

**MEMORANDUM OF UNDERSTANDING**

**ON COMPACT DEVELOPMENT**

**BETWEEN**

**THE MILLENNIUM CHALLENGE CORPORATION**

**AND**

**THE GOVERNMENT OF THE REPUBLIC OF MALI  
ACTING THROUGH THE MINISTRY OF FOREIGN AFFAIRS**

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## ARTICLE I.

### PURPOSE

Section 1.1 Purpose. The Millennium Challenge Corporation, a United States Government corporation (“*MCC*”), and the Government of the Republic of Mali (the “*Government*”), acting through the Ministry of Foreign Affairs (the “*Ministry*”), wish to cooperate to facilitate the development of a Millennium Challenge Compact (the “*Compact*”) between them to support policies and programs that advance the progress of the Republic of Mali in achieving lasting economic growth and poverty reduction. On January 4, 2006, the Government submitted a Compact proposal to MCC (the “*Proposal*”) that focuses on three main projects: (a) improvement of the Bamako-Sénou Airport (the “*Airport Project*”), (b) development of the Bamako-Sénou Industrial Park (the “*Industrial Park Project*”) and (c) development of the Office du Niger Irrigation Scheme (the “*Office du Niger Project*”) and, together with the Airport Project and the Industrial Park Projects, the “*Projects*”).

Section 1.2 Understanding. MCC and the Ministry have concluded this Memorandum of Understanding to set forth their understanding with respect to their undertakings in support of the intent and purposes stated in Sections 1.1, 2.1 and 2.2.

## ARTICLE II.

### ASSISTANCE

Section 2.1 Government Request. The Government has requested assistance from MCC for certain definitional and pre-feasibility studies (the “*Phase 1 Studies*”) and certain feasibility and environmental impact assessment studies (the “*Phase 2 Studies*”, and together with the Phase 1 Studies, the “*Activities*”) and each, an “*Activity*”, as further described in Annex I) in connection with the Projects in order to further develop its Proposal.

Section 2.2 MCC Assistance. MCC intends to support the Government’s effort to further develop its Proposal by funding implementation of the Activities under the authority of Section 609(g) of the Millennium Challenge Act of 2003 (the “*Act*”).

Section 2.3 Government Responsibilities. The Government will (a) cooperate with MCC and the Service Provider (as defined below) to facilitate the assistance contemplated under this Memorandum of Understanding, (b) make its best efforts to take whatever actions are necessary to support the implementation of the Activities, and (c) fulfill the additional responsibilities of the Government as set forth in Annex I.

Section 2.4 Period of Assistance. MCC and the Ministry estimate that the assistance contemplated under this Memorandum of Understanding will occur during the period from the date of this Memorandum of Understanding to February 28, 2007, or such other date as MCC and the Ministry may agree upon in writing.

Section 2.5 Implementation of the Assistance. MCC will enter into two contracts (each, a “*Service Provider Contract*” and collectively, the “*Service Provider Contracts*”), one for the Airport Project and the Industrial Park Project, and one for the Office du Niger Project. Each of the service providers (each, a “*Service Provider*”) under each Service Provider Contract will perform the Activities set forth therein. Annex I further describes the implementation of the assistance.

**ARTICLE III.**  
**SPECIAL PROVISIONS APPLICABLE TO**  
**THIS MEMORANDUM OF UNDERSTANDING**

Section 3.1 Taxes.

(a) As required by applicable United States law, the Government will ensure that assistance provided by MCC under this Memorandum of Understanding will be exempt from all taxes imposed under laws currently or hereafter in effect in the Republic of Mali. This exemption will apply to the use of MCC assistance, including any Exempt Uses (as defined in clause (b) of Section 3.1), and to any work performed under or activities undertaken in furtherance of the Activities by any person or entity funded by MCC assistance, and will apply to all taxes, tariffs, duties, and other levies (collectively, “*Taxes*”), including:

(i) Customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services, or the personal belongings and effects, including personally-owned automobiles, for use in connection with the assistance or the personal use of individuals who are neither citizens nor permanent residents of the Republic of Mali and who are present in the Republic of Mali for purposes of carrying out the Activities or their family members, including all charges based on the value of such goods and services;

(ii) To the extent attributable to MCC assistance, income taxes and other taxes on profit or businesses imposed on entities, other than nationals of the Republic of Mali, receiving payments from MCC, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in the Republic of Mali, or any other tax, duty, charge or fee of whatever nature, except fees for specific services rendered; for the purposes of this clause (ii), the term “national” refers to entities established under the laws currently or hereafter in effect in the Republic of Mali, other than wholly-owned subsidiaries or affiliates of entities not registered or established under the laws currently or hereafter in effect in the Republic of Mali;

(iii) Taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of the Republic of Mali, including income and social security taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to MCC assistance; and

(iv) Taxes or duties levied on the purchase of goods or services funded by MCC assistance, including sales taxes, tourism taxes, value-added taxes (VAT), or other similar charges.

