

COMPACT DEVELOPMENT GRANT AGREEMENT FOR INITIAL ENGAGEMENT

BETWEEN

THE MILLENNIUM CHALLENGE CORPORATION

AND

THE GOVERNMENT OF THE REPUBLIC OF SENEGAL

FOR THE DEVELOPMENT OF A MILLENNIUM CHALLENGE COMPACT

Dated as of April 6, 2016

COMPACT DEVELOPMENT GRANT AGREEMENT FOR INITIAL ENGAGEMENT

This COMPACT DEVELOPMENT GRANT AGREEMENT FOR INITIAL ENGAGEMENT (this “*Agreement*”) is made between the Millennium Challenge Corporation (“*MCC*”), a United States Government corporation, and the Republic of Senegal acting through its (the “*Government*”), as represented by its Ministry of Infrastructure, Land Transport, and Improved Access. The Government and MCC are referred to herein as the “*Parties*” and each, individually, a “*Party*.”

RECITALS

WHEREAS, the Board of Directors of MCC has determined that the Republic of Senegal (“*Senegal*”) is eligible for assistance from the Millennium Challenge Account, and the Parties seek to enter into a Millennium Challenge Compact to advance economic growth and reduce poverty in Senegal (a “*Compact*”);

WHEREAS, the Parties wish to facilitate the development and implementation of such a Compact by providing funds for the assembly of a dedicated team of professional staff (the “*UCF-MCA Senegal*”) that will be responsible for managing the preliminary analysis, problem identification and project definition phases of compact development, leading up to the submission of acceptable concept notes and concept papers (“*Program Proposal*”); and

WHEREAS, MCC wishes to make a grant to the Government to support such activities under the authority of Section 609(g) of the Millennium Challenge Act of 2003, as amended (the “*MCA Act*”);

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE 1.
MCC GRANT

Section 1.1 MCC Grant. MCC hereby grants to the Government, under the terms of this Agreement, an amount not to exceed Seven Hundred and Fifty thousand U.S. Dollars (US\$750,000) (the “*Grant*”) to fund, on a reimbursable basis, certain costs associated with engaging the UCF-MCA Senegal and any consultants, as well as any associated administrative costs, as described in Annex I (the “*Eligible Costs*”).

Section 1.2 Budget. The Grant will be allocated among the Eligible Costs as generally described in Annex II.

Section 1.3 Term. Unless otherwise agreed in writing between the Parties, this Agreement will terminate on the earlier of (a) the date on which the Grant has been disbursed and fully expended and final payment has been made in accordance with this Agreement, and (b) the date on which either Party terminates this Agreement in accordance with Section 3.2.

ARTICLE 2.

IMPLEMENTATION AND DISBURSEMENT OF THE GRANT

Section 2.1 Reimbursement Request Process.

(a) Reimbursement Requests. The Government may request a disbursement of the Grant for reimbursement of Eligible Costs (each, a “*Reimbursement*”) by submitting a written request and certification to MCC substantially in the form of Annex III (each, a “*Request*”), duly completed, at least ten (10) business days prior to the requested date of payment (or such other period of time as may be agreed by MCC). Unless otherwise agreed by MCC, the Government may submit only one Request for each month (such month, or any other period of time as agreed by MCC, a “*Period*”). For purposes of this Section 2.1(a), a “business day” means a day, other than a Saturday or Sunday, when commercial banks in the United States are open.

(b) Approval of Request; Release of Grant Funding. Subject to MCC's approval of a Request, the Reimbursement approved thereunder may be transferred to the account designated by the Government to receive such funding.

Section 2.2 Government Resources. The Government agrees that the Grant is intended to make funds available to expedite the Compact development process, and is not intended to serve as a substitute for Government resources. Accordingly, the Government will not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the Eligible Costs.

ARTICLE 3.

SPECIAL PROVISIONS

Section 3.1 Use of Funds. The Government acknowledges and agrees that no Grant funding will be used for any purpose that would violate United States law or policy (including the MCA Act) as specified in this Agreement or as further notified to the Government in writing by MCC or by posting at www.mcc.gov (the “*MCC Website*”).

Section 3.2 Termination and Suspension.

(a) Each Party may terminate this Agreement without cause 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 Agreement upon giving the Government written notice of the cause for such suspension. If, after 30 days from the date of such notice, MCC determines that the cause for such suspension has not been corrected (if capable of cure) or still exists, MCC may immediately terminate the assistance. In such case, MCC will provide written notice of such termination to the Government.

Section 3.3 Refunds.

