



AMENDMENT # WST-05/2011 OF THE CONTRACT # 0047

This Contract Amendment (the "Fifth 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 as 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 29th, 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 29th of September 2008, which was modified as agreed in Contract Amendment executed as of the 8th 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*").

3. WHEREAS the Parties executed a Third Contract Amendment as of November 4th., 2010 in order to modify the contract in the following: (i) Increase the contract amount in FOUR HUNDRED NINETY-SEVEN THOUSAND SIX HUNDRED FIFTY 00/100 UNITED STATES OF AMERICA DOLLARS (U.S. \$ 497,650.00), including VAT, equivalent to 4.16% of the original contract value for the following aspects: (a) FORTY THOUSAND FIVE HUNDRED AND 00/100 UNITED STATES OF AMERICA DOLLARS (U.S. \$ 40,500.00), including VAT, in addition to previously authorized cost of Task 4 as a result of the decision of the Review Committee appointed by the parties to review and decide on the merits of additional costs generated by the work done in providing Engineering Services for the Section 4 of the Northern Highway and (b) FOUR HUNDRED FIFTY-SEVEN THOUSAND ONE HUNDRED FIFTY 00/100 UNITED STATES OF AMERICA DOLLARS (U.S. \$ 457,150.00), including VAT, as additional costs determined by the level of effort required to extend Supervision Services of Segments 2A and 2B1 of the Northern Transnational Highway until February 20, 2011; (ii) Establish as a result of implementing the agreement between the parties set forth in Section 2 of Amendment # 1 dated May 8, 2009, the final liquidation value of the initial services of the contract until that date required in ONE MILLION FOUR HUNDRED TWENTY EIGHT THOUSAND AND ELEVEN 11/100 UNITED STATES OF AMERICA DOLLARS (US\$1,428,011.11). All these amendments established the revised contract value in TWELVE MILLION FOUR HUNDRED AND FORTY SEVEN THOUSAND SIX HUNDRED AND FIFTY 00/100 UNITED STATES OF AMERICA DOLLARS (US\$12,447,650.00) and as the date of termination of services on March 7, 2012.
4. WHEREAS the Parties executed a Fourth Contract Amendment as of November 3rd., 2011 in order to modify the contract in the following: ((i) Extend the time limit for completion of Task 1 until April 30, 2011 including the Final Report and to increase the amount by US\$ 64,855.00, including VAT; (ii) Extend the time limit for completion of Task 5 in 173 days more until April 28, 2012 including the Final Report and to increase the amount by US\$459,085.00, including VAT; and (iii) Extend the time limit for completion of Task 6 in 183 days more until June 14, 2012 including the Final Report and to increase the amount by US\$ 576,460.61, including VAT. The total increase amounts was ONE MILLION ONE HUNDRED THOUSAND FOUR HUNDRED 61/100 UNITED STATES OF AMERICA DOLLARS (\$1,100,400.61), including VAT, which together with the previous increase of FOUR HUNDRED NINETY SEVEN THOUSAND SIX HUNDRED AND FIFTY 00/100 UNITED STATES OF AMERICA DOLLARS (US\$497.650.00) represents a total increase of ONE MILLION FIVE HUNDRED NINETY EIGHT THOUSAND FIFTY 61/100 UNITED STATES OF AMERICA DOLLARS (US\$1,598,050.61) equivalent to 13.4% of the original contract value and fixing the date of completion of contract activities on June 14, 2012.

RECITALS:

1. WHEREAS **GENERAL CONDITIONS OF CONTRACT** Subclause 2.4.1 indicates that: "*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 Sub clause 7.2, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party.”

2. WHEREAS, as of December 5, 2011, representatives of the parties signed a Memorandum of Record Management Meeting in which established the following agreements relating to the supervision of the Northern Transnational Highway - Bridges Nombre de Jesus and Nuevo Edén de San Juan (Task 5): (i) increasing the contract amount by US\$124,704.55, (ii) extend the period of supervision services from April 28, 2012 to May 27, 2012, and (iii) make the legalization of these contract modifications.

This modification results as a consequence of the corresponding extension of Construction Contracts of both Bridges of NTH (Nombre de Jesus and Nuevo Eden de San Juan), respectively: Contract 300/2010: Construction of Nombre de Jesus Bridge and Contract 299/2010: Construction of Nuevo Eden de San Juan Bridge of the Northern Transnational Highway; signed by and between FOMILENIO and construction company ASTALDI S.P.A., and is the object of the supervision services of the aforementioned Task 5.

3. WHEREAS, as of December 5, 2011, representatives of the parties signed a Memorandum of Record Management Meeting in which established the following agreements relating to the Supervision Services of Segment 6 of the Northern Transnational Highway (Task 6): (i) increasing the contract amount by US\$93,111.33, (ii) extend the period of supervision services from June, 14, 2012 to July 11, 2012, and (iii) make the legalization of these contract modifications.

This modification results as a consequence of the corresponding extension of Construction Contract of Section 6 of NTH, Contract 290/2010, Construction of Section 6 of the Northern Transnational Highway, Segment: Desvío Ciudad Barrios- Osicala y Delicias de Concepción - Cacaopera; signed by and between FOMILENIO and construction company Constructora MECO, S.A. and is the object of the supervision services of the aforementioned Task 6.

4. WHEREAS on December 14, 2011, the FOMILENIO Deputy Executive Director of Infrastructure submitted to the Procurement Director of Institutional Procurement Agency (ACI, in Spanish), the contract amendment application, with approval of his Unit, in order to include the following changes: (i) Extend the time limit for completion of Task 5 until May 27, 2012 including the Final Report and to increase the amount by US\$ 124,704.55, including VAT, and; (ii) Extend the time limit for completion of Task 6 until July 11, 2012 including the Final Report and to increase the amount by US\$93,111.33, including VAT.

