is suspended pursuant to this GCC Clause 2.7.1(h), the Consultant has an obligation to mitigate all expenses, damages and losses to the MCA Entity during the period of the suspension.
- (i) If suspension or termination is permitted under Applicable Law. Suspension or termination under this provision shall become effective immediately upon

delivery of the notice of suspension or termination, as the case may be, in accordance with the terms of the notice. If this Contract is suspended pursuant to this GCC Clause 2.7.1(i), the Consultant has an obligation to mitigate all expenses, damages and losses to the MCA Entity during the period of the suspension.

By the Consultant

2.7.2 The Consultant may terminate this Contract, upon written notice to the MCA Entity in accordance with the time period specified below, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (e) of this GCC Clause 2.7.2.

- (a) If the MCA Entity fails to pay any money due to the Consultant pursuant to this Contract that is not otherwise subject to dispute pursuant to GCC Clause 8 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination unless the payment that is the subject of such notice of termination is made by the MCA Entity to the Consultant within such thirty (30) days.
- (b) If, as the result of an event of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination.
- (c) If the MCA Entity fails to comply with any final decision reached as a result of arbitration pursuant to GCC Clause 8. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination.
- (d) If the Consultant does not receive a reimbursement of any Taxes that are exempt under the Compact within one hundred and twenty (120) days after the Consultant gives notice to the MCA Entity that such reimbursement is due and owing to the Consultant. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination unless the reimbursement that is the subject of such notice of termination is made to the Consultant within such thirty (30) days.
- (e) If this Contract is suspended in accordance with GCC

Clauses 2.7.1(h) or (i) for a period of time exceeding three (3) consecutive months; provided that the Consultant has complied with its obligation to mitigate in accordance with GCC Clauses 2.7.1(h) or (i) during the period of the suspension. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination.

Payment upon Termination

2.7.3 Upon termination of this Contract pursuant to GCC Sub-Clauses 2.7.1 or 2.7.2, the MCA Entity shall make, or cause to be made, the following payments to the Consultant:

- (a) payment pursuant to GCC Clause 6 for Services satisfactorily performed prior to the effective date of termination; and
- (b) except in the case of termination pursuant to paragraphs (a) through (d) and (g) of GCC Sub-Clause 2.7.1, reimbursement of any reasonable cost (as determined by the MCA Entity or MCC) incidental to the prompt and orderly termination of this Contract; provided, that in the case of suspension of this Contract pursuant to GCC Sub-Clauses 2.7.1 (h) or (i), the Consultant has complied with its obligation to mitigate in accordance with such clauses.

Disputes about Events of Termination

2.7.4 If either Party disputes whether an event specified in paragraphs (a), (b), (c), (e) or (g) of GCC Sub-Clause 2.7.1 or paragraphs (a) through (d) of GCC Sub-Clause 2.7.2 has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to dispute resolution in accordance with GCC Clause 8, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

2.8 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to GCC Sub-Clause 2.7, or upon expiration of this Contract pursuant to GCC Sub-Clause 2.3, all rights and obligations of the Parties under this Contract shall cease, except (a) such rights and obligations as may have accrued on the date of termination or expiration, (b) the obligation of confidentiality set forth in GCC Sub-Clause 3.3, (c) the Consultant's obligation to permit inspection, copying and auditing of its accounts and records set forth in GCC Sub-Clauses 3.7 and 3.8 and Appendix G and (d) any right or obligation which a Party

may have under the Applicable Law.

2.9 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to GCC Sub-Clauses 2.7.1 or 2.7.2, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the MCA Entity, the Consultant shall proceed as provided, respectively, by GCC Sub-Clauses 3.4 or 3.12.

3. Obligations of the Consultant

3.1 General

Standard of Performance

3.1.1 The Consultant shall perform the Services and carry out its obligations under this Contract with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the MCA Entity, and shall at all times support and safeguard the MCA Entity's legitimate interests in any dealings with Sub-Consultants or third parties.

Law Governing Services

3.1.2 The Consultant shall perform the Services in accordance with Applicable Law and shall take all practicable steps to ensure that any Sub-Consultants, as well as the Personnel of the Consultant and any Sub-Consultants, comply with the Applicable Law.

3.2 Conflict of Interests

3.2.1 The Consultant shall hold the MCA Entity's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or its own corporate interests.

Consultant Not to Benefit from Commissions, Discounts, etc.

3.2.2 The payment of the Consultant pursuant to GCC Clause 6 shall constitute the Consultant's only payment in connection with this Contract and, subject to GCC Sub-Clause 3.2.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its

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obligations under this Contract, and the Consultant shall use its best efforts to ensure that any Sub-Consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.

- 3.2.3 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the MCA Entity on the procurement of goods, works or services, the Consultant shall comply with the "MCC Program Procurement Guidelines" from time to time in effect as posted on the MCC website at www.mcc.gov and shall at all times exercise such responsibility in the best interest of the MCA Entity. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the MCA Entity.
- 3.2.4 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultants and any entity affiliated with such Sub-Consultants, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Services.
- 3.2.5 The Consultant shall not engage, and shall cause its Personnel as well as its Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.
- 3.3 Confidential Information; Rights of Use
- 3.3.1 Except with the prior written consent of the MCA Entity, or as may be required to comply with Applicable Law, the Consultant and its Personnel shall not (and shall cause any Sub-Consultants and their Personnel not to) at any time (a) communicate to any person or entity any confidential information acquired in the course of the Services, or (b) make public the recommendations formulated in the course of, or as a result of, the Services.
- 3.3.2 The Consultant and its Personnel shall not (and shall cause any Sub-Consultants and their Personnel not to), without the previous written consent of the MCA Entity, disclose this Contract, or any provision of this Contract, or any

Consultant and
Affiliates
Not to Engage
in Certain Activities

Prohibition of
Conflicting
Activities

Confidential
Information

Rights of Use

specification, plan, drawing, pattern, sample or information provided by or on behalf of the MCA Entity in connection therewith, to any person other than a person employed by the Consultant in the performance of this Contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

3.3.3 The Consultant and its Personnel shall not (and shall cause any Sub-Consultants and their Personnel not to), without the previous written consent of the MCA Entity, make use of any document or information related to or delivered in connection with this Contract, except for the purpose of performing this Contract.

3.3.4 Any document related to or delivered in connection with this Contract, other than this Contract itself, shall remain the property of the MCA Entity and shall be returned (including, except as provided in GCC Sub-Clause 3.4, all the copies) to the MCA Entity on completion of the Consultant's performance under this Contract.

3.4 Documents Prepared by the Consultant to be the Property of the MCA Entity

All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultant under this Contract shall become and remain the property of the MCA Entity, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the MCA Entity, together with a detailed inventory thereof in accordance with this GCC Sub-Clause 3.4 and Sub-Clause 3.3.4. The Consultant may retain a copy of such documents and software, and use such software for its own use with prior written approval of the MCA Entity. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any such computer programs, the Consultant shall obtain the MCA Entity's prior written approval to such agreements, and the MCA Entity shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.

3.5 Liability of the Consultant

Subject to additional provisions, if any, set forth in the SCC, the Consultants' liability under this Contract shall be provided by the Applicable Law.

