

EXECUTION VERSION

GRANT AND IMPLEMENTATION AGREEMENT

BY AND BETWEEN

THE MILLENNIUM CHALLENGE CORPORATION

AND

THE GOVERNMENT OF THE HASHEMITE KINGDOM OF JORDAN

FOR THE DEVELOPMENT OF A MILLENNIUM CHALLENGE COMPACT

Dated as of June ____, 2009

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GRANT AND IMPLEMENTATION AGREEMENT

This GRANT AND IMPLEMENTATION AGREEMENT (this “*Agreement*”), dated as of June ____, 2009 is made by and between the Millennium Challenge Corporation, a United States Government corporation (“*MCC*”), and the Government of the Hashemite Kingdom of Jordan (the “*Government*” and, collectively with MCC, the “*Parties*” and each, individually, a “*Party*”).

RECITALS

WHEREAS, the Board of Directors of MCC has determined that the Hashemite Kingdom of Jordan (“*Jordan*”) is eligible for assistance from MCC and is seeking to enter into a Millennium Challenge Compact with Jordan (a “*Compact*”) to advance economic growth and poverty reduction;

WHEREAS, the Government submitted to MCC a proposal for assistance in November 2008 (the “*Concept Paper*”), which requests assistance for certain water projects;

WHEREAS, the Parties wish to facilitate the development and implementation of a Compact (the “*Objective*”);

WHEREAS, to facilitate the development and implementation of a Compact, the Parties now wish to engage in certain activities described herein; and

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

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties agree as follows:

ARTICLE 1.

MCC GRANT

Section 1.1 MCC Grant. MCC hereby grants to the Government, under the terms of this Agreement, an amount not to exceed thirteen million three hundred forty thousand U.S. Dollars (US\$13,340,000) (the “*Grant*”) to fund the activities described in more detail in Annex I (each an “*Activity*” and collectively, the “*Activities*”).

ARTICLE 2.

GOVERNMENT REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.1 Government Representations and Warranties. The Government hereby represents and warrants to MCC that:

(a) Power; Authorization. The Government has the power and authority to execute, deliver and perform its obligations under this Agreement, and under each other agreement, certificate, or instrument contemplated hereby, as applicable, and none of such actions violate or will violate any other obligation of the Government or any Permitted Designee, as applicable.

(b) No Conflict. This Agreement does not, and will not, conflict with any international agreement or obligation binding on the Government, or any laws of Jordan.

(c) Information. 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 ٢,٢ Government Responsibilities and Covenants.

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

(b) Permitted Designees. Subject to the prior written approval of MCC, the Government may designate one or more entities to implement and perform some or all of the Government's obligations or to exercise any rights of the Government under this Agreement (each such entity, a "**Permitted Designee**"); *provided* that such a designation will not relieve the Government of any obligations and rights under this Agreement, for which the Government will retain full responsibility.

(i) The Government hereby designates the Ministry of Water and Irrigation ("**MWI**") to manage the implementation of the Activities including entering into and managing the Service Provider Contracts on behalf of the Government. The Government hereby confirms to MCC that MWI has the authority to bind the Government with regard to all Activities. MCC hereby acknowledges and consents to the designation of MWI as contemplated by this Section 2.2(b)(i).

(ii) The Government hereby designates the Government Tenders Directorate ("**GTD**"), of the Ministry of Public Works, to manage the procurement of the Activities. GTD has the authority to bind the Government with regard to all Activities. MCC hereby acknowledges and consents to the designation of GTD as contemplated by this Section 2.2(b)(ii).

(iii) The Government intends to establish an accountable entity that will implement the programs under a Compact and such entity shall be thereafter referred to as "**MCA-Jordan**." Upon establishment of MCA-Jordan, the Government will promptly take all necessary or appropriate actions to enable MCA-Jordan to carry out the Government's obligations or exercise rights of the Government hereunder, as applicable, and which may include an assignment of the rights previously designated to any other Permitted Designee. The "Accountable Entity" referenced in the MCC Governance Guidelines will be deemed to refer to MCA-Jordan, and all obligations assigned to the "Accountable Entity" in the MCC Governance Guidelines will be obligations of MCA-Jordan.

(c) No Violation of Law. The Government will ensure that no law or regulation of Jordan now or hereinafter in effect makes, or will make, unlawful or otherwise prevent or hinder the performance of any of its obligations under this Agreement, any Service Provider Contracts, any other related agreement or any transaction contemplated hereby.

(d) Liens. The Government will ensure that neither the Grant nor any asset acquired with Grant funding will be 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 not so approved is imposed, the Government will promptly seek the release of such Lien and, if such Lien is imposed by a final non-appealable court order, will pay any amounts due in order to obtain such release; *provided* that the Government will not apply any Grant funding or other funds received from MCC (or assets acquired with funds provided by MCC) to satisfy any such obligation.