(a) If any portion of the Grant is used for any purpose in violation of the terms of this Agreement, then MCC may require the Government to repay to MCC in United States Dollars the value of the misused portion, plus interest within thirty (30) days after the Government's receipt of MCC's request for repayment. The Government will not use the Grant or any proceeds thereof to make such repayment.

(b) If the Government fails to repay any amount under this Section 3.3 when due, interest will be due to MCC on such unpaid amount. Interest will accrue on such unpaid amount at a rate equal to the then-current US Treasury Current Value of Funds Rate, calculated on a daily basis and a 360-day year from the due date of such repayment until such amount is paid in full. Any such repayment will first be credited against interest due and, once the interest due amount is extinguished, then repayments will be credited against outstanding principal.

(c) Notwithstanding any other provision in this Agreement or any other agreement to the contrary, MCC's right under this Section 3.3 for repayment will continue during the term of this Agreement and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

Section 3.4 Taxes. Unless the Parties otherwise specifically agree in writing, and subject to the provisions of this Section 3.4, the Grant will not be used for the payment of any existing or future taxes, duties, levies, contributions or other similar charges ("**Taxes**") of or in Senegal (including any such Taxes imposed by a national, regional, local or other governmental or taxing authority of or in Senegal). The Parties acknowledge and agree that the foregoing includes, *inter alia*, value added and other transfer taxes, profit and income taxes, property, stamp duty and *ad valorem* taxes, import and export duties and taxes (including for goods imported and re-exported for personal use), withholding taxes, payroll taxes, and social security and social insurance contributions. Unless otherwise agreed in writing by the Parties, the provisions of this Section will not apply to income Taxes on and contributions with respect to individuals or legal persons who are nationals of Senegal and individuals who are permanent residents in Senegal, *provided that* such Taxes and contributions are not discriminatory and are generally applicable to all nationals or permanent residents in Senegal.

Section 3.5 Reports. The Government will provide to MCC within 30 days of a written request by MCC, or as otherwise agreed by MCC and the Government in writing, such other reports and documents as MCC may request from time to time in connection with any Eligible Costs or Reimbursement.

(a) Government Books and Records. The Government will maintain accounting books, records, documents and other evidence relating to this Agreement adequate to show to MCC's satisfaction the use of all Grant funding (collectively, the "**Records**"). The Government must maintain Records for at least five years after the end of the term of this Agreement or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements. The Government will furnish, or cause to be furnished to MCC, upon MCC's request all such Records.

(b) Access; Audits. Upon MCC's request, the Government at all reasonable times will permit, or cause to be permitted, authorized representatives of MCC, an authorized Inspector General of MCC, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Agreement, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the activities contemplated herein, the opportunity to audit, review, evaluate or inspect facilities, assets, and activities funded in whole or in part by MCC. Any audit conducted in connection with this Agreement or any transaction contemplated hereby will be prepared in accordance with the "Guidelines for Financial Audits" provided by MCC or posted on the MCC Website.

ARTICLE 4.
GENERAL

Section 4.1 Governing Law; Consultations.

(a) This Agreement will be governed by and construed in accordance with the laws of the State of New York, without giving effect to any conflict of law principles.

(b) Any dispute with regard to this Agreement will be resolved between the Parties through consultations.

(c) In matters arising under or relating to this Agreement, neither Party will be deemed to have submitted to the jurisdiction of the courts of or in the State of New York or any other court or judicial body.

Section 4.2 Representatives. For all purposes relevant to this Agreement, the Government will be represented by the individual holding the position of, or acting as, the Minister of Infrastructure, Land Transport, and Improved Access, and MCC will be represented by the individual holding the position of, or acting as, the Vice President for Compact Operations (each of the foregoing, a "**Principal Representative**"). Each Principal Representative may, by written notice to the other Party, designate one or more additional representatives (each, an "**Additional Representative**") for all purposes other than signing amendments to this Agreement. MCC hereby appoints as an Additional Representative the individual holding the position of, or acting as, Deputy Vice President for Africa. A Party may change its Principal Representative to a new representative of equivalent or higher rank upon written notice to the other Party.

Section 4.3 Communications. Any document or communication required or submitted by either Party to the other under this Agreement must be submitted in writing and, except as otherwise agreed with MCC, in English to such Party's Principal Representative, and, if applicable, to such Party's Additional Representative(s), at such address as may be provided from time to time.

Section 4.4 Counterparts. Except as the Parties may otherwise agree in writing from time to time, this Agreement and any related notice, certificate, instrument, agreement, or other document may be executed using counterpart signatures and, each when so executed and

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delivered, will be an original instrument, but such counterparts together will constitute a single agreement. A signature delivered by facsimile or electronic mail will be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying related notice, certificate, instrument, agreement or other document on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Such signature will be accepted by the receiving Party as an original signature and will be binding on the Party delivering such signature.