3.6 Insurance to be taken out by the

The Consultant (a) shall take out and maintain, and shall cause any Sub-Consultants to take out and maintain, at its (or the

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- Consultant Sub-Consultants', as the case may be) own cost but on terms and conditions approved by the MCA Entity, insurance against the risks, and for the coverage specified in the SCC and in Appendix G, and (b) at the MCA Entity's request, shall provide evidence to the MCA Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid.
- 3.7 Accounting, Inspection and Auditing The Consultant shall keep accurate and systematic accounts and records in respect of the provision of the Services under this Contract, in accordance with the provisions of Appendix G and internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, receipt and use of goods and services and the basis thereof, together with a detailed inventory thereof.
- 3.8 Reporting Obligations The Consultant shall maintain such books and records and submit to the MCA Entity the reports, documents and other information specified in Appendices B and G, in the form, in the numbers and within the time periods set forth in such Appendices. The Consultant shall submit to the MCA Entity such other reports, documents and information as may be requested by the MCA Entity from time to time. Final reports shall be delivered in an electronic form specified by the MCA Entity in addition to the hard copies specified in Appendices B and G. The Consultant consents to the MCA Entity's sharing of the reports, documents and information delivered by the Consultant pursuant to this Contract with MCC and the Government.
- 3.9 Consultant's Actions Requiring the MCA Entity's Prior Approval In addition to any modification or variation of the terms and conditions of this Contract pursuant to GCC Sub-Clause 2.4, the Consultant shall obtain the MCA Entity's prior approval in writing before taking any of the following actions:
- (a) any change or addition to the Personnel listed in Appendix C;
 - (b) entering into a subcontract with a Sub-Consultant for the performance of any part of the Services; and
 - (c) any other action that may be specified in the SCC.
- 3.10 Obligations with Respect to Subcontracts Notwithstanding the MCA Entity's approval for the Consultant to enter into a subcontract pursuant to GCC Clause 3.9, the Consultant shall retain full responsibility for the Services. In the event that any Sub-Consultants are found by the MCA Entity to be incompetent or incapable in discharging assigned duties, the MCA Entity may require that the Consultant provide

a replacement, with qualifications and experience acceptable to the MCA Entity, or to resume the performance of the Services itself.

3.11 Use of Funds

The Consultant shall ensure that its activities do not violate provisions relating to use of funds and environmental guidelines, as set out in Appendix G.

3.12 Equipment, Vehicles and Materials Furnished by the MCA Entity

Equipment, vehicles and materials made available to the Consultant by the MCA Entity, or purchased by the Consultant wholly or partly with funds provided by the MCA Entity, shall be the property of the MCA Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the MCA Entity an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the MCA Entity's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the MCA Entity in writing, shall insure them in an amount equal to their full replacement value plus fifteen percent (15%).

3.13 Equipment and Materials Provided by the Consultant

Equipment, vehicles or materials brought into El Salvador by the Consultant, Sub-Consultants and Personnel, or purchased by them without funds provided by the MCA Entity, and used either for provision of the Services or personal use shall remain the property of the Consultant, its Sub-Consultants or the Personnel concerned, as applicable.

4. Consultant's Personnel and Sub-Consultants

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel and Sub-Consultants as are required to carry out the Services.

4.2 Description and Approval of Personnel; Adjustments; Approval of Additional Work

4.2.1 The title, agreed job description, minimum qualification and estimated period of engagement in the carrying out of the Services of each of the Consultant's Key Professional Personnel are described in Appendix C. The Key Professional Personnel and Sub-Consultants listed by title as well as by name in Appendix C are hereby approved by the MCA Entity.

4.2.2 GCC Sub-Clause 3.9 shall apply in respect of other Personnel and Sub-Consultants which the Consultant proposes to use in the carrying out of the Services, and the Consultant shall submit to the MCA Entity for review and approval a copy of

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their Curricula Vitae (CVs).

- 4.2.3 Adjustments with respect to the estimated periods of engagement of Key Professional Personnel set forth in Appendix C may be made by the Consultant without the prior approval of the MCA Entity only if (a) such adjustments shall not alter the originally estimated period of engagement of any individual by more than ten percent (10%) or one week, whichever is larger and (b) the aggregate of such adjustments shall not cause payments under this Contract to exceed the Contract Price. If so indicated in the SCC, the Consultant shall provide written notice to the MCA Entity of any such adjustments. Any other adjustments shall only be made with the MCA Entity's prior written approval.
- 4.2.4 If additional work is required beyond the scope of the Services specified in Appendix A, the estimated periods of engagement of Key Professional Personnel set forth in Appendix C may be increased by agreement in writing between the MCA Entity and the Consultant. In a case in which such additional work would result in payments under this Contract exceeding the Contract Price, such additional work and payments will be explicitly described in the agreement and shall be subject in all respects to the provisions of GCC Clauses 2.4 and 6.4.
- 4.3 Working Hours, Overtime, Leave, etc.
 - 4.3.1 Working hours and holidays for Key Professional Personnel are set forth in Appendix C. To account for travel time, foreign Personnel carrying out Services inside El Salvador shall be deemed to have commenced, or finished work in respect of the Services such number of days before their arrival in, or after their departure from El Salvador as is specified in Appendix C.
 - 4.3.2 The Consultant and Personnel shall not be entitled to reimbursement for overtime nor to take paid sick leave or vacation leave except as specified in Appendix C, and except as specified in Appendix C, the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is included in the staff-months of service set forth in Appendix C. Any taking of leave by Personnel shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.
- 4.4 Removal and/or Replacement of
 - 4.4.1 Except as the MCA Entity may otherwise agree, no changes shall be made in the Key Professional Personnel. If, for any reason beyond the reasonable control of the Consultant, such

Personnel

as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Professional Personnel, the Consultant shall, subject to GCC Sub-Clause 3.9(a), provide as a replacement a person of equivalent or better qualifications.

4.4.2 If the MCA Entity (a) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (b) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the MCA Entity's written request specifying the grounds therefore and subject to GCC Sub-Clause 3.9(a), provide as a replacement a person with qualifications and experience acceptable to the MCA Entity.

4.4.3 The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

4.5 Resident Project Manager

If required by the SCC, the Consultant shall ensure that at all times during the Consultant's performance of the Services in El Salvador a resident project manager, acceptable to the MCA Entity, shall take charge of the performance of such Services.

5. Obligations of the MCA Entity

5.1 Assistance and Exemptions

Unless otherwise specified in the SCC, the MCA Entity shall use its best efforts to ensure that the Government shall:

- (a) Provide the Consultant, Sub-Consultants and Personnel with work permits and such other documents as shall be necessary to enable the Consultant, Sub-Consultants or Personnel to perform the Services.
- (b) Arrange for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Government's country.
- (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel and their eligible dependents.
- (d) Exempt the Consultant, Sub-Consultants and their Personnel employed for the Services from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity according to the

Applicable Law.

- (e) Grant to the Consultant, Sub-Consultants and their Personnel the privilege, pursuant to the Applicable Law, of bringing into El Salvador reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Personnel and their dependents and of withdrawing any such amounts as may be earned therein by the Personnel in the execution of the Services.

5.2 Access to Land

The MCA Entity warrants that the Consultant, Sub-Consultants and their Personnel shall have, free of charge, unimpeded access to all land in El Salvador in respect of which access is required for the performance of the Services. The MCA Entity will be responsible for any damage to such land or any property thereon resulting from such access and will indemnify the Consultant, Sub-Consultants and their Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Consultant or Sub-Consultants or their Personnel.

5.3 Change in the Applicable Law Related to Taxes and Duties

If, after the date of this Contract, there is any change in the Applicable Law with respect to Taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, payments to the Consultant shall not be adjusted. However, the provisions of GCC Sub-Clause 1.10. (e) shall be applicable in such a situation.

5.4 Services, Facilities and Property of the MCA Entity

5.4.1 The MCA Entity shall make available to the Consultant and the Personnel, for the purposes of performing the Services and free of any charge, the services, facilities and property described in Appendix F at the times and in the manner specified in Appendix F.

5.4.2 In case that such services, facilities and property shall not be made available to the Consultant as and when specified in Appendix F, the Parties shall agree on (a) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (b) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (c) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to GCC Sub-Clause 6.1.

5.5 Payment

In consideration of the Services performed by the Consultant under this Contract, the MCA Entity shall make to the Consultant payments in the manner provided in GCC Clause 6,

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5.6 Counterpart Personnel

5.6.1 The MCA Entity shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the MCA Entity with the Consultant's advice, if specified in Appendix F.

5.6.2 If counterpart personnel are not provided by the MCA Entity to the Consultant as and when specified in Appendix F, the MCA Entity and the Consultant shall agree on (a) how the affected part of the Services shall be carried out, and (b) the additional payments, if any, to be made by the MCA Entity to the Consultant as a result thereof pursuant to GCC Sub-Clause 6.1.

5.6.3 Professional and support counterpart personnel, excluding the MCA Entity's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the MCA Entity shall not unreasonably refuse to act upon such request.