(b) For the purposes of this Section 3.1, “*Exempt Uses*” will mean (i) any transaction, service, activity, contract, grant or other implementing agreement funded in whole or in part by the MCC assistance; (ii) any supplies, equipment, materials, property or other goods (referred to herein collectively as “*goods*”) or funds introduced into, acquired in, used or disposed of in, or imported into or exported from, the Republic of Mali by MCC, or by any entity as part of, or in conjunction with, the MCC assistance; (iii) any contractor, grantee, or other organization carrying out activities funded in whole or in part by the MCC assistance; and (iv) any employee of such organizations.

(c) If any Tax has been levied and paid contrary to the requirements of this Section 3.1, whether inadvertently, due to the impracticality of implementation of this provision with respect to certain types or amounts of taxes, or otherwise, the Government will refund promptly to MCC to an account designated by MCC the amount of such tax in the currency of the Republic of Mali, within thirty (30) days (or such other period as may be agreed in writing by MCC and the Government) after the Government is notified of such levy and tax payment; *provided, however*, the Government will not apply any funds received from MCC in satisfaction of its obligations under this paragraph.

(d) The parties agree that this Section 3.1 shall supplement the provisions relating to customs duties, taxes and charges contained in the bilateral agreement entered into on January 4, 1961 between the Government of the United States of America and the Government of the Republic of Mali Regarding Economic and Technical Assistance (the “*Bilateral Agreement*”). In case of any inconsistency between the provisions of this Section 3.1 and the provisions relating to customs duties, taxes and charges contained in the Bilateral Agreement, the provisions of this Section 3.1 shall prevail.

**Section 3.2 Third Party Instruments and Availability of Funds.** In order to provide the assistance described herein, MCC will enter into contracts, grants or other instruments with public and private parties as MCC deems appropriate. All undertakings of MCC under this Memorandum of Understanding are subject to the availability of funds and to further agreement between MCC and such public and private parties, regarding the provision of assistance. This Memorandum of Understanding does not effect an obligation of funds by MCC.

**Section 3.3 Compliance with United States Law and Regulations.** MCC will obligate, commit and expend funds and carry out operations under this Memorandum of Understanding only in accordance with the applicable laws and regulations of the United States.

**Section 3.4 No Assurance of Future Assistance.** Nothing contained in this Memorandum of Understanding will be construed as creating an obligation on the part of MCC to provide any further funding or assistance in relation to the proposed Compact or any other project or program in the Republic of Mali.

Section 3.5 Termination and Suspension.

(a) MCC or the Ministry may terminate this Memorandum of Understanding in its entirety by giving the other party 30 days written notice.

(b) MCC may suspend, in whole or in part, provision of assistance under this Memorandum of Understanding upon giving the Ministry written notice. If, after 30 days from the date of such notice, MCC determines that the cause or causes for such suspension have not been corrected (if capable of cure) or still exist, MCC may terminate assistance and provide written notice of such termination to the Ministry.

**ARTICLE IV.**

**GENERAL**

Section 4.1 Communications. Unless otherwise agreed by MCC and the Ministry in writing, any notice, request, report, document or other communication required, permitted, or submitted by either party to the other under this Memorandum of Understanding will be (a) in writing, (b) in English, and (c) deemed duly given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient party, if not, then on the next business day; or (iii) one (1) business day after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt, and will be notified at the address indicated below, or at such other address as such party may designate:

To MCC:

Millennium Challenge Corporation  
Attention: John Hewko, Vice President for Operations  
(with a copy to the General Counsel)  
875 Fifteenth Street, N.W.  
Washington, DC 20005  
United States of America  
Tel: (202) 521-3600  
Fax: (202) 521-3700  
Email: VPOperations@mcc.gov (Vice President for Operations)  
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

To the Ministry:

Ministère des Affaires Etrangères et de la Coopération Internationale  
Attention: Son Excellence Monsieur Moctar OUANE  
Koulouba - Bamako  
Mali  
Tel: (223) 222 37 43 / 222 37 44  
Fax: (223) 222 52 26 / 223 00 56  
Email: boncanamaiga2000@yahoo.fr

Section 4.2 Representatives. For all purposes relevant to this Memorandum of Understanding, the Ministry will be represented by the individual holding the position of, or acting as, Minister of Foreign Affairs, and MCC will be represented by the individual holding the position of, or acting as, Vice President for Operations, (each referred to as a “***Principal Representative***”), each of whom, by written notice, may designate one or more additional representatives (each, an “***Additional Representative***”) for all purposes other than signing amendments to this Memorandum of Understanding. MCC or the Ministry may change its Principal Representative under this Memorandum of Understanding to a new representative of equivalent or higher rank and seniority upon written notice to the other party.

