

EXECUTION COPY

IMPLEMENTATION AGREEMENT

FOR COMPACT DEVELOPMENT

BY AND BETWEEN

**THE MILLENNIUM CHALLENGE CORPORATION
AND**

**THE GOVERNMENT OF THE KINGDOM OF LESOTHO
ACTING THROUGH
THE MINISTRY OF FINANCE AND DEVELOPMENT PLANNING**

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IMPLEMENTATION AGREEMENT

This IMPLEMENTATION AGREEMENT (the "*Implementation Agreement*") is made by and between the Millennium Challenge Corporation, a United States Government corporation ("*MCC*"), and the Government of the Kingdom of Lesotho (the "*Government*"), acting through the Ministry of Finance and Development Planning (the "*Ministry*"), and shall become effective as provided herein. MCC, and the Ministry are sometimes referred to herein individually as a "*Party*" and together as the "*Parties*."

RECITALS

WHEREAS, the Board of Directors of MCC has selected the Kingdom of Lesotho as eligible to present to MCC a proposal for the use of 2004 and 2005 Millennium Challenge Account ("*MCA*") assistance to advance economic growth and poverty reduction in Lesotho;

WHEREAS, the Parties wish to cooperate for the purpose of facilitating the development and implementation of a proposed Millennium Challenge Compact between them to help advance economic growth and poverty reduction in Lesotho (the "*Proposed Compact*");

WHEREAS, the Government submitted a revised proposal for MCA assistance (the "*Proposal*") on March 1, 2005, which Proposal focuses on (i) the construction of the Metolong Dam (the "*Proposed Dam Project*") to supply water for Maseru and surrounding communities and (ii) the development and implementation of activities to improve the investment climate and to support small, micro and medium sized enterprises;

WHEREAS, the Government has expressed a desire to make progress in business and investment climate policy reforms, which will allow Lesotho to obtain the maximum benefit from the increased supply of water from the Proposed Dam Project, by developing action plans to implement reforms;

WHEREAS, on June 4, 2005, the Government, acting through the Ministry, and MCC have entered into a Grant Agreement (the "*Grant Agreement*") pursuant to which MCC has determined to make a grant of USD \$600,000 to the Government under the authority of Section 609(g) of the Millennium Challenge Act of 2003 for the purpose of carrying out the activities described herein related to the business and investment climate policy reforms element of the Proposed Compact, including with respect to the agenda of policy reforms related to improving the business and investment climate in Lesotho which were attached to the Grant Agreement ("*Proposed Reforms*");

WHEREAS, concurrently with the activities undertaken pursuant to this Grant Agreement, MCC intends to provide approximately USD \$800,000 in assistance for additional preparatory activities related to the Dam Project ("*the Dam Preparatory Work*") and investment climate reform activities, including (i) completion of a partial feasibility study of the Metolong Dam to address technical gaps, revise project costs and examine the feasibility of recycling industrial waste water to increase short-term water availability and (ii) collection of baseline data for the Proposed Compact program's economic analysis and monitoring and evaluation; and

WHEREAS, the Parties anticipate that if a Millennium Challenge Compact is concluded with Lesotho (i) some or all of implementation of the action plans developed pursuant to this

Grant Agreement will be an integral part of such Compact and (ii) the successful adoption and implementation of some or all of the Proposed Reforms may serve as conditions precedent to certain disbursements under such Compact;

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

ARTICLE I PURPOSE AND TERM

Section 1.1. **Objective and Activities.** The objective of this Implementation Agreement is to facilitate (i) the provision of the assistance to the Ministry for the activities related to the business and investment climate policy reforms element of the Proposed Compact (the “*Policy Reform Project*”) as set out in Article I of the Grant Agreement (the “*Assistance*”), as described in more detail in Annex I (the “*Activities*”); and (ii) coordination with Ministry with respect to the Dam Preparatory Work. Dam Preparatory Work is not part of the Activities funded under the Grant.

Section 1.2. **Effective Date, Term.** This Implementation Agreement shall become effective on the last date on which it is signed by the Principal Representative (defined below) of each Party. Unless otherwise agreed in writing between the Parties, whether or not the Grant is fully utilized, this Implementation Agreement shall terminate on the earlier of (i) ten (10) months from the Effective Date unless otherwise agreed in writing by the Parties (the “*Completion Date*”), (ii) the date on which either Party terminates this Implementation Agreement in accordance with Section 4.1 hereof, or (iii) the date on which either Party terminates the Grant Agreement in accordance with Section 1.2 thereof.

ARTICLE II DISBURSEMENT

Section 2.1. **Disbursement Framework**

(a) Except as may be otherwise agreed in writing by the Parties, MCC shall from time to time, upon presentation of satisfactory documentation in accordance with this Implementation Agreement, make disbursements of the Grant directly to each Service Provider (defined below) which has entered into a contract, satisfactory to MCC, with the Ministry to provide any one of the Activities.

(b) MCC may, in its sole discretion, reduce the total amount of the Grant by an amount equal to the amount estimated in the budget for the activity with respect to which any failure to satisfy a condition precedent to disbursement specified in or any violation of this Implementation Agreement (including a procurement in violation of Section 3.2) is attributable, and such amount shall be automatically released from any obligation in connection with this Implementation Agreement. Upon expiration or termination of this Implementation Agreement or the Grant Agreement, any amount of the Grant not disbursed by MCC in accordance with Section 2.3 of this Implementation Agreement shall be automatically released from any obligation in connection with this Implementation Agreement and the Grant Agreement. Any

amounts of the Grant disbursed by MCC but not incurred as permitted pursuant to Section 4.1(d) of this Implementation Agreement shall be returned promptly to MCC to such accounts designated by MCC from national funds in accordance with Section 3.8 of this Implementation Agreement.

Section 2.2. Disbursement Requests.

(a) The Ministry shall submit to MCC Disbursement Requests (“*Disbursement Requests*”) for MCC to make each payment to the Service Providers authorized in the Service Provider Contracts. The Ministry agrees that it shall only submit Disbursement Requests with respect to Service Provider deliverables that have been approved by the Ministry and by MCC prior to the date of the applicable Disbursement Request. Except as may be otherwise agreed by MCC in writing, the Ministry shall not submit more than one Disbursement Request per Service Provider Contract (defined below) in any calendar month. Each Disbursement Request shall be submitted at least 30 days prior to the date on which the disbursement is requested.

(b) Each Disbursement Request shall:

(i) be a certification and request for payment substantially in the form attached hereto as Annex II;

(ii) attach the invoice presented by the Service Provider to the Ministry (with simultaneous copies to MCC and the National Business Center), which, unless MCC otherwise agrees, shall contain substantially the information as set forth in Annex III; and

(iii) include such other information as MCC may from time to time request.

Section 2.3. Disbursement by MCC; Reservation. MCC shall make disbursements against satisfactory documents presented in accordance with Section 3.2 of this Implementation Agreement. The Ministry acknowledges that MCC shall make disbursements in reliance upon the certifications given by the Ministry to MCC in each Disbursement Request and that MCC shall have no obligations to the Service Provider under the terms of the Service Provider Contract and no obligations to the Ministry to verify the accuracy or completeness of any representations made by the Service Provider to the Ministry. Notwithstanding the foregoing, MCC reserves the right to withhold, in its sole discretion, disbursement with respect to any Disbursement Request which is not satisfactory to MCC.

Section 2.4. Commitment Letters. To facilitate the disbursement process, MCC may issue a commitment letter to a Service Provider.

ARTICLE III IMPLEMENTATION; USE OF FUNDS

Section 3.1. Implementation Framework.