6. Payments to the Consultant

6.1 Contract Price

Except as provided in GCC Sub-Clause 6.5, the total payment due to the Consultant shall not exceed the Contract Price set forth in the SCC (as may be adjusted in accordance with the terms of the SCC). The Contract Price is an all-inclusive fixed-price, lump-sum covering all costs required to provide the Services in accordance with the terms of this Contract. The Contract Price may only be increased above the amounts stated in the SCC (including, without limitation, pursuant to the terms of GCC Sub-Clauses 4.2.4, 5.4.2 and 5.6.2) if the Parties have agreed to additional payments in accordance with GCC Sub-Clauses 2.4 and 6.4.

6.2 Currency of Payment

Payments shall be made in US Dollars.

6.3 Terms, Conditions and Mode of Billing and Payment

Payments will be made to the account of the Consultant and according to the payment schedule stated in SCC 6.1 and against an invoice. Any other payment shall be made after the conditions listed in the SCC for such payment have been met, and the Consultant has submitted an invoice to the MCA Entity specifying the amount. In all cases, invoices shall be delivered

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to the MCA Entity no later than 30 days prior to the requested payment date and will not be deemed delivered until they are in form and substance satisfactory to the MCA Entity. Payments will be made to the Consultant within thirty (30) days of the date of receipt by the MCA Entity of a valid and proper invoice or the date of the MCA Entity's acceptance of required deliverables (e.g., the delivery of reports), whichever is later. The Consultant shall comply with any other instructions related to payment as may be reasonably requested by the MCA Entity.

- 6.4 Payment for Additional Services For the purposes of determining the remuneration due for additional services as may be granted under GCC Sub-Clause 2.4, a breakdown of the Contract Price (lump sum) is provided in Appendices D and E.
- 6.5 Interest on Delayed Payments If the MCA Entity has delayed payments beyond thirty (30) days after the payment date determined in accordance with GCC Sub-Clause 6.3, interest shall be paid to the Consultant for each day of delay at the rate stated in the SCC.

7. Fairness and Good Faith

- 7.1 Good Faith The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.
- 7.2 Operation of the Contract The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of this Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness.

8. Settlement of Disputes

- 8.1 Amicable Settlement The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of this Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- 8.2 Dispute Any dispute between the Parties as to matters arising pursuant

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to this Contract that cannot be settled amicably within thirty (30) days after the receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in the SCC.

9. Compact Conditionalities

9.1 Required Provisions

For the avoidance of doubt, the Parties agree and understand that the provisions set forth in Appendix G reflect certain obligations of the Government and the MCA Entity under the terms of the Compact and related documents that are also required to be transferred onto any consultant, sub-consultant or associate who partakes in procurements or contracts in which MCC funding is involved and that, as with other clauses of this Contract, the provisions of Appendix G are binding obligations under this Contract.

9.2 Flow Through Provisions

In any sub-contract or sub-award entered into by the Consultant, as permitted by the terms of this Contract, the Consultant shall ensure the inclusion of all the provisions contained in Appendix G in any agreement related to such sub-contract or sub-award.

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III. Special Conditions of Contract

	Amendments of, and Supplements to, Clauses in the General Conditions of Contract of this Contract
GCC 1.4	<p>This English language version shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract, except for the Appendices listed as follows, for which the controlling and binding language is the specified.</p> <p>Appendix A: English Appendix B: English Appendix C: Spanish Appendix D: Spanish Appendix D1: Spanish Appendix F: Spanish Appendix G: English Appendix H: English Appendix I: Spanish Appendix J: Spanish</p>
GCC 1.6.1	<p>The governing language for all notices and communications pursuant to this condition shall be: Spanish</p> <p>The addresses for serving notices under this Contract are:</p> <p><u>For the MCA Entity:</u> Executive Director, FOMILENIO Boulevard del Hipódromo # 442 - Col. San Benito San Salvador, Republic of El Salvador Tel: (503) 2524-1000 E-mail: Director.Ejecutivo @fomilenio.gob.sv</p> <p><u>For the Consultant:</u> María del Carmen Becerra Director, U.S. Government International Programs Wilbur Smith Associates 3060 Williams Drive, Suite 300, Fairfax, Virginia 22031 USA Tel: (1) (202) 997.9442/(1) (703) 208-2166 E-mail: CBecerra@WilburSmith.com</p>

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GCC 1.8	The Member in charge of the Association is Wilbur Smith Associates Inc.	
GCC 1.9	<p>The Authorized Representatives are:</p> <p><u>For the MCA Entity:</u></p> <p>Eduardo Ayala Grimaldi President of the Board, FOMILENIO Boulevard del Hipódromo # 442 - Col. San Benito San Salvador, Republic of El Salvador Tel: (503) 2524-1000 E-mail: eaygri@cpmsp.gob.sv</p> <p><u>For the Consultant:</u></p> <p>Maria del Carmen Becerra Director, U.S. Government International Programs Wilbur Smith Associates 3060 Williams Drive, Suite 300, Fairfax, Virginia 22031 USA Tel: (1) (703) 208-2166 E-mail: CBecerra@WilburSmith.com</p>	
GCC 1.10	All matters related to taxes as established in Section 3.8 of the Data Sheet included in the RFP Section 2 Instructions to Consultants (ITC) shall apply for this Contract.	
GCC 2.1	This Contract shall enter into force on the date of signing of the Contract by both parties.	
GCC 2.2	The Effective Date shall be: within 30 days after the signing date of this Contract.	
GCC 2.3	The Total Contract Period shall be of 45 months including 3 phases of individual duration of: 18 months for Phase 1; 33 months for Phase 2; and 21 months for Optional Phase 3, this includes 3 month for liquidation of construction contracts on Phase 3 (see pag.74 on the RFP document). The Project Management Service	

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is included in all Phases for the whole duration of the Contract of 45 months.

At its sole option, FOMILENIO can notify and agree with the Consultant that the term of this Contract will be extended for an additional period as required and to be determined. FOMILENIO shall notify the Consultant of its intent to exercise such option periods at least 30 days prior to the expiration of the current period. The Contract shall expire 45 months after effective date.

GCC 3.5

A. Un-fulfillment and Penalties

In case of un-fulfillment of the contractual obligations by CPM or any delay in its obligation according to the CPM approved work plan, FOMILENIO will apply the following penalties, unless a specific penalty is defined in the contract document for the particular un-fulfillment or failure:

- a) In the first thirty (30) days of delay, the penalty per day will be equivalent to 0.10% of the total contract amount.
- b) In the next thirty (30) days of delay, the penalty per day will be equivalent to 0.125% of the total contract amount.
- c) The following days of delay, the penalty per day will be equivalent to 0.15% of the total contract amount

When the accumulated amount of penalties represents 12% of the total contract amount, FOMILENIO reserve the right to terminate the contract, establishing the responsibility of CPM and the causes for termination, and will decide if the Performance Bond should be activated (called).

Additionally, the following specific penalties are established, which will be effective by deduction in the immediate payment period.

For each Key or Non-Key Personnel or technician that is not at the site, without justified reason, according to the work plan (in accordance with the profile of the staff, period of assignment, and frequency of visits) a specific penalty of Five Hundred US Dollars (US\$500) per day will be applied. In the case that a substitution of any professional or technician is necessary, it shall be done with a substitute with equal or higher profile than the one to be replaced, and with the prior approval of FOMILENIO.

The non existence of the Record Book (Bitacora) at the work site or the non use and daily updating and the omission of registers of main events in a timely manner during the development of the works will result in a specific penalty applied to the CPM. The sanction shall be Five Hundred US Dollars (US\$500) per day of delay.

The delay in the presentation of any report required from the CPM in the TOR according to the contractual submission dates will result in a specific penalty applied to the CPM. The specific penalty shall be One Thousand US Dollars (US\$1,000) per day of delay.

