



## AMENDMENT # WST-03/2010 OF THE CONTRACT # 0047

This Contract Amendment (the "Third Contract Amendment"), by and between, on one hand, **Fondo del Milenio**, a Salvadoran autonomous public entity created pursuant to Legislative Decree # 189, dated December 20, 2006 (hereinafter called FOMILENIO) and on the other hand, **WILBUR SMITH ASSOCIATES, INC. in association with TECNICA Y PROYECTOS, S.A. (TYPISA)** ("The Consultant"), each of which will be jointly and severally liable to FOMILENIO for all of the Consultant's obligations under the Contract and is deemed to be included in any reference to the term "Consultant"; executed as of September 19th, 2008, identified as Contract number 47, for the provision of **PROJECT MANAGEMENT, SUPERVISION OF DESIGN AND CONSTRUCTION SUPERVISION FOR THE CONNECTIVITY PROJECT ON THE NORTHERN TRANSNATIONAL HIGHWAY**, for a Contract Price of **ELEVEN MILLION NINE HUNDRED FIFTY THOUSAND 00/100 UNITED STATES OF AMERICA DOLLARS (US\$11,950,000.00) VAT included**, and effective for a total contract period of **FORTY FIVE (45) MONTHS including 2 phases**.

### BACKGROUND:

1. WHEREAS, the Parties executed a CONTRACT AGREEMENT dated the 29<sup>th</sup> of September 2008, which was modified as agreed in Contract Amendment executed as of the 8<sup>th</sup> of May 2009 (the Contract Agreement and the Contract Amendment) mainly on the following: (i) Base Period was modified to 32 months, which included and set the duration of Task 1 for 20 months, 32 months for Task 2 and 3 months for Task 3, while Tasks 4, 5 and 7 would be activated only after determined by the Parties through a negotiation in good faith to agree on a fixed cost and term for each of the tasks; (ii) It was set a fixed price for Task 1 of \$2,331,000 for 20 months; for Task 2 of \$3,513,000 for 32 months and for Task 3 a price of \$230,200 for 3 months, while Tasks 4, 5, 6 y 7, a fixed price would be determined for each task up to \$4,189,323 and in the event the Parties were unable to reach agreement on the scope and fixed price of these tasks, they would not form part of this contract; (iii) It was established a mechanism to liquidate the services provided since the beginning of the services until the date of this first amendment preliminarily valued to an estimated amount of \$1,686,477.00. Without modifying the original contract value.
2. WHEREAS, the Parties executed a Second Contract Amendment as of September 25, 2009 in order to modify the contract in the following: (i) Modify the Contract Appendix A – Description of Services replacing the text in the Contract with the description set in ANEXO A of this amendment for Task 1, Task 2 and Task 3, with the description set in ANEXO B of the same amendment for Task 4, with the description set in ANEXO C for Task 5, with the description set in ANEXO D for Task 6; (ii) Set a fixed price of \$182,100 (VAT included) and a term of 60 days for Task 4, a fixed price of \$2,150,000 (VAT included) and a term of 24 months for Task 5, a fixed price of \$2,115,688.89 (VAT included) and a term of 22 months for Task 6; (ii) To amend the Contract Appendix B – Reporting requirements and deliverables replacing its content with the ANEXO E to this second amendment; (iii) To amend the Contract Appendix E – Payment Schedule replacing in its entirety with the ANEXO F; (iv) Delete in its entirety the Appendix D, Appendix DI, Appendix H – The TOR and its amendments and clarifications, Appendix I – The Technical Proposal and Appendix J – the negotiation minutes; and (v) To amend the Contract Appendix F – Services and Facilities provided by FOMILENIO with the ANEXO G to this Second Contract amendment. (the Contract Agreement and the Contract Amendment, together constitute "*the Contract*")

### RECITALS:

1. WHEREAS **GENERAL CONDITIONS OF CONTRACT** Sub clause 2.4.1 reads: "*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 authorized representatives of the Parties. Pursuant GCC Subclause 7.2, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party."*