(a) The Ministry shall engage the services of, or directly employ, a procurement agent or management unit satisfactory to MCC (the "***Procurement Management Unit***"). The Ministry, through the Procurement Management Unit, shall procure and manage one or more contracts with service providers ("***Service Providers***") for each of the Activities set out in Schedule 1, Schedule 2 and Schedule 3 to Annex I (the "***Service Provider Contracts***"). The procurement shall be conducted in accordance with the procurement guidelines set out in Annex IV (the "***Implementation Procurement Guidelines***").

(b) The Ministry shall enter into and perform the Service Provider Contracts, make Disbursement Requests to MCC, and provide reports, audits and other information to MCC, in each case as set out in this Implementation Agreement.

(c) The Ministry shall take all steps necessary to ensure compliance with all of its obligations under this Implementation Agreement.

(d) The Ministry shall cooperate with and provide access for Service Providers that may be separately funded by MCC for Dam Preparatory Works.

Section 3.2. Procurement of Services; Mandatory Contract Provisions.

(a) The terms of reference for Service Providers are set out in Annex I attached hereto.

(b) The Ministry shall follow, and shall ensure that the Procurement Management Unit shall follow, procurement guidelines and procedures acceptable to MCC in procuring Service Provider Contracts, including the following requirements:

(i) open, fair and competitive procedures in accordance with the Procurement Guidelines shall be used in a transparent manner to solicit, award and administer contracts, grants, and other agreements and to procure goods, services and works;

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

(iii) contracts shall be awarded only to qualified and capable contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and 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 and services.

(c) The Ministry shall ensure that all Service Provider Contracts shall include: (i) the restrictions set out in Section 3.3 (Use of Funds), (ii) exemption from taxation as set out in Section 3.4 (Taxation), (iii) provisions adequate to facilitate the Ministry's compliance with the requirements of Section 3.5 (Records and Information) and Section 3.6 (Audits); and (iv) budget, basis for Contract payment and invoice procedures acceptable to MCC and substantially in the form set out in Annex IV, including provision for simultaneous presentation of invoices to the Ministry and MCC.

(d) The Ministry shall ensure that MCC shall have the opportunity to review and approve evaluations for proposed Service Providers for the Activities in Schedule 1, Schedule 2 and Schedule 3 to Annex I. The Ministry shall obtain the prior written approval of MCC before entering into each Service Provider Contract.

Section 3.3. Use of Funds.

(a) The Ministry shall ensure that the Grant shall be used solely for the purposes of the Assistance described in Annex I.

(b) The Ministry further agrees and undertakes that the Grant shall not be used to undertake, finance or otherwise support:

(i) any activity that is subject to prohibitions on use of funds contained in (A) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)-(3), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (B) any provision of law comparable to the eleventh and fourteenth provisos under the heading "Child Survival and Health Programs Fund" of division E of Public Law 108-7 (117 Stat. 162), a United States statute;

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

(A) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(B) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(C) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(D) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(E) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(F) Supporting a United States office of an organization that offers incentives for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(G) Providing general budget support for an organization that engages in any activity prohibited above;

(iii) the purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit; or

(iv) any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and the Ministry agree otherwise in writing, the Ministry shall ensure that activities undertaken or financed in whole or in part (directly or indirectly) by the Grant comply with environmental guidelines delivered by MCC to the Ministry or posted by MCC on its website or otherwise publicly made available, as such guidelines may be amended from time to time (the “*Environmental Guidelines*”), including any definition of “likely to cause a significant environmental, health, or safety hazard” as may be set forth in such Environmental Guidelines.

Section 3.4. Taxation. The Ministry shall ensure that the Grant and funding for the Dam Preparatory Work shall be free from any taxes imposed under laws currently or hereafter in effect in the Kingdom of Lesotho during the term of the Grant Agreement and this Implementation Agreement. This exemption shall apply to the use of any Grant proceeds and to any work performed under or activities undertaken by any Service Provider funded by the Grant, and shall apply to all taxes, tariffs and duties and other levies, including:

(i) to the extent attributable to Grant proceeds, income taxes and other taxes on profit or businesses imposed on organizations or entities, other than nationals of Lesotho, receiving Grant proceeds, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in Lesotho, or any other tax, duty, charge or fee of whatever nature, except fees for specific services rendered; for purposes of this Section 3.4, the term “national” refers to organizations established under the laws of Lesotho, or any other entity established solely for purposes of managing or overseeing the implementation of the Grant or any wholly-owned subsidiaries, divisions, or affiliates of entities not registered or established under the laws of Lesotho;

(ii) customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services, or the personal belongings and effects, including personally-owned automobiles, for Grant use or the personal use of individuals who are neither citizens nor permanent residents of Lesotho and who are present in Lesotho for

purposes of carrying out the Grant or their family members, including all charges based on the value of such imported goods;

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

(iv) taxes or duties levied on the purchase of goods or services financed by Grant funding, including sales taxes, tourism taxes, value-added taxes (VAT), or other similar charges.

Section 3.5. Records and Information.

(a) The Ministry shall furnish to MCC, and shall use its best efforts to ensure that all Service Providers and any other third party receiving a portion of the Grant proceeds, as appropriate, furnishes to the Ministry, any records and other information as may be necessary or appropriate for the Ministry effectively to carry out its obligations under the Grant Agreement and this Implementation Agreement.

(b) The Ministry shall maintain, and shall use its best efforts to ensure that all Service Providers and any other third parties maintain, accounting books, records, documents and other evidence relating to the Grant Agreement and this Implementation Agreement adequate to show, without limitation, the use of the Grant proceeds, including all costs incurred by the Ministry and other third parties, the receipt and use of goods and services acquired in furtherance hereof, and the overall progress of the implementation of the Grant, and any documents reasonably requested by MCC upon reasonable notice ("**Records**"). Records shall be maintained for at least five (5) years after the Effective Date or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

Section 3.6. Audits. The Ministry shall afford, or cause to be afforded, authorized representatives of MCC, the Inspector General of the United States Agency for International Development ("**Inspector General**"), the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of the Grant Agreement and this Implementation Agreement, and any agents or representatives engaged by MCC or a representative to conduct any assessment, review or evaluation of the Grant, at all reasonable times the opportunity to audit, review, evaluate or inspect activities financed in whole or in part (directly or indirectly) by MCC or undertaken in connection with the Grant including pursuant to any Service Provider Contract, the utilization of goods and services purchased or financed in whole or in part (directly or indirectly) by the Grant, and Records relating to activities financed or undertaken in furtherance of, or otherwise relating to, the Grant Agreement and this Implementation Agreement, and shall 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 Ministry or any Service Provider hereunder. The Ministry shall make provision for such assessment, review and evaluation in each Service Provider Contract.

Section 3.7. Approvals and Consents. The Ministry shall take or cause to be taken such actions, including using its best efforts to obtain all necessary approvals and consents, as are necessary and appropriate for the implementation of the Grant.

Section 3.8. Refunds. In the event Grant proceeds are used by any party in a manner not supported by valid documentation in accordance with the Grant Agreement and this Implementation Agreement, or otherwise in any manner not in accordance with the Grant Agreement and this Implementation Agreement, or for goods or services not used in accordance with the Grant Agreement and this Implementation Agreement, MCC, notwithstanding the availability or exercise of any other remedies under the Grant Agreement or this Implementation Agreement, and may require the Ministry to refund, and the Ministry shall refund, the amount of such Grant proceeds in United States Dollars to MCC to such accounts designated by MCC within thirty days after receipt of a request. The Ministry shall cause the Government to apply national funds to satisfy its obligations under this Section 3.8 and shall not apply any portion of the Grant or any other funds received from MCC to satisfy such obligations. Notwithstanding any other provision of this Implementation Agreement or any other agreement to the contrary, MCC's right under this Section 3.8 for a refund shall continue until the Completion Date and for a period of (i) three (3) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

ARTICLE IV TERMINATION OF GRANT

Section 4.1. Termination and Suspension.