	<p>Deductions related to the above specific penalties will be made by FOMILENIO from the payments to the CPM.</p> <p>B. Bonds and Guarantees The requirements to submit bonds and guarantees by the CPM are:</p> <ul style="list-style-type: none"> a) Securities, bonds or guarantees shall be issued by a reputable bank or financial institution selected by the Consulting Firm. If the bank or financial institution issuing the security, bond or guarantee is located outside El Salvador, it shall have a correspondent bank or financial institution located in El Salvador to make it enforceable. b) CPM shall present: <ul style="list-style-type: none"> (i) <i>Performance Bond</i>: Within 15 days following the date established on the Start Order of services, the Consulting Firm shall present to FOMILENIO a "Performance Bond" in US\$ for an amount of ten per cent (10%) of the contract value in favor of FOMILENIO, as a guarantee of compliance of the terms of contract. It should be valid until FOMILENIO receives the consulting services in a satisfactory manner (Form TECH 9 of RFP). (ii) <i>Guarantee for Good Management , Supervision of Design and Construction Supervision</i>: Within the 15 days that follows the liquidation of the contract, the Consulting Firm must issued in favor of FOMILENIO this guarantee in US\$ for an amount of ten per cent (10%) of the contract value, as a guarantee for goods services provided by the Consulting Firm. The Guarantee shall be valid for a period of one year from its emission (Form TECH 10 of RFP). <p>The Representatives of both Parties will determine the set of procedures by which FOMILENIO will execute these penalties.</p>
GCC 3.6	<p>The risks and the coverage shall be as follows:</p> <ul style="list-style-type: none"> (a) Third Party motor vehicle liability insurance in respect of motor vehicles operated by the Consultant or its Personnel or any Sub-Consultants or their Personnel for the performance of the Services. (b) Third Party liability insurance for property, injuries or death in connection with the performance of the Services by the Consultant, its Personnel or any Sub-Consultants. (c) Professional liability insurance. (d) Employer's liability and worker's compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultants, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and (e) Insurance against loss of or damage to: (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's

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	<p>property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.</p> <p>Additional provisions included in Appendix G with respect to insurance shall apply.</p>
GCC 3.9	<p>Additional Consultant's Actions Requiring the MCA Entity's Prior Approval:</p> <p>a) Any change or addition to the Work Plan</p> <p>(b) Key Personnel Vacation</p> <p>(c) Programming and changes to mobilization of Key Personnel</p>
GCC 3.12	<p>The conditions established on the GCC 3.12 applies only to equipment, vehicles and materials indicated in Appendix F of this Contract</p>
GCC 4.2.2	<p>Other Personnel to be submitted to MCA Entity for review and approval shall be limited to Non-Key Professional Personnel. This information shall consist of a professional profile and main duties to be undertaken by each specialist.</p>
GCC 4.2.3	<p>Written notification to the MCA Entity of adjustments is required.</p>
GCC 4.5	<p>A resident Project Manager shall be required for the whole duration of this Contract.</p>
GCC 6.1	<p>The total cost of the services is US\$11,950,000. This amount is divided as follows:</p> <p>a) Base Contract: Phase 1, US\$5,296,872.00 and Phase 2, US\$3,300,600.00, making a total of US\$8,597,472.00</p> <p>b) Optional Contract: Phase 3, US\$3,352,528.00</p> <p>The Base Contract and Option Contract include the Project Management for the whole period of 45 months.</p> <p>The accounts number for payments will be provided by the Consultant with the first deliverable. Payments for the deliverables shall be made according to the payment schedule established on Appendix E of this Contract.</p>
GCC 6.5	<p>The interest rate to be applied in the case of late payments is the Federal Funds Rate as stated on the website www.federalreserve.gov/fomc/funds/rate.htm</p>
GCC 8.2	<p>Dispute Resolution</p> <p>a) All disputes that cannot be settled amicably by the Parties shall finally and exclusively be settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (the "Rules") by an arbitration panel composed of three arbitrators appointed in accordance with said Rules. The arbitration will be held in El Salvador and shall be conducted in English. Members of the Consortium shall have access to documents and records maintained pursuant to this Agreement or prepared for purposes of any such arbitration"...</p> <p>b) Without limiting the terms of Section 4.15 of this Agreement, MCC has the right to be an observer or a party to any arbitration proceeding hereunder, in either case at its sole discretion, but does not have the</p>

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	<p>obligation to participate in any arbitration proceeding, in any capacity. Whether or not MCC is an observer or a party to any arbitration hereunder, the Parties shall provide MCC with written transcripts of any arbitration proceedings or hearings and a copy of the reasoned written award within ten (10) days after: (i) each such proceeding or hearing, or; (ii) the date on which any such award is issued. MCC may enforce its rights hereunder in an arbitration conducted in accordance with this provision or by bringing an action in any court that has jurisdiction. The acceptance by MCC of the right to be an observer or a party to the arbitration shall not constitute consent to the jurisdiction of the courts or any other body of El Salvador or any other jurisdiction or to the jurisdiction of any arbitral panel.</p> <p>c) The costs associated with any settlement efforts before arbitration shall be allocated between FOMILENIO and the CPM as follows: (i) each Party shall be responsible for its own attorneys' fees; (ii) costs related to translation or interpretation shall be paid for each Party; and (iii) all other costs associated with the arbitration shall be allocated as determined by the arbitration panel.</p>
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IV. Appendices

Appendix A – Description of Services

I. OBJECTIVE OF THE ASSIGNMENT

Manage the implementation of the Connectivity Project for the Northern Transnational Highway. The Connectivity Project Manager (CPM) shall provide the following main services for the Connectivity Project of the Compact in activities related to the Northern Transnational Highway (Package I), described in detail in the subsequent sub-sections of this appendix and on the whole TOR document (Appendix H of this contract):

1. Connectivity Project Management Services
2. Supervision of Design Consultants
3. Supervision of Construction Works

CPM shall perform effective project management services in order to ensure that the Connectivity Project is completed on time, within budget and at a high level of quality. The services shall be provided to achieve the project goals and objectives as stated in the Compact and in accordance with the outcomes of prior, related activities.

7.3.1.1 BASE CONTRACT

Phase 1

• **Project Management Services and Supervision of the Consultants responsible for the Final Design of Sections 5, 6 and 7 of the NTH (from Nuevo Eden de San Juan to Concepcion de Oriente):** Activities include, but are not limited to: a) Project management process of initiating, planning, executing, monitoring, supervising, controlling, and advising prompt adjustments to the designs implementation plans as a result of a close technical and on the ground follow up, applying best practices in the technical field until final deliveries are accepted accordingly to the related contract(s) and thus closing the implementation; b) reviewing the final deliverables for feasibility study and environmental impact assessment of the project, the ROW and the RAP in order to make any necessary adjustment to proceed with the procurement process for designs not covered in the referred study, if any fatal flaw is detected; and c) supervising and managing the deliverables and providing quality assurance for design consultancies, project scheduling, and project reporting, assistance in the preparation technical specifications of the final design and in the preparation of "Works Requirements" (Bill of Quantities, Technical Specification for Works) for construction of 135 km that will be financed with MCC's funds.

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Phase 2

• Project Management Services and Supervision of the Construction Contractor(s) responsible for construction of Sections 2, 3 and 4 of the NTH (from Metapan to Nuevo Eden de San Juan): Activities include, but are not limited to: a) Project management process of initiating, planning, executing, monitoring, supervising, controlling, and advising prompt adjustments to the construction implementation plans as a result of a close technical and on the ground follow up, applying best practices in the technical field until final deliveries are accepted accordingly to the related contract(s), and thus closing the implementation; b) reviewing the final deliverables for final design of 155 km of the NTH (from La Virgen to Nuevo Eden de San Juan), which also includes design of Section 1 (eventough the decision for construction of Section 1 is still pending, and could be possible included in optional Phase 3) in order to make any necessary adjustment to go ahead with the procurement process for construction, if any fatal flaw is detected; and, c) supervising the construction contractor(s), scheduling, managing Requests for Information (RFIs), change order requests, the provision of full or part-time supervision engineers (to be proposed by the Consultant in its Technical Proposal for effective delivery of its services), progress and scheduling, reviewing requests for payment, reviewing as-built drawings, and providing quality assurance for the construction of about 135 km of the NTH (from Metapan to Nuevo Eden de San Juan).

7.3.1.2 OPTIONAL CONTRACT

Phase 3 (Optional)

Project Management Services and Supervision of the Construction Contractor(s) responsible for construction of Sections 5, 6 and 7 and possible Section 1 of the NTH (from Nuevo Eden de San Juan to Concepcion de Oriente); and, if so decided by FOMILENIO, these services will also include Section 1 (from La Virgen to Metapan).

