

MILLENNIUM CHALLENGE CORPORATION THRESHOLD PROGRAM

GRANT AGREEMENT

BETWEEN

**THE UNITED STATES OF AMERICA,
ACTING THROUGH THE MILLENNIUM CHALLENGE CORPORATION**

AND

THE REPUBLIC OF KENYA

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THRESHOLD PROGRAM GRANT AGREEMENT

PREAMBLE

This THRESHOLD PROGRAM GRANT AGREEMENT (this “*Agreement*”) is made between the United States of America (the “*United States*”), acting through the Millennium Challenge Corporation (“*MCC*”), and the Republic of Kenya (the “*Government*”) (collectively the “*Parties*,” and each individually, a “*Party*”).

Recognizing that MCC, an implementing agency for the United States, is authorized to provide assistance under Section 616 of the Millennium Challenge Act of 2003, as amended (the “*MCA Act*”), to selected candidate countries that have demonstrated a commitment to strengthening good governance, economic freedom, and investments in people in order to assist such countries to become eligible for a Millennium Challenge Compact (the “*Threshold Program*”);

Recalling that MCC has selected Kenya as eligible for the Threshold Program; and

Recognizing that the Parties wish to implement the program described herein to achieve the goals and objectives described herein (as such program description and objectives may be amended from time to time in accordance with the terms hereof, the “*Program*”).

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1.

GOAL AND OBJECTIVES

Section 1.1 Program Goal. The overall goal of this Agreement is to assist Kenya to become eligible for a Millennium Challenge Compact by supporting the implementation of critical policy and institutional reforms that address binding constraints to economic growth in Kenya (the “*Program Goal*”). MCC’s assistance provided under this Agreement seeks to strengthen good governance, economic freedom, and investments in the people of Kenya.

Section 1.2 Project Objectives. The Program consists of the projects described in Annex I (each, a “*Project*” and collectively, the “*Projects*”). The objective of each of the Projects (each, a “*Project Objective*” and collectively, the “*Project Objectives*”) is as follows:

(a) The objective of the Integrated Transport Planning Project is to provide better multimodal transport system planning for Nairobi;

(b) The objective of the First and Last Mile Connections Project is to improve connectivity and provide safer access to the mass public transport system in a targeted area of Nairobi;

(c) The objective of the Land Use Planning Project is to clarify land use and development control policy in a targeted area of Nairobi in order to facilitate the construction of non-motorized transport infrastructure, which shall be supported under the Program; and

(d) The objective of the Blended Finance for the Bus Rapid Transit (“**BRT**”) Project is to catalyze financing required for the implementation of the bus rapid transit system in a manner that promotes lower greenhouse gas emissions.

ARTICLE 2.

GRANT FUNDING

Section 2.1 Grant Funding.

(a) MCC hereby grants to the Government, subject to the terms of this Agreement, an amount not to exceed sixty million United States Dollars (USD \$60,000,000) (the “**Grant**”) to support implementation of the Program, as such Program is described in greater detail in Annex I.

(b) The Grant shall be disbursed from time to time (each, a “**Disbursement**”) in accordance with the terms of this Agreement, including any conditions to disbursement contained in this Agreement.

(c) Annex II sets forth the allocation of Grant funding for the Program.

Section 2.2 Interest. To the extent that any interest or other earnings accrue on the Grant before such funding is used for a Program purpose, the Government shall pay or transfer such amounts to MCC, in accordance with this Agreement.

Section 2.3 Government Resources; Budget.

(a) The Government shall provide all funds and other resources, and take all other actions, that are necessary to carry out the Government’s responsibilities and obligations under this Agreement.

(b) The Government shall ensure that the amount of the Grant that it receives or is projected to receive in each of its fiscal years is fully accounted for and identified in its annual, public budget presentation.

(c) Unless the Government discloses otherwise to MCC in writing, the Grant shall be in addition to, and shall not replace, the resources that the Government would otherwise receive or budget for the activities implemented under the Program.

Section 2.4 Use of the Grant.

(a) The Government shall ensure that the Grant and any Program Assets or services funded by the Grant, in whole or in part, are used solely in furtherance of this Agreement and the Program.

(b) The Government also shall ensure that no Grant funding is used for any purpose that would violate United States law or policy, as specified in this Agreement or as further notified to the Government in writing by MCC, including but not limited to the following purposes:

(i) for assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(ii) for any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(iii) to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health or safety hazard, as further described in MCC's Environmental Guidelines provided by MCC or posted at www.mcc.gov (the "MCC Website") and any guidance documents issued by MCC in connection with such guidelines (collectively, "MCC Environmental Guidelines"); or

(iv) to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

Section 2.5 Taxes.

(a) Unless the Parties agree otherwise, the Government shall ensure that the Grant is free from any and all existing or future taxes, duties, levies, contributions, or other similar charges (but not fees or charges for services that are generally applicable in Kenya, reasonable in amount and imposed on a non-discriminatory basis) ("**Taxes**") of or in Kenya (including any such Taxes imposed by a national, regional, local or other governmental or taxing authority of or in Kenya). Specifically, and without limiting the generality of the foregoing, the Government agrees that the general exemption of the previous sentence applies to (i) any tariffs, customs duties, import taxes, export taxes, and other similar charges on any goods, works or services introduced into Kenya in connection with the Program; (ii) sales tax, goods and services tax, value-added tax, excise tax, property transfer tax, and other similar charges on any transactions involving goods, works, or services in connection with the Program; (iii) taxes and other similar charges on ownership, possession or use of any property in connection with the Program; and (iv) taxes and other similar charges on income, profits or gross receipts attributable to work performed in connection with the Program and related social security taxes and other similar charges on all natural or legal persons performing work in connection with the Program except, in the case of this clause (iv), (A) natural persons who are citizens or permanent residents of Kenya; and (B) legal persons formed under the laws of Kenya (but excluding the Accountable

Entity and any other entity formed for the purpose of implementing the Government's obligations hereunder).

(b) The Government agrees to use the mechanism set forth in Annex V to implement the Tax exemption required by Section 2.5(a). If necessary, the Parties may enter into one or more additional agreements to further define and detail the mechanisms to implement and ensure the benefits of the exemption from Taxes contemplated by Section 2.5(a). Such mechanisms may include exemptions that have been granted in accordance with applicable law, refund or reimbursement of Taxes by the Government to MCC, the Accountable Entity, or to the taxpayer, or payment by the Government to the Accountable Entity or MCC, for the benefit of the Program, of an agreed amount representing any collectible Taxes on the items described in this Section 2.5.

(c) If a Tax has been paid contrary to the requirements of this Section 2.5, the Government shall refund promptly to MCC (or to another party as designated by MCC) the amount of such Tax in the currency of Kenya or, United States dollars within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing (whether by MCC or the Accountable Entity) that such Tax has been paid.

(d) The Government may not apply any portion of the Grant, including any proceeds thereof, or Program Assets, to satisfy its obligations under this Section 2.5.

ARTICLE 3.

GOVERNMENT ASSURANCES AND RESPONSIBILITIES

Section 3.1 Government Assurances. The Government hereby assures MCC that the information provided to MCC by or on behalf of the Government in the course of reaching this Agreement is true, correct, and complete in all material respects.

Section 3.2 Government Responsibilities.

(a) Principal Responsibility. The Government is responsible for overseeing and supervising the implementation of the Program.

(b) Accountable Entity. The Government hereby designates the Kenya Millennium Development Fund, a state corporation (body corporate) that shall have a board of directors and other characteristics and features as discussed in Part B of Annex I, to implement the Program and to exercise and perform the Government's right and obligation to oversee, manage and implement the Program, including without limitation, managing the implementation of the Projects, allocating resources, and managing procurements. Such entity shall: (i) be referred to herein as the "**Accountable Entity**"; (ii) have the authority to bind the Government with regard to the Program (including, without limitation, the legal authority to execute contracts, grants, cooperative agreements, or other, similar arrangements); and (iii) act in accordance with MCC's *Policy for Accountable Entities and Implementation Structures* provided by MCC or posted on the MCC Website (the "**MCC Governance Guidelines**") (to the extent applicable to the Threshold Program and as may be further instructed by MCC from time to time). The designation of the Accountable Entity contemplated by this Section 3.2(b) does not

relieve the Government of any obligations or responsibilities hereunder or under any related agreement for which the Government remains fully responsible. MCC hereby acknowledges and consents to the designation in this Section 3.2(b). With the prior written consent of MCC, the Government shall designate certain qualified Government employees to serve as interim staff of the Accountable Entity's Operations Unit, via secondment or similar staffing action, until such time as the Accountable Entity engages employees in accordance with Section B.2 of Annex I to this Agreement (the "***Interim Accountable Entity Team***"). The Government shall pay all costs related to the Interim Accountable Entity Team and to performing the necessary duties of the Accountable Entity until such time as the Accountable Entity engages employees. The Government and MCC hereby acknowledge and agree that, upon MCC's consent to the Government's designation of an individual as a member of the Interim Accountable Entity Team, such individual shall be considered for the purpose of this Agreement to be authorized to take actions as if such individual were a permanent member of the Operations Unit for so long as that individual is a member of the Interim Accountable Entity Team.

(c) Policy Performance. In addition to undertaking the specific policy, legal, and regulatory reform commitments identified in this Agreement (if any), the Government shall seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the MCA Act, and the selection criteria and methodology used by MCC.

(d) Achievement of Project Objectives. The Government shall take all necessary or appropriate steps to achieve each of the Project Objectives prior to the Completion Date (including, without limitation, funding all costs that exceed the Grant and are required to carry out the terms hereof and achieve such objectives, unless MCC agrees otherwise).

(e) Intellectual Property. The Government hereby grants to MCC a perpetual, irrevocable, royalty-free, worldwide, fully paid, assignable right and license to practice or have practiced on its behalf (including the right to produce, reproduce, publish, repurpose, use, store, modify or make available) any portion or portions of Intellectual Property as MCC sees fit in any medium, now known or hereafter developed, for any purpose whatsoever.

(f) Impoundment; Liens or Encumbrances. The Government shall ensure that neither the Grant nor any asset acquired with Grant funding is at any time subject to any impoundment, rescission, sequestration, liquidation, lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each, a "***Lien***"), except with MCC's prior written approval. In the event any Lien is nonetheless imposed, the Government shall promptly seek the release of such Lien and, if such Lien is imposed by a final non-appealable court order, shall pay any amounts due in order to obtain such release; *provided, however*, that the Government may not apply any portion of the Grant, including any proceeds thereof or Program Assets, to satisfy any of its obligations under this Section 3.2(f); and *provided, further*, that nothing in this Section 3.2(f) shall be deemed to waive any immunities enjoyed by the Government under international law.

(g) Insurance; Performance Guaranties. The Government shall ensure to MCC's satisfaction that all Program Assets are insured and arrange such other appropriate insurance to cover against risks or liabilities associated with the Program and the transactions contemplated thereby, including by requiring Providers or Covered Providers to obtain adequate insurance and

to post adequate performance bonds or other guaranties. The Government or the Accountable Entity shall be named as the payee (or an additional insured, as the case may be) on any such insurance and the beneficiary of any such guaranty or bonds. The Government shall promptly notify MCC of the payment of any proceeds from claims paid under such insurance or guaranty, and ensure that any such proceeds are used to replace or repair any lost, stolen, or damaged Program Assets; *provided, however*, that, at MCC's election, such proceeds shall be deposited in an account as designated by or as otherwise directed by MCC.

(h) Autonomy. The Government shall ensure that (i) no decision of the Accountable Entity is modified, supplemented, unduly influenced, or rescinded by any governmental authority, except by a non-appealable judicial decision or as otherwise approved by MCC, and (ii) the authority of the Accountable Entity is not expanded, restricted, or otherwise modified, except in accordance with this Agreement or as otherwise approved by MCC in writing.

(i) Performance Liabilities. No Grant funding or any Program Assets may be used to pay any damages, including any indemnification-related payments, incurred or owed by the Government or the Accountable Entity under any agreement between the Government or the Accountable Entity, on the one hand, and any third party on the other hand.

(j) Publicity. The Government shall give appropriate publicity to this Agreement as a program to which the United States, through MCC, has contributed, including by posting this Agreement, as MCC may request, on an agreed website, identifying the Grant activity sites and marking assets acquired with the Grant, all in accordance with MCC's *Standards for Global Marking* provided by MCC or posted on the MCC Website (the "**MCC Marking Standards**"); *provided, however*, that any press release or announcement regarding MCC or the fact that MCC is making the Grant or any other publicity materials referencing MCC shall be subject to MCC's prior written approval. MCC may post this Agreement on the MCC Website. MCC may also freely use any information it receives in any report or document provided to it with respect to the Program, the Grant, or this Agreement.

(k) Due Care. The Government shall carry out its obligations hereunder and shall ensure that the Program is implemented with due care, efficiency, and diligence in conformity with sound technical, financial, procurement, and management practices, and in conformity with this Agreement, each Implementation Letter, the Program Guidelines, and any supplemental agreement to this Agreement.

(l) Further Assurances. The Government shall promptly do and perform such other and further acts, and take all necessary and appropriate actions, including using its best efforts to obtain all necessary approvals and consents to otherwise effectively carry out the obligations of the Government set forth in this Agreement.

(m) Additional Requirements. The Government shall:

(i) without limiting the generality of Section 2.3 of this Agreement, fund any severance costs or other financial liabilities incurred by the Accountable Entity

arising from the termination or expiration of the Accountable Entity employment agreements, pursuant to the terms of such employment agreements;

(ii) assist foreign personnel (including individual consultants or personnel of firms) providing goods, works, or services under this Agreement with work permits or such other documents as shall be necessary to enable the foreign personnel to perform services and to remain in Kenya for the duration of this Agreement; and

(iii) ensure that the Accountable Entity is exempt from the requirements of Sections 5(2) and 5(3) of the *Public Procurement and Asset Disposal Regulations, 2020*.

ARTICLE 4.

IMPLEMENTATION FRAMEWORK

Section 4.1 Program Implementation Plan. The Parties agree that the framework for the Program's implementation shall be further elaborated in a set of documents, in form and substance approved by MCC, consisting of: (i) the Detailed Financial Plan; (ii) one or more Procurement Plans; (iii) a Work Plan; and (iv) an Audit Plan (each, an "**Implementation Plan Document**" and, collectively, the "**Implementation Plan**").

The Government shall submit its proposed Implementation Plan for review and approval by MCC by the timeframes set forth in this Agreement and at least on an annual basis thereafter (or in such other interval as may be required by the Program Guidelines). MCC shall review the proposed Implementation Plan and as necessary may request the Government to submit clarifications or adjustments.

The Government shall submit an updated Implementation Plan or updated Implementation Plan Document during any quarter in which significant changes or modifications are made to a Project or to the Program, or when the Government determines that the expected results, targets, and milestones for the specified year are not likely to be achieved; *provided, however*, that an updated Detailed Financial Plan shall be submitted each quarter and an updated Procurement Plan shall be submitted at least every quarter. In such instances, the Government shall submit to MCC for approval a proposed revised Implementation Plan or updated Implementation Plan Document (as applicable) on the same date as the next Disbursement Request is due. The Government shall ensure that the implementation of the Program is conducted in accordance with the Implementation Plan.

(a) Detailed Financial Plan. Unless MCC agrees otherwise, the Government shall develop, adopt, and implement a detailed financial plan (as approved by MCC) in accordance with the MCC Reporting Guidelines for all activities (as supplemented or otherwise modified from time to time, the "**Detailed Financial Plan**"). The Detailed Financial Plan shall set forth the funding requirements (including administrative costs) for each activity of the Program and for each Project, broken down to the sub-activity level (or lower, where appropriate), and projected both on a commitment and cash requirement basis.

(b) Procurement Plan. The Government shall develop, adopt, and implement a procurement plan covering each procurement relating to the Program (each, a "**Procurement**

Plan”), and submit such Procurement Plan to MCC for approval before commencing the relevant procurement. Each Procurement Plan shall identify, among other things, the method of procurement for the goods, works, or services to be procured. The Government shall ensure that all goods, works, or services are procured using the procurement method as approved in each Procurement Plan, and comply with the method of procurement outlined in such Procurement Plan. In addition, the Government shall develop and implement a bid challenge system (“*BCS*”) for Government contracted activities that provides suppliers, contractors, and consultants that are interested parties the ability to seek review of procurement actions and decisions. The organization, rules, and procedures of such BCS shall be subject to MCC approval. Upon MCC’s approval of the BCS, the Government shall publish the BCS on an agreed website.

(c) Work Plan. The Government shall develop, adopt, and implement a work plan, in form and substance satisfactory to MCC, for the overall administration of the Program (the “*Work Plan*”). In addition, the Government shall develop, adopt, and implement such other work plans relating to the Projects and/or Activities as MCC may request from time to time.

(d) Audit Plan. The Government shall develop, adopt, and implement a plan, in accordance with MCC’s *The Accountable Entity Guidelines for Contracted Financial Audits* (the “*AE Audit Guidelines*”) provided by MCC or posted on the MCC Website, for the audit of the expenditures under this Agreement consistent with the AE Audit Guidelines (the “*Audit Plan*”). The Audit Plan shall be in form and substance satisfactory to MCC and shall be developed no later than sixty days before the end of the first period to be audited. Unless MCC agrees otherwise, the Government shall engage one or more auditors as contemplated in the AE Audit Guidelines (each, an “*Auditor*”) to undertake the audits contemplated by the Audit Plan.