(e) Insurance; Performance Guaranties. The Government will ensure, to MCC's satisfaction, that all assets acquired with Grant funding are insured and will arrange such other appropriate insurance to cover against risks or liabilities associated with the Activities and the transactions contemplated thereby, including by requiring Service Providers to obtain adequate insurance and to post adequate performance bonds or other guaranties. The Government or a Permitted Designee, as applicable, will be named as the payee on any such insurance and the beneficiary of any such guaranty or bonds. If not already named as an insured party, the applicable Permitted Designee and MCC (if it so requests) will be named as additional insureds on any such insurance. The Government will ensure that any proceeds from claims paid under such insurance or guaranty will be used to replace or repair any lost or damaged assets acquired with Grant funding; *provided* that, at MCC's election, such proceeds will be deposited in an account as designated by or as otherwise directed by MCC.

(f) Further Assurances. The Government will 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 effectively carry out the obligations of the Government set forth in this Agreement.

(g) Indemnification. The Government will indemnify, defend and hold harmless MCC and any MCC officer, director, employee, affiliate, contractor, agent or representative (each of MCC and any such persons, an "***MCC Indemnified Party***") from and against, and will compensate, reimburse and pay such MCC Indemnified Party for, any liability or other damages which (i) are (directly or indirectly) suffered or incurred by such MCC Indemnified Party, or to which any MCC Indemnified Party may otherwise become subject, regardless of whether or not such damages relate to any third-party claim, and (ii) arise from or as a result of the negligence or willful misconduct of the Government, any Permitted Designee, or any officer, employee, affiliate, contractor, agent or representative of the Government (directly or indirectly) connected with any activities (including acts or omissions) undertaken in furtherance of this Agreement; *provided* that the Government will not apply any Grant funding or other funds received from MCC (or assets acquired with funds provided by MCC) to satisfy any such obligation.

(h) Government Resources.

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

(ii) The Government will use its best efforts to ensure that the amount of Grant funding it receives or is projected to receive in each of its fiscal years is fully accounted for in its annual budget on a multi-year basis.

(iii) The Government will not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the Activities.

(iv) Unless the Government discloses otherwise to MCC in writing, Grant funding will be in addition to the resources that the Government would otherwise receive or budget for the Activities.

(i) Use of Funds.

(i) The Government will ensure that the Grant and any assets or services funded by the Grant, in whole or in part, will be used solely in furtherance of this Agreement and the Activities.

(ii) The Government also will ensure that no Grant funding will be 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 or by posting at www.mcc.gov (the "**MCC Website**"), including but not limited to the following purposes:

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

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

(3) 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 on the MCC Website ("**MCC Environmental Guidelines**"); or

(4) 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.

(j) Taxes.

(i) Unless the Parties otherwise specifically agree in writing, and subject to the provisions of Sections 2.2(j)(ii) and (iii), the Government will ensure that each of the following is free from the payment of any existing or future taxes, duties, levies, contributions or other similar charges ("**Taxes**") of or in Jordan (including any such Taxes imposed by a national, regional, local or other governmental or taxing authority of or in Jordan): (i) Grant funding; (ii) interest or earnings on Grant funding; (iii) the Activities and the goods, works, services, technology and assets related to any Activity; (iv) persons and entities that provide such goods, works, services, technology and assets; (v) MCA-Jordan; and (vi) income, profits and payments with respect thereto. The Parties acknowledge and agree that "**Taxes**" include, among other things, value added and other transfer taxes (including exemption therefrom with credit), profit and income taxes, property and *ad valorem* taxes, import and export duties and taxes (including for goods imported and re-exported for personal use), withholding taxes, payroll taxes, and social security and social insurance contributions.

(ii) The Government and MCC may, at MCC's discretion, enter into one or more agreements setting forth the mechanisms for implementing this Section 2.2(j), including one or more mechanisms to effect the exemption of Taxes required by Section 2.2(j)(i), which may include (i) exemptions from payment of such Taxes that have been granted in accordance with applicable law, (ii) refund or reimbursement of such Taxes by the Government to MCC, MCA-Jordan or to the taxpayer, or (iii) payment by the Government to MCA-Jordan or MCC, for the benefit of the Activities, of an agreed amount representing any collectible Taxes on the items described in Section 2.2(j)(i).

(iii) Unless otherwise agreed in writing by the Parties, the provisions of Section 2.2(j)(i) shall not apply to income Taxes on and contributions with respect to individuals or legal persons who are nationals of Jordan and individuals who are permanent residents in Jordan; *provided* that such

Taxes and contributions are not discriminatory and are generally applicable to all nationals or permanent residents in Jordan. For purposes of this Section 2.2(j)(iii), the term “national” means natural persons who are citizens of Jordan and legal persons who are formed under the laws of Jordan (excluding MCA-Jordan and any other entity formed for the purpose of implementing the Government’s obligations hereunder).

(iv) If a Tax has been levied and paid contrary to the requirements of this Section 2.2(j) or any agreement entered into pursuant to this Section 2.2(j), the Government will refund promptly to MCC (or to another party as designated by MCC) the amount of such Tax in United States dollars or the currency of Jordan 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 MCA-Jordan) that such Tax has been paid.