Activities include, but are not limited to: a) Project management process of initiating, planning, executing, monitoring, supervising, controlling, and advising prompt adjustments to the construction implementation plans as a result of a close technical and on the ground follow up, applying best practices in the technical field until final deliveries are accepted accordingly to the related contract(s), and thus closing the implementation; and, b) supervising the construction contractor(s), scheduling, managing Requests for Information (RFIs), change order requests, the provision of full or part-time supervision engineers (to be proposed by the Consultant in its Technical Proposal for effective delivery of its services), progress and scheduling, reviewing requests for payment, reviewing as-built drawings, and providing quality assurance for the construction of about 136 km of the NTH: from Nuevo Eden de San Juan to Concepcion de Oriente, and, if so decided by FOMILENIO, also from La Virgen to Metapan (about 19 km).

The optional contract indicated above may awarded to the CPM depending on the performance in rendering the services for Base Contract. FOMILENIO will evaluate the compliance of all contract requirements by the CMP in the services for the Base Contract and in accordance with this evaluation will determine if the optional contract will be continued by the CPM. In any case, the level of effort needed will be determined before the initiation of this option period accordingly to the full loaded monthly rate indicated in Appendix D.

8.1 Project Management

CPM shall perform effective project management services in order to ensure that the Connectivity Project is completed on time, within budget and at a high level of quality. The services shall be provided to achieve the project goals and objectives as stated in the Compact and in accordance with the outcomes of prior, related activities.

It is expected that the CPM will manage competing project requirements, namely *scope, time, and cost*. Project quality is affected by balancing these three factors, and as such it is expected that the CPM will work to ensure that the Connectivity Project will be considered a high quality project by delivering the roads as required, through works that are within scope, and completed on time and within budget.

Adhering to widely recognized international best practices and standards for project management –the details of which shall be proposed by the bidder in the technical proposal – and acting as the Employer’s Representative for managing the Connectivity Project, the services of the CPM provided to FOMILENIO shall include but are not limited to the following:

8.1.1 Project Integration Management

In order to properly integrate all Compact activities, FOMILENIO has prepared an Implementation Plan, already approved by MCC, which will be the basis for the planning activities of the CPM. The preparation of the Implementation Plan also considered conditions in the Compact whose satisfactory completion is required to ensure continued funding from MCC.

8.1.1.a The CPM shall review and continually monitor the development of the Implementation Plan of the Project, particularly as it pertains to the Connectivity Project, and shall recommend to FOMILENIO any adjustment or modification necessary to optimize and successfully complete the project on time, within budget and with the required quality. If FOMILENIO agrees to adjust or modify the Implementation Plan based on the CPM’s recommendation; any adjustment of technical specifications, bill of quantities, drawings, budgets or any other technical document resulting from this decision, shall be performed by the CPM as part of its responsibilities.

8.1.1.b To secure the funding for the Connectivity Project, the GoES must comply with conditions set out in the Compact between the GoES and the MCC. The CPM shall assist FOMILENIO and pertinent entities, such as GoES, in attaining compliance with such conditions. The Compact and its supplementary documents and also all MCC guidelines, particularly environmental guidelines, procurement guidelines and gender policy, which apply to the implementation of the Program are available at the following websites:

www.mcc.gov and www.fomilenio.gob.sv.

8.1.1.c The CPM shall be responsible for developing a comprehensive project management information system, which shall be adequately introduced and described in the bidder’s proposal. The project management information system shall, as a minimum, have the capacity to collect and distribute information necessary for overall monitoring and control of the project from initiation through closing. Based on this information, the CPM shall be able to obtain, on demand, real-time project and component status, forecast the future trends of the Project, evaluate the effect on the achievement of project objectives and propose any necessary measures to guarantee the successful implementation of the project. The CPM shall provide access to this system to FOMILENIO and the UIPC during the period of services and at completion of the services to transfer the software and the rights for operation of this system to FOMILENIO.

When proposing such project management information system, the Consultant shall also include training sessions for FOMILENIO and UIPC staff in using it, and all its applications, within the

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first 30 days of the implementation of the system by the CPM. The Consultant shall implement the system in full operational mode within 60 days from the execution of the CPM Contract.

8.1.1.d The CPM shall coordinate with *FOMILENIO* and the PA on all Connectivity Project procurements to ensure proper integration of technical inputs to the Bidding Documents. This may include, and is not limited to, providing reviews of technical aspects of all Bidding Documents, assessing their completeness and revising technical inputs, as necessary.

8.1.2 Project Scope Management

The CPM, through project scope management, shall ensure that all the work required - and only the work required - to complete the Connectivity Project successfully is included in the Contractors' scope of work. The CPM shall consider scope management in both the design phase and the construction phase and shall, as a minimum, perform the following:

8.1.2.a The CPM shall develop a scope statement, identifying project constraints and assumptions, and estimating project resource requirements before a project is included in the Procurement Plan of FOMILENIO. A written project scope statement will provide a documented basis for making future project decisions and will ensure a common understanding of project scope among all stakeholders.

8.1.2.b The CPM shall continually monitor and assess the progress of activities in the Connectivity Project for the NTH in order to evaluate the initial scope statement and mitigate negative impacts to overall activity objectives. The CPM shall notify FOMILENIO of impacts as they arise, in real-time, and may be requested to develop and/or implement mitigation strategies.

8.1.2.c As actual project costs and progress may affect the entire scope of the Compact, the CPM shall participate in activities, in coordination with FOMILENIO, to assess and determine scope changes that may impact the overall scope of the Connectivity Project.

8.1.3 Project Time Management

The CPM shall effectively manage the scheduling of project activities to mitigate risks, such as higher project costs, non-delivery of benefits to the residents of the Northern Zone, and loss of MCC's and GoES funds. To achieve this objective, the CPM shall perform tasks, which include but may not be limited to, the following:

8.1.3.a The CPM shall develop a strategy (included in its technical proposal) and implement its proposed plan, upon acceptance by FOMILENIO, which, as a minimum, will accurately identify required activities and sub-activities, will demonstrate schedule and resource requirements, and will manage any changes and impacts that may occur.

8.1.3.b As mentioned above, FOMILENIO has prepared an Implementation Plan, including a project schedule, which was already approved by MCC as the baseline for the Connectivity Project. Furthermore, the CPM shall develop a more detailed MS-Project implementation plan capturing significant components of each design and construction contract, and provide real-time progress updates and comparison to FOMILENIO's baseline plan, whenever needed by FOMILENIO. The CPM shall review and continually monitor the development of this detailed implementation plan and prepare performance reporting against the schedule baseline as part of its schedule control, in which the CPM shall also propose any proper and timely measures to secure the successful implementation of the Connectivity Project.

8.1.4 Project Cost Management

The CPM shall assist FOMILENIO in managing the Connectivity Project budget. Specific tasks to ensure this objective include, but may not be limited to, the following:

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8.1.4.a The CPM shall develop and implement a cost management plan to ensure that the Connectivity Project is completed within the project budget. The plan (introduced in its technical proposal) shall, as a minimum, determine the types and quantities of resources needed for project activities, assess and apply costs for the resources, allocate costs to project activities over the duration of the project, and manage changes to the project budget.

8.1.4.b The Implementation Plan of FOMILENIO has been prepared based on the cost estimation made in 2006 at the pre-feasibility level, for preparation of the proposal to MCC for applying to MCC funds. As result of the Feasibility Study, general updated costs for the Connectivity Project will be determined, establishing the project cost baseline. The CPM shall review the costs and incorporate the costs into the cost management plan accordingly.

8.1.4.c CPM shall prepare timely analysis and compare the project's budget to actual costs when new design or construction contracts are awarded or amounts related to Right of Way or RAPs are finalized for sections of the NTH from the inception of the project to its completion. The CPM shall incorporate and report any variances and change orders, tracking and monitoring all costs associated with the project against the overall project budget allocated in the Compact.

8.1.4.d CPM shall provide FOMILENIO with timely and systematic reports of cost status and changes. This activity will gain importance in the implementation of the project when the actual designs are completed and construction cost increases are likely to exceed the total amount allocated in the Compact for the Connectivity Project.