(a) Either Party may terminate this Implementation Agreement with 30 days prior written notice; *provided, however*, that the Ministry may not terminate this Implementation Agreement with respect to any activity for which a commitment letter or disbursement has already been issued or approved by MCC.

(b) Notwithstanding the preceding paragraph, MCC may terminate or suspend this Implementation Agreement upon giving the Ministry written notice, if MCC determines that:

(i) any use or proposed use of Grant proceeds or continued implementation of the Grant would be in violation of applicable law or United States Government policy, whether now or hereafter in effect;

(ii) the Ministry or any other third party receiving Grant proceeds is engaged in activities that are contrary to the national security interests of the United States;

(iii) the Ministry has committed an act, or an event has occurred that would render the Kingdom of Lesotho 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;

(iv) the Ministry or any Service Provider, in MCC's sole opinion, has materially breached one or more of its assurances or any other covenants, obligations or responsibilities under the Grant Agreement or this Implementation Agreement or has taken any action or omission or engaged in any activity in violation of, or inconsistent with, the requirements of the Grant Agreement or this Implementation Agreement or a Service Provider Contract, as applicable;

(v) if the Ministry, any Service Provider, or any of their respective directors, officers, employees, affiliates, contractors, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;

(vi) any Grant proceeds are applied, directly or indirectly, to the provision of resources and support to, individuals and organizations associated with terrorism, sex trafficking or prostitution; or

(vii) an event or condition of any character has occurred that, in MCC's sole opinion: materially and adversely affects, or is likely to materially and adversely affect, the ability of the Ministry or any other party to effectively implement, or ensure the effective implementation of, the Grant or to otherwise carry out its responsibilities or obligations under or in furtherance of the Grant Agreement or this Implementation Agreement or to exercise its rights hereunder.

(d) Notwithstanding the foregoing provisions, reasonable expenditures for goods and services that are properly incurred under or in furtherance of the Grant Agreement or this Implementation Agreement before the Completion Date or before termination hereof may be paid from Grant proceeds if the request for such payment is properly submitted within sixty (60) days after such expiration or termination.

Section 4.2. Reinstatement. MCC may reinstate any suspended or terminated Grant funding under the Grant Agreement or this Implementation Agreement if MCC determines, in its sole discretion, that the Ministry or other relevant party has demonstrated a commitment to correcting each condition for which Grant funding was suspended or terminated.

ARTICLE V GOVERNMENT REPRESENTATIONS AND OBLIGATIONS

Section 5.1. Nature of Obligation. This Implementation Agreement is a legal, valid and binding obligation of the Government. The Ministry has the power and authority to execute, deliver and perform its obligations under this Implementation Agreement and each certificate or instrument contemplated hereby. The execution, delivery and performance by the Ministry of this Implementation Agreement and each certificate or instrument contemplated hereby to which it is or will be a party have been duly authorized by all necessary action by the Ministry and no other approvals or consents are required.

Section 5.2. No Violation of Law. Neither this Implementation Agreement nor any of the activities contemplated herein violates or will violate any applicable law or regulation in force in

the Kingdom of Lesotho or any decree, order, agreement or obligation to which the Ministry is a party or by which it is bound.

Section 5.3. Reaffirmation of Assurances Given in Grant Agreement. The assurances given in Article III of the Grant Agreement are hereby repeated by the Ministry as of the date of this Implementation Agreement.

ARTICLE VI GENERAL

Section 6.1. Governing Law; Consultation.

(a) This Implementation Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(b) Any Party may at any time request consultations relating to the interpretation or implementation of this Implementation Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter into consultations and the other Parties shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within 20 days from the commencement of the consultations then each Party shall forward the consultation to the Principal Representative (defined below) or such other representative of comparable or higher rank. The consultations shall last no longer than 45 days from date of commencement. If the matter is not resolved within such time period, any Party may terminate this Implementation Agreement pursuant to Section 4.1. The Parties shall enter any such consultations guided by the principle of achieving the Grant objective in a timely and cost-effective manner.

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

Section 6.2 Alteration. The Ministry shall ensure that the Grant shall not be subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in the Kingdom of Lesotho that would have the effect of requiring or allowing any impoundment, rescission or sequestration thereof.

Section 6.3 Liens or Encumbrances. The Ministry shall ensure that the Grant shall not be subject to any lien, attachment, enforcement of judgment, pledge or encumbrance of any kind, except with the prior approval of MCC.

Section 6.4. Publicity, Information and Marking. The Ministry shall give appropriate publicity to the Grant Agreement and this Implementation Agreement as a program to which the United States has contributed, including by posting the Grant Agreement and this Implementation Agreement, and any amendments thereto, on an agreed website, identifying Grant activity sites, and marking goods financed in whole or in part (directly or indirectly) by the Grant; *provided*, any announcement, press release or statement regarding MCC or the fact that MCC is financing

the Grant or any other publicity materials referencing MCC shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time.

Section 6.5. No Assurance of Future Assistance. Nothing contained in the Grant Agreement or this Implementation Agreement shall 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 Proposed Compact proposal or any other project or program in the Kingdom of Lesotho.

Section 6.6. Foreign Government Information. The Parties agree to the removal of the Foreign Government Information (“FGI”) classification for the text of this Implementation Agreement and the terms of the Grant and the implementation thereof described herein. Notwithstanding the foregoing, except as shall otherwise be agreed by the Parties in writing, all prior drafts of this Implementation Agreement, any other agreement between MCC and the Government yet to be negotiated and documented, and all other documents, information and other communications between MCC and the Government or their respective representatives either prior to, on or after the date of this Implementation Agreement, whether related to the subject matter of this Implementation Agreement or otherwise, will remain subject to FGI classification and, as such, protected from disclosure to the public in accordance with the letter dated November 16, 2004 that was exchanged from MCC to the Government.

Section 6.7. Headings. The Section and Subsection headings used in this Implementation Agreement are included for convenience only and are not to be considered in construing or interpreting this Implementation Agreement.

Section 6.8. Severability. If one or more provisions of this Implementation Agreement is held to be unenforceable under any applicable law, such provision(s) shall be excluded from this Implementation Agreement and the balance of this Implementation Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

Section 6.9. Communications. Unless otherwise agreed by the Parties in writing, any notice, request, report, document or other communication required, permitted, or submitted by any Party to the other under this Implementation Agreement shall be (i) in writing, (ii) in English, and (iii) deemed duly given: (a) upon personal delivery to the Party or Parties to be notified; (b) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party or Parties, if not, then on the next business day; or (c) upon the date of receipt by the Party that is the intended recipient when sent by the other Party by internationally recognized express mail carrier at the address indicated below, or at such other address as such Party may designate:

To MCC:
Millennium Challenge Corporation
Attention: Vice President for Country Programs (Principal Representative),
with a copy to the General Counsel
875 Fifteenth Street, N.W.
Washington, DC 20005
United States of America
Tel: 1-202-521-3600
Fax: 1-202-521-3700
Email: VPCountryPrograms@mcc.gov (Vice President for Country Programs);
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

To Lesotho:
Ministry of Finance and Development Planning
Attention: Minister of Finance and Development Planning
with a copy to the Principal Secretary
P.O. Box 395
Maseru – 100
Lesotho
Tel: 266-22323703 / 22316304 / 22311101
Fax: 266-22310622 / 22310157
Email: ps@finance.gov.ls

Section 6.10. Counterparts; Signatures. Except as the Parties may otherwise agree in writing from time to time, this Implementation Agreement between the Parties may be executed in one or more counterpart signatures and, each when so executed and delivered, shall be an original instrument, but such counterparts together shall constitute a single agreement. A signature delivered by facsimile or electronic mail in accordance with Section 6.9 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument or agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 6.11. Relationship Between the Parties. Nothing in this Implementation Agreement among the Parties shall be construed to constitute or create a partnership, agency relationship, joint venture, or equity or similar interest among the Parties. No 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 6.12. MCC Status. MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of this Implementation Agreement. As such, MCC has no liability under this Implementation Agreement, is immune from any action or proceeding arising under or relating to this Implementation Agreement and the Ministry hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Implementation Agreement, MCC is not subject to the jurisdiction of the courts or other body of Lesotho.