(v) No Grant funding or any other funds received from MCC (or asset acquired with funds provided by MCC) may be applied by the Government in satisfaction of its obligations under this Section 2.2(j).

ARTICLE 3. DISBURSEMENT OF GRANT FUNDING

Section 3.1 Disbursement Process.

(a) Disbursement Requests. The Government may request disbursements of the Grant (each, a “**Disbursement**”) by submitting a written request to MCC substantially in the form of the “Disbursement Request” 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 otherwise agreed by MCC, the Government may submit only one Disbursement Request for each quarter (such quarter, or any other period of time as agreed by MCC, the “**Disbursement Period**”).

(b) Approval of Disbursement Requests; Release of Grant Funding.

(i) Upon receipt of a Disbursement Request, MCC will determine the appropriate aggregate amount of the Disbursement permitted for the applicable Disbursement Period based on, among other things, (1) progress achieved under the 609(g) Implementation Plan, (2) the amount of funds required to complete the Activities described in the Disbursement Request during such Disbursement Period, and (3) the satisfaction, waiver or deferral of the conditions precedent applicable to the requested Disbursement.

(ii) MCC may, in its sole discretion, reject any Disbursement Request completely, or reject or reduce the amount of any Disbursement requested thereunder, based on among other things (1) as a result of any modification made to the 609(g) Implementation Plan or (2) if any condition precedent applicable to such Disbursement has not been satisfied, waived or deferred.

(iii) Subject to MCC’s approval of a Disbursement Request, the proceeds of the Disbursement approved thereunder may be transferred, at MCC’s sole election, (1) to a Permitted Account, or (2) directly to a provider as payment for goods, works or services in accordance with MCC’s common payment system or any alternate payment system approved by MCC.

(iv) Except as MCC may otherwise agree, 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 609(g) Detailed Financial Plan and sufficient uncommitted funds exist in the 609(g) Detailed Financial Plan for the relevant Disbursement Period.

(c) Conditions Precedent to Each Disbursement. MCC's approval of each Disbursement Request will be subject to the satisfaction of each of the following conditions (except as such conditions may be waived or deferred by MCC in its sole discretion):

(i) If requested by MCC upon five business days' prior notice, delivery by the Government to MCC of a copy of an executed tax implementation letter (or such other documentation acceptable to MCC) setting forth the detailed mechanisms for implementing Section 2.2(j) of this Agreement (the "**Tax Implementation Letter**") and any decree, legislation, regulation or other instrument establishing or giving effect to Section 2.2(j), certified, in each case, as being in full force and effect by the Government;

(ii) Delivery of a completed Disbursement Request, together with the periodic reports required under Section 5.1 of this Agreement, in each case in form and substance satisfactory to MCC;

(iii) Each of the Government's representations and warranties set forth in Section 2.1 of this Agreement are true and correct on and as of the date on which the Disbursement Request is submitted and as though made on and as of such date;

(iv) Prior to the initial Disbursement of any Grant funding to a Permitted Account, delivery of (i) evidence of the establishment of the Local Account, and any other Permitted Account agreed by the Parties, and (ii) a true and complete copy of each Bank Agreement, duly executed and in full force and effect as of the date of the Disbursement Request;

(v) No material breach of any responsibility, covenant or obligation under this Agreement or any other related agreement (including the Bank Agreement, the Fiscal Agent Agreement, the Procurement Agent Agreement and any Service Provider Contract) by the Government or any Permitted Designee has occurred and is continuing on and as of the date of the Disbursement Request;

(vi) Fulfilment to MCC's satisfaction of each of the conditions precedent to Disbursement set forth in Annex II; and

(vii) If requested by MCC, delivery of a certificate from each of the Government, the Permitted Designees, the Fiscal Agent and/or the Procurement Agent, in each case in form and substance satisfactory to MCC.

Section 3.2 Permitted Accounts.

(a) The Government will establish: (1) an account denominated in Jordanian Dinars (the "**Local Account**") and (2) such other accounts, at a financial institution acceptable to MCC (such Local Account, and each such other account, a "**Permitted Account**"). Before any Grant funding is deposited into a Permitted Account, the Government will enter into a bank 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 terms and operation of the Permitted Accounts will be set forth in the Fiscal Accountability Plan and the Bank Agreement.

(b) Unless otherwise authorized by MCC, no other funds will be commingled in a Permitted Account other than funding from MCC and accrued interest thereon. MCC will have 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 will provide copies of such statements to MCC upon its request.

(c) The Government will ensure that Grant funding held in a Permitted Account accrues 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 will ensure the transfer to MCC of any interest accrued on amounts held in a Permitted Account.

(d) The Government will provide in writing to MCC and the Fiscal Agent the account name, designated account number and wire transfer instructions for transfers to Permitted Accounts (the "*Account and Wire Transfer Information*") no later than 10 business days prior to the date on which the initial deposit is to be made to a Permitted Account. In the event that any Permitted Account or the related Account and Wire Transfer Information changes during the term of this Agreement, the Government will provide to MCC and the Fiscal Agent the new information as soon as practicable, but in no event later than 10 business days prior to the requested date for the next Disbursement.