Section 4.3 Amendment. This Memorandum of Understanding may be amended or modified in writing by the Principal Representatives of MCC and the Ministry.

**SIGNATURE PAGE FOLLOWS ON NEXT PAGE**

**IN WITNESS WHEREOF**, MCC and the Government, each acting through its duly authorized representative, have caused this Memorandum of Understanding to be executed in their names and delivered as of this 3rd day of April, 2006.

**MILLENNIUM CHALLENGE  
CORPORATION**

**MINISTRY OF FOREIGN AFFAIRS**

By: \_\_\_\_\_ / s / \_\_\_\_\_

Name: John Hewko

Title: Vice President for Operations

By: \_\_\_\_\_ / s / \_\_\_\_\_

Name: Moctar Ouane

Title: Minister of Foreign Affairs

**SIGNATURE PAGE TO MEMORANDUM OF UNDERSTANDING ON  
COMPACT DEVELOPMENT BETWEEN THE MILLENNIUM CHALLENGE CORPORATION AND  
THE GOVERNMENT OF THE REPUBLIC OF MALI ACTING THROUGH THE MINISTRY OF FOREIGN AFFAIRS**

## ANNEX I

### 1. Description of Activities.

The assistance will be used for the engagement of local and international specialists through an existing MCC Architecture and Engineering Services Indefinite Delivery/Indefinite Quantity (IDIQ) Contract for the performance of the Activities under two Service Provider Contracts: (a) a Service Provider Contract for performing pre-feasibility and feasibility studies of the proposed Airport and Industrial Park Project; and (b) a Service Provider Contract for performing pre-feasibility and feasibility studies of the Office du Niger Project. The Activities funded under these Service Provider Contracts will provide MCC with more complete information on the technical, environmental, financial, economic, and institutional aspects of the proposed investments. Specifically, the studies will provide engineering conceptual design, pre-feasibility and feasibility level design and cost estimates, social/environmental analyses, including public consultation, and financial and economic evaluations for the proposed Project components and sub-components. These studies will build on previous studies carried out by the Government and MCC, and comprise the following:

**Bamako-Sénou Airport and Industrial Park Project Studies.** The Activities under this Service Provider Contract will be carried out in two phases:

- **Phase 1** - This phase will take approximately four months and will include definitional studies, pre-feasibility analyses, initial environmental and social analyses, and initial design. The work will include, to the level of detail possible, pre-feasibility level designs of essential infrastructure; preliminary cost estimates; and preliminary financial and economic analyses.
- **Phase 2** - This phase will take approximately six months and will commence only upon a notice to proceed from MCC and following a full review of the Phase 1 Report. These studies will involve more detailed and refined analyses of the studies completed in Phase 1, and will include the full feasibility study, Category A Environmental Impact Assessment, improved and updated cost estimates, and financial and economic analyses.

The Activities to be financed will include activities to:

- Complete conceptual and preliminary engineering design of the identified Airport Project components, developed to pre-feasibility level (Phase 1 Report) and feasibility level (Draft Final Report).
- Conduct design review, prepare design and construction contract packaging (Overall Project Infrastructure plus Early Action Items).
- Evaluate investment alternatives based on technical, social, environmental assessments, and financial and economic feasibility and the preferred service arrangements for each infrastructure component.

- Develop an implementation schedule for all project components, including design, procurement, project management, training and construction. Assess and recommend alternative project delivery systems.
- Prepare initial social and environmental analyses at pre-feasibility stage and Category A Environmental Impact Assessment at the feasibility stage, in conformity with MCC Environmental Guidelines, relevant World Bank Operational Policies and Malian Law.
- Prepare a Resettlement Action Plan in accordance with World Bank OP 4.12 on Involuntary Resettlement, at feasibility stage.
- Determine adequacy and costs of proposed social and environmental mitigation features.
- Liaise closely with and participate in the review of any project preparation work being undertaken by other consultants and MCC.

**Office du Niger Project Studies.** The Activities under this Service Provider Contract will be carried out in two phases:

- **Phase 1** - This phase will take approximately four months and will include definitional studies, pre-feasibility analyses, initial environment and social analysis, and initial design. In particular, the work will examine in detail the technical feasibility of extending the area irrigated by 15,000 gross hectares with regard to the capacity of the main conveyance channels, water availability during the low flow season and the actual overall efficiency of the irrigation system. The work will also include, to the level of detail possible, pre-feasibility level designs of main infrastructure; initial social and environmental analyses; preliminary cost estimates; and preliminary economic and financial analyses.
- **Phase 2** - This phase will take approximately six months and will commence only upon a notice to proceed from MCC and following a full review of the Phase 1 report. These studies will involve more detailed and refined analyses of the studies completed in Phase 1, and will include the full feasibility study to extend the project area, within the present hydraulic and hydrological conditions and corresponding measures to address existing constraints, improve and update cost estimates, and refine economic and financial analyses.