8.1.5 Project Quality Management

The CPM shall apply quality management to increase the likelihood that the project will accomplish its objectives. Quality management should address the management of the project as well as the quality of the product. Ultimately, the CPM shall incorporate quality management to minimize rework, and in doing so, shall help to control costs, increase productivity, and meet Stakeholder expectations. Quality management shall be performed in conjunction with other services described in this contract. For Connectivity Project Management services, tasks shall include, but are not limited to, the following:

8.1.5.a The CPM shall identify relevant quality standards for project management components, such as project scheduling, Bidding Documents, budget and resource monitoring, risk recognition, supervision reports, among others, and prepare and implement a Quality Management Plan to ensure the quality standards are met for all activities under the CPM's responsibility. The Quality Management Plan of the CPM shall be submitted for approval to FOMILENIO.

8.1.5.b The CPM shall manage quality of the Design and Construction Supervision services (as detailed in this contract). As part of this task, the CPM shall regularly monitor performance and report to FOMILENIO on compliance with the Quality Management Plan.

8.1.6 Project Human Resources Management

CPM shall manage and balance its resources, particularly its staff, in order to guarantee provision of high quality services and appropriate balance for the work load in any stage of the project. The CPM shall be required to provide, as a minimum, the following:

8.1.6.a The CPM shall develop a Staffing and Resource Plan (which was introduced in its technical proposal) in order to manage all tasks required to fulfill the objectives of this contract. The CPM shall accommodate its personnel to the work rate of the design consultants and/or the

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construction contractors, which at various points may occur simultaneously. During the period of services, the Consultant shall not make any adjustment to the Staffing and Resource Plan without prior written approval of FOMILENIO. Any request for such an adjustment shall be first submitted for consideration of FOMILENIO.

8.1.6.b In the case that the design consultants or construction contractors increase the work fronts, the CPM shall provide the staff and equipment resources necessary to fulfill the required supervision services of designs or works. Failure by the CPM to provide supervision of all work will represent non-compliance to this contract and will be subject to the penalties or sanctions established in GCC 3.5 of the SCC.

8.1.6.c In conjunction with its duties as Design and Construction Supervisor, the CPM shall ensure that provisions in the Design Consultants' and Contractors' contracts regarding the qualifications of contractor staff are strictly enforced.

8.1.7 Project Communications Management

Determining and satisfying the information needs of project stakeholders is the essence of project communication management. CPM communications should be addressed as a part of the overall project plan, although the level of formality will vary with the diversity of the stakeholders. Critical to effective communication management are performance reporting processes that provide timely information about how project resources are used to achieve project objectives. CPM shall keep close and permanent communication with FOMILENIO, UIPC of MOP, Procurement Agent, and project's stakeholders during the implementation of the project.

Public participation is one of the main principles of MCC projects as established in the Compact, the CPM shall ensure that in all stages of the implementation of the Connectivity Project the design consultants and construction contractors carry out proper public consultation in order to identify critical areas, potential social and environmental impacts and, in a timely manner, propose prevention, mitigation, and/or compensation measures, in order to avoid delays in the implementation of the project.

The EIA final report (as described in Section 4.2 of the TOR of the RFP) will include an information and communication plan for the construction stage including objectives, strategies, actions and public consultation; CPM shall revise and complement this plan if necessary to achieve the project objectives.

As part of its project communication strategy, the CPM shall propose a web-based information system to share real-time project management data, including (but not limited to) schedule, cost, and scope information, with FOMILENIO, UIPC, and MCC. For this the CPM shall use handheld devices to record field observations and images by construction supervision staff and make it available in real-time on such web-based information system. As proposed for the web-based system, the Consultant shall carry out training sessions for FOMILENIO and UIPC staff in using it in its application within the first 30 days of the Contract. Any information to be divulged by the CPM shall be previously discussed with FOMILENIO.

8.1.8 Project Risk Management

The CPM will be expected to assist FOMILENIO in managing risk regarding the Connectivity Project. In doing so, the CPM may be asked to identify, assess and respond to project risks, and, as a minimum, will be expected to perform the following tasks:

8.1.8.a The Feasibility Study will include a Risk Management Plan for the Connectivity Project including risk to implementation from the increase in the price of materials and fuel, risk of

natural disasters (floods, hurricanes, earthquakes, etc); and also the EIA will include the analysis of environmental and social risks. The CPM shall review and complement this plan, if necessary and if any deficiency is detected, in order to minimize the impact of such identified risk in the achievement of the project objectives.

8.1.8.b The CPM shall continually monitor risk and update the Risk Management Plan accordingly, immediately reporting to FOMILENIO as new risks or associated impacts to the Project are identified and developing strategies to manage the impacts, and especially to mitigate negative impacts.

8.1.9 Project Procurement Management¹

The procurement processes for the Connectivity Project in particular, and for FOMILENIO's program in general, are the responsibility of the PA (Charles Kendal and Partners). Also, FOMILENIO has its own Procurement Management office which works in coordination with the PA to guarantee that all procurements for services, goods and works are handled and managed in a transparent, competitive and fair way, and in accordance with the timings of the Implementation Plan.

8.1.9.a The CPM shall maintain close communication and coordination with the Procurement Director of FOMILENIO and the PA to monitor the progress of the procurement processes related to the Connectivity Project and to provide any necessary information related to performance of the design consultants and works contractors, since the contract administration is a responsibility of the PA.

8.1.9.b Every six months during the Compact Term, the PA, in coordination with FOMILENIO, prepares a six-month period Procurement Plan to be submitted for the approval of MCC. The CPM shall provide to the PA all information related to procurement processes to be executed for the Connectivity Project for design or construction of any section of the NTH.

8.1.10 Environmental and Social Impact Management

As provided in the Appendix B of this contract, the CPM shall provide the ESID of FOMILENIO with regular reports that update the status of environmental and social impact management activities and verify Project compliance with EMPs, Resettlement Action Plans (RAPs), and other applicable environmental requirements of MCC and the GoES.

The proposed frequency, format, and content of these reports shall be described in the methodology of the Technical Proposal and reconfirmed by the selected Contractor in the Inception Report. Each report should at a minimum:

- a) Ensure that all necessary environmental permits have been obtained prior to commencement of Project activities at a given location. These include, but are not limited to, the permits required for work camps, waste disposal sites, borrow pits, and blasting activities.
- b) Ensure that environmental and social responsibilities have been included in the bidding documents, including gender issues.
- c) Ensure that prior to commencing construction works for any given section, that approval of the implementation of the corresponding RAP has been obtained from FOMILENIO and MCC.
- d) Monitor and ensure that the Construction Contractors prepare and submit EMP implementation plans for CPM approval, and—following their approval—that the construction contract activities are in strict compliance with EMPs, in accordance with the corresponding EMP implementation plans.

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- e) Support or participate in public outreach and consultation programs, as requested by FOMILENIO.
- f) Support or participate in third party environmental audits, as requested by FOMILENIO.
- g) Coordinate with the UIPC specialists and any other consultant hired by FOMILENIO regarding all technical issues associated with ROW acquisition and RAP implementation.

8.2 Supervision of Design Consultants

The CPM shall undertake the responsibilities necessary to ensure timely and successful completion of the design of the remaining 135 km of the NTH. In this sense, the activities described in this section shall be considered as indicative only. The Consultants should not be limited by the concise outline of services in this appendix and shall render his services accordingly.

The CPM shall provide technical supervision of the work of the Design Consultants for the remaining roads of the NTH. This will include review and recommending approval to FOMILENIO of studies, designs, technical specifications, progress and other reports that were submitted. It shall be the responsibility of the CPM to ensure that the design is optimum and cost effective for obtaining the desired output and successful construction.

It is important to note that the design contracts for the remaining sections of the NTH will also include the preparation of the Resettlement Action Plans (RAP) and the implementation of such plans for the acquisition of the rights of way (ROW) for the roads.

However, these design contracts will not include the construction of new houses for Project Affected Persons (PAP) which will have to be relocated, if necessary. It is expected that the Connectivity Project will include only a limited number of such actual resettlement cases.

Therefore, the major focus of the design contracts, and the related design supervision effort by the CPM, shall be placed on the acquisition process for the ROW in coordination with the UIPC and any other consultant hired by FOMILENIO.