Section ٣,٣ Working Capital. Each Disbursement Request will authorize up to one hundred thousand U.S. Dollars (US\$100,000) of Grant funding to serve as a contingent funding reserve ("*Working Capital*") to be used exclusively for expenses included in the then current MCC-approved 609(g) Detailed Financial Plan.

ARTICLE 4. IMPLEMENTATION FRAMEWORK

Section ٤,١ 609(g) Implementation Plan. The framework for implementation for each of the Activities will be further elaborated in a set of documents, in form and substance approved by MCC, consisting of (i) the 609(g) Detailed Financial Plan, (ii) one or more 609(g) Procurement Implementation Plans, and (iii) one or more Service Provider Contracts (each, a "*609(g) Implementation Plan Document*" and, collectively, the "*609(g) Implementation Plan*"). MCC may review the 609(g) Implementation Plan, or any portion thereof and, as necessary, request the Government to submit clarifications or adjustments.

(a) 609(g) Detailed Financial Plan. The Government or its Permitted Designee, as applicable, will develop, adopt and implement a detailed financial plan in accordance with the MCC Reporting Guidelines, in form and substance approved by MCC, setting forth funding requirements for each of the Activities (including administrative costs), broken down to the sub-activity level (or lower, where appropriate), and projected both on a commitment and cash requirement basis (as supplemented or otherwise modified from time to time, and as approved by MCC, the "*609(g) Detailed Financial Plan*").

(b) 609(g) Procurement Implementation Plan. The Government or its Permitted Designee, as applicable, will develop any applicable implementation plan for each procurement relating to the Government Contracted Activities (each, a "*609(g) Procurement Implementation Plan*"), and submit such 609(g) Procurement Implementation Plan to MCC for approval before commencing the relevant procurement. Each 609(g) Procurement Implementation Plan shall identify, among others, the method of

procurement for the goods, works or services to be procured. The Government or its Permitted Designee will ensure that all goods, works or services shall be procured using the procurement method as approved in each 609(g) Procurement Implementation Plan, and shall comply with the method of procurement outlined in such 609(g) Procurement Implementation Plan.

(c) Service Provider Contracts. The Government or a Permitted Designee, as applicable, will procure and manage the services of one or more service providers for each of the Activities (each a “**Service Provider**”). The Government or a Permitted Designee, as applicable, will enter into one or more contracts, in a form acceptable to MCC, with the Service Providers implementing the Activities (“**Service Provider Contracts**”). No Service Provider Contract may be assigned by the Government or a Permitted Designee, as the case may be, without the prior written approval of MCC.

Section ٤,٢ Procurement.

(a) MCC Program Procurement Guidelines. The Government or a Permitted Designee, as applicable, will comply with the “Program Procurement Guidelines” provided by MCC or posted on the MCC Website (the “**MCC Program Procurement Guidelines**”) in the procurement (including solicitation) of goods, works and services and the award and administration of contracts for each of the Activities; *provided* that the provisions in the MCC Program Procurement Guidelines relating to the procurement plan and general procurement notice shall not apply to procurements under this Agreement.

(b) Procurement Agent. Except as MCC otherwise agrees, any reference in this Agreement to the “**Procurement Agent**” will be deemed a reference to (i) any interim service provider approved by MCC to provide procurement agent services until such time as the Government or MCA-Jordan delivers to MCC a true and complete copy of a duly executed procurement agent agreement, in form and substance satisfactory to MCC (the “**Procurement Agent Agreement**”), and the service provider named as procurement agent therein has mobilized, or (ii) thereafter, the service provider named in the Procurement Agent Agreement. The Procurement Agent will carry out and/or certify specified procurement activities relating to the Activities and in furtherance of a Compact.

Section ٤,٣ Fiscal Accountability.

(a) Except as MCC otherwise agrees, any reference in this Agreement to the “**Fiscal Agent**” will be deemed a reference to (i) any interim service provider approved by MCC to provide fiscal agent services until such time as the Government or MCA-Jordan delivers to MCC a true and complete copy of a duly executed fiscal agent agreement, in form and substance satisfactory to MCC (the “**Fiscal Agent Agreement**”), and the party named as fiscal agent therein has mobilized or (ii) thereafter, the service provider named in the Fiscal Agent Agreement. Except as MCC otherwise agrees, the Fiscal Agent will be responsible for, among other things, (1) ensuring and certifying that Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Fiscal Agent Agreement and Bank Agreement, (2) instructing a Bank to make Disbursements from a Permitted Account or requesting Disbursement be made directly to a provider as payment for goods, works or services in accordance with MCC’s common payment system or any alternate payment system approved by MCC, as the case may be, and in each case, following applicable certification by the Fiscal Agent, (3) providing applicable certifications for Disbursement Requests, (4) maintaining proper accounting of all financial transactions involving Grant funding, and (5) producing reports on Disbursements in accordance with established procedures set forth in the Fiscal Accountability Plan or with any interim procedures approved by MCC prior to the development of the Fiscal Accountability Plan.