The Activities to be financed will include activities to:

- Complete conceptual and preliminary engineering design of the identified components of the Office du Niger Project, developed to pre-feasibility level (Phase 1 Report) and feasibility (Draft Final Report).
- Conduct design review, value engineering and prepare design and construction contract packaging.

- Assess the technical, social, environmental and financial and economic feasibility and sustainability of the Office du Niger Project and recommend service arrangements for each Office du Niger Project activity.
- Develop an implementation schedule for all Office du Niger Project components, including design, procurement, management, training and construction. Assess/recommend alternative project delivery systems.
- Prepare initial social and environmental analyses at pre-feasibility stage and Category A Environmental Impact Assessment at the feasibility stage, in conformity with MCC Environmental Guidelines, relevant World Bank Operational Policies and Malian Law.
- Prepare a Resettlement Action Plan in accordance with WB OP 4.12 on Involuntary Resettlement, at feasibility stage.
- Determine adequacy and costs of proposed social and environmental mitigation features.
- Liaise closely with and participate in the review of any project preparation work being undertaken by other consultants and MCC.

## **2. Service Provider Contracts.**

The Service Providers will be selected in accordance with the terms of United States Government procurement requirements and MCC's existing IDIQ contract. MCC will make payments from time to time to the Service Providers pursuant to and in accordance with the terms of such Service Provider Contracts. MCC will follow United States Government procurement rules and practices applicable to MCC and other MCC standard procurement practices for the for the procurement of goods, if any, in connection with the Activities.

The commencement of all or any part of the Phase 2 Studies under each Service Provider Contract will be contingent upon the delivery by MCC of a written notice to the relevant Service Provider to proceed with all or part of such Phase 2 Studies.

MCC may assign its rights and obligations under such Service Provider Contract to the Government, a permitted designee of the Government or a third party, pursuant to and in accordance with the terms of the relevant Service Provider Contract.

## **3. Budget.**

The total budget for MCC assistance under the Memorandum of Understanding will not exceed \$9,700,000.

## **4. Responsibilities of the Government of the Republic of Mali.**

(a) General. The Government will participate in the following aspects of the implementation of the assistance and will have the obligations and responsibilities set forth in Section 2.3 of the Memorandum of Understanding:

- (i) Review the terms of reference for each Activity;
  - (ii) Appoint at least one qualified representative of the Government having appropriate technical expertise in the area(s) relevant to an Activity to participate as a member of the technical selection committee for the Service Provider for such Activity;
  - (iii) Facilitate and cooperate in the obtaining of all necessary permits, consents, and approvals necessary or advisable for the successful performance of all aspects of each Activity, and assist in the identification and contracting of appropriate office space by each Service Provider at such Service Provider's expense;
  - (iv) Provide such other documents or information as may be requested from time to time by MCC, and provide a prompt response to any such request for verification or information;
  - (v) Ensure a qualified representative of the Government with the relevant technical expertise is available to assist any Service Provider or MCC in the provision of the Activities; *provided*, that such assistance will only be provided if so directed by MCC;
  - (vi) Ensure that each representative specified in item (v) above is available to accompany and learn from each Service Provider, so that such representative may develop and further strengthen his/her skill set to perform such tasks in the future;
  - (vii) Agree to incorporate the deliverables provided by the Service Providers and approved by MCC into a Compact; and
  - (viii) Inform each Service Provider of, and as appropriate, facilitate access by each Service Provider to, relevant donor, industry and technical meetings in such Service Provider's field.
- (b) The Government will, in connection with the mobilization of each Service Provider:
- (i) Perform an introduction and orientation for the Service Provider at the commencement of activity start-up and perform regular consultations with the Service Provider, at either the Service Provider's or MCC's request;
  - (ii) Participate in the monitoring of the Service Provider's performance and the progress of each Activity; review and comment on work plans, reports and other major deliverables;
  - (iii) In a timely manner, respond to the Service Provider's requests for contact information and for organizing meetings with local private sector, civil society, and public agencies as needed to facilitate the tasks called for in the terms of reference; and
  - (iv) Coordinate regular conference calls, every fifteen days or at such additional intervals as may be requested by either party, among the Government, the Service

Provider and MCC, in order to review the progress and any issues associated with the fulfillment of the Activities.