Section 4.2 Monitoring and Evaluation. The Government shall develop, adopt, and implement a monitoring and evaluation plan (the “*M&E Plan*”) in accordance with MCC’s *Policy for Monitoring and Evaluation of Compacts and Threshold Programs* provided by MCC or posted on the MCC Website (the “*M&E Policy*”). The M&E Plan shall serve as the primary governing document for monitoring and evaluation activities for the Program.

Section 4.3 Procurement and Grants.

(a) The Government shall ensure that all procurements for goods, works, and services required to implement the Program, are undertaken solely in accordance with the *MCC Program Procurement Guidelines* (the “*MCC Program Procurement Guidelines*”) provided by MCC or posted on the MCC Website. The MCC Program Procurement Guidelines include, among others, the following requirements:

(i) open, fair, and competitive procedures must be used in a transparent manner to solicit, award, and administer contracts and to procure goods, works, and services;

(ii) solicitations for goods, works, and services must be based upon a clear and accurate description of the goods, works, and services to be acquired;

(iii) contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their terms on a cost effective and timely basis; and

(iv) no more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices shall be paid to procure goods, works, and services.

(b) The Government shall ensure that any grant issued in furtherance of the Program (each, a “**Program Grant**”) is awarded, implemented, and managed in accordance with MCC’s *Program Grant Guidelines* (the “**MCC Program Grant Guidelines**”), unless the Parties agree otherwise in writing. The MCC Program Grant Guidelines must be interpreted and applied consistent with the principle that open, competitive, and fair procedures are used in a transparent manner in the award and administration of Grants, for the accomplishment of objectives under this Agreement.

Section 4.4 Fiscal Accountability. Unless MCC agrees otherwise, the Government shall develop, adopt, and implement a manual (as approved by MCC) setting forth the principles, mechanisms, and procedures (the “**Fiscal Accountability Plan**”) that shall be used to ensure appropriate fiscal accountability and compliance with MCC’s *Cost Principles for Government Affiliates* provided by MCC or posted on the MCC Website (the “**MCC Cost Principles**”) for the use of the Grant funding. The Fiscal Accountability Plan shall include, among other things, requirements with respect to (a) budgeting; (b) accounting; (c) cash management; (d) financial transactions (receipts and payments); (e) opening and managing Permitted Accounts; (f) personnel and payroll; (g) travel and vehicle use; (h) asset and inventory control; (i) audits; and (j) reporting. The Fiscal Accountability Plan shall be revised periodically, subject to review and approval by MCC.

Section 4.5 Environmental, Gender, and other Program Guidelines.

(a) Unless MCC agrees otherwise, the Government shall ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by Grant funding comply with the MCC Environmental Guidelines, including the environmental and social performance standards set forth in the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation (as in effect from time to time, the “**IFC Performance Standards**”) that have been incorporated by reference into the MCC Environmental Guidelines. The Government also shall ensure that the Program complies with all Kenyan environmental laws and regulations, licenses, and permits, except to the extent such compliance would be inconsistent with this Agreement. Unless MCC agrees otherwise, the Government shall fund all necessary costs of environmental and social mitigation measures (including, without limitation, costs of resettlement) not specifically provided for, or that exceed the amount of Grant funding specifically allocated for such costs, in the Detailed Financial Plan for any Project.

(b) Unless MCC agrees otherwise, the Government shall ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by Grant funding comply with MCC’s *Gender Policy*, the *MCC Operational Requirements and Milestones*

for Social Inclusion and Gender Integration, and the MCC's Counter-Trafficking in Persons Policy made available on the MCC Website. The Program shall comply with all Kenyan laws, regulations, and policies related to gender and social inclusion, except to the extent such compliance would be inconsistent with this Agreement. Where there is a difference between such Kenyan laws, regulations, or policies and the standards required by this Agreement, the MCC Gender Policy, the MCC Operational Requirements and Milestones for Social Inclusion and Gender Integration, MCC's Counter-Trafficking in Persons Policy, and other gender and social integration operational milestones, the Program shall follow the stricter standard provided it remains in compliance with this Agreement.

(c) Unless MCC agrees otherwise, the Government shall ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by Grant funding comply with the Program Guidelines, which, if not directly applicable, shall apply, *mutatis mutandis*, to the Program and this Agreement as if references in such guidelines to a "compact" were references to this Agreement.

Section 4.6 Reports.

(a) Periodic Reports. Unless MCC agrees otherwise, the Government shall provide to MCC the periodic reports required by the *MCC Guidance to Accountable Entities on the Quarterly Disbursement Request Package* provided by MCC or posted on the MCC Website (the "**MCC Reporting Guidelines**"), in each case timely delivered and in form and substance satisfactory to MCC.

(b) Additional Reports. In addition to the reports required by Section 4.6(a), the Government shall provide to MCC within thirty (30) days of a written request by MCC, or as otherwise agreed by the Parties, such other reports, documents, and information as MCC may request from time to time related to the Program or necessary for implementing, monitoring, or evaluating the Program.

Section 4.7 Records; Accounting; Providers; Access.

(a) Records. The Government shall maintain, and use its best efforts to ensure that the Accountable Entity and any Covered Providers maintain, accounting books, records, documents, and other evidence relating to the Program adequate to show, to MCC's satisfaction, the use of all Grant funding (collectively, the "**Records**"). The Government shall furnish or cause to be furnished to MCC upon MCC's request originals or copies of all such Records.

(b) Accounting. The Government shall maintain, and shall use its best efforts to ensure that the Accountable Entity and any Covered Providers maintain, Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with MCC's prior written approval, other accounting principles, such as those (i) prescribed by the International Accounting Standards Board or (ii) then prevailing in Kenya. Records must be maintained 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.

(c) Access. Upon MCC’s request, the Government, at all reasonable times, shall permit, or cause to be permitted, authorized representatives of MCC, the Inspector General of MCC (“**Inspector General**”), 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 Program, the opportunity to audit, review, evaluate or inspect facilities, assets, and activities funded in whole or in part by the Grant funding.

Section 4.8 Audits; Reviews.

(a) Government Audits. Unless MCC agrees otherwise, the Government shall conduct, or cause to be conducted, on an annual basis (or on a more frequent basis if requested by MCC in writing), financial audits of all disbursements of Grant funding covering the period from signature of this Agreement until such date determined by MCC and consistent with the AE Audit Guidelines. Upon MCC’s request, the Government shall ensure that such audits are (i) conducted by an independent auditor approved by MCC and selected in accordance with MCC’s AE Audit Guidelines and (ii) performed in accordance with the AE Audit Guidelines. Each audit must be completed and the audit report delivered to MCC no later than the deadline as required in the AE Audit Guidelines, or as otherwise agreed by the Parties.

(b) Audits of Other Entities. The Government shall ensure that MCC-financed agreements between the Government and any Covered Provider state that the Covered Provider is subject to audit in accordance with the AE Audit Guidelines.

(c) Corrective Actions. The Government shall use its best efforts to ensure that each Covered Provider (i) takes, where necessary, appropriate and timely corrective actions in response to audits, (ii) considers whether the results of the Covered Provider’s audit necessitate adjustment of the Government’s records, and (iii) permits independent auditors to have access to its records and financial statements as necessary.

(d) Audit by MCC. MCC has the right to arrange for audits of the Government’s use of the Grant funding.

Section 4.9 Required MCC Approvals. Each of the following transactions, agreements, and documents require MCC’s prior written approval:

(a) each Disbursement Request;

(b) Implementation Plan (including each element or component thereof), the Fiscal Accountability Plan, the M&E Plan, and any modification of any of the foregoing;

(c) all agreements between the Government and the Accountable Entity, and all agreements in which any of the following are appointed, hired or otherwise engaged (each of the foregoing, a “**Material Agreement**”):

(i) Auditor;

(ii) Fiscal Agent;

- (iii) Procurement Agent;
 - (iv) Bank;
 - (v) Implementing Entity;
 - (vi) a member of the Accountable Entity's board of directors (including any observer); and
 - (vii) any Interim Accountable Entity Team or Key Staff of the Accountable Entity (including agreements regarding compensation for any such person);
- (d) any modification, termination or suspension of a Material Agreement, or any action that would have equivalent effect;
- (e) any agreement or transaction of the Accountable Entity that is not arm's-length;
- (f) any pledge of any Grant funding or any Program Assets, or any incurrence of material indebtedness, or any guarantee, directly or indirectly of any indebtedness;
- (g) any decree, legislation, regulation, charter, contractual arrangement, or other document establishing or governing (other than public laws of general application to all public institutions), or relating to the formation, organization, or governance of, the Accountable Entity, and any amendment, supplement, modification, repeal or other alteration thereof or thereto (each, a "**Governing Document**");
- (h) any disposition, in whole or in part, liquidation, dissolution, winding up, reorganization or other change of the Accountable Entity;
- (i) any change in character or location of any Permitted Account;
- (j) (i) any change of any member of the Accountable Entity's board of directors, any observer, the chairperson of the board, the composition or size of the board or the filling of any vacant seat on the board, or the replacement of any observer; (ii) any change of any Key Staff of the Accountable Entity or in the composition or size of its Operations Unit, and the filling of any vacant position of any Key Staff of the Accountable Entity;
- (k) any decision by the Accountable Entity to engage, accept or manage any funds in addition to the Grant (including from any donor agencies or organizations) prior to the Completion Date, or to engage in any activities or undertake any duties or responsibilities other than those contemplated under this Agreement or any related agreement or document;
- (l) any agreement, transaction, decision or other action or document for which MCC approval is required under any of the Program Guidelines, including the MCC Program Procurement Guidelines; and

(m) any decision to amend, supplement, replace, terminate, revoke, or otherwise change any of the foregoing documents or arrangements.

Section 4.10 Implementation Letters. From time to time, MCC may provide guidance to the Government in writing on any matters relating to this Agreement, the Grant or implementation of the Program. The Government shall use such advice in implementing the Program. The Parties may also issue jointly agreed-upon writings to confirm and record their mutual understandings on aspects related to the implementation of this Agreement or other related agreements including any agreed upon revisions, exceptions or modifications that are permitted hereunder. Such writings are referred to herein as “*Implementation Letters*.”

ARTICLE 5.

DISBURSEMENT OF GRANT FUNDING

Section 5.1 Disbursement Process.

(a) Government Disbursement Requests. The Government may request Disbursements of the Grant by submitting a written request to MCC substantially in the form of the disbursement request package provided by MCC or posted on the MCC Website (each, a “*Disbursement Request*”), duly completed, not later than 20 days (or such other period of time as may be agreed by MCC) prior to the commencement of each Disbursement Period. Unless MCC agrees otherwise, the Government may submit only one Disbursement Request for each calendar quarter (such quarter, or any other period of time as agreed by MCC, the “*Disbursement Period*”).

(b) Approval of Disbursement Requests; Release of Proceeds.

(i) Upon receipt of a Disbursement Request, MCC shall determine the appropriate aggregate amount of Disbursements permitted for the applicable Disbursement Period based on, among other things: (A) progress achieved under the Implementation Plan; (B) the amount of funds required to complete the activities described in the accompanying Disbursement Request during such Disbursement Period; and (C) the satisfaction, waiver, or deferral of the conditions precedent applicable to the requested Disbursements.

(ii) MCC may, in its discretion, reject any Disbursement Request completely, or reject or reduce the amount of any Disbursement requested thereunder, based on among other things: (A) any modification made to, or lack of progress under, the Implementation Plan; or (B) if any condition precedent applicable to the requested Disbursements has not been satisfied, waived, or deferred. MCC shall communicate any such rejection or reduction to the Government in writing.

(iii) Subject to MCC’s approval of a Disbursement Request, the proceeds of the approved Disbursements may be transferred, at MCC’s election: (A) to a Permitted Account; (B) directly to a third party as payment for goods, works, or services received by the Government or the Accountable Entity, as applicable, in accordance with MCC’s common payment system (the “*Common Payment System*”) or any alternate payment system approved by MCC; or (C) directly to an employee of the Accountable Entity (or to the

Government, as reimbursement for authorized expenses); *provided, however*, that any expenditure of such proceeds is authorized by the Government or the Accountable Entity, as applicable, and any related payment complies with the most recently approved Detailed Financial Plan and the standards and procedures set forth in the Fiscal Accountability Plan.

(iv) Unless MCC agrees otherwise, any Disbursement, or financial commitment involving Grant funding may be made, and a Disbursement Request may be submitted, only if the related expense is provided for in the Detailed Financial Plan and sufficient uncommitted funds exist in the Detailed Financial Plan for that object of expense and for the relevant Disbursement Period.

(c) Permitted Accounts.

(i) Any Grant funding to be disbursed to a bank account of the Government or Accountable Entity must be deposited in a bank account (the “**Local Account**”) established by the Government or the Accountable Entity, as applicable, in the local currency of Kenya or United States dollars, as agreed by the Parties, at a financial institution acceptable to MCC. With prior MCC approval, the Accountable Entity may establish such other bank accounts as are needed for the purposes of implementing the Program (each such other bank account, together with the Local Account, a “**Permitted Account**”). Before any Grant funding is deposited into a Permitted Account, the Government shall ensure that the Accountable Entity enters into an agreement, in form and substance satisfactory to MCC, with the financial institution approved by MCC to hold such Permitted Account (each, a “**Bank**”), which sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to such Permitted Account (each, a “**Bank Agreement**”). The Bank shall be a commercial financial institution unless MCC otherwise agrees. The terms and operation of the Permitted Accounts shall be set forth in the Fiscal Accountability Plan and the Bank Agreement.

(ii) Unless MCC agrees otherwise, Grant funding held in a Permitted Account shall accrue interest or other earnings in accordance with the applicable Bank Agreement. On a quarterly basis and upon the termination or expiration of this Agreement or the relevant Bank Agreement, the Government shall ensure the transfer to MCC of any interest accrued on amounts held in a Permitted Account.

(iii) Unless MCC agrees otherwise, no funds shall be commingled in a Permitted Account other than Grant funding and accrued interest and earnings thereon. MCC has the right, among other things, to view any Permitted Account statements and activity directly on-line, and where such viewing is not feasible, the Government shall provide copies of such statements to MCC upon its request.

(iv) Unless MCC agrees otherwise, if Grant funding is held in any Permitted Account other than the Local Account, the Government shall ensure that such Grant funding is denominated in United States dollars prior to release. Unless MCC agrees otherwise, to the extent that any amount of Grant funding held by a Bank in United States dollars must be exchanged into the currency of Kenya for any purpose, the Government shall ensure that such exchange is consistent with the requirements of the Bank Agreement.

Section 5.2 Conditions Precedent to the Initial Disbursement of Grant Funding. Unless waived or deferred by MCC in writing, the conditions set forth in this Section 5.2 and the conditions set forth in Section 5.3 must be met to MCC's satisfaction before the initial Disbursement of Grant funding:

(a) Entry into Force. This Agreement has entered into force as provided in Article 8.

(b) Implementation Plan. The Accountable Entity has developed a complete Implementation Plan; *provided, however*, that the Accountable Entity is only required to develop the Audit Plan by the time of the initial Disbursement if so required by the AE Audit Guidelines.

(c) Fiscal and Procurement Documents. The Accountable Entity has developed the Fiscal Accountability Plan (or an interim version) and an interim Procurement Operations Manual and the plan has been approved by MCC and the Board.

(d) Permitted Account. To the extent that any portion of the Disbursement is to be held in a Permitted Account, a Bank has been engaged, the Local Account and any other required Permitted Account has been established, and the Accountable Entity has delivered to MCC a copy of the Bank Agreement.

(e) Procurement Agent. The Procurement Agent has been engaged and the Accountable Entity has delivered to MCC a copy of the related Procurement Agent Agreement.

(f) Fiscal Agent. The Fiscal Agent has been engaged and the Accountable Entity has delivered to MCC a copy of the related Fiscal Agent Agreement.

(g) Interim Accountable Entity Team. The Interim Accountable Entity Team has been approved by MCC and appointed and engaged by the Accountable Entity in accordance with Section 3.2(b) and Annex I, Part B hereof, and the Government is making progress, satisfactory to MCC, on recruiting for the Accountable Entity employees.

(h) Accountable Entity Governing Documents. The Accountable Entity has delivered to MCC full copies of all Governing Documents of the Accountable Entity.

Section 5.3 Conditions Precedent to Each Disbursement. Unless waived or deferred in writing by MCC, the following conditions must be met to MCC's satisfaction before each Disbursement of the Grant:

(a) Deliverables. The Government has delivered to MCC the following documents, in form and substance satisfactory to MCC:

(i) a completed Disbursement Request, together with the periodic reports required under Section 4.6, covering the related Disbursement Period; and

(ii) a certificate from the Accountable Entity, dated as of the date of such Disbursement Request, substantially in the form provided by MCC.