Section 4.5 Relationship Between the Parties. Nothing in this Agreement will be construed to constitute or create a partnership, agency relationship, joint venture or equity or similar interest between the Parties. Neither Party has the power or authority to act on behalf of the other Party, except as expressly authorized by the other Party in writing.

Section 4.6 No Assurance of Future Assistance. Nothing contained in this Agreement will be construed as creating an obligation on the part of MCC to provide any further funding or assistance other than the Grant, including, without limitation, the provision of any funding for a Compact or any other project or program in Senegal.

Section 4.7 Amendment. This Agreement may be amended or modified by written agreement of the Parties.

Section 4.8 Severability. If one or more provisions of this Agreement is held to be unenforceable, such provision(s) will be excluded from this Agreement and the balance of this Agreement will be interpreted as if such provision(s) were so excluded and will be enforceable in accordance with its terms.

Section 4.9 Survival. The Government's obligations under Article 3 survive the expiration, suspension or termination of this Agreement.

Section 4.10 References to MCC Website. Each reference in this Agreement or any other agreement entered into in connection with this Agreement to a document or information available on, or notified by posting on, the MCC Website will be deemed a reference to such document or information as updated or substituted on the MCC Website from time to time.

Section 4.11 Entire Agreement. This Agreement, including all annexes hereto, will constitute the entire agreement of the Parties with respect to the subject matter hereof and the transactions contemplated hereby, superseding and extinguishing all prior agreements, understandings, negotiations and representations and warranties, whether oral or written, relating to the subject matter hereof.

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IN WITNESS WHEREOF, MCC and the Government, each acting through its duly authorized representative, have caused this Agreement to be executed in their names and delivered as of the date first written above. This Agreement will become effective on and as of the date the Agreement is executed by the Parties.

MILLENNIUM CHALLENGE
CORPORATION

THE GOVERNMENT OF THE REPUBLIC
OF SENEGAL

By: _____ /S/
Name: Kamran M. Khan
Title: Vice President, Compact Operations

By: _____ /S/
Name: Mansour Elimane Kane
Title: Minister of Infrastructure, Land
Transport, and Improved Access

ANNEX I

DESCRIPTION OF THE ASSISTANCE

Unless the Parties otherwise agree in writing, Eligible Costs for Reimbursement under the Grant include UCF-MCA Senegal Compensation and Fees as such are defined and described in subsections (a) and (b) to this Annex I.

(a) *UCF-MCA Senegal Compensation.* The Grant is available to reimburse the Government for the payment of Eligible Costs it incurs in furtherance of the development of the Program Proposal. The UCF-MCA Senegal may be comprised of individuals engaged under employment agreements or consulting agreements. For the avoidance of doubt, such Eligible Costs with respect to the UCF-MCA Senegal will be limited to costs associated with salaries, consulting fees, and any related benefits (such as pensions, health coverage and disability pay), holidays and leave (collectively, “*Compensation*”).

The Grant is available to reimburse the Government for Compensation only for the following members of the UCF-MCA Senegal and consistent with the timeframes for eligibility for reimbursement set forth below. The Government will be responsible for withholding all applicable withholding taxes under Senegal law for all Senegal payees. For the avoidance of doubt, the Grant will not be used for any mandatory severance or termination indemnities or payments, or any similar end-of-term payments that may be owed to employees as a matter of Senegal law.

UCF MCA-Senegal Member	Timeframe for Eligibility for Reimbursement
National Coordinator	Upon signing of this Agreement
Economist 1	
Economist 2	
Social and Gender Specialist	
Private Sector Development Specialist	
Outreach/Consultation Lead	
Monitoring and Evaluation Specialist	After the Parties agree on the binding constraints, as identified through the Constraints to Economic Growth Analysis
One or more sector leads, to be determined by mutual agreement of the Parties	
Environmental and Social Performance Specialist	

(b) *Fees for Services.* Unless MCC otherwise agrees in writing, fees for services are permitted on a limited basis to finance a limited range of activities to facilitate the development of a compact program, including fees for services procured in order to provide (i) support for conducting the constraints analysis, (ii) support for conducting public consultations, and (iii) support for conducting the root cause analysis workshop(s), and (iv) support for conducting market analysis (“*Fees*”).

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(c) *Other Costs.* For the avoidance of doubt, the Grant will not be used to fund UCF-MCA Senegal administrative costs, including travel, office expenses, equipment or vehicles.