(b) In accordance with the Fiscal Agent Agreement, the Government or a Permitted Designee as applicable, will develop, adopt and implement a manual, in form and substance satisfactory to MCC,

setting forth the principles, mechanisms and procedures (the “*Fiscal Accountability Plan*”) that will be used to ensure appropriate fiscal accountability for the use of the Grant funding, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and in the procurement of goods, works and services. The Fiscal Accountability Plan will also include, among other things, requirements with respect to: (i) budgeting, (ii) accounting, (iii) cash management, (iv) financial transactions (receipts and payments), (v) opening and managing permitted accounts, (vi) personnel and payroll, (vii) travel and vehicle use, (viii) asset and inventory control, (ix) audits, and (x) reporting.

ARTICLE 5. REPORTS; RECORDS AND AUDITS

Section 5.1 Reports.

(a) Unless otherwise agreed by MCC, the Government or its Permitted Designee, as applicable, will provide to MCC the periodic reports required by the “MCC Guidance on Quarterly MCA Disbursement Request and Reporting 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) The Government or its Permitted Designee, as applicable, will provide each of the reports or other documents requested by MCC relating to the Activities. Such reports and documents will be timely delivered and in form and substance satisfactory to MCC.

(c) In addition to the reports required by Section 5.1(a) above, the Government or its Permitted Designee, as applicable, will provide to MCC within 30 days of a written request by MCC, or as otherwise agreed by MCC and the Government or MCA-Jordan, as applicable, in writing, such other reports or documents as MCC may request from time to time as related to any component of the 609(g) Implementation Plan, the Fiscal Accountability Plan or in connection with any Activity or Disbursement.

Section 5.2 Providers. Unless the Parties agree otherwise in writing, (a) a “*Provider*” is (i) any entity of the Government that receives or uses Grant funding or any other asset purchased with Grant funding in carrying out activities in furtherance of this Agreement, or (ii) any third party that receives at least US\$50,000 in the aggregate of Grant funding (other than as salary or compensation as an employee of an entity of the Government) during the term of this Agreement; and (b) a “*Covered Provider*” is (i) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US\$300,000 or more of Grant funding in any Government fiscal year or any other non-United States person or entity that receives, directly or indirectly, US\$300,000 or more of Grant funding from any Provider in such fiscal year, or (ii) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US\$500,000 or more of Grant funding in any Government fiscal year or any other United States person or entity that receives, directly or indirectly, US\$500,000 or more of Grant funding from any Provider in such fiscal year.

Section 5.3 Government Books and Records. The Government will maintain, and will use its best efforts to ensure that all Permitted Designees and Covered Providers maintain, accounting books, records, documents and other evidence relating to this Agreement adequate to show to MCC’s satisfaction the use of all Grant funding (collectively, the “*Records*”). Records must be maintained for at least five (5) years after the end of the term of this Agreement or for such longer period, if any, required to resolve any

litigation, claims or audit findings or any statutory requirements. The Government will furnish or cause to be furnished to MCC, upon MCC's request, all such Records.

Section 5.4 Accounting. The Government will maintain, and will use its best efforts to ensure that all Permitted Designees and 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 (a) prescribed by the International Accounting Standards Board or (b) then prevailing in Jordan.

Section 5.5 Access; Audits. The Government will at all reasonable times afford, or cause to be afforded, authorized representatives of MCC, the Inspector General of the United States Agency for International Development (the "*Inspector General*"), and at the request of MCC, the United States Government Accountability Office, as well as any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Agreement and any agents or representatives engaged by MCC the opportunity to audit, review, evaluate or inspect facilities and activities, and any Records relating thereto, funded in whole or in part (directly or indirectly) by MCC, and will use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, affiliates, contractors, representatives and agents of the Government or any Provider. The Government will make provision for such audit, review, assessment, evaluation or inspection in each contract with a Provider. Any audit conducted in connection with this Agreement or any transaction contemplated hereby shall be prepared in accordance with the "Guidelines for Financial Audits" provided by MCC or posted on the MCC Website (the "*MCC Audit Guidelines*").

ARTICLE 6.

TERM; TERMINATION AND SUSPENSION OF THE GRANT

Section 6.1 Term. Unless otherwise agreed in writing between the Parties, whether or not the entire amount of the Grant has been disbursed and fully expended, this Agreement will terminate on the earlier of (a) the date on which all of the Activities have been fully performed and final payment has been made with respect to such performance in accordance with this Agreement, (b) the date on which either Party terminates this Agreement in accordance with Section 6.2, (c) the fifth anniversary of the date of this Agreement, or (d) the termination of a Compact.

Section 6.2 Termination and Suspension.

(a) Either Party may terminate this Agreement in its entirety by giving the other Party thirty (30) days' written notice; *provided* that the Government may not terminate this Agreement with respect to any activity for which a Disbursement has already been issued or approved by MCC or for which a period longer than thirty (30) days may be required for termination under the applicable Service Provider Contract, in which case this Agreement may be terminated by the Government upon the passage of such longer period as specified in such Service Provider Contract.