(iii) a certificate of the Procurement Agent, substantially in the form provided by MCC (the “*Procurement Agent Disbursement Certificate*”); and

(iv) a certificate of the Fiscal Agent, substantially in the form provided by MCC (the “*Fiscal Agent Disbursement Certificate*”).

(b) Other Conditions Precedent. MCC has determined in its discretion that:

(i) any applicable conditions precedent in Annex III have been duly satisfied, deferred, or waived pursuant to the terms of this Agreement;

(ii) the Government’s assurances set forth in Section 3.1 are true and correct on and as of the date of such Disbursement Request as though made on and as of such date;

(iii) no material breach of any responsibility, covenant or obligation by the Government, the Accountable Entity or any other Government entity has occurred and is continuing under this Agreement or any related agreement or document;

(iv) the activities to be funded with such Disbursement do not violate any applicable law or regulation;

(v) the Implementation Plan Documents and Fiscal Accountability Plan are current and updated and are in form and substance satisfactory to MCC, and there has been progress satisfactory to MCC on the components of the Implementation Plan related to such Disbursement;

(vi) there has been progress satisfactory to MCC on the M&E Plan (including the targets set forth therein, any related baseline data collection requirements set forth therein or any applicable reporting requirements set forth therein for the relevant Disbursement Period) and the social and gender integration plan (“*SGIP*”);

(vii) there has been no material negative finding in any financial audit report delivered in accordance with this Agreement and the Audit Plan for the prior two quarters (or such other period as the Audit Plan may require);

(viii) any Taxes paid with Grant funding through the date ninety days prior to the start of the applicable Disbursement Period have been reimbursed by the Government in full in accordance with Section 2.5; and

(ix) each of the Key Staff remains engaged or, if a position is vacant, the Government (i) is actively engaged, to MCC’s satisfaction, in recruiting to fill that position and (ii), for such period as agreed between MCC and the Government, the responsibilities of the position are covered by a member of the Interim Accountable Entity Team.

ARTICLE 6.

COMPLETION DATE; TERMINATION AND SUSPENSION

Section 6.1 Completion Date. Unless the Parties agree otherwise, the date four years after this Agreement enters into force in accordance with Article 8 is the date by which the Parties estimate that all of the activities related to the implementation of the Program and the achievement of the Project Objectives are expected to be completed (the “*Completion Date*”). Unless MCC agrees otherwise, Grant funding may not be used for expenditures incurred after the Completion Date.

Section 6.2 Termination and Suspension; Expiration.

(a) Either Party may terminate this Agreement without cause in its entirety by giving the other Party 30 days’ written notice; *provided, however*, that notwithstanding such termination, this Agreement shall continue to be effective with respect to any activity for which a Disbursement has already been issued or approved by MCC.

(b) MCC may immediately, upon written notice to the Government, suspend or terminate this Agreement or the Grant, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC as a basis for suspension or termination (whether in writing to the Government or by posting on the MCC Website) has occurred, which circumstances include but are not limited to the following:

(i) the Government fails to comply with its obligations or commitments under this Agreement or any other agreement or arrangement entered into by the Government in connection with this Agreement or the Program;

(ii) any statement, affirmation, or assurance of the Government made in this Agreement, any supplemental agreement, or in any certificate or other document delivered in connection with this Agreement proves to have been willfully false or misleading as of the date when made;

(iii) an event or series of events has occurred that MCC determines makes it improbable that the Program can be performed, that any of the Project Objectives can be achieved before the Completion Date, or that the Government can perform its obligations under this Agreement;

(iv) a use of the Grant or continued implementation of this Agreement would violate applicable law or United States government policy, whether now or hereafter in effect;

(v) the Government or any other person or entity receiving Grant funding or using assets acquired in whole or in part with Grant funding is engaged in activities that are contrary to the national security interests of the United States of America;

(vi) an act has been committed or an omission or an event has occurred that would render Kenya ineligible to receive United States economic assistance under Part I

of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(vii) the Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Kenya for assistance under the MCA Act; and

(viii) a person or entity receiving Grant funding or using assets acquired in whole or in part with Grant funding is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(c) All Disbursements shall cease upon expiration, suspension or termination of this Agreement; *provided, however*, that Grant funding may be used, in compliance with this Agreement, to pay for: (i) reasonable expenditures for goods, works or services that are properly incurred under or in furtherance of this Agreement before expiration, suspension or termination of this Agreement; and *provided, further*, that the request for such expenditures is submitted within 90 days after such expiration, suspension or termination; and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within 120 days after the expiration, suspension or termination of this Agreement.

(d) Subject to Section 6.2(c), upon the expiration, suspension or termination of this Agreement: (i) any amounts of the Grant not disbursed by MCC shall be automatically released from any obligation in connection with this Agreement without any action from the Government or MCC; and (ii) any amounts of the Grant disbursed by MCC to the Government but not expended before such expiration, suspension or termination of this Agreement, including any amounts in a Permitted Account, plus accrued interest thereon, shall be returned to MCC within 30 days after the Government receives MCC's request for such return, and the Government shall ensure that such amount is returned promptly to such account(s) designated by MCC.

(e) Unless MCC agrees otherwise, at least one year prior to the expiration, or upon termination, of this Agreement, the Parties agree to consult in good faith with a view to reaching agreement in writing on (i) the treatment of the Accountable Entity after the Completion Date, (ii) the process for ensuring the refunds of Disbursements that have not yet been released from a Permitted Account or committed in accordance with Sections 6.2(c) and (d), and (iii) any other matter related to the winding up of the Program, including the proper disposition of all Program Assets. If the Accountable Entity continues operations after the Completion Date, or following the termination of this Agreement, with sources of funding other than the Grant, the Accountable Entity shall cease to use the name and logo that it used during implementation of the Program, except as otherwise agreed by MCC.

(f) The Parties expect the effects of the Program to be long-ranging and its impact may not be measurable for several years after the Completion Date. Accordingly, the Parties agree to cooperatively monitor the results and evaluate the impacts of the Program in Kenya after the termination or expiration of this Agreement.

(g) MCC may reinstate any suspended or terminated portion of the Grant under this Agreement if MCC determines that the Government, or other relevant person or entity, has committed to correct each condition for which the Grant was suspended or terminated.

Section 6.3 Refunds.

(a) If any Grant funding, any interest or earnings thereon, or any asset acquired in whole or in part with Grant funding 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 of the Grant, interest, earnings or asset, plus interest within 60 days after the Government's receipt of the request for repayment. Interest shall accrue on such amount at a rate equal to the then-current United States Treasury Current Value of Funds Rate, calculated on a daily basis and a 360-day year from the due date of such payment until such amount is paid in full. The Government shall not use Grant funding, proceeds thereof or any other funds received from MCC (assets acquired with Grant funding or with any such other funds) to make such payment.

(b) Notwithstanding any other provision in this Agreement or any other existing agreement to the contrary, MCC's right under this Section 6.3 to obtain a refund shall continue during the term of this Agreement and for a period of (i) five years thereafter or (ii) one year after MCC receives actual knowledge of such violation, whichever is later.

ARTICLE 7.

GOVERNING LAW; AMENDMENTS; GENERAL

Section 7.1 Governing Law. This Agreement is an international agreement and as such shall be governed by international law.

Section 7.2 Consultations. Either Party may, at any time, request consultations relating to the interpretation or implementation of this Agreement. Such consultations shall begin at the earliest possible date.

Section 7.3 Representatives. For all purposes relevant to implementation of this Agreement, the Government is represented by the individual holding the position of, or acting as, the Cabinet Secretary of the National Treasury and Economic Planning, and the United States acting through MCC is represented by the individual holding the position of, or acting as, the Vice President of the Department of Policy and Evaluation of MCC (each of the foregoing, a "**Principal Representative**"). Each Party, by written notice to the other Party, may designate one or more additional representatives (each, an "**Additional Representative**") for all purposes of this Agreement except for purposes of Section 7.7(a). The United States acting through MCC hereby designates the Deputy Vice President of the Department of Policy and Evaluation of MCC as an Additional Representative for the United States. A Party may change its Principal Representative to a new representative that holds a position of equal or higher authority upon written notice to the other Party.

Section 7.4 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, in English. All such documents or communication must be submitted to the addresses set forth below or to such other address as may be designated by either Party in a written notice to the other Party.

To MCC:

Attention: Millennium Challenge Corporation
Vice President, Department of Policy and Evaluation
(with a copy to the Vice President and General Counsel)
1099 Fourteenth Street, NW, Suite 700
Washington, DC 20005
United States of America

Facsimile: +1 (202) 521-3700
Telephone: +1 (202) 521-3600
Email: VPPolicyEvaluation@mcc.gov (Vice President, Department of Policy and Evaluation)
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

To the Government:

Attention: The National Treasury and Economic Planning
Cabinet Secretary
P.O. Box 30007
Nairobi 00100 KENYA

Telephone: +254 (20) 225-1865
Email: cabinetsecretary@treasury.go.ke

Section 7.5 MCC Status. MCC is a United States Government corporation acting on behalf of the United States government in the implementation of this Agreement and the Program. MCC and the United States assume no liability for any claims or loss arising out of activities or omissions under this Agreement. The Government waives any and all claims against MCC or the United States or any current or former officer or employee of MCC or the United States for all loss, damage, injury, or death arising out of activities or omissions under this Agreement, and agrees that it shall not bring any claim or legal proceeding of any kind against any of the above entities or persons for any such loss, damage, injury, or death. The Government agrees that MCC and the United States or any current or former officer or employee of MCC or the United States shall be immune from the jurisdiction of all courts and tribunals of Kenya for any claim or loss arising out of activities or omissions under this Agreement.

Section 7.6 No Assurance of Future Assistance. Nothing contained in this Agreement creates an obligation on the part of the United States or MCC to provide any further funding or assistance, other than the Grant, in relation to any other project or program in Kenya.

Section 7.7 Amendment.

(a) The Parties may amend this Agreement only by written agreement. Such agreement shall specify how it enters into force.

(b) Notwithstanding subsection (a), the Parties agree that the Government and MCC may by written agreement, which shall enter into force upon signature (i) modify any annex to this Agreement to, in particular, but without limitation, (A) suspend, terminate or modify any Project or Activity described in Annex I or create a new Project or Activity, (B) add, delete or waive any condition precedent described in Annex III, or (C) modify the designation or allocation of funds among the activities identified in Annex II; or (ii) extend the Completion Date; *provided, however*, that, in each case, any such modification (A) is consistent in all material respects with the Project Objectives, (B) does not cause the amount of the Grant to exceed the aggregate amount specified in Section 2.1(a), and (C) does not cause the Government's responsibilities or contribution of resources to be less than as specified in this Agreement. Any such modification pursuant to this subsection (b) shall not be deemed an amendment of this Agreement pursuant to subsection (a).

Section 7.8 Survival. The obligations under Sections 2.4 (Use of the Grant), 2.5 (Taxes), 3.2 (Government Responsibilities), 4.7 (Records; Accounting; Providers; Access), 4.8 (Audits; Review), 6.2 (Termination and Suspension; Expiration), 6.3 (Refunds), 7.1 (Governing Law), and this Section 7.8 (Survival) shall survive the expiration, suspension, or termination of this Agreement; *provided, however*, that the terms of Section 2.5 shall survive for only 120 days following this Agreement's expiration.

Section 7.9 Definitions; Interpretation.

(a) Except as otherwise expressly provided herein, capitalized terms used in this Agreement shall have the respective meanings provided in Annex IV.

(b) Unless expressly provided otherwise: (i) each definition of or reference to any agreement, instrument, law, regulation, policy, guideline, or similar document in this Agreement (or any other agreement entered into in connection with this Agreement), unless otherwise expressly set forth herein, shall be construed as a reference to such agreement, instrument, law, regulation, policy, guideline, or similar document as it may, from time to time, be amended, revised, replaced, or extended, and shall include any agreement, instrument, law, regulation, policy, guideline, or similar document issued under or otherwise applicable or related to such agreement, instrument, law, regulation, policy, guideline, or similar document; (ii) all references herein to Articles, Sections, and Annexes shall be construed to refer to the Articles and Sections of, and Annexes to, this Agreement, all of which form an integral part of this Agreement; (iii) any use of the phrases "unless MCC agrees otherwise" or "unless the Parties agree otherwise" or similar phrases in this Agreement shall be deemed to be followed by "in writing" and any such notice, approval, or other action shall be required to be in writing; and (iv) any approval right granted to MCC herein shall only be satisfied upon the prior written approval of MCC.

Section 7.10 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 shall be deemed a reference to such document or information as updated or substituted on the MCC Website by MCC from time to time.

Section 7.11 Signatures. Signatures to this Agreement and to any amendment to this Agreement (and to any other legally binding international agreement related to this Agreement) shall be original signatures appearing on the same page or in an exchange of letters or diplomatic notes.

Section 7.12 Grant Reference. The Government shall include the Grant reference number provided by MCC on all notices, requests, reports or correspondence in connection with the Grant funding.

ARTICLE 8.

ENTRY INTO FORCE

Section 8.1 Date of Entry into Force. The Government shall notify MCC in writing when necessary internal Kenyan procedures for this Agreement's entry into force have been completed. Following receipt of this notification, MCC shall notify the Government in writing when MCC deems the conditions precedent to entry into force set forth in Section 8.2 have been met to MCC's satisfaction and the United States' necessary internal procedures for entry into force have been completed. This Agreement shall enter into force on the date of MCC's written notification to the Government.

Section 8.2 Conditions Precedent to Entry into Force. Each of the following conditions must be fulfilled, in each case to the satisfaction of MCC, before this Agreement enters into force:

(a) The Government has delivered evidence to MCC that the Accountable Entity has been legally established.

(b) The Government has delivered to MCC a signed legal opinion, in form and substance satisfactory to MCC, by the Attorney General or other legal counsel of Kenya acceptable to MCC.

(c) The Government has delivered to MCC complete, certified copies of all decrees, legislation, regulations, or other governmental documents relating to the Government's domestic requirements necessary for this Agreement to enter into force, which MCC may post on the MCC Website or otherwise make publicly available.

(d) The Government has delivered to MCC an incumbency certificate and specimen of the Government's Principal Representative.

(e) MCC has determined that, since the time of signing this Agreement, the Government has not engaged in a pattern of actions inconsistent with the eligibility criteria for MCC assistance.

SIGNATURE PAGE FOLLOWS ON NEXT PAGE

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective governments, have signed this Agreement.

Done at New York, NY on this 19th day of September, 2023.

FOR THE UNITED STATES OF
AMERICA, acting through THE
MILLENNIUM CHALLENGE
CORPORATION

FOR THE REPUBLIC OF KENYA

/s/

/s/

Name: Alice P. Albright
Title: Chief Executive Officer

Name: Njuguna S. Ndung'u
Title: Cabinet Secretary, the National
Treasury and Economic Planning

ANNEX I

PROGRAM DESCRIPTION

Unless the Parties agree otherwise, the Government shall utilize the assistance provided under this Agreement to support the following Program.

A. SUMMARY OF PROGRAM

The Program consists of the following four Projects and their activities (each, an “*Activity*” and collectively, the “*Activities*”):

1. Integrated Transport Planning Project (the “*ITP Project*”).

The objective of the ITP Project is to provide better multimodal transport system planning for Nairobi. To support this objective, MCC shall support three closely related Activities that strengthen the institutional foundations of the Nairobi Metropolitan Area Transport Authority (“*NaMATA*”); build its capacity to lead and manage a comprehensive, cooperative, and continuous transport planning process; and clarify its relationships with other agencies and authorities that have responsibilities over parts of the transport system in the Nairobi metropolitan area.

The proposed Activities under this ITP Project include:

(a) Activity 1.1: Institutional Support.

This Activity shall support NaMATA to (i) build and implement its human resource tools, including a recruitment plan and human resources policies; (ii) build capacity within its Transport Planning Department and among its core staff; and (iii) improve its information technology (IT) capabilities to support transparency and communications. The Institutional Support Activity shall support the following three Sub-Activities.

(i) *Human Resources Capacity Building Sub-Activity.*

This Sub-Activity shall support embedded technical experts, with experience in institutional strengthening and human resources management in a public sector context (the “*Organizational Consultants*”), in NaMATA’s Corporate Services Department. The Organizational Consultants shall assist NaMATA to (a) develop administrative processes and policies, including human resource policies, for the recruitment, hiring, onboarding, and retention of staff; (b) prepare financial plans; (c) revise NaMATA’s strategic staffing plan and prepare administrative and technical position descriptions; (d) conceptualize staff onboarding, training, and capacity building approaches; and (e) develop a plan for NaMATA’s IT infrastructure needs. In support of this Sub-Activity, the Government shall ensure that NaMATA is authorized to initiate the recruitment and hiring of permanent staff within its Transport Planning Department, in accordance with its existing staffing plan. NaMATA shall ensure that the Organizational Consultants are provided space within its offices.