(d) *Costs Principles and Procurements.* Reimbursement of Eligible Costs for Compensation and Fees will each be subject to MCC's determination that: (i) the actual costs are reasonable, allowable and allocable, all as set forth in *MCC Cost Principles for Accountable Entity Operations* available on the MCC Website and as may be updated from time to time (the "*Cost Principles*"); and (ii) open, fair and competitive procedures are used in a transparent manner for the procurement of services, and the process for such procurement has been agreed in writing with MCC in advance of the commencement of the procurement. With respect to such procurements, MCC reserves the right to: (1) require a procurement plan to clarify the purpose, type and cost of procurements; (2) amend or approve applicable standard bidding documents used by the Government; (3) approve applicable terms of reference or statements of work and evaluation reports; (4) participate as an observer in the evaluation process; (5) approve the evaluation report; and (6) approve the final contract.

In addition, prior to the initial Request for Reimbursement for a particular UCF-MCA Senegal member's Compensation, the Government shall have submitted to MCC: (A) that UCF-MCA Senegal member's fully executed employment agreement, including a clear indication of the salary of the employee and the start date of his/her employment; and (B) a curriculum vitae of that employee. Each such employee shall be properly qualified to perform the tasks set forth in the applicable employment agreement. The determination regarding proper qualifications and compliance with the Cost Principles shall be made in MCC's sole discretion.

(e) *Requests for Reimbursement.*

Each Request shall include the following:

1. Completed timesheets for each reimbursement period signed by each relevant member of the UCF-MCA Senegal and approved by an authorized official acceptable to MCC.
2. Request form summarizing Eligible Costs to be reimbursed and an invoice "certified" by the Government of Senegal as true and correct.
3. Government's banking information for the reimbursement (Bank name, account number, routing information (IBAN/SWIFT, *etc.*), currency for remittance (United States dollars preferred).

Payments of Eligible Costs will be made in accordance with Section 2.1 of this Agreement. MCC will pay the reimbursement request in United States Dollars (USD) or in West African CFA Franc at MCC's discretion. If payment is made in USD, the exchange rate, if applicable will be determined from an official source that MCC specifies for the value date of each payment transaction.

ANNEX II
BUDGET

Eligible Costs	Budget (US\$)
UCF-MCA Senegal Compensation (Reimbursement)	\$730,000
Fees (Reimbursement)	\$20,000
Total Estimated MCC Contribution	\$750,000

**ANNEX III
FORM OF REQUEST**

[Letterhead of UCF-MCA Senegal/Office of the Prime Minister]

Reference is made to the Compact Development Grant Agreement for Initial Engagement between the Republic of Senegal, acting through its Government (the “**Government**”), and the Millennium Challenge Corporation, a United States Government corporation (“**MCC**”), dated as of [date], 2016 (the “**Agreement**”). Capitalized terms used but not defined herein shall have the meanings given such terms in the Agreement.

[I][We], the undersigned, as [Title of the Government Official(s)], pursuant to Section 2.1 of the Agreement, hereby submit this Request and certif[ies][y] as follows:

- (a) Attached hereto is a true and correct copy of each UCF-MCA Senegal member’s timesheet for the period for which Reimbursement is being requested;
- (b) Attached hereto is a true and correct copy of the invoice for services for which Reimbursement is being requested;
- (c) No material default or breach of any covenant, obligation or responsibility by the Government has occurred and is continuing under the Agreement;
- (d) Eligible Costs to be reimbursed under this Request will not violate any applicable law or regulation; and
- (e) No act, omission, condition, or event has occurred that would be the basis for MCC to suspend or terminate, in whole or in part, the Agreement in accordance with Section 3 of the Agreement.

[Signature]
Printed/Typed Name:
Title: []

Remit to:
Account Name:
Account Number:
Bank Name:
SWIFT Code:
For the Credit of:

Attachments: Form of Timesheet[Senegal may provide own form of timesheet subject to MCC approval]

Implementing Entity:

Project Name: Program Administration

MONTHLY EMPLOYEE TIMESHEET

Staff member: _____ Month & Year: _____ Duty Station: _____

	Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total hours	Total days	
a)	Present at work																																	0	0
b)	Weekends 1/																																		
c)	Official Holidays 1/																																		
d)	Annual Leave 2/																																		
e)	Sick Leave (Certified) 3/																																		
f)	Maternity Leave 3/																																		
g)	Special Leave Without Pay 4/																																		
h)	Compensatory Time-Off 5/																																		
i)	Special Leave with Full Pay 4/																																		
j)	Travel /6																																		

Employee _____
Signature of employee *Date*

Supervisor _____
Signature of supervisor *Date*