(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 under this Agreement or any other agreement or arrangement entered into by the Government in connection with this Agreement or the Activities;

(ii) an event or series of events has occurred that MCC determines makes it improbable that the Activities can be performed, that the Government will be able to perform its obligations under this Agreement or that a Compact will be entered into;

(iii) 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;

(iv) 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;

(v) an act has been committed or an omission or an event has occurred that would render Jordan 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;

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

(vii) 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 will cease upon expiration, suspension, or termination of this Agreement; *provided* 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 provided that the request for such expenditures is submitted within ninety (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 Activities 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 will 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, plus accrued interest thereon will be returned to MCC within thirty (30) days after the Government receives MCC's request for such return, and the Government will ensure that such amount will be returned promptly to such account(s) designated by MCC.

(e) 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 U.S. Dollars the value of the misused portion of the Grant, interest, earnings, or asset, plus interest within thirty (30) days after the Government's receipt of MCC's request for repayment. The Government shall not use any Grant funding, proceeds thereof or other funds received from MCC (or 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 agreement to the contrary, MCC's right under this Section 6.3 for a refund will continue during the term of this Agreement and for a period of (i) five (5) years thereafter, or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

ARTICLE 7.

GENERAL

Section 7.1 Governing Law; Consultations.

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

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

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

Section 7.2 Representative. Unless otherwise agreed in writing by the Parties, for all purposes relevant to this Agreement, the Government will be represented by the individual holding the position of, or acting as, the Director of the Millennium Challenge Unit of the Prime Ministry and MCC will be represented by the individual holding the position of, or acting as, the Vice President for Compact Development (each of the foregoing, a "**Principal Representative**"). Each Party may, by written notice to the other Party, designate one or more additional representatives (each an "**Additional Representative**") for all purposes other than signing amendments to this Agreement. A Party may change its Principal Representative to a new representative of equivalent or higher rank upon written notice to the other Party.

Section 7.3 Communications. Any document or communication required or submitted by either Party to the other under this Agreement must be submitted in writing and, except as otherwise agreed with MCC, in English to such Party's Principal Representative, and, if applicable, to such Party's Additional Representative(s), at such address as may be provided from time to time.

Section 7.4 Counterparts. Except as the Parties may otherwise agree in writing from time to time, this Agreement and any related notice, certificate, instrument, agreement or other document may be executed using counterpart signatures and, each when so executed and delivered, will be an original instrument, but such counterparts together will constitute a single agreement.

Section ٧,٥ Relationship Between the Parties. Nothing in this Agreement will be construed to constitute or create a partnership, agency relationship, joint venture or equity or similar interest between the Parties. Neither Party has the power or authority to act on behalf of the other Party, except as expressly authorized by the other Party in writing.

Section ٧,٦ MCC Status. MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of this Agreement. As such, MCC has no liability under this Agreement, is immune from any action or proceeding arising under or relating to this Agreement and the Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Agreement, MCC will not be subject to the jurisdiction of the courts or any other body of Jordan.

Section ٧,٧ Publicity; Information and Marking. The Government will give appropriate publicity to this Agreement as a program to which the United States of America, through MCC, has contributed, including by posting this Agreement, in English, as MCC may request, on an agreed website, identifying the Grant activity sites and marking assets acquired with the Grant, all in accordance with the “MCC Standards for Corporate Marking and Branding,” of which MCC has informed the Government in writing or by posting on the MCC Website; *provided* that any press release or announcement regarding MCC or the fact that MCC is making the Grant or any other publicity materials referencing MCC will be subject to MCC’s prior written approval. MCC may post this Agreement on the MCC Website. MCC may freely use any information it receives in any report or document provided to it in connection with this Agreement.

Section ٧,٨ No Assurance of Future Assistance. Nothing contained in this Agreement will be construed as creating an obligation on the part of MCC to provide any further funding or assistance, other than the Grant, in relation to the Concept Paper, a Compact or any other project or program in Jordan.

Section ٧,٩ Amendment.

(a) This Agreement may be amended or modified by written agreement of the Parties.

(b) Notwithstanding Section 7.9(a), the Government hereby acknowledges and agrees that MCA-Jordan and MCC may, by written agreement of only MCA-Jordan and MCC, modify any Activity described in Annex I; *provided* that any such modification (1) is consistent in all material respects with the Objective, (2) does not cause the amount of the Grant to exceed the aggregate amount specified in Section 1.1, (3) does not cause the Government’s responsibilities or contribution of resources to be less than specified in this Agreement, and (4) does not extend the term of this Agreement beyond the fifth anniversary of the date of this Agreement. Any such modification pursuant to this Section 7.9(b) shall not be deemed an amendment of this Agreement pursuant to Section 7.9(a).

Section ٧,١٠ Severability. If one or more provisions of this Agreement is held to be unenforceable, such provision(s) will be excluded from this Agreement and the balance of this Agreement will be interpreted as if such provision(s) were so excluded and will be enforceable in accordance with its terms.

Section ٧,١١ Non-Waiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with this Agreement will be construed as a waiver of such right or remedy.

