

## **Minute Number one (1). Extraordinary Board of Directors Meeting of the Foundation MCA Nicaragua.**

In Managua, at three pm on May 10<sup>th</sup>, 2006, in the Presidency office of Nicaragua, the following persons are present:

### GOVERNMENT DIRECTORS

1. Mr. Leonardo Somarriba on behalf of the Secretary of the Presidency, according to Presidential Decree that once examined is filed.
2. Mr. Alvaro Montalván on behalf of the Technical Secretary of the Presidency (SETEC), according to Presidential Decree that once examined is filed.
3. Mr. Mario Flores on behalf of Finance Ministry (MHCP), according to Presidential Decree that once examined is filed.
4. Mr. Alejandro Arguello on behalf of Commerce Ministry (MIFIC), according to Presidential Decree that once examined is filed.

### CIVIL OBSERVERS:

1. Mr. Rigoberto Sampson Granera on behalf of "Concejo de Desarrollo Departamental de León", according to the documents presented that once examined are filed. For this meeting, Mr. Roger Salvador Gurdian Vigil is present on Mr. Sampson's behalf according to a proxy that once examined is approved and filed.
2. Mr. Santos Mendez Zepeda on behalf of "Concejo Departamental de Chinandega", according to the documents presented that once examined are filed.
3. Ms. Jilma Balladares Terán on behalf of "Fundacion para el Desarrollo de León"(FUDAPADELE), according to the documents presented that once examined are filed.
4. Mr. Julio Cesar Montealegre Venerio on behalf of "Asociación de Productores y Exportadores de Nicaragua" (APEN), according to the documents presented that once examined are filed.

### MAYORS OBSERVERS:

1. Mr. Transito Tellez on behalf of Municipalities of Leon, according to the documents presented, taking notice that there are some mayors' signatures in the document missing, requesting to Mr. Tellez that the complete document be presented as soon as possible.
2. Mr. Agrecio Osejo on behalf of the Municipalities of Chinandega, according to the documents presented that once examined are filed.

### MILLENNIUM CHALLENGE CORPORATION (MCC) OBSERVER

1. Mr. Matt Bohn on behalf of the MCC.

### GOVERNMENT OBSERVERS

1. Mr. Mario Salvo Horvilleur on behalf of Agriculture Ministry (MAGFOR), according to the Ministerial Decree that once examined is filed.
2. Mr. Cristobal Sequeira Gonzalez on behalf of Environmental Ministry (MARENA), according to the Ministerial Decree that once examined is filed.
3. Mr. Ricardo Vega Jackson on behalf of Infrastructure Ministry (MTI), according to the Ministerial Decree that once examined is filed.

All the presents were duly notified for this meeting according to the applicable laws and the Millennium Challenge Compact executed between the Nicaraguan Government (the "Government") and the United State of America, acting trough the Millennium Challenge Corporation ("MCC") dated July 14<sup>th</sup>, 2005 (the "Compact").

### DESIGNATION OF THE PRESIDENT OF THE BOARD OF DIRECTORS

According to the Annex I 3 (d) (ii) (2) (D) of the Compact and the bylaws of the Foundation, the President of the Board of Directors will be designated among the Government Directors by mutual agreement between the Executive branch and MCC; therefore, it is registered in this minute that Ing. Enrique Bolaños in agreement with MCC have designated as President of the Board of Directors of the Foundation Mr. Alvaro Montalvan on behalf of the Technical Secretary of the Presidency.

### DESIGNATION OF CIVIL OBSERVERS AS DIRECTORS

According to the Annex I 3 (d) (ii) (2) (F) of the Compact and the bylaws of the Foundation, once designated the President of the Board of Directors, it should follow the designation of the two Civil Observers to be directors of the Board of Directors. For the above mentioned, Mr. Montalván as President of the Board of

Directors of the foundation, in presence of the Government Directors and the Observer of MCC appoint the following CIVIL DIRECTORS:

- ✓ Ms. Jilma Balladares on behalf of FUNDAPADELE
- ✓ Mr. Julio Cesar Montealegre on behalf of "Asociacion de Productores y Exportadores de Nicaragua"(APEN)