Section 6.13. Non-waiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with this Implementation Agreement shall be construed as a waiver of such right or remedy.

Section 6.14. Language. This Implementation 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 shall prevail.

Section 6.15. Amendment. This Implementation Agreement may be amended or modified by written agreement of the Parties.

[Signature Page Follows on Next Page]

IN WITNESS WHEREOF, MCC and the Ministry, each acting through its duly authorized representative, have caused this Implementation Agreement to be executed in their names and delivered as of the 1st day of September, 2005.

MILLENNIUM CHALLENGE
CORPORATION

THE MINISTRY OF FINANCE AND
DEVELOPMENT PLANNING
ON BEHALF OF THE GOVERNMENT OF
THE KINGDOM OF LESOTHO

By: _____ / s / _____

By: _____ / s / _____

Name: Charles O. Sethness

Name: Timothy T. Thahane

Title: Vice President,
Monitoring & Evaluation

Title: Minister of Finance
and Development Planning

ANNEX I
DESCRIPTION OF THE ASSISTANCE

Section 1. Description of Assistance

1.1. The Assistance shall be comprised of the activities described in Schedules 1 through 3 of this Annex (each, an “*Activity*”).

1.2. The principal representative and primary point of contact for the Assistance shall be the Ministry of Finance and Planning Development (the “*Ministry*”). All reports and other deliverables shall be submitted to the Ministry through the MCC Technical Committee Coordinator for further distribution in accordance with the agreement set out in each Schedule.

1.3. The Assistance shall be subject to all of the provisions of the Implementation Agreement of which this Annex forms a part, including the restrictions on use of funds set forth in Section 3.3 of the Implementation Agreement.

Section 2. Contracting of Service Providers

2.1 (i) The Government shall conduct a tender process acceptable to MCC for the Service Providers to be procured under this Annex. For each Activity, Service Providers may be procured through multiple procurement exercises.

(ii) The tender process shall be conducted in accordance with Section 3.2 of the Implementation Agreement using procurement guidelines acceptable to MCC and attached hereto to the Implementation Agreement as Annex IV (the “*Implementation Procurement Guidelines*”).

Section 3. Budget and Disbursement

3.1 The budget for the Grant is expected to be utilized as set forth below, and in no circumstances shall the total budget exceed six hundred thousand United States Dollars (USD \$600,000). Amounts may be allocated and reallocated between Activities by agreement between MCC and the Ministry of Finance and Development Planning (the “*Ministry*”).

Activity	Budgeted Amount in USD
Land Tenure Reform Activity	300,000
Civil Legal Systems Activity	90,000
Capacity Building Activity	200,000
Procurement process and administrative expenses	10,000
Total	600,000

3.2. Disbursements shall be made in accordance with Article II of the Implementation Agreement, except as may be otherwise agreed by MCC, as described in Schedules 1 through 3 of this Annex.

Schedule 1 to Annex I
LAND TENURE REFORM

1. Introduction

The subject of these Terms of Reference (“*TOR*”) is land tenure reform. The *TOR* may be amended by written agreement of MCC and the Government of Lesotho (“*GoL*”), acting through the Ministry.

2. Procurement of the Services

The services will be provided by a firm, joint venture or other legal entity (the “*Service Providers*”) to be engaged by the Ministry in accordance with the Implementation Procurement Guidelines. The services may be procured through more than one procurement exercise.

3. Description of Services

3.1 In the context of on-going land tenure reform projects in Lesotho, the Service Providers will evaluate current land administration processes and systems and make recommendations regarding how to enable Land Institutions, Local Authorities and communities to adopt the best procedures for recording land rights and providing land information services.

3.2 Specifically, the Service Providers will undertake a review of the status of existing computerized and manual Land Information Systems and Land Registration Systems, and provide written recommendations on:

- The most appropriate relation between central and decentralized data repository and transactional services;
- The best approach to migrate 40,000 cadastral records from a ReGIS platform to a new software platform;
- Either improving current data capture methods for land registration applications, land revenue collection, mapping and land application processing (most of which exist in hard copy form only) or for designing a new system;
- Based on the existing situation the Service Providers should recommend a proposal for the development of appropriate systems and, where applicable, how to merge data on multiple databases. In addition, the proposal should identify the appropriate resources (human and technical) and a financing plan for implementing the changes. Where possible, the proposal should also identify impediments to achieving sustainable systems, e.g. lack of capacity or ability to retain trained personnel, shortage of resources for acquisition of hardware and software including for payment of software maintenance agreements; and
- The Service Providers should ensure that all recommendations are consistent with the Land Bill 2005, and other GoL land initiatives including but not limited to: the development mortgage markets and a collateral system.

3.3 The Service Providers should undertake a baseline study to identify performance indicators of the current system including (but not limited to) the following:

- Response time to request for information about land;
- Time and costs for registration; and
- Numbers of land related litigation and if possible, times and costs related to these.

3.4 The Service Providers should provide recommendations to GoL on:

- The prioritization of proposed reforms;
- The sequence for implementation of the recommended proposed reforms identifying the costs (if any) of each reform;
- The estimated timeline for such implementation;
- The resource specifications, including recommendations on additional human resources requirements for the management of the new Land Information and Land Registration Systems (including the transition), and cost estimates for such implementation;
- Suggested performance milestones and indicators that could be included in a five year agreement between GoL and one or more international donors;
- Identification of risks and probability of those risks in the design of an administration system, and in those cases where risks are relatively high, alternative design options to mitigate those risks; and
- Actions needed to implement the reforms contained in the Land Bill 2005 (i.e. establishing regulations).

3.5 The Service Providers will provide written recommendations for the design of pilot projects for operationalizing an integrated land registry system. The recommendations should be based on the work conducted under Section 3.2 above as well as a review of the existing pilot peri-urban and rural mapping projects. The recommendations should specifically address:

- Differences in implementation approaches for urban versus rural areas;
- Relevant attributes of mapping parcels and administrative boundaries of villages, registration of rights, revenue collection and how to integrate maps and other data generated by the pilots; and
- Specific recommendations regarding whether to expand existing pilots or to modify the approach should be included.

3.6 Based on the foregoing, or based on the agreement of the Ministry and MCC, additional follow-on or other related work may be undertaken according to terms of reference to be agreed by the Ministry and MCC. Service Providers for such work will be procured through a separate procurement exercise.

4. Outputs Expected

4.1 The Service Providers will be expected to develop, in consultation with stakeholders, a framework for the establishment of an operational Land Information System and Land Registration System that facilitates access to information about the land, including efficient registration and application procedures. The Service Providers will produce an inception report (“*Inception Report*”) (including the findings of research on the existing land registration and land information systems and the relevant legal framework), a baseline study report (“*Baseline Study Report*”) (highlighting indicators including response times needed to request information about land, time and costs associated with registering land, and amount of formal land-related disputes) and a final report (“*Final Report*”), each acceptable to the Ministry and MCC. The Final Report will present the framework and include the following:

- A report reviewing status of Land Information System and Land Registration System in Lesotho as described in Section 3.2. The report should emphasize how the recommendations are aligned with the current legal framework of the country as well as the Land Bill 2005 and subsequent regulatory framework and other GoL land initiatives including but not limited to: the development mortgage markets and a collateral system;
- A baseline study describing systems current performance as requested in Section 3.3;
- A strategy for implementing the Land Information System and Land Registration System including recommendations as listed in Section 3.4; and
- Recommendations for design and implementation of selected pilot projects.