2. WHEREAS on May 31, 2010, the Parties acting through its authorized representatives signed a Supplementary Agreement by which a Review Committee was formed acting on their behalf to review and decide on the merits of the additional costs required by the Consultant in relation to the conceptual design submitted for the Section 4A of the Northern Highway in the Task 4. This Review Committee resolved that: *"based on the conducted documental review, the meetings and discussion that were held, unanimously and in the spirit of Clause 7 of the General Conditions of Contract: Fairness and Good Faith, it is considered fair to pay the consultant the value of FORTY THOUSAND FIVE HUNDRED 00/100 UNITED STATES OF AMERICA DOLLARS (\$ 40,500.00), including VAT, by the additional work performed and related to Task 4: Engineering Services for the Section 4 of the Second Amendment to Contract. "*
3. WHEREAS Section 2 of the First Amendment executed as of May 8, 2009 stated that: *"Payment of services rendered before the effective date of this Amendment will be liquidated as indicated in Letter of Understanding attached to this document and up to \$1,686,477.00. Any residual amount will increase the amount the item 1.b.ii."* The aforementioned Letter of Understanding sets out the procedure to liquidate the services rendered before the date of this amendment. As a result of the foregoing, the Finance Division of FOMILENIO reported that the final data resulting from this procedure was ONE MILLION FOUR HUNDRED TWENTY EIGHT THOUSAND AND ELEVEN 11/100 DOLLARS (\$ 1,428,011.11) amount that breaks down as follows: ONE MILLION THREE HUNDRED SEVENTEEN THOUSAND AND SIX HUNDRED FIFTY THREE 68/100 UNITED STATES OF AMERICA DOLLARS (\$ 1,317,653.68) from MCC funds and ONE HUNDRED AND TEN THOUSAND THREE HUNDRED FIFTY-SEVEN 43/100 UNITED STATES OF AMERICA DOLLARS (\$ 110,357.43) from GOES funds.
4. WHEREAS, as of October 14, 2010, Parties negotiated and agreed an extension of contract services corresponding to Task 1, as recorded in the Aide Memoire of the negotiation process by which it was determined the required levels of effort for the extension of Supervision Services of Segments 2A and 2B1 of the Northern Transnational Highway, indicating that Supervision activities of the works shall be performed up to the completion date of February 20, 2011, extension that implies a total additional cost at fixed price of FOUR HUNDRED FIFTY-SEVEN THOUSAND ONE HUNDRED AND FIFTY 00/100 UNITED STATES AMERICA DOLLARS (US\$457,150.00), VAT included.

This modification results as a consequence of the corresponding extension of Construction Contracts of Section 2 of NTH (from Metapán to Nueva Concepción), respectively: Contract # 085/2009, Construction of the Northern Transnational Highway, Section 2A: Metapán - Santa Rosa Guachipilín; and Contract 209/2009, Construction of Section 2B1 of the Northern Transnational Highway, Segment: Santa Rosa Guachipilín - El Matazano; signed by and between FOMILENIO and construction companies Constructora MECO, S.A. and Constructora Santa Fe, Ltd., which have been extended each up to February 16 and 20, 2011 respectively, and are the object of the supervision services of the aforementioned Task 1.

5. WHEREAS on October 28, 2010, the FOMILENIO Deputy Executive Director of Infrastructure submitted to the Procurement Director of Institutional Procurement Agency (ACI, in Spanish), the contract amendment application, based on: (a) The supplementary agreement referred by the FOMILENIO Legal Counselor to be processed for the corresponding adjustment, and (b) The Negotiating Committee Aide Memoir for an extension of supervision services of Task 1, with approval of his Unit, in order to include the following changes: (i) Extend the time limit for completion of Task 1 in 2.5 months more until March 20, 2011 including the Final Report and to increase the amount by US\$ 457,150.00, including VAT; and (ii) increase the cost of services for Task 4: Technical Services for Section 4 NTH, for the value of US\$40,500.00, including VAT, as a result of the agreements of the Review Committee appointed by the



parties and accepted by them. The total increase amounts is FOUR HUNDRED NINETY-SEVEN THOUSAND SIX HUNDRED AND FIFTY 00/100 UNITED STATES OF AMERICA DOLLARS (\$497,650.00), including VAT, which means 4.16% of the total original value of the contract and the extension of time for the activities of the Task 1 does not alter the overall total contract term

- Whereas, pursuant to the provisions of Annex 1. Approval Requirements of the MCC Procurement Guidelines, the proposed amendments do not require approval of FOMILENIOs' Board of Directors neither MCCs' No Objection.

**THEREFORE, the Parties hereto agree:**

- To modify the **CLAUSE CGC 2.3 of Part III: Special Conditions of Contract (SCC)** in the first paragraph, replacing the text with the following:

*"The contract period is broken down as follows:*

#	Task	Term	Dates
1	Initial Stage	6.3 months	From October 27, 2008 to May 7, 2009
2	Task 1 – Supervision Section 2 NTH	22.5 months	From May 4, 2009 to March 20, 2011.
3	Task 2 – NTH – PM	32 months	From May 8, 2009 to January 7, 2012
4	Task 3 – Technical Services Sections 5 and 6	3 months	From March 6, 2009 to June 3, 2009
5	Task 4 – Technical Service Section 4	60 days	From September 28, 2009 to November 26, 2009.
6	Task 5 - Supervision Bridges NDJ and NEDSJ	24 months	From March 8, 2010 to March 7, 2012.
7	Task 6 – Supervision D&B Section 6	22 months	From February 15, 2010 to December 14, 2011.