Section ٧,١٢ Survival. The Government’s obligations under Articles 2, 5 and 6 and Sections 7.1, 7.3, 7.6 and this 7.12 survive the expiration, suspension or termination of this Agreement.

Section ٧,١٣ Language. This Agreement is prepared in English and in the event of any ambiguity or conflict between this official English version and any other version translated into any language for the convenience of the Parties, this official English version will prevail.

Section ٧,١٤ Interpretation. Any reference to the term “including” in this Agreement will be deemed to mean “including, without limitation,” except as expressly provided otherwise. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) the words “herein”, “hereof” and “hereunder”, and words of similar import, will be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (c) all references herein to Articles, Sections, Exhibits and Annexes will be construed to refer to Articles and Sections of, and Exhibits and Annexes to, this Agreement, and (d) any approval right granted to MCC herein shall only be satisfied upon the prior written approval of MCC. The section headings used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

Section ٧,١٥ References to MCC Website. Each reference in this Agreement, or any other agreement entered into in connection with this Agreement, to a document or information available on, or notified by posting on, the MCC Website will be deemed a reference to such document or information as updated or substituted on the MCC Website by MCC from time to time.

Section ٧,١٦ References to Laws, Regulations, Policies and Guidelines. Each definition of or reference to in this Agreement, or any other agreement entered into in connection with this Agreement, a law, regulation, policy, guideline or similar document, unless otherwise expressly set forth herein, will be construed as a reference to such law, regulation, policy, guideline or similar document as it may, from time to time, be amended, revised, replaced or extended and will include any law, regulation, policy, guideline or similar document issued under or otherwise applicable or related to such law, regulation, policy, guidelines or similar document.

Section ٧,١٧ Entire Agreement This Agreement shall constitute the entire agreement of the Parties with respect to the subject matter hereof and the transactions contemplated hereby, superseding and extinguishing all prior agreements, understandings, negotiations and representations and warranties, whether oral or written, relating to the subject matter hereof.

Section ٧,١٨ Grant Reference. In all notices, requests, reports or correspondence in connection with Grant funding, the following number should appear on any such document as the grant reference: GR06JOR09001.

SIGNATURE PAGE FOLLOWS ON NEXT PAGE

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

MILLENNIUM CHALLENGE CORPORATION

THE GOVERNMENT OF THE
HASHEMITE KINGDOM OF JORDAN

By: _____
Name: Rodney Bent
Title: Acting Chief Executive Officer

By: _____
Name:
Title:

EXHIBIT A
INDEX OF DEFINITIONS

The following compendium of capitalized terms that are used herein is provided for the convenience of the reader. To the extent that there is a conflict or inconsistency between the definitions in this Exhibit A and the definitions elsewhere in the text of this Agreement, the definition elsewhere in this Agreement shall prevail over the definition in this Exhibit A.

***609(g) Detailed Financial Plan** has the meaning given to that term in Section 4.1(a).*

***609(g) Implementation Plan** has the meaning given to that term in Section 4.1.*

***609(g) Implementation Plan Document** has the meaning given to that term in Section 4.1.*

***609(g) Procurement Implementation Plan** has the meaning given to that term in Section 4.1(b).*

***Account and Wire Transfer Information** has the meaning given to that term in Section 3.2(d).*

***Act** has the meaning given to that term in the Recitals to this Agreement.*

***Activity and Activities** has the meaning given to that term in Section 1.1.*

***Additional Representative** has the meaning given to that term in Section 7.2.*

***Agreement** has the meaning given to that term in the Preamble to this Agreement.*

***Bank** has the meaning given to that term in Section 3.2(a).*

***Bank Agreement** has the meaning given to that term in Section 3.2(a).*

***Compact** has the meaning given to that term in the Recitals to this Agreement.*

***Concept Paper** has the meaning given to that term in the Recitals to this Agreement.*

***Covered Provider** has the meaning given to that term in Section 5.2.*

***Disbursement** has the meaning given to that term in Section 3.1(a).*

***Disbursement Period** has the meaning given to that term in Section 3.1(a).*

***Disbursement Request** has the meaning given to that term in Section 3.1(a).*

***Exchange** has the meaning given to that term in Annex II.*

***Fiscal Accountability Plan** has the meaning given to that term in Section 4.3(b).*

***Fiscal Agent** has the meaning given to that term in Section 4.3(a).*

***Fiscal Agent Agreement** has the meaning given to that term in Section 4.3(a).*

Fresh Water has the meaning given to that term in Annex II.

Government has the meaning given to that term in the Preamble to this Agreement.

Grant has the meaning given to that term in Section 1.1.

GTD has the meaning given to that term in Section 2.2(b)(ii).

Inspector General has the meaning given to that term in Section 5.5.

Jordan has the meaning given to that term in the Recitals to this Agreement.

Jordanian Dinar means the lawful currency of Jordan.

Lien has the meaning given to that term in Section 2.2(d).

Local Account has the meaning given to that term in Section 3.2(a).