International standards will be applied for design works, which shall also be considered by the CPM in the design supervision activities. Standards include but are not limited to the following:

- AASHTO
- ACI
- FP
- FHWA
- ASTM
- Asphalt Institute
- Portland Cement Association (PCA)
- Especificaciones para la Construcción de Carreteras y Puentes Regionales, SIECA, March 2001
- Manual Centroamericano para Diseño de Pavimentos, SIECA.
- Manual Centroamericano de Dispositivos Uniformes para el Control de Tránsito, SIECA
- Reglamento para la Seguridad Estructural de las Construcciones de la República de El Salvador.
- Salvadoran roads law (Ley de Carreteras y Caminos Vecinales)

In case of any contradiction between standards and specifications, the one that provides higher safety and better likelihood for timely completion and suitability for intended use, within cost of

the Project shall prevail. Lack of knowledge of laws, standards, rules or regulations of the Republic of El Salvador will not be accepted as cause for failure to apply appropriate standards.

8.2.1 Duties

Duties to be included in this portion of the assignment include but are not limited to:

- a) Review the FS and the EIA (which includes EMPs, RAPs and HIV-AIDS Awareness Plans) Final Reports prepared by CPB as part of the study "*Mejoramiento de la Red Vial de la Zona Norte de El Salvador*", which is the main technical input for further design work. The CPM will perform this review with additional information and clarifications provided by UIPC as available. The CPM shall provide timely advice to FOMILENIO of any required modification or complementary work if any fatal flaw is detected, and after obtaining the corresponding FOMILENIO's authorization, proceed to complement and modify the Final Reports accordingly. The content of these reports is described in Section 4 of the TOR included in Appendix H of this contract;
- b) Review and recommend any modification to the TOR for the final design works to be used for the tendering of final design services;
- c) Prepare the agenda and presentation for the kickoff (pre-design) meeting of the design projects with the Design Consultants and discuss the agenda with FOMILENIO prior to the meetings. Prepare meeting minutes for this meeting and any project meeting thereafter;
- d) Review and approve of the work programs submitted by the design consultants;
- e) Review and approval of the methodology proposed by the design consultants for the design works;
- f) Monitor and report on the physical and financial progress of the works undertaken by Design Consultants and recommend action(s) to be taken when progress is not in accordance with the approved program;
- g) Ensure that the design works are completed according to the recommendations of the previously developed FS, EIA, the AIA, the general resettlement strategy/RAP, and Archeological Resources Survey and that quality assurance on quality control performed by design consultants has been included;
- h) Ensure that the Design Consultants perform their services in accordance with the Compact, MCC's regulations, Salvadoran legal framework and any other provisions given in the consulting services contracts;
- i) In the case of deficiency by the Design Consultants, report immediately to UIPC and FOMILENIO and compile or prepare support documents related to such deficiency. Such documentation should include, as a minimum, a description of the current situation and how it constitutes a deficiency in the responsibilities of the Design Consultant, an analysis of potential impacts (including technical, cost, and schedule impacts), and a recommended approach to address the deficiency, when necessary;
- j) Revise and approve all technical matters of the design works, such as topographic surveys, proposed alignment, geometric design, right of way and relocation of utilities, geotechnical investigations, and proposed locations for borrow banks, quarries, disposal areas and camp-yards, pavement design, drainage works, bridges, intersections, earthworks, pedestrian crossings, signage, and any other deliverable from the Design Consultant;
- k) Cooperate with UIPC to ensure that all proposed locations for borrow banks, quarries, disposal areas, camp-yards, and water extraction are communicated to MARN in a timely

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fashion, in order that site inspections can take place and preliminary environmental approvals can be provided during the design phase.

l) Ensure that special attention is paid to the border connection/crossing with Honduras in the final design of Section 7 of the NTH, which will additionally require coordination with the government authorities of Honduras. The CPM shall manage such coordination and provide necessary technical support;

m) Systematically and periodically review the evolution of the cost proposed for construction works, in such a way as to maintain economic feasibility and to allow making real-time decisions related to changes in the level of intervention or category of the roads to optimize the use of financial resources without reducing the quality, useful life and design period;

n) Ensure that all designs are directly coordinated with and adhere to the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12), MCC Environmental Guidelines and Salvadoran laws. Ensure that final designs include, to the extent feasible, measures to eliminate or reduce the incidence of resettlement, including land acquisition and physical or economic displacement. Also ensure that the design consultants strictly follows the general Resettlement Plan included in the EIA, including any resettlement action plans (RAPs) or land acquisition and compensation programs that must be implemented prior to commencement of construction or rehabilitation activities at a given location. Also, CPM shall secure that implementation of the ROW and RAPs is properly performed by the Design Consultants and avoiding conflicts with the project affected persons.

CPM shall be responsible to manage and supervise the preparation and implementation of the RAPs by the design consultants which is a critical activity for the successful implementation of the Connectivity Project, including but not limited to:

- Planning, preparation and implementation of the activities of: i) social support; ii) acquisition of right of way; and iii) construction of new houses for resettlement (if necessary) indispensable for the satisfactory physical execution of the RAP, all in accordance with OP 4.12 of the World Bank.
- The number of project affected persons (PAP) under the project alignment will be the result of the final designs and of the preparation of the Resettlement Action Plans, and the CPM shall supervise all activities related to the total number of PAPs.
- Ensure the compliance by the design consultants of the assignment and optimal use of all resources allocated for the project in relation to the RAP's.
- Review, approve and monitor the work plan for RAP's of the design consultants, in case of non compliance with the work plan to propose corrective measures in order to ensure the proper and on-time clearance of the work areas previous to the execution of construction works.
- Establish a flexible working time shift for his staff in order to supervise RAP development to be performed on weekends and non working hours, since many of the landowners work or live outside the project area.
- Ensure that the design consultant provides the social support in two areas: (i) acquisition of right of way or economic compensation; and (ii) resettlement or physical relocation, as applicable.
- Ensure that the design consultants include in the RAP all landowners that are affected by the alignment of the NTH. This attendance shall cover not only the persons/families living

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in the properties under the project alignment, but also to those owners/occupants living in other regions of the country.

- Ensure that the design consultants provide necessary field offices to inform and attend the residents of the influence area of the project and owners/occupants of properties under project alignment, in any matter related to processes, inquiries and questions about right of way acquisitions and resettlements. Such field offices of the design consultants, shall be strategically located in the project area in order to allow to all PAPs in order to allow the participation of as many residents.
 - Ensure that the design consultant render his services related to RAP in an equally and fair way to all PAPs, indistinctly of their financial status or if they are owners or occupants of the affected properties.
 - Ensure the compliance by the design consultants of all and any of the parts of the process for Acquisition Rights of Way, including but not limited to: (i) identification of owners or occupants; (ii) collection of identification documents and property documents; (iii) topographic survey; (iv) preparation of general and individual right of way drawings; (v) preparation of valuation criteria and parameters; (vi) public consultation; (vii) valuation; (viii) notification; (ix) negotiation and acceptance of valuations; (x) Deed for properties on the name of the State and Government of the Republic of El Salvador; (xi) monitor payment process; (xii) monitor the registration process at the National Center of Registers (Centro Nacional de Registros – CNR); and (xiii) monitor the process for clearance of the right of way areas prior to the construction of works.
 - Ensure the compliance by the design consultants of the activities related to new houses for resettlements, either individual or group solutions or of any other economic activity, for the PAPs to be relocated in new places (if necessary), including but not limited to: (i) preparation of alternatives and analysis of possible relocation sites; (ii) design of resettlement solutions, individual or group housing or commercial solutions or any other type with the corresponding technical specifications, cost estimation and work plan; (iii) monitor the social support to be provided to the PAPs prior, during and after the resettlement; (iv) monitor the public consultation; and (v) supervision of the construction of any housing or commercial structure resulting necessary for the resettlements.
- o) Ensure that the Design Consultants adequately considered potential impacts to cultural, historical, and archeological resources in the project zones and, as needed, modify road designs to minimize or eliminate impact to these zones;
- p) Ensure that the Design Consultants, in coordination with the FOMILENIO Regional Offices: Reception, Encounter and Attention Centers as well as the FOMILENIO Communication Direction, plan, organize and carryout appropriate public consultation of all significant design alternatives with the potentially affected parties; monitor and supervise such public consultation activities and the appropriate consideration of and response to the public input received;
- q) As needed, perform periodic field observations of design firm works including survey work, geotechnical investigation, etc.;
- r) With cooperation of the UIPC, ensure that the Design Consultants prepare the EMP including all measures required to prevent, reduce, control and/or compensate for negative environmental impacts that may occur during the construction and post completion phases of the project, as well as to optimize positive impacts. Additionally, CPM shall secure that the engineering design includes all environmental measures included in the EMP and ensure that the technical:

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specifications for construction bidding documents clearly identify the responsibilities of the Construction Contractor with respect to EMPs, site specific environmental permits and related environmental requirements;

s) Compile and evaluate information about accident reports as they may occur and report to FOMILENIO;

t) Prepare and issue instructions to Design Consultants, as necessary for Project Implementation;

u) Review and comment with recommendation of approval (or rejection) by FOMILENIO of change (variation) orders proposed by Design Consultants;

v) When appropriate, propose change orders for FOMILENIO's approval, which shall also include the cost and time impact of such proposed changes. CPM shall also be required to submit the various alternatives with cost-benefit analysis and effect on time for the particular design work and for the project as a whole to facilitate decisions by FOMILENIO;

w) Review and approve of reports submitted by the Design Consultants;

x) Provide photographs of field works related to design, and documentation, as appropriate, showing monthly progress of the designs and potential trouble areas;

y) Review and approve of documents for payments to the Design Consultants, certifying that such documents accurately reflect the value of the services rendered. This shall include invoices and support documents submitted by the Design Consultants as evidence of the executed work, and advice FOMILENIO accordingly;

z) Analyze and make recommendations regarding claims submitted by the Design Consultants;

aa) Attend claims meetings between FOMILENIO and the Design Consultants;

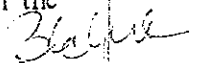
bb) Ensure that the designs of the proposed roads are technically sound, cost optimized, and fulfill the minimum requirements of MOPTVDU for each road classification;

cc) Assist FOMILENIO to incorporate the results of these studies/designs into the bidding/contract documents for the construction projects;

dd) Revise and approve the estimated bill of quantities, technical specifications, proposed construction schedule, cost estimation, drawings, and any other technical inputs to the Bid Documents for procurement packages of road construction;

ee) Maintain orderly working files and a comprehensive, computerized log for correspondence, minutes of meetings and conferences, submittal data, submittal registers, inspection and monthly progress reports, contract documents including amendments, notices to proceed, change orders and modifications, all in a system which is comparable with software used by FOMILENIO, which will provide deliverable inventory, scheduled dates and actual status. During the course of the work, the CPM shall maintain it in good order and in a reference library format in office space in San Salvador to be used by the FOMILENIO staff. From time to time, FOMILENIO may request the CPM to show documents to interested parties, approved by FOMILENIO. Documents of a sensitive nature should be stored separately in the reference library. Prior to completion of the period of work, the CPM shall pack and deliver to FOMILENIO the entire contents of the Project library in good order and properly indexed and marked. In addition, the CPM shall provide FOMILENIO with all electronic files of any and all project documents stored in a media acceptable to FOMILENIO including a comprehensive, well-organized electronic index of all those documents. The copyright of all Project materials will remain with FOMILENIO;

ff) Perform all other design supervision and project administration tasks as specified in the contracts between FOMILENIO and the Design Consultants;



- gg) CPM shall promptly recommend to FOMILENIO remedial actions to be taken in the case of implementation delays, cost overruns, poor quality of the deliverables, and other problems, paying special attention to activities that are part of the critical path; Prepare a Final Report for each one of the Final Designs Sections completed, including recommendation to FOMILENIO for Final Acceptance of all the designs included in the contract documents and amendments, with a Quality Certification, stating that all technical, environmental and social requirements have been met.;
- hh) Answer, together with the Design Consultants if necessary, to any comment or questions on the execution of the final designs issued by FOMILENIO;
- ii) As requested by FOMILENIO, support or participate in FOMILENIO's public outreach and consultation program; and
- jj) Perform other related duties as directed by FOMILENIO.

8.3 Construction Supervision

This Section applies to the construction supervision services indicated in Phase 2 as well as the Optional Phase 3 for the NTH.

The CPM shall implement the methodology and approach included in its Technical Proposal to utilize cost effectively its staff in the interim period between Phase-1 and Phase 2 (such as maintaining a reduced presence to effectively perform the required activities during this period). All such costs are included in this contract.

The CPM Consultant shall provide complete construction supervision services, according to best international standards of road construction—whether noted below or not—as the supervisory representatives of FOMILENIO.

The CPM shall prepare and manage the Connectivity Project's implementation schedule and shall monitor and report on the physical and financial progress of the works undertaken by Construction Contractors. The CPM shall recommend preventive and corrective actions to be taken in the case of implementation delays, cost overruns, poor quality of the works that does not meet specifications, unmitigated environmental impacts, and other problems. In addition, the CPM shall review and certify the accuracy of invoices submitted by entities providing technical and construction services.

In addition to its continuing service as the Employer's Representative, the CPM shall assume and perform all the duties and responsibilities of "the Engineer" as prescribed in the Conditions of Contract for Building and Engineering Works Designed by the Employer, FIDIC 1999, in particular for the construction supervision activities during the construction stage of the Connectivity Project. There will be no other supervisory engineer acting on behalf of FOMILENIO.

8.3.1 Duties

Duties to be included in this portion of the assignment include but are not limited to:

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- 1) Review the Final Design reports prepared by CPB as part of the study "Mejoramiento de la Red Vial de la Zona Norte de El Salvador" for the first 155 km of the NTH (from La Virgen to Nuevo Eden de San Juan), which also includes design of Section 1 (even though the decision for construction of Section 1 is still pending, with the possibility to be included in optional Phase 3), which are the main technical input for the further construction work. The CPM will perform this review with additional information and clarifications provided by UIPC as available CPM shall timely advice to FOMILENIO of any required modification or complementary work if any fatal flaw is detected, and after obtaining the corresponding FOMILENIO's no objection, proceed to complement and modify the final reports accordingly. The content of this report is described in Section 8 of the TOR included in Appendix H of this contract;
- 2) Review and recommend any modification to the Scope of Work (Technical Specification and/or drawings) on the bidding document for construction works;
- 3) Prepare the agenda and presentation for the kickoff (pre-construction) meeting with the contractors of each different project and discuss the agenda with FOMILENIO prior to the meetings. During this meeting, points of contact shall be identified and procedures for exchange of information and communications are discussed and decided upon. Prepare meeting minutes for this meeting and any project meeting thereafter;
- 4) Review and comment on or approval of the programs of work submitted by construction contractors;
- 5) Review and approve construction plans and methods proposed by construction contractors, for road sections and bridges;
- 6) CPM shall be responsible for managing and supervising the activities of the construction contractors related to ROW and RAPs, including but not limited to the following:
 - Monitor the finalization of pending cases which by any reason were not completed in the design stage. This activity shall apply in the following areas: (i) acquisition of right of way or economic compensation; and (ii) resettlement or physical relocation.
 - Ensure that construction of works by the contractors is executed according to the drawings of right of way acquired by FOMILENIO, avoiding that contractors use land or affect constructions not included in the acquisition.
 - Ensure that construction contractors provide an office space for attention of residents of the project area, resolution of claims and social problems resulting from the construction works.
 - Follow-up the process of resettlement on those sections or segment were still exist some problems, and look for an adequate solution, in cooperation with UIPC;
 - In cooperation with UIPC ensure that the ROW of the Section or Sections under consideration for construction is cleared and the land is property of the GOES;
 - Review and assure that social and environmental and social responsibilities are defined in the contractor bidding documents, including gender issues;
 - Ensure that the Contractor has attended any unforeseen social impact that could arise during the construction period and that necessary mitigation measures have been taken, and support as necessary to avoid delays, and inform FOMILENIO immediately;
 - Ensure that the construction contractors execute the access solution to properties as identified in the design stage; and
 - Cooperate with FOMILENIO-UIPC to avoid the illegal occupation (usurpation) of the acquire ROW.

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