The total increase amounts is TWO HUNDRED SEVENTEEN THOUSAND EIGHT HUNDRED FIFTEEN 88/100 UNITED STATES OF AMERICA DOLLARS (US\$217,815.88), including VAT, which means 1.82% of the original contract value and the previous increase of ONE MILLION FIVE HUNDRED NINETY EIGHT THOUSAND FIFTY 61/100 UNITED STATES OF AMERICA DOLLARS (US\$1,598,050.61) equivalent to 13.4% of the original contract value; which together means ONE MILLION EIGHT HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED SIXTY SIX 49/100 UNITED STATES OF AMERICA DOLLARS



(US\$1,815,866.49) represents a total increase of 15.2% and fixing the date of completion of contract activities on July 11, 2012.

5. WHEREAS on December 14, 2011, the Deputy Executive Director of Infrastructure, Connectivity Manager and Finance Director of FOMILENIO, have signed the request for funds # 5/2011, which supports the availability of resources to cover additional costs resulting from this contract modification.
6. WHEREAS, pursuant to the provisions of Annex 1. Approval Requirements of the MCC Procurement Guidelines, the proposed amendments were approved by the Procurement Director and the FOMILENIOS' Board of Directors, in Session # 129, point # 3, date on December 15th, 2011. MCC No Objection is no required in accordance with the regulations set out in Annex D of the Material Interim Amendment Notice 2011-001 in force effective on May 2, 2011 of these Procurement Guidelines which states that once the 10% contract or 1 million USD or more (whichever may apply) threshold for modifications or change orders has been reached for a contract, any subsequent contract modification or change order that individually or collectively exceed 3% of the original contract value will also require MCC approval.
7. WHEREAS the Consultant has submitted a Power of Attorney dated October 11, 2011, in Richland County, South Carolina, United States of America, before the public notary Teresa C. Arneson and duly apostilled by the Secretary of State of South Carolina, Mark Hammond, dated October 12, 2011 No. 107 179, in which has appointed Mr. Oscar Caceres, as a lawful attorney for and in the name of Wilbur Smith Associates, Inc., to do all the things necessary to carry on the affairs in El Salvador, including but not limited to, signing proposals, contracts, agreements, and other documents necessary to carry on the business affairs, or any such documents, letter, copy reports or other items as may be necessary in connection therewith until December 31, 2011.

THEREFORE, the Parties hereto agree:

1. 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	23.5 months	From May 4, 2009 to April 30, 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	26.1 months	From March 8, 2010 to May 27, 2012.
7	Task 6 – Supervision D&B Section 6	28.3 months	From February 15, 2010 to July 11, 2012.



2. 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 THIRTEEN MILLION SEVEN HUNDRED SIXTY FIVE THOUSAND EIGHT HUNDRED SIXTY SIX 49/100 UNITED STATES OF AMERICA DOLLARS (US\$13,765,866.49), which is broken down as follows:

Item	MCC US\$	VAT US\$	Total US\$
Phase I – Initial Stage	1,317,653.68	110,357.43	1,428,011.11
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	6,725.11	58,456.67
Task 1- Supervision Section 2	2,524,783.19	328,221.81	2,853,005.00
Task 2 – NTH – PM	3,108,849.56	404,150.44	3,513,000.00
Task 3 – Technical Services Sections 5 and 6	205,486.72	26,713.27	232,200.00
Task 4 – Technical Services Section 4	196,991.15	25,608.85	222,600.00
Task 5 – Supervision Bridges NDJ and NEDSJ	2,419,282.79	314,506.76	2,733,789.55
Task 6 – Supervision Section 6	2,463,062.68	320,198.15	2,783,260.83
Total	12,236,109.77	1,529,756.71	13,765,866.49

(1 /) MCC funds billed overseas.

3. To modify **APPENDIX E: Payment Schedule of the Contract**, in relation with Task 5 and Task 6, replacing the following information:

TASK 5

Construction Supervision Services of the Nombre de Jesus and Nuevo Eden de San Juan Bridges of the NTH.

<i>20 monthly payments (#1 to #20) of</i>	<i>\$ 85,000.00</i>
<i>Total of monthly payments 1 through 20</i>	<i>\$ 1,700,000.00</i>
<i>7 monthly payments (#21 to #27) of</i>	<i>\$ 115,000.00</i>
<i>Total monthly payments 21 through 27</i>	<i>\$ 805,000.00</i>
<i>Final payment with the approval of Final Report</i>	<i>\$ 228,789.55</i>
	<i>\$ 2,733,789.55</i>

TASK 6

Design and Construction Supervision Services of Section 6 of NTH (from Desvio Ciudad Barrios – Osicala and Delicias de Concepcion –Cacaopera)

<i>29 monthly payments (#1 to #29) of</i>	<i>\$ 92,000.00</i>
<i>Total of monthly payments 1 through 29</i>	<i>\$ 2,668,000.00</i>
<i>Final payment with the approval of Final Report</i>	<i>\$ 115,260.83</i>
	<i>\$ 2,783,260.83</i>

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 December 21, 2011.

By and on behalf of Fondo del Milenio:


Dr. Alexander Ernesto Sagovia Cáceres
President of the Board of Directors



By and on behalf of Wilbur Smith / TYPSA:


Mr. Oscar Cáceres
Client Service Manager
Latin America and Caribbean