The Service Providers shall further present each deliverable to the MCC Technical Committee in a formal meeting. All the above deliverables will be subject to the approval of the Land Reform Steering Committee and MCC. These reports should be in English and be delivered to the client in seven hard copies and two electronic versions on CD.

5 Reporting Relationships

5.1 All of the deliverables shall be submitted to the MCC Technical Committee Coordinator through the Ministry for further distribution to and approval of the Land Reform Steering Committee.

5.2 The Department of Land, Surveys and Physical Planning will make relevant staff available to provide advice, guidance and information to the Service Providers when appropriate.

6. Inputs Required

6.1 The GoL requires technical assistance of land administration expert(s) to undertake the Land Information System and Land Registration System studies. The expert or a team of experts will undertake both the Land Information System and Land Registration System studies. The Service Providers should hold a professional degree in Economics, Agricultural Economics, Land Administration, Land Economics, Land Surveying or Urban and Regional Planning and have comprehensive experience in land administration (property registration, cadastre, land titling, land tenure reform) and/or land market development work. In addition, the Service Providers

should have experience in the development of computerized information systems. Experience in the African or in a developing country environment will be advantageous.

6.2 The Service Providers will be expected to provide resources to undertake the study including computers, internet access, and transport. Office accommodations within the Department of Lands, Surveys and Physical Planning may be provided if there are no cost implications to GoL.

7. Scheduling

Activity	Estimated Duration	Outcome
1. Inception Report	5 Weeks	Visits and interviews in various institutions dealing with land issues resulting in an analytical report of the strengths and weaknesses of the existing scenario.
2. Baseline Study Report	6 Weeks	Report highlighting indicators including: response times needed to request information about land; time and costs associated with registering land; amount of formal land-related disputes.
3. Strategy development for implementing the Land Information System and Land Registration System	1 Week	Report on best-practices for implementing Land Information System and Land Registration System
4. Pilot project identification	5 Weeks	Design pilot projects and draft implementation plan for these projects
Total	17 Weeks	

8. Payments

Except as may be otherwise agreed by MCC, disbursements will be made to the Service Providers on the following basis:

Deliverable	% of Contract
Mobilization Payment	10
Inception Report and Baseline Study Report	40
Final Report	50
Total Contract	100

Schedule 2 to Annex I CIVIL LEGAL SYSTEMS

1. Introduction

The subject of these Terms of Reference (“*TOR*”) is civil legal system reform. The TOR may be amended by written agreement of MCC and the Government of Lesotho (“*GoL*”), acting through the Ministry.

2. Procurement of the Services

The services will be provided by a firm, joint venture or other legal entity (the “*Service Provider*”) to be engaged by the Ministry in accordance with the Implementation Procurement Guidelines. The services may be procured through more than one procurement exercise.

3. Description of Services

3.1 In the context of on-going reform of the law and justice sector in Lesotho, the Government has identified the need to reform the civil legal system in order to improve the business and investment climate. The project will provide a study of business and commercial law, civil proceedings and small claims procedures in Lesotho. The study will recommend a program design to implement reform of these areas.

3.2 The initial project contains the following objectives:

- Review the current state of, and develop proposals for the reform of business and commercial law including case management, women and property, small claims procedures and a system of alternative dispute resolution. With respect to these proposed reforms it will identify the training and resource needs for their implementation;
- Review laws to enable property to be mortgaged and leased and to use other property including agricultural fields and stock as collateral to raise funding; and
- Review laws – current and proposed – and civil legal systems to identify impediments to married women’s ability to own property.

4. Scope of Work

4.1 The study shall have two main components as described in the objectives in paragraph 3.2 above.

4.2 To achieve these objectives the following will be carried out by the Service Providers:

- Review legislation and procedures relating to business and commercial law to determine their constraining and facilitating features (identifying quantified indicators if possible);

- Review relevance and propriety of the existing court processes, including case management systems, in relation to the above;
- Make recommendations for improvements to the above, including consideration of development of commercial courts and/or, small claims courts to hear civil claims;
- Consider the viability of expanded use of Alternative Dispute Resolution (“ADR”) such as arbitration, mediation, and conciliation;
- Review legislation and procedures relating to land acquisition and tenure;
- Review the relevance and propriety of the existing court processes in relation to the above;
- Review the relevance and complementarity of the Land Tribunal regime;
- Review the access and adequacy of judicial remedies for the above;
- Examine the constraints of using all forms of property as collateral in raising finance;
- Review laws – current and proposed – and civil legal systems to identify impediments to married women’s ability to own property;
- Undertake a needs assessment (human, infrastructure, capital etc.) for the Ministry/Department including training and resource needs to implement reforms; and
- Identify risks and probability of those risks in the design of an administration system, and in those cases where risks are relatively high, alternative design options to mitigate those risks.

4.3. Based on the foregoing, or based on the agreement of the Ministry and MCC, additional follow-on or other related work may be undertaken according to terms of reference to be agreed by the Ministry and MCC. Service Providers for such work will be procured through a separate procurement exercise.

5. Time Frame

5.1 The study will take two Service Providers a month to complete with a further two weeks for the completion of the interim report. For further information on reporting please refer below.

6. Outputs Expected

6.1 A detailed report reflecting the above scope of work containing key elements of a civil legal reform program that will incorporate major recommendations from the study and include expected performance milestones. The recommendations should have been quality assured through consultation with the relevant sectors. The Service Providers will submit an interim report (“*Interim Report*”) followed by a final report (“*Final Report*”) that takes into

consideration the comments of the relevant ministries and other stakeholders, each acceptable to MCC and the Ministry.

6.2 The Interim Report will be submitted within six weeks from the commencement of the contract. The Ministry of Justice will arrange an evaluation panel to consider the Interim report and will advise the Service Providers of their comments within two weeks of receiving the document.

6.3 The Final Report will be submitted within two weeks of receiving the observations from the Ministry of Justice. The final report will be submitted to the MCC Technical Committee Coordinator through the Ministry for further distribution to and approval of the Civil Legal reform Steering Committee and Ministry of Justice. The PS Justice will be responsible for approving the final report and advising the Ministry of Finance.

6.4 These reports should be in English and be delivered to the client in seven hard copies and two electronic versions on CD.

7. Reporting Relationships

7.1 The Ministry of Finance is the lead ministry for this initial MCC Compact Development Project relating to the review of the civil legal systems. However, the Service Providers are expected to also work closely with the Ministry of Justice, the Ministry of Law & Constitutional Affairs and the Ministry of Local Government. The Law and Justice Sector Development Program (“*LJSDP*”) will make relevant staff available and provide advice, information and guidance to the Service Providers when appropriate.

7.2 All of the deliverables shall be submitted to the MCC Technical Committee Coordinator through the Ministry for further distribution to and approval of the Civil Legal reform Steering Committee and the Principal Secretary for the Ministry of Justice (P.S. Justice), Human Rights and Rehabilitation.

8. Inputs Required

8.1 The team leader will be a senior lawyer with at least 10 years of experience practicing commercial law or with significant legal reform experience. Additionally, previous experience in Southern Africa would be beneficial. The second member of the team will be a practicing lawyer who has specialized in Lesotho commercial law for the past five years.

8.2 Only limited support will be made available to the team of lawyers and will be restricted to general advice in terms of information from the Ministry of Justice and the LJSDP as to identity of key people and organizations who should be consulted, documentation and general advice on legislation and obstacles to justice. The office accommodation, facilities and transport are expected to be provided by the Service Provider.