MCA-Jordan has the meaning given to that term in Section 2.2(b)(iii).

MCC has the meaning given to that term in the Preamble to this Agreement.

MCC Audit Guidelines has the meaning given to that term in Section 5.5.

MCC Environmental Guidelines has the meaning given to that term in Section 2.2(i)(ii)(3).

MCC Governance Guidelines means the MCC “Accountable Entity Guidelines and Implementation Structures” available on the MCC Website.

MCC Indemnified Party has the meaning given to that term in Section 2.2(g).

MCC Program Procurement Guidelines has the meaning given to that term in Section 4.2(a).

MCC Reporting Guidelines has the meaning given to that term in Section 5.1(a).

MCC Website has the meaning given to that term in Section 2.2(i)(ii).

MWI has the meaning given to that term in Section 2.2(b)(i).

Objective has the meaning given to that term in the Recitals to this Agreement.

Party and Parties has the meaning given to that term in the Preamble to this Agreement.

Permitted Account has the meaning given to that term in Section 3.2(a).

Permitted Designee has the meaning given to that term in Section 2.2(b).

Principal Representative has the meaning given to that term in Section 7.2.

Procurement Agent has the meaning given to that term in Section 4.2(b).

Procurement Agent Agreement has the meaning given to that term in Section 4.2(b).

Provider has the meaning given to that term in Section 5.2.

Records has the meaning given to that term in Section 5.3.

Service Provider has the meaning given to that term in Section 4.1(c).

Service Provider Contracts has the meaning given to that term in Section 4.1(c).

Substitution Plan has the meaning given to that term in Annex II.

Tax Implementation Letter has the meaning given to that term in Section 3.1(c)(i).

Taxes has the meaning given to that term in Section 2.2(j)(i).

U.S. Dollar means the lawful currency of the United States of America.

Working Capital has the meaning given to that term in Section 3.3.

ANNEX I
DESCRIPTION OF THE ASSISTANCE

The Grant funding will support the following Activities:

١. Zarqa Water Supply Project: Wells Rehabilitation Component. Feasibility study and environmental assessment to identify the investment requirements for the rehabilitation of the groundwater wells system that supplies water to Zarqa.
٢. Zarqa Water Supply Project: Water Network Restructuring and Rehabilitation Component. Feasibility study and environmental assessment to identify the investment requirements for the rehabilitation and/or upgrading of the water transmission and distribution system, including household connections, with the aim of significantly reducing non-revenue water.
٣. Zarqa Water Supply Project: Management Component. Technical assistance to establish a public company and develop a performance-based management contract for water and wastewater services. This new public company would assume responsibility over the operations, maintenance, development, and management of water and wastewater service in the project area.
٤. Zarqa Wastewater Collection Project. Feasibility study and environmental assessment to identify the investment requirements for the rehabilitation and extension of the wastewater collection network in Zarqa.
٥. Expansion of Wastewater Treatment Capacity Project. Transaction advisors to assist with the proposed expansion of the As-Samra Wastewater Treatment Plant on a build-operate-transfer basis.
٦. Technical Assistance. Technical assistance to provide project management, technical supervision and technical advisory services to the Government.

ANNEX II

CONDITIONS TO DISBURSEMENT

The Government has committed, through the National Water Strategy (2008-2022), to expand the safe use of treated wastewater in order to reduce the demand for freshwater and achieve the highest possible social and economic returns. The proposed Compact program supports this strategy by expanding the collection, treatment and reuse of wastewater and diverting freshwater to higher value urban and industrial uses. The economic rationale for the proposed Compact program rests on these results. To ensure the success of the proposed Compact program, MCC seeks assurance from the Government that these results will be achieved as additional treated wastewater becomes available.

Accordingly, prior to any Disbursement of Grant funds under this Agreement on or after September 1, 2009, the Government will deliver a plan certified by the Minister of Water and Irrigation (the “*Substitution Plan*”) for increasing fresh water extraction from the King Abdullah Canal at the Zai intake for non-agricultural use (the “*Fresh Water*”) in exchange for additional treated wastewater delivered to the Jordan Valley (the “*Exchange*”). The Substitution Plan shall contain (i) preliminary targets for additional amounts of Fresh Water to be made available as a result of the proposed Compact program, based on an accounting of Fresh Water currently being extracted and an estimate of the additional, incremental amounts of treated wastewater to be produced as a result of the proposed Compact program; (ii) a detailed description of a method, procedure, or mechanism that provides assurance that the necessary service providers will undertake the Exchange at the agreed quantities; (iii) an explanation of how the Disi Conveyance Project and the diversion of untreated wastewater for irrigation in the vicinity of the Khirbet As-Samra Wastewater Treatment Plant will affect the quantities of water available for the Exchange; and (iv) a plan and methodology for measuring and monitoring the Exchange. The Substitution Plan may also include a description of inputs, including technical assistance and equipment, that may be necessary to facilitate the Exchange.

The Substitution Plan shall be subject to further discussion and negotiation between the Government and MCC, however, the Substitution Plan shall be finalized prior to Compact signing.