The Civil Observers will be Mr. Rigoberto Sampson on behalf of "Concejo de Desarrollo Departamental de Leon" and Mr. Santos Mendez on behalf of "Concejo de Desarrollo Departamental de Chinandega"

#### DESIGNATION OF MAYOR OBSERVER AS DIRECTOR

According to the Annex I 3 (d) (ii) (2) (G) of the Compact and the bylaws of the Foundation, it should follow the designation of the Mayor Director among the Mayors Observers; and Mr. Montalvan as President of the Board of Directors of the foundation, in presence of the Government Directors and the MCC Observer appoint the following MAYOR DIRECTOR:

- ✓ Mr. Transito Tellez on behalf of the Municipalities of Leon

The Mayor Observer will be Mr. Agrecio Osejo on behalf of the Municipalities of Chinandega.

#### CONFORMATION OF THE BOARD OF DIRECTORS OF THE FOUNDATION

Due to the corresponding designations were made, it is registered in this minute that the Board of Directors of the Foundation is conformed as follows:

PRESIDENT:	Alvaro Montalvan on behalf of the Technical Secretary of the Presidency.
GOVERNMENT DIRECTOR:	Mr. Leonardo Somarriba on behalf of Secretary of the Presidency, according to the Ministerial Decree that once examined is filed.
GOVERNMENT DIRECTOR:	Mr. Mario Flores on behalf of Finance Ministry (MHCP), according to Presidential Decree that once examined is filed.
GOVERNMENT DIRECTORS:	Mr. Alejandro Arguello on behalf of Commerce Ministry (MIFIC), according to Presidential Decree that once examined is filed.
CIVIL DIRECTOR:	Ms. Jilma Balladares Terán on behalf of "Fundacion para el Desarrollo de León"(FUDAPADELE), according to the documents presented that once examined are filed.
CIVIL DIRECTOR:	Mr. Julio Cesar Montealegre Venerio on behalf of "Asociación de Productores y Exportadores de Nicaragua" (APEN), according to the documents presented that once examined are filed.
MAYOR DIRECTOR:	Mr. Tránsito Tellez on behalf of the Municipalities of Leon

Having assembled the board of directors of the Foundation, Mr. Alvaro Montalvan presides the session, initiates the Board of Directors meeting and proceeds to inform the points of agenda:

1. Verification of Quorum.
2. Ad-Hoc Secretary election.
3. Politics of Conflict of interest.
4. Election of the General Director.
5. Approval of the Contracts that should be subscribed by the Foundation in order for the Program established in the Millennium Challenge Covenant enters in to effect.
6. Appointment of the person that in representation of the Foundation will execute the Contracts.
7. Summary of activities carried out during the transition phase and discussion of next steps.
8. Various points.

Once the points of agendas where acknowledge, they were approved by all the Directors and it was proceeded in accordance to them.

#### **FIRST: Verification of Quorum**

The President proceeds to verify quorum and he confirms that the totalities of the directors of the Board of Directors are present, for which there is legal quorum to initiate the session.

#### **SECOND: Ad-Hoc Secretary election**

According to the Statutes the Secretary of the Board of Directors, the Office of the Secretary, should be assumed by the General Director. However, being that it has not been elected, the President of the Board of

Directors proposes that Mr. Julio Cesar Montealegre in representation of APEN, act as Secretary Ad-Hoc of the Board of Directors, having thus the functions established in the Statutes. Record is left that Mr. Julio Montealegre resigned to the position exercised in the Presidency of the Republic, letter that is evident in files. The proposal is accepted by all the directors, who by unanimity agree to elect as Secretary Ad-Hoc Mr. Julio Cesar Montealegre.

Resolution: It is agreed to elect Mr. Montealegre as the Secretary Ad-Hoc of the Board of Directors.

### **THIRD: Politics of Conflict of Interest**

The President presents to the other directors and observers a document called Politics of Conflict of Interest, which will govern the problems of conflict of interest that could arise in the Board of Directors. Mr. Montealegre proceeds to read the Conflict of Interest Politics Agreement, Obligations, Confidentiality and Prohibited Transactions.

The President proposes that said document be signed by all the directors and observers of the Board of Directors, which is approved for unanimously.