9. Payments

Except as may be otherwise agreed by MCC, disbursements will be made to the Service Providers on the following basis:

Deliverable	% of Contract
Mobilization payment	10
Final Report	90
Total Contract	100

Schedule 3 to Annex I
PRIVATE SECTOR CAPACITY BUILDING

1. Introduction

The subject of these Terms of Reference (“*TOR*”) is private sector capacity building. The TOR may be amended by written agreement of MCC and the Government of Lesotho (“*GoL*”), acting through the Ministry.

2. Procurement of the Services

The services will be provided by a firm, joint venture or other legal entity (the “*Service Provider*”) to be engaged by the Ministry in accordance with the Implementation Procurement Guidelines. The services may be procured through more than one procurement exercise.

3. Description of Services

3.1 The task of the Service Providers shall be to:

- Review and validate of the final report of the demand Study conducted by Institute of Development Management – W.K. Kellogg Foundation (“*IDM-WKKF*”), its methodology, as well as existing background literature (bibliography to be provided);
- Undertake a detailed and extensive gap analysis including a functional review of all existing public, private and civil society institutions supporting capacity building in the following three areas:
 1. Business and market information (such as information on market opportunities);
 2. Coordination of dialogue between the local private sector and Government; and
 3. Business development services and training for local private sector companies;

(This will involve extensive literature review and interviews of relevant public, private and civil society institutions supporting capacity building of the Private Sector.)
- Propose relevant indicators with identified sources that could be used as a basis for determining the successful outcome for the capacity building action plan;
- Develop a capacity building action plan; and
- Present the key findings at a Stakeholder’s Forum and incorporate feedback into a final report.

3.2 Based on the foregoing, or based on the agreement of the Ministry and MCC, additional follow-on or other related work may be undertaken according to terms of reference to

be agreed by the Ministry and MCC. Service Providers for such work will be procured through a separate procurement exercise.

4. Outputs Expected

4.1 The Service Providers are expected to submit an interim report ("*Interim Report*"), acceptable to the Ministry and MCC, to include activities 1 through 4 of Section 7 below. The Service Providers are also expected to submit a final report ("*Final Report*"), acceptable to the Ministry and MCC, incorporating the following:

- A revised and updated demand study working closely and in conjunction with the IDM-WKKF facilitation team;
- A report identifying the gaps in capacity building services including the findings of a functional review of existing institutions. Provide recommendations to match supply with identified demand;
- A capacity building action plan including prioritization of proposed reforms, sequencing for implementation of the recommended reforms, resource specifications and cost estimates for such implementation, estimated timeline for such implementation, suggested performance milestone and indicators that could be included in an agreement between GoL and one or more international donors; and
- A presentation to stakeholders of key findings and recommendations. The Final Report must incorporate these comments.

4.2 The Service Providers shall further present each deliverable to the MCC Technical Team in a formal meeting. All of the above deliverables will be subject to the approval of the Capacity Building Steering Committee and MCC. These reports should be in English and be delivered to the client in seven hard copies and two electronic versions on CD.

5 Inputs

5.1 The expertise for the study requires one or more Service Providers with a relevant degree in Business Administration; Financial Management; Economics or related fields. The Service Providers should have at least five years experience in private sector capacity building, business management or economic development.

5.2 Facilities to be provided by the Government

- Furnished office accommodation and access to documents.

5.3 Facilities to be provided by the Service Providers

The Service Providers are expected to cover expenses related to all other facilities required to perform the task, including:

- Communication

- Transportation
- Secretarial services
- Stationery
- Workshop material and equipment, where applicable

6. Reporting relationships

- 6.1 All of the deliverables shall be submitted to the MCC Technical Committee Coordinator through the Ministry for further distribution to and approval of the capacity building Steering Committee. The Ministry will make relevant staff available and provide advice, information and guidance to the Service Providers when appropriate.

7. Scheduling

Activity	Duration	Outcome
1. Review the final report of the Demand Study conducted by IDM-WKKF, its methodology, as well as existing background literature (bibliography to be provided)	2 Weeks	A revised and updated demand study
2. Undertake a detailed and extensive gap analysis including a functional review of all existing public, private and civil society Institutions supporting capacity building in the following three areas: - business and market information (such as information on market opportunities); - coordination of dialogue between the local private sector and Government; business development services and training for local private sector companies;	3 Weeks	A report identifying the gaps in capacity building services including the findings of a functional review of existing institutions
3. Propose relevant indicators that could be used as a basis for determining the successful outcome for the capacity building action plan	1 Week	A report on performance indicators
4. Develop a capacity building action plan.	2 Weeks	A Capacity Building Action Plan with clear performance indicators.
5. Present the key findings at a Stakeholders' Forum	2 Days	A presentation to Stakeholders of a comprehensive report with key findings and recommendations.
6. Finalize report and incorporate feedback into a final report	1.5 Weeks	Final report
Total	10 Weeks	

8. Payments

Except as may be otherwise agreed by MCC, disbursements will be made to the Service Providers on the following basis:

Deliverable	% of Contract
Mobilization Payment	10
Interim Report	40
Final Report	50
Total Contract	100

**ANNEX II
FORM OF DISBURSEMENT REQUEST**

CERTIFICATION

<p>A. Request for Payment: The undersigned hereby requests the Millennium Challenge Corporation to make payment to the Service Provider listed below. This request is made pursuant to the Grant Agreement by and between the Government of the Kingdom of Lesotho, acting through the Ministry of Finance and Development Planning (the "Ministry"), and the Millennium Challenge Corporation ("MCC"), dated the date first mentioned above and effective as of September 1, 2005 (the "Grant Agreement") and the Implementation Agreement by and between the Ministry and MCC, dated the date first mentioned above.</p>	
<p>1. Disbursement amount requested to be made by the Millennium Challenge Corporation (amount in USD):</p>	
<p>2. Service Provider to which disbursement is requested to be made</p>	
<p>B. Invoice. The invoice of the Service Provider is attached to this Certification.</p>	
<p>C. Certification. The undersigned certifies that (a) the services for which payment is requested have been satisfactorily delivered; (b) the payment requested is in accordance with the terms of the Service Provider Contract, and the conditions set forth in the Grant Agreement and Implementation Agreement; and (c) reports or recommendations required under the Service Provider Contract have been received and are in accordance with the terms of the Service Provider Contract. As such, the undersigned we approves the payment of the enclosed invoice.</p>	
<p>Government of the Kingdom of Lesotho Acting through the Ministry</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>As Authorized Principal Representative of the Ministry</p> <p>Date: _____</p>	

**ANNEX III
FORM OF SERVICE PROVIDER INVOICE**

1. Name, address and telephone number of the Service Provider
2. Addressee:
Ministry of Finance and Development Planning
Attention: Minister of Finance and Development Planning
with a copy to the Principal Secretary

P.O. Box 395
Maseru – 100
LESOTHO
Tel: 266-22323703 / 22316304 / 22311101
Fax: 266-22310622 / 22310157
Email: **ps@finance.gov.ls**

With simultaneous copies to:
National Business Center
Attn. Heidi Pratt, MCC Accounting,
7301 W. Mansfield Avenue
Mail Stop: D2773
Denver, CO 80235-2230
UNITED STATES OF AMERICA
Tel: 1-303-969-7780, Ext. 2617
Fax: 1-303-969-7220
E-mail : **MCC_Accounting_NBCDenver@nbc.gov**

Millennium Challenge Corporation
Attention: Vice President for Country Programs, with a copy to the General Counsel
875 Fifteenth Street, N.W.
Washington, DC 20005
UNITED STATES OF AMERICA
Tel: 1-202-521-3600
Fax: 1-202-521-3700
Email: **VPCountryPrograms@mcc.gov** (Vice President for Country Programs);
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)
3. Date of invoice
4. (a) Contract Number (or other authorization for services performed or supplies delivered (including order number and contract line item number))