(ii) *Transport Planning Capacity Building Sub-Activity.*

This Sub-Activity shall support capacity building in NaMATA’s Transport Planning Department to identify, define, and map the specific transport planning competencies and expertise that the department shall require, and develop a staffing plan to address any critical gaps in staff skills and expertise. These competencies could include project management, technical working group facilitation, analysis of climate and environmental modeling data, geographic information system (GIS) and data analysis, and stakeholder and public engagement. In addition, NaMATA shall seek to identify suitable training courses and certification opportunities for its staff and develop a proposal for an Urban Public Transport Center of Excellence, in which NaMATA may partner with one or more public universities to create curricula by which local and regional transport planners can be educated and trained.

(iii) *Communication and Public Engagement Sub-Activity.*

This Sub-Activity shall support technical assistance to NaMATA to expand a communications and messaging strategy to broaden NaMATA’s outreach to a range of stakeholders and improve NaMATA’s ability to share information publicly through its website and social media.

(b) Activity 1.2: Integrated Transport Planning Support (the “***Transport Planning Activity***”).

The objective of this Activity is to develop NaMATA’s transportation planning capacity for the Nairobi metropolitan area. Transport planning shall enable NaMATA to undertake a strategic, data-driven approach to investment decision-making, and integrate community and stakeholder engagement in NaMATA’s planning process. MCC funding shall support:

- a consultant experienced in long-term transport planning (the “***Transport Planning Consultant***”) embedded within NaMATA;
- the design of a participatory framework for stakeholder and public engagement in transport planning and decision-making;
- a comprehensive audit of data and information that has been generated by various transportation agencies and authorities, and public and private entities and institutions;
- the development by NaMATA’s Transport Planning Department of a proprietary transport demand model that incorporates information about projected land use, population changes, and employment trends to forecast future transportation demand growth; and
- the development of a strategy for managing all forms of transport data and information (“***Transport Data Clearinghouse Strategy***”), combining existing data with new data generated in the development of the Urban Mobility Plan.

The Transport Planning Activity also shall support the development of a 15-20 year urban mobility plan (the “***Urban Mobility Plan***”) which should include three to five year plans for short-range prioritized investment programs. The development of the Urban Mobility Plan shall require the creation of transport planning coordination teams that shall bring together technical specialists from the relevant transport agencies and authorities and, where appropriate, representatives of international development partners, private transport service providers, and

other stakeholders including civil society organizations. NaMATA and the National Transport and Safety Authority shall ensure that the Urban Mobility Plan includes the collection, storage, and use of gender-disaggregated transport data. As set out below, the Target Area Land Use Planning Activity anticipates that the Urban Mobility Plan shall include the preparation of a Local Area Action Plan that focuses on transit-oriented development and shall be prepared through coordination between NaMATA, the Nairobi City County planners, and any other relevant parties.

In furtherance of the Transport Planning Activity, NaMATA may partner with relevant academic or non-profit research organizations, including but not limited to, the University of Nairobi, the Kenya Institute for Public Policy Research and Analysis, or the Kenya National Bureau of Statistics, to jointly host and manage a data portal for transportation research.

(c) Activity 1.3: Sector Alignment and Governance Support.

The objective of the Sector Alignment and Governance Support Activity is to strengthen institutional alignment and governance of the transport sector by helping the Government clarify roles and responsibilities among the transport agencies. The Activity shall support a review by the Transport Planning Consultant of the work activities, operational practices, and legal mandates of various transport agencies and authorities to identify gaps, overlaps and conflicts between their mandates and activities. As part of this Activity, NaMATA, with assistance from the Transport Planning Consultant, shall seek to define processes for information sharing, coordination of planned activities, and collective decision-making; more effectively collaborate with other agencies and authorities; and provide leadership in transport planning. Through this Activity, NaMATA should be able to identify opportunities to revise its authorizing legislation or support the development and adoption of alternative legislation to provide greater certainty over long-term funding for transportation infrastructure.

2. First and Last Mile Connections Project (the “*Connectivity Project*”)

The objective of the Connectivity Project is to improve connectivity and provide safer access to the mass public transport system in a target area of Nairobi. The Project shall focus on the eastern quadrant of Nairobi City County extending along the Nairobi-Thika line of the commuter rail service and encompassing the area between the Makadara Station in the west and the Dandora Station in the east, the nine wards in Makadara Sub-County, Embakasi West Sub-County and Embakasi East Sub-County (the “*Target Area*”).

The Connectivity Project includes three Activities:

(a) Activity 2.1: First and Last Mile Improvements.

The First and Last Mile Improvements Activity shall support the plans, designs, prioritization, and construction of small-scale first and last mile infrastructure that improves connectivity in the Target Area such as crosswalks, pedestrian pathways, pedestrian overpasses, bicycle lanes and pick-up and drop-off points for unregulated, private minibus taxis (known locally as a “*matatu*” or “*matatus*”). The First and Last Mile Improvements Activity has the following two Sub-Activities:

(i) *Connectivity Infrastructure Prioritization and Implementation Planning Sub-Activity.*

At the beginning of this Sub-Activity, the Roads, Public Works and Transport Directorate (“**Roads Directorate**”) of Nairobi City County Government (“**NCCG**”) shall review existing plans for non-motorized transport infrastructure within the Target Area and identify a limited number of construction or rehabilitation works, such as the construction of sidewalks or rehabilitation of crosswalks, that (a) meet the connectivity goals of the Connectivity Project, and (b) can be implemented promptly. The Parties shall agree on a screening and prioritization process for the infrastructure works that shall be used to identify the projects that shall be financed through this Sub-Activity. The Roads Directorate shall prepare rapid designs and undertake public consultations before commencing with the construction or rehabilitation works.

Based on this initial identification, prioritization, and construction of non-motorized transport infrastructure, the Roads Directorate shall (a) work with other transport agencies and authorities to improve and refine its project selection criteria; (b) develop and utilize a formal project review and screening process to ensure future planning considers these criteria; (c) assess and prioritize the small-scale non-motorized transport infrastructure proposed in each of the Station Area Connectivity Plans; and (d) prepare project designs after consultations with stakeholders. Applying this connectivity planning process, the Roads Directorate shall derive a prioritized list of small-scale non-motorized transport infrastructure for funding and construction.

The Roads Directorate shall rely on its in-house capacity to prepare the designs and undertake the public consultations. Any procurements required under this Sub-Activity shall be procured by the Accountable Entity using the MCC Program Procurement Guidelines. Through the implementation of the construction or rehabilitation works, the Roads Directorate shall adhere to applicable MCC Environmental Guidelines, which shall include the preparation of environmental and social management plans (“**ESMP**”) which are consistent with the developed environmental and social management system (“**ESMS**”). The Accountable Entity shall engage a consultant who shall assist the Roads Directorate with the preparation of the ESMS and if needed, provide strategic support for the development and oversight of the implementation of the ESMP.

(ii) *Detailed Station Area Connectivity Plans Sub-Activity.*

Under this Sub-Activity, the Roads Directorate shall develop detailed plans for physical infrastructure that enhance connectivity to stops on the commuter rail service line within the Target Area (each, a “**Station Area Connectivity Plan**”). These Station Area Connectivity Plans shall identify and prioritize small-scale non-motorized infrastructure to improve connectivity to public transport including pedestrian pathways, crossing infrastructure, improved lighting, speed bumps, separated cycle lanes, bicycle parking, and infrastructure for matatu pick-up and drop-off points. The Accountable Entity shall ensure coordination between the preparation of the Station Area Connectivity Plans with the physical and land use development plan under the Land Use Planning Project to ensure that land rights, access, and other considerations do not become obstacles to the construction of non-motorized infrastructure.

(b) Activity 2.2: Capacity Building for First and Last Mile Connections (the “**Capacity Building Activity**”).

The Capacity Building Activity shall support capacity building within the Roads Directorate to articulate a vision for intermodal connectivity that includes non-motorized transport infrastructure, matatu routings and pick-up and drop-off points, and stations on the mass public transport system. The Activity aims to (i) collect and analyze data and information related to connectivity; (ii) develop processes for planning and prioritizing connectivity projects; (iii) measure and report progress toward greater connectivity; and (iv) integrate safety considerations into the planning and design of non-motorized transport infrastructure.

Under this Activity, the Transport Planning Consultant shall assist the Roads Directorate to:

- collaborate with NaMATA and other transport agencies and authorities that are involved in non-motorized transport, street design, regulation of matatus, and development of the mass public transport system to share best practices, set expectations, and define new ways of working together;
- facilitate a series of inter-agency workshops aimed at assisting the Roads Directorate to (i) define roles and responsibilities, (ii) set standards for public consultation, (iii) develop consistent approaches to infrastructure design, (iv) integrate road safety considerations, (v) improve budgeting, and (vi) strengthen coordination in the planning, prioritization, and implementation of connectivity projects in the Nairobi metropolitan area;
- based on the output of the workshops, develop standard operating procedures for coordination with other transport agencies and authorities to incorporate considerations of non-motorized transport during the transport planning process that shall include a review of standard practices for connecting access to commuter rail stations, including Kenya Rails station design plans and plans for future BRT station development;
- prepare a first biannual report on the status of non-motorized transport within the Nairobi City County that shall include (i) the demand for non-motorized transport, (ii) the stock and quality of non-motorized transport infrastructure, and (iii) activities that NCCG has undertaken to encourage increased use of non-motorized transport, including walking and bicycling; and
- adopt guidelines and standards for the design and implementation of non-motorized transport infrastructure that cover roads, pedestrian paths, pedestrian crossings, bicycle lanes, and bicycle parking, and safety and access for people with disabilities.

(c) Activity 2.3: Sexual Harassment Prevention.

The Sexual Harassment Prevention Activity aims to address persistent problems with harassment of women on matatus. The Activity shall support a consultant firm experienced in paratransit, private transport services, or transport training and capacity building (the “**Sexual Harassment Prevention Consultants**”). The Sexual Harassment Prevention Consultants aim to assist the Accountable Entity to identify, train, and support a select group of matatu owners and operators to (i) raise awareness, deliver training, and improve standards and practices related to the identification and prevention of sexual harassment in all aspects of matatu service; (ii) develop

and promote an easily identifiable certification program for matatu owners and operators that have completed rigorous training and agreed to provide increased safety for women customers; and (iii) implement a functional system of self-regulation for reporting and addressing sexual harassment complaints. It is envisioned that non-governmental organizations that have experience working on sexual harassment issues in Nairobi (collectively, the “**Implementers**”) shall be engaged to support this Activity.

The Accountable Entity shall establish an advisory committee comprised of civil society organizations, Implementers, public sector representatives, and matatu owners to make recommendations on a quarterly basis on design decisions and adaptive strategies for the certification program.

Where possible, the training that will be provided under this Activity may seek opportunities to highlight public safety concerns on matatus impacting women, people with disabilities, the elderly, and youth.

3. Land Use Planning Project.

The objective of the Land Use Planning Project is to clarify land use and development control policy in a targeted area of Nairobi in order to facilitate the construction of non-motorized transport infrastructure that shall be supported under the Program. The Land Use Planning Project includes four Activities:

(a) Activity 3.1: Policy and Regulatory Framework.

The Policy and Regulatory Framework Activity aims to assist the NCCG’s Lands, Urban Planning, Urban Renewal, Housing and Projects Management Directorate (“**Lands Directorate**”) to update the policy and regulatory framework for control of property development, zoning, and preparation of land use plans in Nairobi City County using an integrated approach.

MCC funding shall support a policy consultant with experience in land use policy and regulation to assist the Lands Directorate to (i) complete a legal and regulatory assessment to understand the gaps in the framework which regulates construction and property development (the “**Development Control Framework**”); (ii) gather data and conduct research on urban growth trends and future economic development; (iii) draft a comprehensive development control policy that allows the Lands Directorate to regulate and manage land and property development more effectively across the Nairobi City County; (iv) prepare a zoning regulation for the county and zoning map for the Target Area that defines the land use and construction allowed on each land parcel; and (v) develop a new policy guideline that sets standards for the preparation and approval of integrated physical and land use development plans that involve different stakeholders, including physical and land use, transportation, environmental, and utility planners, in the planning process. During the implementation of this Activity, the Lands Directorate shall ensure stakeholder consultations and public outreach events are undertaken.

(b) Activity 3.2: Target Area Land Use Planning.

The Target Area Land Use Planning Activity responds to the need for detailed land use planning that follows an integrated planning approach. MCC funding shall support a consultant (the “**Planning Consultant**”), who shall work with the Lands Directorate, in preparing land use plans for the Target Area. MCC funding shall support:

- the establishment of a furnished local project office in Makadara Sub-County, to facilitate the Lands Directorate planning staff’s interaction with residents, small enterprises, local stakeholders, and community leaders in order for the planning staff to better understand community development issues;
- the collection of initial data, research, analysis, and the undertaking of public consultation in the Target Area;
- the preparation of a physical and land use development plan for the Target Area, which shall be approved by the Nairobi City County Assembly;
- in cooperation with NaMATA and with assistance from the Transport Planning Consultant, the preparation of a local area action plan that focuses on transit-oriented development aimed at strengthening connectivity between areas where people live and work and the commuter rail service stops, and identifies land parcels for development and the location of non-motorized transport infrastructure;
- the preparation of a local area action plan that focuses on residential revitalization in one or more neighborhoods or estates within Makadara Sub-County that identifies land parcels that can be made available to support affordable public housing or new private housing development; and
- the preparation of a local area action plan that focuses on industrial and commercial development in areas where vacant, unoccupied, or underutilized land parcels can be made available for investments that create jobs for area residents and commuters using mass rapid transit.

In furtherance of this Activity, the Lands Directorate shall place one county planner to work in the Makadara Sub-County local project office.

(c) Activity 3.3: Land Use Plan Implementation Support (the “**Implementation Support Activity**”).

The Implementation Support Activity shall support a consultant (*the “Implementation Consultant”*), who shall provide technical assistance to the Lands Directorate to implement the physical and land use development plan and local area action plans approved under the Target Area Land Use Planning Activity. The Implementation Consultant shall assist the Lands Directorate to organize, manage, and oversee the site-specific actions that make land available for private investment or for public projects, including some of the multimodal connections that the Connectivity Project aims to support. Through this Activity, the Lands Directorate shall receive assistance in (i) negotiating with state corporations or institutional landholders to release land for development; (ii) negotiating agreements with informal occupants to relocate voluntarily to make public land available for investment in line with land use plans; or (iii) using land readjustment approaches to support voluntary agreements among landholders to make land available for the construction of small-scale infrastructure. The Activity shall be undertaken in

accordance with the MCC Environmental Guidelines and the IFC Performance Standards incorporated therein and, subject to Section 4.5 of this Agreement, Kenyan environmental laws.

(d) **Activity 3.4: Geographic Information System Platform Development** (the “***GIS Activity***”).

The GIS Activity shall support the development of a GIS platform for the Lands Directorate, which shall include funding for the hardware and software needed to implement the platform and provide updated imagery, as well as technical support services, training, and maintenance of the platform up until the Completion Date. Specifically, the GIS platform shall be designed to support (i) physical and land use planning; (ii) valuation of property and collection of land rates; (iii) approval of property development applications; and (iv) building inspection and enforcement of property development control standards. The GIS platform shall serve as the land data archive or repository for the information listed above.

4. Blended Finance for Bus Rapid Transit Project (the “*Blended Finance for BRT Project*”)

The objective of the Blended Finance for BRT Project is to catalyze financing required for the implementation of the BRT system in a manner that promotes lower greenhouse gas emissions. The Project aims to support NaMATA to deliver on the Government’s core BRT program and increase the efficiency of public transportation modes by assisting the Government to meet a financing gap or attract private capital needed by the Government to operationalize BRT. At MCC’s sole discretion, MCC funding may support the leasing and maintenance of buses with lower greenhouse gas emissions compared to diesel buses for the BRT Line 2 (the “***Bus Leasing Option***”). The Bus Leasing Option is being conducted under Kenya’s procurement laws. In order to provide funding for the Bus Leasing Option, at a minimum, MCC must determine that the procurement process and the financing terms are in accordance with MCC’s policies and blended finance objectives.

If MCC, at its sole discretion, determines that the Bus Leasing Option is not viable, MCC and the Government shall work together to identify other opportunities where MCC could support an alternative BRT financing need, in form and substance satisfactory to MCC. In identifying a blended finance opportunity, the Parties shall give consideration to: (a) using blended finance to deliver sustainable, market-based solutions to support the BRT system, (b) utilizing Grant funding to support commercial sustainability in the BRT system; (c) supporting Kenya’s national climate goals; (d) the allocation of risks among stakeholders; (e) financial and social returns and benefits; and (f) the Program’s policy or reform objectives.

Any support provided under this Project shall require prior written approval by MCC. In determining whether to support a blended finance opportunity MCC considers, among other matters, the extent to which the support is consistent with MCC’s procurement, fiscal accountability, environmental and social standards, and other related processes and policies. If by the end of the second year after entry into force of the Agreement, the Parties have not agreed on one or more blended finance opportunities to support, MCC shall de-obligate the funding for this Project.

B. IMPLEMENTATION ARRANGEMENTS

The Program shall be implemented through an Accountable Entity (with MCC oversight). The roles and responsibilities of the various entities involved in implementation are set forth below.

1. MCC.

MCC shall take all appropriate actions to carry out its responsibilities in connection with this Agreement and the Program, including, without limitation, exercise of its approval rights. MCC oversight of the Program is expected to include an MCC resident threshold director based in Nairobi and an implementation support team from MCC headquarters, as well as MCC-managed consultants, who work in Kenya from time to time as necessary to perform their duties.