Observations: Mr. Roger Gurdian requested an explanation regarding the concept of conflict of interest to which it was explained. Mr. Mario Flowers requested an explanation regarding the potential conflict of interest to which it was explained satisfactorily.

Resolution: It is resolved to adopt the Politics of Conflict of Interest, Obligations, Confidentiality and Prohibited Transactions for the directors and observers of the Board of Directors by unanimity of votes and each of the directors and observers proceeds to sign the document in sign of commitment and acceptance of its terms.

### **FOURTH: Election of the General Director**

The President puts in knowledge that there has been a candidate selection process for the election of the General Director of the Foundation and the word is given to Julio Montealegre. Record is left that the process was transparent and competitive. Ninety four applications were filled by Nicaraguans and foreigners, remaining 73 in the final list, individuals that were interviewed and evaluated by Preseleccion Empresarial. As a consequence of the process four finalists remained, who complied with 75% of the criteria required by Preselección Empresarial. A fifth person was presented, who did not comply with the requirements, which was disqualified. One of the four finalists renounced and three finalists remained, and they are: (I) Salvador Navarrete, Salvadorian (ii) Juan Sebastián Chamorro and (iii) María de los Angeles Pérez López. The process was transparent and competitive.

Having revised the report and the Curriculum Vitae of each of the finalists, the President recommends electing Juan Sebastián Chamorro. The motion was discussed, and the election of the Juan Sebastián Chamorro as General Director was unanimously decided.

Resolution: Juan Sebastián Chamorro was elected as the General Director, decision that was taken by the unanimity of votes.

### **FIFTH: Approval of Contracts**

The President puts in knowledge that the Foundation, according to Article IV section 4.1. of the Millennium Challenge Covenant, has to sign the following contracts for the purpose that the Program for the Millennium Challenge Covenant enter in to effect:

1. Contract of Disbursement and its timetable, attached as Annex A.
2. Contract of Acquisitions, attached as Annex B.
3. Contract of Designation and Donation, attached as Annex C.
4. Contract of Governance, attached as Annex D.
5. Complementary Agreement of Terms in which the formats for the Banking Services Contract, Fiscal Agent Contract and the Acquisition Agents Contract, will attached as Annex E.

The President gives the word to Mr. Julio Cesar Montealegre. Mr. Montealegre refers that the contracts referred were revised by and external lawyer and negotiated with MCC. Mr. Montealegre mentions that all the members of the board of directors have had access to the Contracts and explains the objective of each one. In the Contract of Disbursement is established that certain conditions should be complied with in order to receive the disbursements. The Contract of Acquisitions is based on the politics of acquisitions of the World Bank, and establishes the rules and conditions to acquire goods and services. The Contract of Designation and Donation indicates that MCA Nicaragua is the beneficiary of the funds of the Millennium Account. The Contract of Governance establishes the procedure and operation of the board of directors. The Complementary Agreement of Terms is a cover that says that the formats of the Banking Services Contract, Fiscal Agent Contract and the Acquisition Agents Contract are approved. Emphasis is made that the timetable

for the Contract of Disbursement was arrived at by consensus with the institutions that would be implementing the program such as MTI, PRODEP, among others.

Questions are made on the bank that will handle the funds. Julio Montealegre explained the process in which the banks were chosen that required the conditions of stability, presence in the region and services. As a consequence, BAC, BANCENTRO and BANPRO complied with the conditions required and proceeded to put out to bid according to the following elements: costs for banking services and interest rate. As a consequence BANPRO obtained the best score. Nevertheless, the Banking Services Contract has not been assigned still, since it has to be negotiated with the Bank.

The observation is done and the request is done that the Contracts be put in the Web as quickly as possible and that the interests be returned to the Government of the United States and that they are not property of MCA Nicaragua. Additionally, it is asked if there is an estimate of the interests that will be generated, and it is replied that it depends on the quantities disbursed. The President mentions that is difficult to arrive at an amount, for which it is impossible to provide and estimate at this moment. The topic can be discussed at a latter date.