(b) Number and date of Commitment Letter (if any) with the Millennium Challenge Corporation
5. Description, quantity, unit of measure, unit price and extended price of services performed or supplies delivered
6. Name and address of Service Provider official or the bank account routing information to whom or to which payment will be sent (must be the same as that in the Contract or in a proper notice of

assignment). The Service Provider must at a minimum include the following information regarding the account to which the payment will be sent:

Account name:
Account number:
Bank name:
Full bank address (including country):
Bank SWIFT Code:
Bank Code:

Routing instructions for payments:

*A United States Service provider shall also furnish the following information [if appropriate]:
[Taxpayer Identification Number]
[Electronic funds transfer banking information – may be included in the invoice or otherwise submitted, e.g., through the Central Service Provider Registration process]
[Any other information or documentation required by the Contract]*

7. Name, title, phone number and mailing address of the person to notify in the event of a defective invoice
8. Billing Information:
 - (a) Amount billed in this invoice
 - (b) Cumulative billings under this Commitment Letter
 - (c) Balance remaining under this Commitment Letter
9. An executed Service Provider's Certificate certifying the following:
 - (a) The Service Provider will, upon the request of the Government of Lesotho, promptly make appropriate refund to the Millennium Challenge Corporation, plus from the time of payment to the Service Provider, in the event of:
 - i. Its nonperformance, in whole or in part, under the Contract, or
 - ii. Any breach by it of any of its undertakings in this Certificate, or
 - iii. Any false certification or representation made by it in this Certificate.At its option, the Government of Lesotho may deduct, or may instruct the Millennium Challenge Corporation to deduct, any refund due under this paragraph from other amounts payable to the Service Provider.
 - (b) To the best of its information and belief, any commodity or service supplied under the Contract meets the requirements specified in the Contract.
 - (c) Neither the Service Provider nor its agent has compensated any person to obtain the Contract except as permitted under the laws of Lesotho and approved in writing by the Ministry.
 - (d) Neither the Service Provider nor its agent has made or will make any payment to or for the benefit of the Purchaser, the Purchaser's agent, or any other person or entity in the nature of a kickback. Any commission paid or to be paid by the Service Provider to its agent in connection with the transaction for which payment is being requested under the Contract is shown in item 5 above and does not exceed the lesser of (a) the amount customarily paid by the Service Provider in connection with similar transactions or (b) the amount customary in the trade. Neither the Service Provider nor its agent has

given or received and will not give or receive any payment or benefit whatever in connection with any transaction or series of transactions that are covered by the Contract other than those payments or benefits permitted under this Certificate and Agreement.

- (e) The Service Provider has not been placed on the “List of Parties Excluded from Federal Procurement or Non-procurement Programs” published by the United States General Services Administration (<http://epls.arnet.gov>), or the list of “Specially Designated Nationals and Blocked Persons” published by the United States Treasury Department Office of Foreign Assets Control and thereby rendered ineligible to receive Millennium Challenge Corporation funds, or on the list of firms or persons debarred by the World Bank (<http://www.worldbank.org>). To the best of its knowledge, the Service Provider has not subcontracted and, in any event, will not subcontract the services covered by this Certificate and Agreement to any subcontractor included on the “List of Parties Excluded from Federal Procurement or Non-procurement Programs” or included on the list of “Specially Designated Nationals and Blocked Persons” or from any affiliate of a person or entity on such lists.
- (f) The Service Provider will for a period of not less than five years after the date of final payment maintain all business records and other documents which bear on its compliance with any of the undertakings and certifications herein and will, at any time requested by the Millennium Challenge Corporation promptly furnish to the Millennium Challenge Corporation such additional information as the Millennium Challenge Corporation may request relating to such compliance.
- (g) The natural person who signs the certificate must state that he or she is either the Service Provider or that he or she has actual authority to sign on behalf of the Service Provider and to bind the Service Provider with regard to all certifications and agreements contained in this Certificate and Agreement. He or she must further certify, if he or she is not personally the Service Provider, that he or she is either an employee of the Service Provider or he or she has a written power of attorney to sign for and bind the Service Provider.

10. Signature by an authorized representative of the Service Provider

ANNEX IV IMPLEMENTATION PROCUREMENT GUIDELINES

ARTICLE 1: PROCUREMENT MANAGEMENT

- The Government of the Kingdom of Lesotho (the “Government”) and the Millennium Challenge Corporation (“MCC”) have entered into a Grant Agreement, dated June 4, 2005 (the “Grant Agreement”) and an Implementation Agreement, dated as of September 1, 2005 (the “Implementation Agreement”) pursuant to which MCC will provide \$600,000 to the Government to support development of a compact for economic growth and poverty reduction in Lesotho.
- The Government should appoint a procurement management unit (PMU) acceptable to MCC which will undertake activities for procuring the Service Providers to perform the services described in Section 1.1 of the Grant Agreement dated June 4, 2005 between the Government and MCC.
- Implementation management including monitoring, evaluation and reporting functions for the Service Providers performing the Policy Reform Studies will be the responsibility of the Government of Lesotho through the MCC Technical Team to be designated in writing who will collaborate with the (PMU) as appropriate to ensure the satisfactory and complete performance of the contracts.

ARTICLE 2: PROCUREMENT PROCEDURES

The principles, rules and procedures set out in **The World Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004** shall govern the conduct and administration of the procurement of the services that need to be acquired under this Implementation Agreement subject to the following *exceptions*. Guidance in implementing these procedures is found in The World Bank publication “CONSULTING SERVICES MANUAL, A Comprehensive Guide to Selection of Consultants” 2002.

General Exceptions

- References to the “Bank” unless otherwise noted refer to the Millennium Challenge Corporation (MCC).
- References to the “Borrower” unless otherwise noted refer to the Government of Lesotho as signatory to the Grant Agreement and the Ministry of Finance as the accountable entity (Ministry).
- References to the “Loan Agreement” unless otherwise noted refer to the Grant Agreement and the Implementation Agreement.
- Dispute resolution will take place primarily in Lesotho with the possibility for international arbitration in the case that disputes are not resolved at the national level.

Specific Exceptions (Modifying instructions and text of modifications are set out in regular type. *[Explanatory text is set out in italics type within brackets.]*)

I. Introduction

- **Paragraphs 1.1 to 1.3** defining the purpose of the guidelines are deleted. *[The purpose of the procurement guidelines is defined in the Grant Agreement and this Implementation Agreement.]*
- **Paragraphs 1.4 and 1.5** describing the procurement principles underlying the guidelines are deleted. *[The MCC procurement principles are set out at Section 3.2 of this Implementation Agreement.]*
- **Paragraph 1.6** shall be changed to: The particular methods to be followed for the selection of consultants under the Grant Agreement are set out in the Procurement Plan.
- **Paragraphs 1.7 and 1.8** defining application of guidelines are deleted. *[The application of these guidelines is set out in the Implementation Agreement.]*
- **Paragraph 1.11** defining eligibility requirements shall be modified to add the following paragraph: (f) Any person or entity that has been blacklisted from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the US Federal Government or otherwise prohibited by applicable United States law or Executive Order or United States policies shall be excluded from procurements awarded under the Compact; including under any then-existing anti-terrorist policies.
- **Paragraph 1.12** defining rules for advance contracting and retroactive funding is deleted. *[The conditions of disbursement are set out in the Grant Agreement and the Implementation Agreement.]*
- **Paragraph 1.15** providing for Bank's assistance in identifying consultants is deleted. *[The MCC will not furnish any lists of suggested consultants.]*
- **Paragraph 1.17** defining misprocurement is deleted. *[The conditions of disbursement are set out in the Grant Agreement and the Implementation Agreement.]*
- **Paragraph 1.18** defining how to reference The World Bank role in the procurement shall be changed to: The Ministry shall use the following language when referring to the MCC in the RFP and contract documents:

“The Government of Lesotho (“GoL”) has submitted a proposal to the Millennium Challenge Corporation, a United States Government Corporation (“MCC”) for the use of 2004 and 2005 Millennium Challenge Account (“MCA”) assistance to help facilitate poverty reduction through economic growth in Lesotho (the “Proposed Compact”) in the amount of USD \$1,390,000. MCC has determined to make a grant of USD \$1,390,000 to the Government through the Ministry of Finance and Development Planning under the authority of Section 609(g) of the Millennium Challenge Act of 2003 for the purpose of development of the Proposed Compact (the “Grant”). The Grant does not obligate MCC to fund the Proposed Compact or any other program in Lesotho. GoL intends to apply \$600,000 of the proceeds of the Grant to eligible payments under this contract. Payment by MCC will be made under this contract only at the request of the Authorized Principal Representative of the Ministry of Finance and Development Planning and upon approval by MCC, and will be subject, in all respects, to the terms and conditions of the Grant Agreement and the Implementation Agreement between the GoL and MCC.”