2. The Accountable Entity.

(a) Independence and Autonomy.

The Government shall take all appropriate actions to carry out its responsibilities in connection with this Agreement and the Program. To do so, the Government has designated the Accountable Entity pursuant to Section 3.2(b) to exercise and perform the Government's rights and obligations to oversee and implement the Program. The Accountable Entity shall have operational and legal independence, including, *inter alia*, the ability to (i) enter into contracts in its own name; (ii) sue and be sued; (iii) establish a bank account in its own name; (iv) expend Grant funding; and (v) engage contractors, consultants, and grantees.

The internal operations of the Accountable Entity shall be governed by the terms and conditions of this Agreement, any related MCC policies, and the Governing Documents, which shall include bylaws providing further details on the Accountable Entity's internal operations. The bylaws must be in form and substance satisfactory to MCC.

The Accountable Entity shall be administered and managed by a board of directors (the "**Board**") and an operations unit (the "**Operations Unit**").

(b) Board of Directors.

The Board shall have ultimate responsibility for the oversight, direction, and decisions of the Accountable Entity, as well as the overall implementation of the Program. It comprises seven voting members. The Board will include the following members:

1. Cabinet Secretary, National Treasury and Economic Planning;
 2. Attorney General;
 3. Principal Secretary, State Department of Transport;
 4. Principal Secretary, State Department of Housing and Urban Development;
 5. one member representing the private sector;
 6. two members representing civil society or non-government organizations (with one of the members representing an organization focused on women's issues);
- and

7. the Accountable Entity's Chief Executive Officer ("**CEO**"), who shall serve as a non-voting member.

The Board chair shall be appointed by the Government from among the members drawn from civil society, non-government organizations, or the private sector. The members of the Board may be represented by alternates appointed pursuant to the Governing Documents. The non-Government representatives shall be selected through an open and transparent process in form and substance satisfactory to MCC, and not by the Government. Other non-voting members may be included as named in the Governing Documents. In addition, MCC's resident threshold director in Kenya shall serve as a non-voting observer of the Board.

(c) Operations Unit.

The Operations Unit shall report to the Board and have principal responsibility for the day-to-day operations of the Accountable Entity. The Operations Unit shall be led by the CEO and shall be composed of the directors and officers as agreed between MCC and the Government. The Government shall conduct an open and competitive recruitment for Program-funded positions within the Accountable Entity. The Key Staff shall be supported by appropriate additional staff to enable the Operations Unit to execute its roles and responsibilities, subject to MCC approval and availability of Grant funds. Any reference to the Operations Unit shall be deemed to be a reference to the Interim Accountable Entity Team, or any member thereof, until such time as Operations Unit employees begin their employment following the above-referenced open and competitive recruitment. Any reference to Key Staff shall be deemed to be a reference to any member of the Interim Accountable Entity Team performing the functions that otherwise would be the responsibility of a Key Staff position, until such time as such employees begin their employment following the above-referenced open and competitive recruitment.

The Accountable Entity shall be supported by staff funded by the Government, as needed, and the Government shall provide such other in-kind support as required for the performance of the Accountable Entity's duties. This funding shall include but is not limited to: all costs required to implement the Program before the initial Disbursement, such as costs related to the recruitment of Accountable Entity staff; administrative costs related to the procurement of the Fiscal Agent and Procurement Agent; administrative costs related to the selection of the Bank; administrative costs for the Interim Accountable Entity Team; and Accountable Entity staff salaries. During the implementation of the Program, the Government shall be responsible for IT and operating costs, as needed, human resources administrative support, and daily transportation costs for the Operations Unit.

(d) Other Government Entities.

The Government shall ensure that Government entities cooperate with the Accountable Entity in the implementation of the Program. As needed, the Accountable Entity and such other

Government entities shall enter into appropriate agreements to memorialize such cooperation and to assure the sustainability and maintenance of any Program Assets.

(e) Fiscal and Procurement Management.

Unless MCC agrees otherwise, the Accountable Entity shall engage a firm with expertise in financial management to serve as fiscal agent (the “*Fiscal Agent*”). In addition, unless MCC agrees otherwise, the Accountable Entity shall also engage one or more individuals or a firm with expertise in procurement to serve as a procurement agent (the “*Procurement Agent*”). It is expected that the Fiscal Agent and Procurement Agent, respectively, shall perform all services necessary to ensure that: (i) all financial management activities related to the Program are conducted in strict compliance with the terms of this Agreement, the MCC Cost Principles, and other related MCC policies, and (ii) all Program-related procurements are conducted in strict compliance with the terms of this Agreement, the MCC Program Procurement Guidelines, and other related MCC policies.

C. MONITORING AND EVALUATION

This Part C of Annex I summarizes the M&E Plan for the Program. The actual structure and content of the M&E Plan, which may differ from that specified in this Part C, shall be formulated by MCC and the Government in accordance with the M&E Policy. In addition, the M&E Plan may be modified from time to time as described in the M&E Policy without requiring an amendment to this Part C. The M&E Plan shall be posted publicly on the MCC Website and any relevant Government websites and updated as necessary.

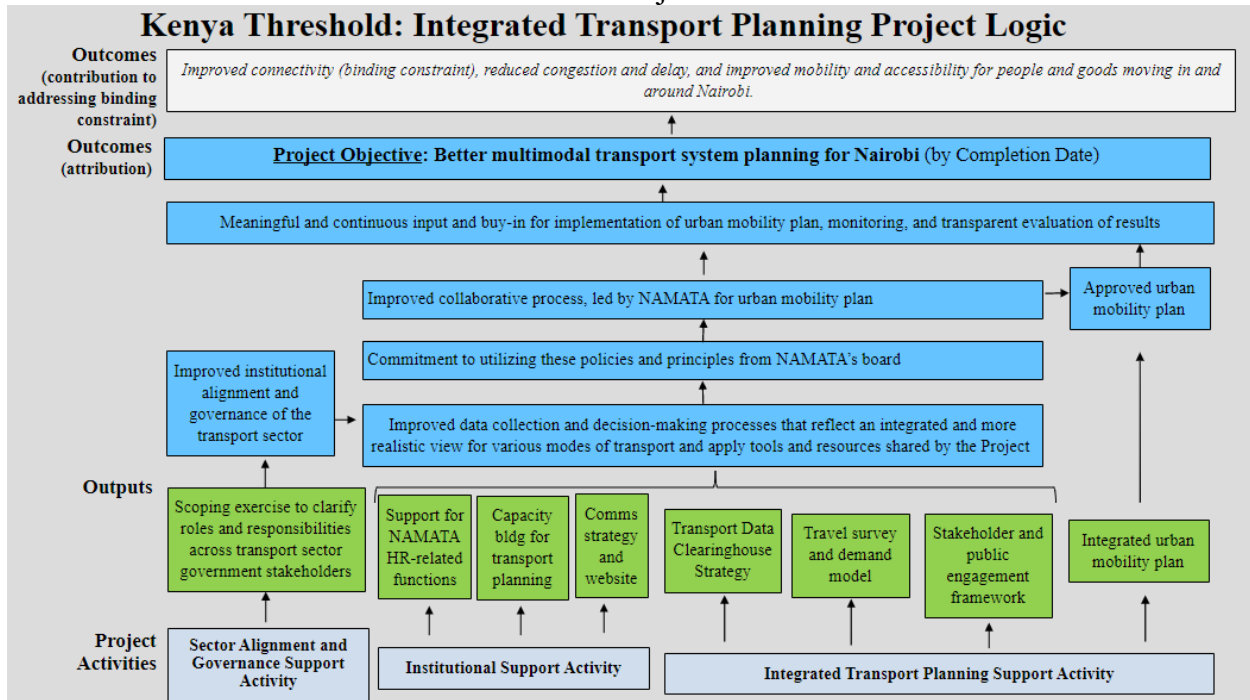
1. General.

MCC and the Government agree to formulate, and the Government shall adopt and implement, an M&E Plan that explains in detail how and what MCC and the Accountable Entity shall (i) monitor to determine whether the Projects are on track to achieve their intended results (“*Monitoring Component*”), and (ii) evaluate to assess implementation strategies, provide lessons learned, and assess progress toward achieving the Project Objectives (“*Evaluation Component*”).

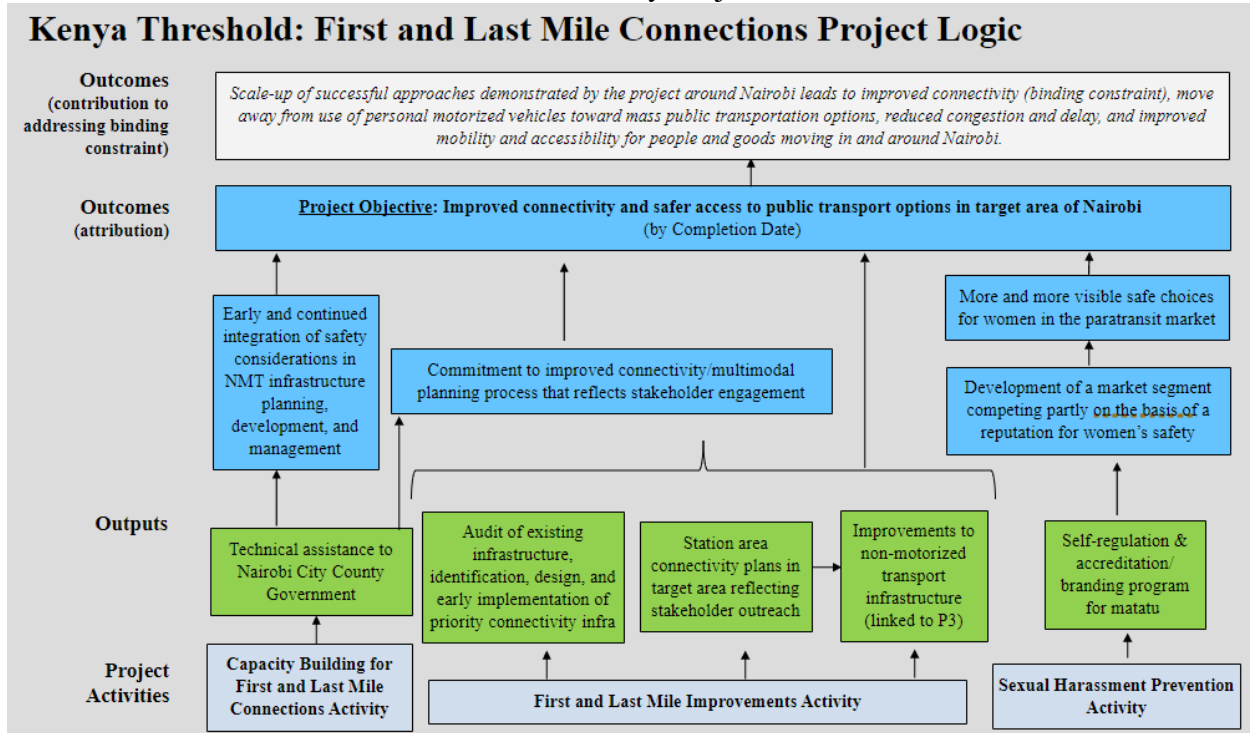
2. Program Logic.

The program logic is an explanatory model that demonstrates how specific interventions lead to the expected outcomes and objectives of a program. This model reflects the design and implementation plans of a program, noting planned activities and outputs and the sequencing of results. The program logic forms the basis of the M&E Plan. A description of the logic underlying three of the four Projects is included below. The logic for the Blended Finance for the BRT Project shall be developed in accordance with the conditions precedent set forth in Annex III.

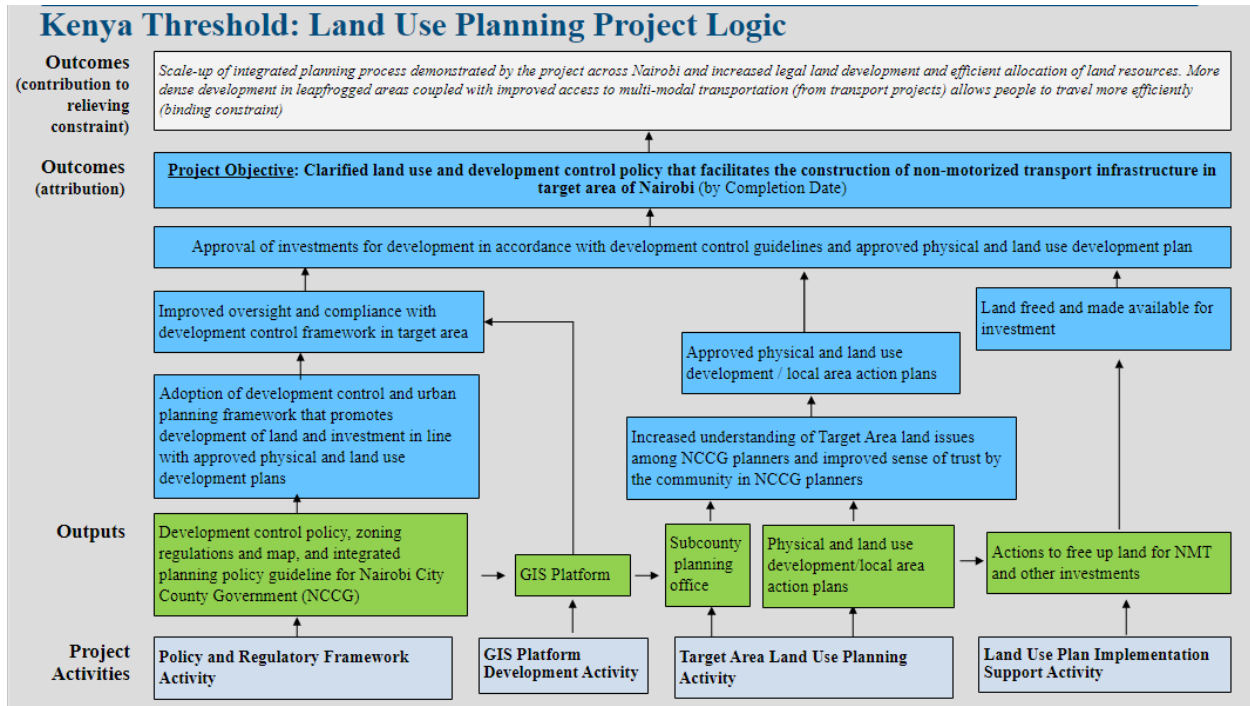
ITP Project



Connectivity Project



Land Use Planning Project



3. Monitoring Component.

To monitor progress toward the achievement of results of the Program, the Monitoring Component of the M&E Plan shall document (a) the Indicators (as defined below); (b) the definitions of the Indicators; (c) the sources and methods for data collection; (d) the frequency for data collection; (e) the party or parties responsible for collecting and analyzing relevant data; and (f) the timeline for reporting on each Indicator to MCC. The Accountable Entity shall share any updates with the Government. It should be noted that some Indicators shall continue to be tracked after the Completion Date as necessary.

Indicators

The M&E Plan shall measure the results of the Program using quantitative, objective, and reliable data (“*Indicators*”).

(a) The M&E Plan shall document baselines for every Indicator (each, a “*Baseline*”). An Indicator’s Baseline should be established prior to the start of the corresponding Project, Activity, and/or Sub-Activity. Baselines demonstrate that the problem can be specified in measurable terms, and are thus a pre-requisite for adequate intervention design. The Government shall establish Baselines on the selected Indicators or verify already collected Baselines where applicable.

(b) The M&E Plan shall document a benchmark for each Indicator that specifies the expected value and the expected time by which the result shall be achieved (“*Target*”).

(c) The M&E Plan shall indicate which Indicators shall be disaggregated by gender, income level, and age, and beneficiary types to the extent practical and applicable.

(d) MCC's Common Indicators (as described in the M&E Policy) shall also be included as relevant. These shall be denoted by the Common Indicator code.

(e) Subject to prior written approval from MCC and in accordance with the M&E Policy, the Government may add Indicators or refine the definitions and Targets of existing Indicators.

(f) The Accountable Entity must report to MCC on monitoring Indicators in the M&E Plan on a quarterly basis using an Indicator Tracking Table ("*ITT*") in the form provided by MCC. No changes to Indicators, Baselines, or Targets may be made in the ITT until the changes have been approved in the M&E Plan. Additional guidance on Indicator reporting is contained in the *MCC Guidance to Accountable Entities on the Quarterly Disbursement Request Package*. In the case that the Accountable Entity submits a six-month Disbursement Request, the ITT must still be submitted quarterly.

Key Indicators that can be reported on at least an annual basis shall be included in quarterly monitoring indicator reports, while Indicators that require survey data or a longer time period to track shall be tracked for evaluation purposes. The M&E Plan shall contain the Indicators listed in Schedule A to Annex I.

4. Evaluation Component.

The Evaluation Component of the M&E Plan contains information about how the Program shall be evaluated through independent evaluations which are further described in the M&E Policy.