- To modify the first paragraph of **CLAUSE 6.1 of Part III: Special Conditions of Contract (SCC)** , replacing its text with the following:

*"The total cost of the services is TWELVE MILLION FOUR HUNDRED AND FORTY SEVEN THOUSAND SIX HUNDRED AND FIFTY 00/100 UNITED STATES OF AMERICA DOLLARS (US\$12,447,650.00), which is broken down as follows:*

Item	MCC US\$	VAT US\$	Total US\$
<b>Phase I – Initial Stage</b>	<b>1,317,653.68</b>	<b>110,357.43</b>	<b>1,428,011.11</b>
Initial Report (1 /)	234,375.22	0.00	234,375.22
Inception Report (1 /)	234,375.22	0.00	234,375.22
Monthly Report	148,585.84	19,316.16	167,902.00
Monthly Report	148,585.84	19,316.16	167,902.00
Settlement Services until May 8, 2009 (Payment 1)	500,000.00	65,000.00	565,000.00
Settlement Services until May 8, 2009 (Payment 2)	51,731.56	6,725.10	58,456.66
<b>Task 1- Supervision Section 2</b>	<b>2,467,389.38</b>	<b>320,760.62</b>	<b>2,788,150.00</b>
<b>Task 2 – NTH – PM</b>	<b>3,108,849.56</b>	<b>404,150.44</b>	<b>3,513,000.00</b>
<b>Task 3 – Technical Services Sections 5 and 6</b>	<b>205,486.72</b>	<b>26,713.27</b>	<b>232,200.00</b>
<b>Task 4 – Technical Services Section 4</b>	<b>196,991.15</b>	<b>25,608.85</b>	<b>222,600.00</b>
<b>Task 5 – Supervision Bridges NDJ and NEDSJ</b>	<b>1,902,654.87</b>	<b>247,345.13</b>	<b>2,150,000.00</b>
<b>Task 6 – Supervision Section 6</b>	<b>1,870,521.14</b>	<b>243,167.75</b>	<b>2,113,688.89</b>
<b>Total</b>	<b>11,069,546.50</b>	<b>1,378,103.49</b>	<b>12,447,650.00</b>

(1\_) MCC funds billed overseas.



3. To modify APPENDIX E: Payment Schedule of the Contract, in relation with Task 1 and Task 4, replacing the following information:

**"TASK 1**

*Supervision of the Construction Contractor(s) responsible for construction of Section 2 of NTH (from Metapán to Nueva Concepción)*

<i>19 monthly payments (#1 to #19) of .....</i>	<i>\$ 110,400.00</i>
<i>2 monthly payments (#20 and #21) of.....</i>	<i>\$ 182,860.00</i>
<i>1 payment (#22)ont February 20, 2011(5 days later) of.....</i>	<i>\$ 91,430.00</i>
<i>Final payment with the approval of Final Report .....</i>	<i>\$ 233,400.00</i>
	<b><i>\$2,788,150.00</i></b>

**TASK 4**

*Preparation of Conceptual Design and Term of Reference for bidding documents of Section 4 of the NTH*

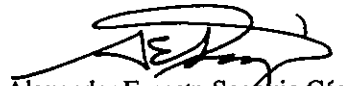
<i>Conceptual Design and Sections VII, VIII and XI of the BD(DdL) for Section 4C .....</i>	<i>\$ 55,000.00</i>
<i>Sections VII, VIII y XI of the BD (DdL) for Section 4A .....</i>	<i>\$ 55,000.00</i>
<i>Sections VII, VIII y XI of the BD (DdL) for Section 4B .....</i>	<i>\$ 55,000.00</i>
<i>At the end of the consultation period for bidders.....</i>	<i>\$ 17,100.00</i>
<i>Additional Works Payment for Section 4A (agreement between the parties).....</i>	<i>\$ 40,500.00</i>
	<b><i>\$222,600.00</i></b>

*All values include VAT."*

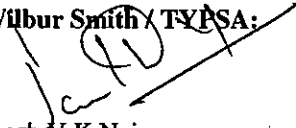
All other terms and conditions of the Agreement or its amendments not mentioned in this document remain unchanged and remain valid and enforceable with respect to their obligations.

Therefore, we signed, this Amendment to be executed under the Contract and the laws of El Salvador on November 4<sup>th</sup>, 2010.

**By and on behalf of Fondo del Milenio:**

  
Dr. Alexander Ernesto Segovia Cáceres  
FOMILENIO's President of the Board

**By Wilbur Smith / TYPSA:**

  
Santhosh V K Nair  
Regional Vice President