- **Paragraph 1.19** relating to assistance for training and transfer of knowledge is deleted. *[This form of assistance is not provided for in the Grant Agreement.]*
- **Paragraphs 1.20 and 1.21** defining rules for use of language are revised to a single paragraph that states: The RFP and the proposals shall be prepared in English. The contract signed with the Service Provider shall be written in English and this language shall govern contractual relations between the Ministry and the Service Provider. At the discretion of the Ministry, the RFP may be prepared both in English and in a local language commonly in use in Lesotho.
- **Paragraph 1.24** defining the rules for providing a Procurement Plan shall be changed to: Before commencing the procurement for services, the Ministry shall furnish to the MCC for its review and “no objection” a detailed plan for conducting the procurement. The plan shall set out the key procedural steps for conducting the procurement with a projected timeframe for each step and describe, briefly, how the plan will be implemented. The Ministry shall ensure that the procurement is implemented in the manner in which it has been accepted by the MCC.

II. QUALITY- AND COST-BASED SELECTION (QCBS)

- **Paragraph 2.2** is changed to: The steps of the selection process shall be set out in the plan referenced in Paragraph 1.24 as amended by these Procurement Guidelines.
- **Paragraph 2.3** is changed to: When conducting the procurements, the Ministry shall be responsible for using the appropriate Terms of Reference as identified in this Implementation Agreement.
- **Paragraph 2.4** providing rules for developing cost estimates is deleted. *[The cost estimates have been developed and are set out in the Budget that is part of this Implementation Agreement.]*
- **Paragraph 2.5** providing rules for advertising procurements is changed to: Each

procurement shall be open to foreign and national participants without restrictions or preferences and shall be advertised at the Lesotho MCC website and in dgMarket. Any procurement valued over \$100,000 shall also be advertised in UN Development Business Online. The Ministry may also advertise the procurements in national and international paper publications or electronic media. The text of the advertisement shall be subject to review by the MCC.

- **Paragraphs 2.6, 2.7 and 2.8** providing rules for preparing the Short List of Consultants are revised to a single paragraph that states: The Ministry is responsible for preparation of the short list which is expected to include six to ten firms or organizations for the procurement. Consideration will be given to all firms or organizations— national and international—expressing interest and possessing the relevant qualifications. The method for developing a shortlist shall be fair and objective according to pre-announced criteria. The short list shall be subject to review and “no objection” by MCC.
- **Paragraphs 2.11** defining the contents of the Instructions to Consultants shall be modified by deleting the reference to “total budget” in the second sentence of the paragraph.
- **Paragraph 2.15** defining the rules for evaluating quality shall be modified to delete all references to the use of “transfer of knowledge” and “participation of nationals” to evaluate the quality of the proposals.
- **Paragraphs 2.15 through 2.19** defining rules for evaluating quality shall be interpreted, when applied to a procurement for multidiscipline services, to the evaluation of the technical proposals for each discipline by an evaluation committee for each sector composed of three or more specialists in the sector. In a procurement for multidiscipline services, a minimum qualifying score for the technical quality shall be established for each sector.
- **Paragraph 2.21** providing rules for review of the financial proposals shall not be interpreted to permit bids in any currency other than United States dollars or the local currency of Lesotho.
- **Paragraph 2.22** providing rules for evaluating cost proposals shall be subordinated to Section 3.4 of this Implementation Agreement governing issues of Taxation.
- **Paragraph 2.23** defining the procedures for developing the total score and determining the winning proposal shall be renumbered.
- **Paragraph 2.23.1** and a new paragraph shall be added that states: 2.23.2. Before inviting the firm obtaining the highest total score for negotiations, the Ministry shall furnish to the MCC for its review and “no objection” a full description of the procurement process including an account of all significant problems or defects during the process and a description of how these were resolved.
- **Paragraph 2.26** providing rules for financial negotiations shall be subordinated to Section 3.4 of this Implementation Agreement governing issues of Taxation.

- **Paragraph 2.28** defining requirements for publishing notice of award of the contract shall be modified to require that notice shall also be posted to the Lesotho MCC website.

III. OTHER METHODS OF SELECTION

- **Paragraphs 3.8** defining the requirements for publishing notice of award when selection is based on the consultant's qualifications is changed to: The Government shall publish in *Lesotho MCC Website* and in *dgMarket*, the name of the consultant to which the contract was awarded, and the price, duration, and scope of the contract.

IV. TYPES OF CONTRACTS AND IMPORTANT PROVISIONS

- **Paragraphs 4.2 through 4.5** providing for various types of contracts shall be deleted. *[The contracts made with Service Providers pursuant to this Implementation Agreement shall be Lump Sum or Time Based Contracts.]*
- **Paragraph 4.6** defining currency related rules shall not be interpreted to permit bids in any currency other than United States dollars or the local currency of Lesotho.
- **Paragraphs 4.8 and 4.9** defining payment provisions shall be subordinated to the disbursement provisions set out in Article II of this Implementation Agreement.
- **Paragraph 4.11** relating to Borrower's contribution is deleted.

APPENDIX 1: REVIEW BY THE MCC OF THE SELECTION OF CONSULTANTS

- **Paragraph 1** relating to review of selection process shall be changed to: Prior to advertising the procurement, the MCC shall review the procurement plan and the selection process for procuring the Service Providers.
- **Paragraph 2 (a)** relating to review before inviting proposals shall be changed to: Before inviting proposals, the Ministry shall furnish to the MCC for its review and "no objection" to the process, a copy of the RFP and a description of the short listing process.
- **Paragraph 4** relating to translations shall be changed to: All documents and other information required for review by the MCC shall be written in the English language.
- **Paragraph 5** relating to requirements for post review shall be subordinated to the provisions set out in this Implementation Agreement particularly the provisions in Section 3.5.

APPENDIX 2: INSTRUCTIONS TO CONSULTANTS (ITC)

- **Paragraph 1** relating to use of The World Bank standard proposal documents shall be changed to: For procuring the services at Annex 1, the Ministry shall use The World Bank standard Request for Proposals documents as modified to reflect the provisions of the Grant Agreement, this Implementation Agreement and the circumstances of the procurement. The ITC shall include adequate information on the following aspects of the assignment:
- **Paragraph 1 (g)** referring to external financing shall be deleted.

APPENDIX 3: GUIDANCE TO CONSULTANTS

Appendix 3: Guidance to Consultants, providing guidance on policies and procedures of The World Bank in the operation of its programs is deleted. [*Consultants can learn about the Millennium Challenge Corporation and its programs at www.mcc.gov and about the Millennium Challenge program in Lesotho at www.lesotho.gov.ls*]