The Evaluation Component of the M&E Plan shall describe the purpose of the evaluation, methodology, timeline, required MCC approvals, and the process for collection and analysis of data for each evaluation. All independent evaluations must be designed and implemented by independent, third-party evaluators. For each independent evaluation, the Accountable Entity is expected to review and provide feedback to independent evaluators on the evaluation design reports, evaluation materials (including questionnaires), baseline report (if applicable), and any interim/final reports in order to ensure proposed evaluation activities are feasible, and final evaluation products are technically and factually accurate.

A description of the expected evaluation methodologies for each Project is below.

(a) ITP Project.

The ITP Project may be evaluated through a retrospective performance evaluation relying on a pre-post or post-implementation thematic analysis to understand the quality and effectiveness of multimodal transport planning reforms. The following questions shall guide the design of the evaluation:

- (i) To what extent was the Project implemented according to plan (in terms of quantity and quality of outputs)?
- (ii) Did the Project result in better multimodal transport system planning for Nairobi (Project Objective), by the Completion Date? (see associated indicator in Table 1 of Schedule A to Annex I) Why or why not?
- (iii) Did the results of the Project justify the allocation of resources towards it? Why or why not?

To fully evaluate the achievement of the objective, the evaluator shall independently assess how well the approved Urban Mobility Plan has been put into practice in line with transport planning principles and whether the planning process has advanced significantly to define the priority investments linked to the Urban Mobility Plan that shall move forward in the short term and identified financial resources for the same. The evaluator shall likely make this determination through review of NaMATA documentation and key informant interviews with NaMATA board members and staff and other stakeholders who have been involved in transport planning.

(b) Connectivity Project.

The Connectivity Project may be evaluated through a pre post-performance evaluation relying on a combination of data about the number and composition of users of targeted non-motorized transport infrastructure and matatus and data on user perceptions about connectivity and access to public transport options in the Target Area. The following questions shall guide the design of the evaluation:

- (i) To what extent was the Project implemented according to plan (in terms of quantity and quality of outputs)?
- (ii) Did the Project improve connectivity and result in safer access to public transport options in the Target Area (Project Objective), by the Completion Date? (see associated indicator in Table 2 of Schedule A to Annex I) Why or why not?
- (iii) Did the results of the Project justify the allocation of resources towards it? Why or why not?

To fully evaluate the achievement of the objective, the evaluator shall independently assess whether the Project successfully relieved critical bottlenecks to accessing mass public transport, as evidenced by increased usage of the upgraded connectivity infrastructure and matatus. The evaluator shall likely make this determination using surveys of commuters in the Target Area to collect the quantity and composition of infrastructure users and their perceptions about connectivity and safety. The evaluator may also conduct origin-destination surveys and/or explore use of mass public transport options that are newly made available during the implementation of the Program.

(c) Land Use Planning Project.

The Land Use Planning Project may be evaluated through a retrospective performance evaluation relying on a pre-post or post-implementation thematic analysis to understand the

quality and effectiveness of zoning and land development control policies and reforms. The following questions shall guide the design of the evaluation:

- (i) To what extent was the Project implemented according to plan (in terms of quantity and quality of outputs)?
- (ii) Did the Project adequately clarify land policy and use sufficiently to facilitate the construction of non-motorized transport infrastructure (identified in the Connectivity Project and noted in the approved physical and land use plan) (Project Objective), by Completion Date? (see associated indicator in Table 3 of Schedule A to Annex I) Why or why not?
- (iii) Did the results of the Project justify the allocation of resources towards it? Why or why not?

To fully assess the achievement of this indicator, the evaluator shall independently assess whether land policies and use of particular parcels of land were adequately clarified such that non-motorized transport infrastructure investments identified by the Connectivity Project in the Target Area came to fruition as planned and in line with the policies and procedures supported by the Project. It may also assess whether new property development applications that are in line with the approved physical and land use development plan and local area actions plans emerged. The evaluator shall likely make this determination by reviewing policies, property development applications, and investment plans, by undertaking key informant interviews with NCCG staff, community members, and other stakeholders.

(d) Blended Finance for BRT Project.

Evaluation plans for the Blended Finance for the BRT Project shall be determined at a later date in accordance with the conditions precedent set forth in Annex III and set forth in the M&E Plan. The following questions shall guide the design of the evaluation:

- (i) To what extent was the Project implemented according to plan (in terms of quantity and quality of outputs)?
- (ii) Did the Project catalyze financing required for the implementation of the BRT in a manner that promotes lower greenhouse gas emissions by the Completion Date? Why or why not?
- (iii) Did the results of the Project justify the allocation of resources towards it? Why or why not?

To facilitate the evaluations, the Government shall share with MCC any necessary data, documentation, or other information required to assess the achievement of results targeted by the Program. This shall include, but is not limited to, copies of transport or land planning policies, procedures, investment plans, and completed investment details; data on general transport, mass public transport, and/or matatu use and demand forecasts; and data on land permit applications and licenses. All such information provided by the Government for evaluation purposes shall be de-identified and/or generalized in reporting, such that sensitive details shall not be made public. Specifics on required data sources shall be set forth in the M&E Plan. For each of the evaluations, the Accountable Entity or the Government is expected to review and provide feedback to the independent evaluators on the evaluation reports and

materials. The results of all evaluations shall be made publicly available in accordance with the M&E Policy.

5. Data Quality Reviews.

Data Quality Reviews (“**DQRs**”) are a mechanism to review and analyze the utility, objectivity, and integrity of performance information. DQRs are to cover: (a) quality of data; (b) data collection instruments; (c) survey sampling methodology; (d) data collection procedures; (e) data entry, storage and retrieval processes; (f) data manipulation and analyses; and (g) data dissemination. MCC requires that an independent entity conduct the DQRs, such as a local or international specialized firm or research organization, or an individual consultant, depending on the size of the Program or Project in review. The frequency and timing of data quality reviews must be set forth in the M&E Plan; however, MCC may request a DQR at any time. DQRs should be timed to occur before or early enough in the term of this Agreement that meaningful remedial measures (if any) may be taken depending on the results of the review. The methodology for the review should include a mix of document and record reviews, site visits, key informant interviews, and focus groups.

6. Other Components of the M&E Plan.

In addition to the monitoring and evaluation components, the M&E Plan shall include the following components:

(a) Data Management. The M&E Plan shall describe the process to collect data, store, analyze, and deliver information to relevant stakeholders in such a way that the information collected and verified pursuant to the M&E Plan is accessible and useful to those who wish to use it.

(b) Budget. A detailed cost estimate for all components of the M&E Plan.

7. Responsibility for Developing the M&E Plan.

MCC desires to “[refrain] from requesting the introduction of performance Indicators that are not consistent with countries’ national development strategies.”¹ For this reason, primary responsibility for developing the M&E Plan lies with the M&E staff of the Accountable Entity with support and input from MCC’s M&E and economist staff. The M&E Plan must be developed in conjunction with key stakeholders, including the Accountable Entity leadership and sector leads, the MCC resident country mission, and other MCC staff (such as Environmental and Social Performance and Gender and Social Inclusion), as well as external stakeholders, as applicable. While the entire M&E Plan must be developed collaboratively, MCC and the Accountable Entity Project or Activity leads are expected to guide the selection

¹ Busan Partnership for Effective Development Cooperation, Busan Outcome Document, 1 December 2011, p. 5

of Indicators at the process and output levels that are particularly useful for management and oversight of Projects and Activities.

8. Approval and Implementation of the M&E Plan.

The approval and implementation of the M&E Plan, as amended from time to time, shall be in accordance with this Agreement, any other relevant supplemental agreements, and the M&E Policy. All M&E Plan modifications proposed by the Accountable Entity must be submitted to MCC for prior written approval. The M&E Plan may undergo peer review within MCC before the beginning of the formal approval process. Evaluation activities under the M&E Plan are expected to continue beyond the end of the term of this Agreement and the Accountable Entity shall identify the individuals and organizations that shall support these activities through completion.

SCHEDULE A TO ANNEX I

INDICATORS

Indicators that shall be used for monitoring and evaluating the Program and that shall be included in the M&E Plan are set forth below:

Table 1: ITP Project						
Result	Indicator	Definition	Unit of Measure	Baseline	End of Threshold Target	ITT Indicator
Outcome Indicators to measure the Project Objective						
Objective: Better multimodal transport system planning for Nairobi	Prioritized list of financed transport investments produced	Date on which a list of prioritized transport investments, drawing from the Urban Mobility Plan and with financial resources committed, is produced	Date	N/A	Completion Date	Y
Intermediate Outcome Indicators						
Meaningful and continuous input and buy-in for implementation of long-range transport plan, monitoring, and transparent evaluation of results	TBD	TBD	TBD	TBD	TBD	TBD
Approved Urban Mobility Plan	Urban Mobility Plan approved	Date on which financially realistic Urban Mobility Plan for non-motorized transport, matatus, mass public transport, etc. is approved	Date	N/A	TBD	Y
Improved collaborative process, led by NaMATA for Urban Mobility Plan	TBD	TBD	TBD	TBD	TBD	TBD
Commitment to utilizing these policies and principles from NaMATA's board	TBD	TBD	TBD	TBD	TBD	TBD
Improved data collection and decision-making processes that reflect an integrated and more realistic view for various modes of transport and apply tools and resources shared by the Project	TBD	TBD	TBD	TBD	TBD	TBD
Improved institutional alignment and governance of the transport sector	TBD	TBD	TBD	TBD	TBD	TBD

Table 1: ITP Project

Result	Indicator	Definition	Unit of Measure	Baseline	End of Threshold Target	ITT Indicator
Sector Alignment and Governance Support Activity						
Output Indicators						
Scoping exercise to clarify roles and responsibilities across transport sector Government stakeholders	Scoping exercise on transport roles and responsibilities completed	Date on which scoping exercise to identify overlaps and conflicts in various Government stakeholders' organizational mandates and work activities completed	Date	N/A	TBD	Y
Integrated Transport Planning Support Activity						
Output Indicators						
Integrated Urban Mobility Plan	Nairobi Urban Mobility Plan produced	Date on which the integrated Urban Mobility Plan for Nairobi that sets a new long-term vision for transportation across the metropolitan area, and fully incorporates mass public transit and non-motorized transport opportunities, is produced	Date	N/A	TBD	Y
Stakeholder and public engagement framework	Stakeholder engagement framework developed	Date on which the stakeholder engagement framework for an Urban Mobility Plan, with mechanisms to (i) lead participatory engagement in planning process, (ii) educate the public with information about planned investments, budgets, and impacts, and (iii) seek input, and documented process for capturing feedback that shall be utilized in planning decisions, is developed	Date	N/A	TBD	Y
Travel survey and demand model	Nairobi household travel survey completed	Date on which the baseline household travel survey (that emphasizes non-motorized transport trips) for the Nairobi metropolitan area, or at a	Date	N/A	TBD	Y

Table 1: ITP Project

Result	Indicator	Definition	Unit of Measure	Baseline	End of Threshold Target	ITT Indicator
		minimum the proposed Target Area completed				
	Nairobi travel demand model created	Date on which the baseline travel demand model (expanded to evaluate non-motorized transport modes and mass rapid transport accessibility factors) for the Nairobi metropolitan area created	Date	N/A	TBD	Y
Transport Data Clearinghouse Strategy	Transport Data Clearinghouse Strategy completed	Date on which a consolidated and complete set of required transport data is finalized by NaMATA to comprise the Transport Data Clearinghouse Strategy	Date	N/A	TBD	Y
Institutional Support Activity						
Output Indicators						
	NaMATA website updated	Date on which NaMATA website updated to provide more accurate, transparent information about transport projects	Date	N/A	TBD	Y
Communications strategy and website	NaMATA communications strategy developed	Date on which communications and messaging strategy for NaMATA that articulates its operational role in the landscape of Nairobi transportation planning, makes a case for the importance of multimodal transportation planning and connectivity to its modal partners, and markets its value-add to skeptical stakeholders is developed	Date	N/A	TBD	Y
Capacity building for transport planning	TBD	TBD	TBD	TBD	TBD	Y
Support for NaMATA human resources-related functions	TBD	TBD	TBD	TBD	TBD	Y

Table 2: Connectivity Project						
Result	Indicator	Definition	Unit of Measure	Base-line	End of Threshold Target	ITT Indicator
Outcome Indicators to measure the Project Objective						
Objective: Improved connectivity and safer access to public transport options in Target Area of Nairobi	Average daily users of connectivity infrastructure	The average number of users of Project's non-motorized transport infrastructure (e.g., crosswalks, pedestrian pathways, bicycle lanes, overpasses, and pick up and drop off points), per day, averaged over different times (day and night) and over different seasons to arrive at an annualized daily average	Number	TBD	TBD The timing for achievement of this result is by the Completion Date.	N
	Note: The improved connectivity component of the objective is expected to be achieved upon completion of the connectivity/non-motorized infrastructure outputs. See Indicators below.					
Intermediate Outcome Indicators						
Commitment to improved connectivity/multimodal planning process that reflects stakeholder engagement	TBD	TBD	TBD	TBD	TBD	TBD
Early and continued integration of safety considerations in non-motorized transport infrastructure planning, development, and management	TBD	TBD	TBD	TBD	TBD	TBD
More and more visible safe choices for women in the paratransit market	Travel time	Average amount of time it takes to travel a key route. Note: Sample shall focus on female riders of matatu routes	Minutes	N/A	N/A	N
Development of a market segment competing partly on the basis of a reputation for women's safety	TBD	TBD	TBD	TBD	TBD	TBD
Sexual Harassment Prevention Activity						
Output Indicators						
Self-regulation & accreditation/ branding Program for matatus	Number of operators trained	Number of matatu operators trained	Number	0	TBD	Y
First and Last Mile Improvements Activity						
Output Indicators						

Table 2: Connectivity Project						
Result	Indicator	Definition	Unit of Measure	Base-line	End of Threshold Target	ITT Indicator
Technical assistance to NCCG	TBD	TBD	TBD	TBD	TBD	TBD
First and Last Mile Improvements Activity						
Output Indicators						
Improvements to non-motorized transport infrastructure	TBD	TBD	TBD	TBD	TBD	TBD
Station Area Connectivity Plans in Target Area reflecting stakeholder outreach	Station Area Connectivity Plans produced	Number of detailed station and stop connectivity plans to improve first and last mile connections to public transport in the Target Area produced	Number	0	TBD	Y
Audit of existing infrastructure, identification, design, and early implementation of priority connectivity infra	TBD	TBD	TBD	TBD	TBD	TBD

Table 3: Land Use Planning Project						
Result	Indicator	Definition	Unit of Measure	Base-line	End of Threshold Target	ITT Indicator
Outcome Indicators to measure the Project Objective						
Objective: Clarified land use and development control policy that facilitates the construction of non-motorized transport infrastructure in Target Area of Nairobi	Planned non-motorized transport investments completed	Number of priority non-motorized transport infrastructure and transport connections investments, as identified in approved physical and land use development plan, completed in Target Area of Nairobi	Number	0	TBD. The timing for achievement of this result is by Completion Date.	Y
Intermediate Outcome Indicators						
Approval of investments for development in accordance with development control guidelines and approved physical and land use development plan	Investments approved	TBD	TBD	TBD	TBD	TBD
Land freed and made available for investment	Land made available for investment	Parcels of land where obstacles that prevented investment have been removed. Land shall be made available through public tender,	Number	N/A	TBD	Y

Table 3: Land Use Planning Project						
Result	Indicator	Definition	Unit of Measure	Base-line	End of Threshold Target	ITT Indicator
		negotiation, long term lease, etc.				
Improved oversight and compliance with Development Control Framework in Target Area	TBD	TBD	TBD	TBD	TBD	TBD
Approved physical and land use development / local area action plans	Physical and land use development / local area action plans approved	Number of physical and land use development / local area action plans for Target Area of Nairobi approved by Nairobi City County Assembly	Number	0	4	Y
Increased understanding of Target Area land issues among NCCG planners and improved sense of trust by the community in NCCG planners	TBD	TBD	TBD	TBD	TBD	TBD
Adoption of development control and urban planning framework that promotes development of land and investment in line with approved physical and land use development plans	TBD	TBD	TBD	TBD	TBD	TBD
Policy and Regulatory Framework Activity						
Output Indicators						
Development control policy, zoning regulations and map, and integrated planning policy guideline for the NCCG	Legal and regulatory reforms adopted	The number of specific pieces of legislation or implementing regulations adopted by Kenya and attributable to Threshold Program support	Number	0	TBD	Y
	Development control policy updated and approved	Date on which revised development control policy for Nairobi has been finalized and approved	Date	N/A	TBD	Y
	Zoning regulations prepared and approved	Date on which Nairobi zoning regulations and parcel-level map (for Target Area) have been finalized and approved	Date	N/A	TBD	Y
	Integrated planning policy guideline prepared	Date on which integrated planning policy guideline for Nairobi	Date	N/A	TBD	Y