Matt Bohn mentioned that the Board of Directors must approve a detailed budget and they will receive a report from the bank on the interest rate. For which until budget is obtained they will be able to calculate the interest earned by the funds; nevertheless, it will be in the reports.

Mr. Alvaro Montalvan sets for the record that he has not been involved in this process and that in the case that BANPRO is to be chosen, he request to be recorded that his wife works in said institution and it is his will to reveal said information.

The directors declare that they have revised the drafts of each of the Contracts mentioned, which have been already revised by the Executive Power and negotiated with MCC, for which they have no objection and they proceed to approve them by unanimous votes.

Resolution: The Contracts mentioned are approved unanimously by the board of directors in its English version and they recognize that the versions in English should be signed by MCA Nicaragua, for which they agree that in case of inconsistencies between the Spanish and English versions of the documents in reference, the English version will prevail.

#### **SIXTH: Designation of representative that will execute the Contracts**

The President mentions that it is necessary to appoint a representative of the Foundation so that in its name execute the previously mentioned Contracts. Therefore, he proposes that Julio Cesar Montealegre execute the mentioned Contracts on behalf of the Foundation. The motion is approved unanimously by the directors.

Resolution: It is decided that the Mr. Julio Cesar Montealegre will be the representative of the Foundation who will execute the following Contracts under the terms and conditions approved in this act: (i) Contract of Disbursement; (ii) Contract of Acquisitions; (iii) Contract of Designation and Donation and (iv) Contract of Governance. It is resolved that Mr. Montealegre is authorized to carry out changes that are neither substantial nor materials on said Contracts without having to require authorization of the Board of Directors.

#### **SEVENTH: Summary of activities carried out during the transition phase and discussion of steps to be followed.**

The representative of MCC congratulates the present. He explains the preceding of the funds of the Millennium Account, and makes reference to the work and time that has been invested in this implementation and congratulates those that have been involved on behalf of the government and civil institutions. What is important in this program is to be focused on the results and not in the velocity of the disbursements, since the question that will be made in the future will not be, when the money came, but rather what was the impact for the Nicaraguans.

MCC realized that foreign aid is not efficient without internal reforms. Nicaragua and the Nicaraguans have managed very important internal reforms such as FOMAV and the achievement of the ratification by the National Assembly of the Covenant, which was done because it was deemed to be important to have the approval of the Nicaraguan's representatives.

There have been comments of several months delay, but in that time tenders for the fiscal and acquisition agents have been initiated, the terms of reference for positions inside the Foundation have been drafted, among others things, and with that preparation is met to comply with the objectives within the 5 years.

With the approval of the contracts here revised the program will be able to go into effect and it is expected that the initial disbursement will be done in three to five weeks. Once approved, they will be submitted to the Board of Directors of MCC in Washington DC, and after 7 days they will enter into effect.

It is important to differentiate that there are two disbursements: (i) Initial disbursement that will cover the administrative and initiation costs, that is approximately US\$500,000 to US\$1,000,000; for which we expect that this Board of Directors meet next Friday to approve documents; and (ii) the First Disbursement.

After the initial disbursement, MCA Nicaragua must work to comply with the preceding conditions and to obtain the first disbursement that it is expected to be in September in order to start work on the studies, cadastre, mapping, etc.

It is mentioned that the participation of the Board of Directors is not symbolic, and is required for it to be active to achieve the success of the program.

Congratulation is given to all the members!

**EIGHTH:** It is authorized for Mr. Alvaro Montalvan in representation of SETEC to negotiate the Fiscal Agent Contract, Acquisition Agents Contract and Professional Services Contract of the General Director, with exception of the Banking Services Contract, the one that will be negotiated by some delegate of Mr. Montalvan. Once negotiated the terms of the same will be presented to the board of directors for their approval. This resolution is approved unanimously.

**NINTH:** The Secretary of the board of directors or any notary Public they will have the faculty to certify the present minutes. The certification of the present minutes will suffice to accredit the here done appointments.

Concluded the session an hour and thirty minutes after initiated and record is left that all the decisions were taken unanimously.

Alvaro Montalvan

Leonardo Somarriba

Alejandro Argüello

Mario Flores

Jilma Balladares

Julio Cesar Montealegre

Transito Téllez