Table 3: Land Use Planning Project						
Result	Indicator	Definition	Unit of Measure	Base-line	End of Threshold Target	ITT Indicator
		City County has been finalized				
Target Area Land Use Planning Activity						
Output Indicators						
Physical and land use development/local area action plans	Local area action plans prepared	Number of local area action plans prepared for corridors in the Target Area, focused on transit-oriented development, residential revitalization, and industrial development and job creation	Number	0	3	Y
	Physical and land use development plan Prepared	Date on which initial Physical and Land Use Development Plan for Target Area of Nairobi has been drafted and finalized, reflecting an integrated planning process	Date	N/A	TBD	Y
Sub-county planning office	Subcounty planning office established	Date on which a Target Area sub-county local planning office to oversee field activities and establish close relations with subcounty administration and community has been established	Date	N/A	TBD	Y
Land Use Plan Implementation Support Activity						
Output Indicators						
Actions to free up land for NMT and other investments	TBD	TBD	TBD	TBD	TBD	TBD
GIS Platform Development Activity						
Output Indicators						
GIS Platform	GIS platform launched	Date on which improved GIS for land use planning and implementation launched	Date	N/A	TBD	Y

Table 4: Blended Finance for BRT Project						
Result	Indicator	Definition	Unit of Measure	Base-line	End of Threshold Target	ITT Indicator
Outcome Indicators to measure the Project Objective						

Table 4: Blended Finance for BRT Project

Result	Indicator	Definition	Unit of Measure	Base-line	End of Threshold Target	ITT Indicator
<u>Project Objective:</u> Financing required for the implementation of the BRT in a manner that promotes lower greenhouse gas emissions catalyzed	TBD	TBD	TBD	TBD	TBD	TBD

ANNEX II

ALLOCATION OF GRANT FUNDING

Project/Activity	Total (USD)
1. Integrated Transport Planning Project	\$6,000,000
1.1 Institutional Support Activity	\$1,000,000
1.2 Integrated Transport Planning Support Activity	\$4,450,000
1.3 Sector Alignment and Governance Support Activity	\$550,000
2. First and Last Mile Connections Project	\$20,000,000
2.1 First and Last Mile Improvements Activity	\$16,660,000
2.2 Capacity Building for First and Last Mile Connections Activity	\$320,000
2.3 Sexual Harassment Prevention Activity	\$3,020,000
3. Land Use Planning Project	\$13,900,000
3.1 Policy and Regulatory Framework Activity	\$3,410,000
3.2 Target Area Land Use Planning Activity	\$3,690,000
3.3 Land Use Plan Implementation Support	\$5,770,000
3.4 Geographic Information System Platform Development Activity	\$1,030,000
4. Blended Finance for Bus Rapid Transit Project	\$12,000,000
5. Monitoring and Evaluation	\$600,000
6. Program Management and Administration	\$7,500,000
Program Total	\$60,000,000

ANNEX III

CONDITIONS PRECEDENT TO DISBURSEMENTS OF GRANT FUNDS

The conditions precedent set forth in this Annex III apply to all Disbursements.

PART A. Conditions Precedent for Entire Disbursement Request (Applicable to All Projects)

- (1) Before the second Disbursement of Grant funding, the Accountable Entity must develop and adopt a Work Plan pursuant to Section 4.1(c), in form and substance satisfactory to MCC.
- (2) Before the second Disbursement of Grant funding, the Accountable Entity must develop and adopt a comprehensive SGIP in accordance with the *MCC Operational Requirements and Milestones for Social Inclusion and Gender Integration*, in form and substance satisfactory to MCC.
- (3) Before the second Disbursement of Grant funding, the Accountable Entity must develop and adopt a M&E Plan in accordance with Section 4.2, in form and substance satisfactory to MCC.
- (4) Before the third Disbursement of Grant funding, the Accountable Entity must develop and adopt, in form and substance satisfactory to MCC, a Program-wide ESMS commensurate with the scope, scale, risks and opportunities presented by the Program, which ESMS shall include, *inter alia*, a Resettlement Policy Framework and a stakeholder engagement plan for each of the Projects.
- (5) Before each Disbursement of Grant funding for payment under any technical assistance contract for a given Project or Activity, the Accountable Entity must submit evidence, in form and substance satisfactory to MCC, that the Accountable Entity is implementing and in compliance in all material respects with the requirements of each of the ESMS, the stakeholder engagement and communications plan for that Project or Activity, and all of the environmental and social requirements identified in each of the studies conducted as part of such Project or Activity.
- (6) Before the initial Disbursement of Grant funding for the payment of goods, works or services that the Accountable Entity must procure using solicitation documents, the Government must have adopted enabling legislation, satisfactory to MCC, that is required to ensure compliance with Section 2.5 of the Agreement.

PART B. Conditions Precedent to Disbursement of Grant Funding for the ITP Project

- (1) Before the first Disbursement of Grant funding for the ITP Project, the Government shall deliver to MCC evidence, in each case, in form and substance satisfactory to MCC, that:

- a. the Government has created or designated NaMATA as a sub-program within the budget for Urban and Metropolitan Development.
 - b. the National Assembly has approved, and NaMATA has received, an administrative budget to support the recruitment and hiring of permanent staff within its Transport Planning Department, in accordance with its existing staffing plan.
 - c. NaMATA has been duly authorized to initiate the recruitment and hiring of permanent staff in accordance with its existing staffing plan.
 - d. NaMATA has allocated appropriate working space within its offices for the consultants performing any technical assistance under the Project.
- (2) Before the first Disbursement of Grant funding for NaMATA under the ITP Project, the Accountable Entity must develop and adopt an implementing entity agreement with NaMATA, in form and substance satisfactory to MCC.
 - (3) Before the first Disbursement of Grant funding for technical assistance under the Transport Planning Activity, the Government shall deliver to MCC evidence, in form and substance satisfactory to MCC, that NaMATA has recruited and hired permanent staff to carry out its functions within its Transport Planning Department, in accordance with its existing staffing plan.
 - (4) Before the first Disbursement of Grant funding for technical assistance under the Transport Planning Activity, the Government shall deliver to MCC evidence, in form and substance satisfactory to MCC, that NaMATA has formed transport planning coordination teams.

Part C. Conditions Precedent to Disbursement of Grant Funds for the Connectivity Project

- (1) Before the first Disbursement of Grant funding for the Connectivity Project, the Accountable Entity must develop and adopt an implementing entity agreement with the relevant Government entity, in form and substance satisfactory to MCC.
- (2) Before the first Disbursement of Grant funding for the Connectivity Project, the Government shall deliver to MCC evidence, in form and substance satisfactory to MCC, that the Roads Directorate has allocated appropriate working space within its offices for the Transport Planning Consultant.
- (3) Before the first Disbursement of Grant funding for construction or works for the Connectivity Project, the Government shall deliver to MCC a report, in form and substance satisfactory to MCC, that sets clear goals for the improvement of service along the Nairobi-Thika line of the commuter rail service.

- (4) Before the ninth Disbursement of Grant funding for the Connectivity Project, the Accountable Entity shall have established the baseline and target for the Project Objective which shall be documented in an approved M&E Plan, in form and substance satisfactory to MCC.

PART D. Conditions Precedent to Disbursement of Grant Funds for the Land Use Planning Project

- (1) Before the first Disbursement of Grant funding for the Land Use Planning Project, the Accountable Entity must develop and adopt an implementing entity agreement, in form and substance satisfactory to MCC, with the Lands Directorate or the Nairobi Metropolitan Services.
- (2) Before the first Disbursement of Grant funding for the Land Use Planning Project, the Government must provide evidence, in form and substance satisfactory to MCC, that the NCCG or Nairobi Metropolitan Services has made available office space for the establishment of a local Project office in Makadara Sub-County.
- (3) Before the first Disbursement of Grant funding for the Implementation Support Activity, the Government shall deliver to MCC, in form and substance satisfactory to MCC, evidence that the physical and land use development plan for the Target Area has been approved by the Nairobi City County Assembly.
- (4) Before the ninth Disbursement of Grant Funding for the Land Use Planning Project, the Accountable Entity must have established the target for the Project Objective in line with approved investments planned under the First and Last Mile Activity, in form and substance satisfactory to MCC.

PART E. Conditions Precedent to Disbursement of Grant Funds for the Blended Finance for BRT Project

- (1) Before the first Disbursement of Grant funding for the Blended Finance for BRT Project, the Parties must agree on, and MCC provide written approval for, either the Bus Leasing Option or such other blended finance opportunities developed in accordance with Annex I.A.4.
- (2) Before the ninth Disbursement of Grant funding for the Blended Finance for BRT Project, the Accountable Entity must produce a written Project design with a project logic diagram, in form and substance satisfactory to MCC, and establish an indicator to measure the Project Objective, including a definition, baseline, and target, which information shall be incorporated into an approved M&E Plan in form and substance satisfactory to MCC.

ANNEX IV
DEFINITIONS

Accountable Entity has the meaning provided in Section 3.2(b).

Activity or Activities has the meaning provided in Section A of Annex I.

Additional Representative has the meaning provided in Section 7.3.

AE Audit Guidelines has the meaning provided in Section 4.1(d).

Agreement has the meaning provided in the preamble to this Agreement.

Audit Plan has the meaning provided in Section 4.1(d).

Auditor has the meaning provided in Section 4.1(d).

Bank has the meaning provided in Section 5.1(c)(i).

Bank Agreement has the meaning provided in Section 5.1(c)(i).

Baseline has the meaning provided in Section C.3 of Annex I.

BCS has the meaning provided in Section 4.1(b).

Blended Finance means the strategic use of development finance to mobilize additional finance towards sustainable development in developing countries.

Blended Finance for BRT Project has the meaning provided in Section A.4 of Annex I.

Board has the meaning provided in Section B.2(a) of Annex I.

BRT has the meaning provided in Section 1.2(d).

Bus Leasing Option has the meaning provided in Section A.4 of Annex I.

Capacity Building Activity has the meaning provided in Section A.2.(b) of Annex I.

Capacity Building for First and Last Mile Connections Activity has the meaning provided in Section A.2.(b) of Annex I.

CEO has the meaning provided in Section B.2.(b) of Annex I.

Common Indicators has the meaning provided in the M&E Plan.

Common Payment System has the meaning provided in Section 5.1(b)(iii).

Completion Date has the meaning provided in Section 6.1.

Connectivity Project has the meaning provided in Section A.2 of Annex I.

Covered Provider has the meaning provided in the AE Audit Guidelines.

Detailed Financial Plan has the meaning provided in Section 4.1(a).

Development Control Framework has the meaning provided in Section A.3.(a) of Annex I.

Disbursement has the meaning provided in Section 2.1(b).

Disbursement Period has the meaning provided in Section 5.1(a).

Disbursement Request has the meaning provided in Section 5.1(a).

DQRs has the meaning provided in Section C.5 of Annex I.

ESMP has the meaning provided in Section A.2.(a)(i) of Annex I.

Environmental and Social Management System or **ESMS** means a set of policies, procedures, tools and internal capacity to identify and manage an institution's exposure to the environmental and social risks of its activities, investments, clients, investees or stakeholders.

Evaluation Component has the meaning provided in Section C.1 of Annex I.

Exempt Beneficiary has the meaning provided in Annex V.

Exempt Entity has the meaning provided in Annex V.

Exempt Individual has the meaning provided in Annex V.

First and Last Mile Connections Project has the meaning provided in Section A.2 of Annex I.

First and Last Mile Improvements Activity has the meaning provided in Section A.2.(a) of Annex I.

Fiscal Accountability Plan has the meaning provided in Section 4.4.

Fiscal Agent has the meaning provided in Section B.2(e) of Annex I.

Fiscal Agent Agreement means the agreement or agreements by which the Government or Accountable Entity engages or hires the Fiscal Agent and which sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions.

Fiscal Agent Disbursement Certificate has the meaning provided in Section 5.3(a)(iv).

Geographic Information System Platform Development Activity or **GIS Activity** has the meaning provided in Section A.3.(d) of Annex I.

GIS Activity has the meaning provided in Section A.3.(d) of Annex I.

Governing Document has the meaning provided in Section 4.9(g).

Government has the meaning provided in the preamble to this Agreement.

Grant has the meaning provided in Section 2.1(a).

iCMS has the meaning provided in Annex V.

IFC Performance Standards has the meaning provided in Section 4.5(a).

Implementation Consultant has the meaning provided in Section A.3.(c) of Annex I.

Implementation Letters has the meaning provided in Section 4.10.

Implementation Plan has the meaning provided in Section 4.1.

Implementation Plan Document has the meaning provided in Section 4.1.

Implementation Support Activity has the meaning provided in Section A.3.(c) of Annex I.

Implementers has the meaning provided in Section A.2.(c) of Annex I.

Indicators has the meaning provided in Section C.3 of Annex I.

Inspector General has the meaning provided in Section 4.7(c).

Institutional Support Activity has the meaning provided in Section A.1.(a) of Annex I.

Intellectual Property means all registered and unregistered trademarks, service marks, logos, names, trade names, and all other trademark rights; all registered and unregistered copyrights; all patents, inventions, shop rights, know how, trade secrets, designs, drawings, art work, plans, prints, manuals, computer files, computer software, hard copy files, catalogues, specifications, and other proprietary technology and similar information; and all registrations for, and applications for registration of, any of the foregoing, that are financed, in whole or in part, using the Grant.

Integrated Transport Planning Project or ITP Project has the meaning provided in Section A.1 of Annex I.

Integrated Transport Planning Support Activity or Transport Planning Activity has the meaning provided in Section A.1.(b) of Annex I.

Interim Accountable Entity Team has the meaning provided in Section 3.2(b).

ITP Project means the Integrated Transport Planning Project.

ITT has the meaning provided in Section C.3 of Annex I.

Key Staff has the meaning provided in the MCC Governance Guidelines or as otherwise agreed between MCC and the Government.

KRA has the meaning provided in Annex V.

Lands Directorate has the meaning provided in Section A.3.(a) of Annex I.

Land Use Plan Implementation Support Activity provided in Section A.3.(c) of Annex I.

Land Use Planning Project has the meaning provided in Section A.3 of Annex I.

Lien has the meaning provided in Section 3.2(f).

Local Account has the meaning provided in Section 5.1(c)(i).

Master List has the meaning provided in Annex V.

Matatu(s) has the meaning provided in Section A.2.(a) of Annex I.

M&E Plan has the meaning provided in Section 4.2.

M&E Policy has the meaning provided in Section 4.2.

Material Agreement has the meaning provided in Section 4.9(c).

MCA Act has the meaning provided in the preamble to this Agreement.

MCC has the meaning provided in the preamble to this Agreement.

MCC Cost Principles has the meaning provided in Section 4.4.

MCC's Counter-Trafficking in Persons Policy means the Counter-Trafficking in Persons Policy, as such may be posted on MCC's Website from time to time or otherwise made available to the Government.

MCC Environmental Guidelines has the meaning provided in Section 2.4(b)(iii).

MCC Operations Requirements and Milestones for Social Inclusion and Gender Integration means the MCC Operational Requirements and Milestones for Social Inclusion and Gender Integration, as such may be posted on MCC's Website from time to time or otherwise made available to the Government.

MCC Gender Policy means the MCC Gender Policy (including any guidance documents issued in connection with the guidelines) posted from time to time on the MCC Website or otherwise made available to the Government.

MCC Governance Guidelines has the meaning provided in Section 3.2(b).

MCC Marking Standards has the meaning provided in Section 3.2(j).

***MCC Program Grant Guidelines** has the meaning provided in Section 4.3(b).*

***MCC Program Procurement Guidelines** has the meaning provided in Section 4.3(a).*

***MCC Reporting Guidelines** has the meaning provided in Section 4.6(a).*

***MCC Website** has the meaning provided in Section 2.4(b)(iii).*

***Monitoring Component** has the meaning provided in Section C.1 of Annex I.*

***NaMATA** has the meaning provided in Section A.1 of Annex I.*

***NCCG** has the meaning provided in Section A.2.(a)(i) of Annex I.*

***Operations Unit** has the meaning provided in Section B.2(a) of Annex I.*

***Organizational Consultants** has the meaning provided in Section A.1.(a)(i) of Annex I.*

***Party or Parties** has the meaning provided in the preamble to this Agreement.*

***Permitted Account** has the meaning provided in Section 5.1(c)(i).*

***Planning Consultant** has the meaning provided in Section A.3.(b) of Annex I.*

***Policy and Regulatory Framework Activity** has the meaning provided in Section A.3.(a) of Annex I.*

***Principal Representative** has the meaning provided in Section 7.3.*

***Procurement Agent** has the meaning provided in Section B.2(e) of Annex I.*

***Procurement Agent Agreement** means the agreement or agreements by which the Government or Accountable Entity engages or hires the Procurement Agent and which sets forth the roles and responsibilities of the Procurement Agent and other appropriate terms and conditions.*

***Procurement Agent Disbursement Certificate** has the meaning provided in Section 5.3(a)(iii).*

***Procurement Plan** has the meaning provided in Section 4.1(b).*

***Program** has the meaning provided in the preamble to this Agreement.*

***Program Asset(s)** means any asset, good or property (real, tangible or intangible) purchased or financed, in whole or in part (directly or indirectly), by the Grant, including any Intellectual Property.*

***Program Goal** has the meaning provided in Section 1.1.*

***Program Grant** has the meaning provided in Section 4.3(b).*

Program Guidelines means collectively the AE Audit Guidelines, the MCC Cost Principles, the MCC Environmental Guidelines, the MCC Policy for Accountable Entities and Implementation Structures, the MCC Gender Policy, the MCC Operational Requirements and Milestones for Social Inclusion and Gender Inclusion, the Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations, the MCC Governance Guidelines, the MCC Marking Standards, the MCC Program Procurement Guidelines, the MCC Reporting Guidelines, the M&E Policy, MCC Program Grant Guidelines, any successor to any of the foregoing, and any other guidelines, policies or guidance papers relating to the administration of a Threshold Program, and, in each case, as from time to time published on the MCC Website.

Project or Projects has the meaning provided in Section 1.2.

Project Objective or Project Objectives has the meaning provided in Section 1.2.

Provider has the meaning provided in the AE Audit Guidelines.

Records has the meaning provided in Section 4.7(a).

Resettlement Policy Framework means a broad plan or scheme prepared for a project, based on the principles of IFC Performance Standard No.5, that sets forth and defines the principles, organizational arrangements, and design criteria to be applied to regulate all circumstances regarding resettlement that may occur in implementation of the project.

Roads Directorate has the meaning provided in Section A.2.(a)(i) of Annex I.

Sector Alignment and Governance Support Activity has the meaning provided in Section A.1.(c) of Annex I.

Sexual Harassment Prevention Activity has the meaning provided in Section A.2.(c) of Annex I.

Sexual Harassment Prevention Consultants has the meaning provided in Section A.2.(c) of Annex I.

SGIP has the meaning provided in Section 5.3(b)(vi).

Station Area Connectivity Plan has the meaning provided in Section A.2.(a)(ii) of Annex I.

Target has the meaning provided in Section C.3 of Annex I.

Target Area has the meaning provided in Section A.2 of Annex I.

Target Area Land Use Planning Activity has the meaning provided in Section A.3.(b) of Annex I.

Taxes has the meaning provided in Section 2.5(a).

TBD means to be determined by the Parties.

Transport Data Clearinghouse Strategy has the meaning provided in Section A.1.(b) of Annex I.

Transport Planning Activity has the meaning provided in Section A.1.(b) of Annex I.

Transport Planning Consultant has the meaning provided in Section A.1.(b) of Annex I.

Threshold Program has the meaning provided in the preamble to this Agreement.

United States has the meaning provided in the preamble to this Agreement.

United States Dollars or USD or US\$ means the lawful currency of the United States of America.

United States Treasury Current Value of Funds Rate means the interest rate published by the United States Treasury's Bureau of Fiscal Services that is based on the current value of funds available to the Department of the Treasury and is the rate used for debt collection, cash discounts, and rebate evaluation of the United States Government.

Urban Mobility Plan has the meaning provided in Section A.1.(b) of Annex I.

VAT has the meaning provided in Annex V.

Work Plan has the meaning provided in Section 4.1(c).

ANNEX V

TAX SCHEDULE

The Government shall ensure that the Accountable Entity, as well as all Government entities providing assistance with the implementation of the Program, Providers, Covered Providers, contractors (prime contractors and subcontractors), consultants, and other entities and individuals providing goods, works or services in furtherance of the Program that receive MCC Funding directly or indirectly (an “*Exempt Entity*” in the case of a legal entity or an “*Exempt Individual*” in the case of a natural person, and in either case an “*Exempt Beneficiary*”), are exempt from Taxes in accordance with Section 2.5 of this Agreement. The Accountable Entity shall facilitate and assist each Exempt Beneficiary with the exemption process to ensure compliance with the exemption procedures herein.

Each Exempt Beneficiary shall provide the documents described in the following Tax Schedules or those which provide substantially equivalent information but for which terminology may vary. The Government shall make no additional requirements or demands without modification of these Tax Schedules. All applications made to and requests made of Government authorities in connection with the procedures described in these Tax Schedules shall be free of any fees or charges.

Consistent with Section 2.5 of this Agreement, and notwithstanding the exemption procedures described in these Tax Schedules, if a Tax has been paid by an Exempt Beneficiary in connection with this Agreement, the Government shall refund the amount of the Tax paid to that Exempt Beneficiary within (30) days of the receipt of documentation providing evidence of the Tax paid.

All references to days in these Tax Schedules represent calendar days, unless otherwise specified.

**INITIAL PROCEDURES TO BE UNDERTAKEN BY THE GOVERNMENT OF KENYA
TO FACILITATE THE TAX EXEMPTION PROCESS**

To facilitate the timely exemption of the Taxes covered under Schedules A and B (collectively, “Indirect Taxes”), the Accountable Entity and the Government will ensure the approval of a complete list of the goods, works and services to be purchased exempt of Indirect Taxes (a “*Master List*”).

- I. Approval of a Master List will include the following steps for goods and works:
 - 1) Upon the execution of a contract or other agreement with an Exempt Beneficiary to provide goods or works in connection with the Program, the Accountable Entity will request from the Exempt Beneficiary information on the nature, quantity and estimated value of the goods and equipment the Exempt Beneficiary expects to purchase or procure in the implementation of its contract or agreement.
 - 2) On behalf of the Exempt Beneficiary and, after certifying that the goods and works are aligned to the needs of the Program and to the contract or agreement, the Accountable Entity will prepare an application for approval of a Master List. The application shall include (a) the name of the Exempt Beneficiary, (b) the expected commencement and completion date of its contract or agreement, (c) a Master List that identifies the estimated quantity and indicative value of goods and equipment to be exempted from Indirect Taxes in the format provided below, and (d) a copy of the Threshold Program Grant Agreement.

Template for preparation of a master list

Master List Number	Description	Quantity (estimated)	Unit cost (estimated)	Value (estimated)

- 3) The Accountable Entity will forward the application, including the Master List, to the National Treasury, with a copy to the Ministry in which the Accountable Entity is legally domiciled. The Cabinet Secretary, National Treasury and Economic Planning may approve or reject the application based on the information provided within seven (7) days.
- 4) Upon approval, the Cabinet Secretary, National Treasury and Economic Planning, will inform the Accountable Entity, the Exempt Beneficiary, and the Kenya Revenue Authority (“*KRA*”), in writing, of his or her approval of the Master List.

- II. Approval of the Master List will include the following steps for services:

- 1) Upon the execution of a contract or other agreement with an Exempt Beneficiary to provide services in connection with the Program, the Accountable Entity will request from the Exempt Beneficiary information on the nature, quantity and estimated value of the services the Exempt Beneficiary expects to utilize in the implementation of its contract or agreement.
- 2) On behalf of the Exempt Beneficiary and, after certifying that the services are aligned to the needs of the Program and to the contract or agreement, the Accountable Entity will prepare an application for approval of a Master List of the services, as well as associated goods and equipment, to be utilized in the implementation of its contract or agreement. The application shall include, (a) the name of the Exempt Beneficiary, (b) the expected commencement and completion date of its contract or agreement, (c) a Master List that identifies the nature, value, and duration of the services, including the expected value and duration of any associated sub-contracts, and if necessary, the estimated quantity and indicative value of associated goods and equipment to be exempted from Indirect Taxes in the format provided above, and (d) a copy of the Threshold Program Grant Agreement.
- 3) The Accountable Entity will forward the application to the National Treasury, with a copy to the Ministry in which the Accountable Entity is legally domiciled. The Cabinet Secretary, National Treasury and Economic Planning, may approve or reject the application based on the information provided within seven (7) days.
- 4) Upon approval, the Cabinet Secretary, National Treasury and Economic Planning, will inform the Accountable Entity, the Exempt Beneficiary, and the KRA, in writing, of his or her approval of the Master List.

SCHEDULE A

VALUE ADDED TAX AND EXCISE DUTIES ON LOCAL PURCHASES

Legal Basis for Exemption

- First Schedule Part I section A, Paragraph 51 of the Value Added Tax Act (2013)
- Second Schedule Part A, Paragraph 9 of the Excise Duty Act, 2015
- Section 2.5 of this Agreement

Beneficiaries of the Exemption

The Accountable Entity and each Exempt Beneficiary shall be exempt from all Value Added Tax (“*VAT*”), Excise Duties, and other, similar Indirect Taxes on goods, equipment or services purchased in the local market in the implementation of the Program. Following completion of the initial procedures related to the approval of the Master List as described in these Tax Schedules, the following procedures shall apply to implement this exemption.

Procedures

- 1) Goods, equipment, or services to be purchased or procured in the local market by the Accountable Entity or an Exempt Beneficiary in furtherance of the Program shall be exempt from VAT, Excise Duties and any other, similar Indirect Taxes.
- 2) When an Exempt Beneficiary intends to purchase or procure any goods, equipment, or services included in an approved Master List in the local market, the Exempt Beneficiary shall provide the Accountable Entity with a request for a specific exemption from Indirect Taxes. The request shall include a list of the specific goods, equipment, or services that shall be acquired in the local market, a pro forma invoice, and a copy of the contract or agreement with the Accountable Entity.
- 3) The Accountable Entity shall certify that specific goods, equipment or services requested for exemption align to the needs of the Program and are included in the Master List. The Accountable Entity shall then prepare an application for an exemption from Indirect Taxes for the specific goods, equipment or services to be purchased or procured in the local market and submit the request to KRA. The request will include the approved Master List and the pro forma invoice.
- 4) Within fourteen (14) days of receipt of the application, the KRA shall issue to the Exempt Beneficiary a tax exemption certificate for the specific goods, equipment or services to be purchased or procured locally.

- 5) The Exempt Beneficiary shall provide the tax exemption certificate to the vendor or service provider, which shall provide the goods, equipment, or services to the Exempt Beneficiary without the imposition of the exempt Indirect Taxes.

SCHEDULE B

VALUE ADDED TAXES, IMPORT DUTIES, IMPORT DECLARATION FEES, EXCISE TAXES AND RAILWAY DEVELOPMENT LEVY ON IMPORTS

Legal Basis for Exemption

- First Schedule Part I section A, Paragraph 51 of the Value Added Tax Act (2013)
- Fifth Schedule Part A, Paragraph 10 of the East African Community Customs Management Act, 2004
- Second Schedule Part A, Paragraph 9 of the Excise Duty Act, 2015
- Second Schedule Part A, Paragraph (xi) and Part B paragraph (i) of the Miscellaneous Fees and Levies Act, 2016
- Section 2.5 of this Agreement

Beneficiaries of the Exemption

The Accountable Entity and each Exempt Beneficiary shall be exempt from all VAT, Import Duties, Customs Fees, Excise Taxes, Import Declaration Fees, Railway Development Levies and other, similar Indirect Taxes for goods imported into Kenya for use in the implementation of the Program. Following completion of the initial procedures related to the approval of the Master List as described in these Tax Schedules, the following procedures shall apply to implement this exemption.

Procedures

- 1) Goods, equipment, and personal effects to be imported by the Accountable Entity or an Exempt Beneficiary in furtherance of the Program shall be exempt from VAT, Import Duties, Excise Duties, Import Declaration Fees, Railway Development Levies, or other similar Indirect Taxes.
- 2) When an Exempt Beneficiary intends to import any goods or equipment included in an approved Master List, the Exempt Beneficiary shall provide the Accountable Entity, in writing, a request for the release of the specific goods or equipment to be imported without Indirect Taxes. The request shall include: (i) a list of the goods or equipment (packing list); (ii) a bill of lading, airway bill or road consignment note; and (iii) a copy of the invoice.
- 3) The Accountable Entity shall certify that the specific goods or equipment to be imported align to the needs of the Program and are included in the Master List. The Accountable Entity shall then prepare an application for the release of the specific goods or equipment to be imported free of Indirect Tax and forward its certification and a copy of the exemption request to the KRA for processing.

- 4) Within seven (7) days of the receipt of the application, the KRA shall process the exemption and issue an approval letter.
- 5) Upon receipt of the approval letter, the Exempt Beneficiary will input (or instruct its clearing agent to input) required information into the integrated customs management system ("*iCMS*") utilized by the Government.
- 6) Within seven (7) days of the information being input into the iCMS, the KRA will issue an exemption certificate for the specific goods or equipment to be imported. The iCMS will automatically generate a quota number that is visible to clearing agents at all ports of entry in Kenya and to the Accountable Entity or Exempt Beneficiary
- 7) Based on the exemption certificate and quota number, the Exempt Beneficiary (or its consignee) will be able to clear the goods without the imposition of the exempt Indirect Taxes.

SCHEDULE C
CORPORATE INCOME TAX

Legal Basis for Exemption

- Income Tax Act, Cap. 470
- Section 2.5 of this Agreement

Beneficiaries of the Exemption

Each Exempt Entity, other than legal persons that are legal entities registered under the laws of Kenya, *provided that*, in determining if an Exempt Entity has been formed under the laws of Kenya for the purposes of this Tax Schedule, the status of such entity shall be based on its status as of the time it is awarded or executes a Program-related agreement or contract, and such initial determination shall not change regardless of: (i) the type of agreement or contract used to employ or engage such Exempt Entity, (ii) any laws of Kenya that purport to change such status based on period of contract performance or period of time residing and/or working in Kenya, (iii) any laws of Kenya that purport to make exemption status conditional on working in Kenya solely or exclusively for the implementation of a project financed by this Agreement, and/or (iv) any requirement under the laws of Kenya that a company or other legal person must establish a branch office in Kenya, or otherwise register or organize itself under the laws of Kenya, in order to provide goods, services or works in Kenya.

Procedures

- 1) Income earned by an Exempt Entity in connection with the implementation of the Program shall be exempt from corporate income tax.
- 2) The Accountable Entity shall not withhold corporate income tax or related taxes on income from any of its payments to an Exempt Entity from, or with respect to, Program Funding.
- 3) The Exempt Entity may obtain a personal identification number (PIN) but that shall not result in an obligation to file annual tax returns or create an obligation to pay any form of corporate income tax.
- 4) In the event that an Exempt Entity earns income from sources other than the Program, the Exempt Entity shall record and account for such income separately, and any such income from sources other than the Program shall be outside the scope of the tax exemptions provided under the Agreement.

SCHEDULE D
INDIVIDUAL INCOME TAX

Legal Basis for Exemption

- Income Tax Act, Cap. 470
- Section 2.5 of this Agreement

Beneficiaries of the Exemption

Each Exempt Individual, other than citizens and permanent residents of Kenya, working in connection with the Program, *provided that*, in determining if an individual is a permanent resident for the purposes of this provision, the status of such individual shall be based on his/her status as of the time that such individual is awarded or executes a Program-related agreement or contract, and such initial determination shall not change regardless of: (i) the type of contract used to employ or engage such individual, (ii) any laws of Kenya that purport to make exemption status conditional on working in Kenya solely or exclusively for the implementation of the project financed by the Agreement, and/or (iii) any laws of Kenya that purport to change such status based on period of contract performance or period of time residing and/or working in Kenya.

Procedures

- 1) Income earned by an Exempt Individual in connection with the implementation of the Program shall be free from individual income tax.
- 2) Exempt Individuals shall not pay individual income tax, shall have no obligation to complete any mandatory filings or periodic reporting, and shall not be subject to withholdings.
- 3) The Exempt Individual may obtain a personal identification number (PIN) but that shall not result in an obligation to file annual tax returns or create an obligation to pay any form of individual income tax.
- 4) In the event that an Exempt Individual earns income from sources other than the Program, the Exempt Individual shall record and account for such income separately, and any such income from sources other than the Program shall be outside the scope of the tax exemptions provided under the Agreement.

SCHEDULE E
TAX REFUNDS

Legal basis for exemption

- Tax Procedures Act (2015, as amended)
- Threshold Program Grant Agreement

Beneficiaries of the Exemption

The Accountable Entity and each Exempt Beneficiary

Procedures

- 1) If the Accountable Entity or any other Exempt Beneficiary that is entitled to an exemption has paid a Tax in connection with the Program, the Government shall refund the amount of that Tax paid upon receipt of evidence that such Tax has been paid.
- 2) If an Exempt Beneficiary has paid a Tax in connection with the Program, the Exempt Beneficiary shall notify the Accountable Entity, in writing, of the date and amount of the Tax paid and provide documentation supporting this claim. The Exempt Beneficiary will obtain a PIN if they do not have one.
- 3) The Accountable Entity shall review the notification and related documentation and determine, based on the contract or agreement and the exemption status of the Exempt Beneficiary, if the Tax was paid. If necessary, the Accountable Entity will initiate the process for updating the approved Master List to ensure that the exemption of goods, works or services is approved after purchase. The Accountable Entity may consult with National Treasury and/or the KRA in the course of its review.
- 4) If the Accountable Entity deems that the Tax was paid, the Accountable Entity will submit to the National Treasury a request that the Tax paid be reimbursed. The request will include copies of the relevant exemption certificate(s), invoices, and contract or agreement between the Accountable Entity and the Exempt Beneficiary. The National Treasury shall review the request and forward it to the Commissioner, the KRA, for processing.
- 5) The Exempt Beneficiary shall lodge a refund claim in the iTax system.
- 6) The KRA shall reimburse such Tax to the Accountable Entity or the Exempt Beneficiary.
- 7) From the time the Government is notified in writing that the Tax has been paid, such refund will be made within 30 days.