

THE UNITED REPUBLIC OF TANZANIA

MINISTRY OF FINANCE AND ECONOMIC AFFAIRS



MILLENNIUM CHALLENGE ACCOUNT – TANZANIA

**AGREEMENT OF COOPERATION FOR THE IMPLEMENTATION
OF THE ZANZIBAR RURAL ROADS PROJECT ACTIVITY**

BY AND BETWEEN

MILLENNIUM CHALLENGE ACCOUNT-TANZANIA (MCA-Tanzania)

AND

MINISTRY OF COMMUNICATIONS AND TRANSPORT (MoCT)

DATED thisday of..... 2008

**AGREEMENT OF COOPERATION FOR THE IMPLEMENTATION
OF THE ZANZIBAR RURAL ROADS PROJECT ACTIVITY**

This Agreement of Cooperation (the “*Agreement*”) is entered into on this day of, 2008, by and between the Millennium Challenge Account – Tanzania (“*MCA-Tanzania*”), as a permitted designee authorized to act on behalf of the Government of Zanzibar to manage and oversee the implementation of the Compact (as defined below) and the Ministry of Communications and Transport of the Government of Zanzibar (the “*MoCT*” and together with MCA-Tanzania, collectively the “*Parties*” and each a “*Party*”).

Terms that are used but not defined herein shall have the meaning given to such terms in that certain Compact.

CONSIDERING

I. That on February 17, 2008, the United States of America, acting through the Millennium Challenge Corporation (“*MCC*”), and the Government of the United Republic of Tanzania (the “*Government*”) entered into that certain Millennium Challenge Compact (the “*Compact*”), aimed at increasing income and reducing poverty in Tanzania through the implementation of a series of projects, among them the Zanzibar Rural Roads Project Activity (the “*Activity*”), designed to improve access to markets and facilitate access to social services in rural communities on the island of Pemba.

II. That the provisions governing administration and general supervision of the implementation of the Projects have been laid out in the Compact, and Compact implementation has been delegated by the Government to MCA-Tanzania.

III. The MoCT has the authority to formulate policies for matters related to transportation and construction, to regulate, plan, execute, evaluate and control any activities that have as a goal the conservation of road infrastructure and the provision of transportation services, in its different modalities, to satisfy the demand of the population.

IV. That to implement the Transport Sector Project it becomes necessary to establish technical cooperation links between MCA-Tanzania and the MoCT.

NOW THEREFORE, in consideration of the premises set forth herein, the Parties agree to enter this Agreement, subject to the following terms and conditions:

ARTICLE 1

OBJECTIVE AND TERM

1.1 The general objective of this Agreement is to set forth a mechanism of coordination and communication between MCA-Tanzania and the MoCT to facilitate the execution of the Activity, in particular, with respect to the execution of road infrastructure studies and works. The terms and conditions established in the Compact for the Transport Sector Project and the Activity shall apply to this Agreement *mutatis mutandis*.

1.2 This Agreement shall be effective as of the Effective Date and shall continue in force until completion of the Activity. Notwithstanding the foregoing, the Parties shall be entitled to terminate the Agreement in accordance with the conditions set forth in Article IV hereof.

ARTICLE 2

IMPLEMENTATION

2.1 In the implementation of this Agreement, the Parties agree to comply with the General Provisions set forth in Annex I hereto.

2.2 The Parties shall be responsible for the following implementation activities, without considering this list of an exhaustive nature:

2.2.1 Obligations of MCA-Tanzania.

(a) Ensure that the rehabilitation of the primary and secondary roads that are identified as part of the Activity are executed, at a minimum, in compliance with the applicable quality standards and technical specifications, including, without limitation, the “Standard Specifications of the Ministry of Works” in 2000 and the MCC Environmental Guidelines, which are incorporated herein by reference.

(b) Ensure compliance with the World Bank Policy on Involuntary Resettlement 4.12.

(c) Ensure compliance with the Government of Zanzibar — Environmental Management for Sustainable Development Act (No 2 of 1996) Part 5.

2.2.2 Obligations of MoCT.

(a) Grant MCA-Tanzania the right to rehabilitate and/or upgrade those segments of the rural road networks approved as eligible to receive MCC Funding.

(b) Ensure the inclusion of roads rehabilitated and/or upgraded through the Activity into the maintainable road network of Zanzibar.

(c) Appoint appropriate officials, including a project engineer and a representative from the Coordinating Office of Donor Assisted Projects to act as permanent liaisons with MCA-Tanzania and the Director of Transport Sector Project in all matters related to the correct and efficient implementation of the Activity.

(d) Facilitate the appropriate site access, documentation and approvals with other Government of Zanzibar agencies that may have jurisdiction over the activities of MCA-Tanzania or its contractors in furtherance of the rehabilitation and/or improvement of the eligible rural road segments.

(e) Provide input to the MCA-Tanzania M&E Director as necessary to (i) complete the M&E Plan, (ii) ensure the proper and timely collection of all data related to the relevant performance indicators, baselines and targets of the M&E Plan, (iii) comply with the requirements of the evaluations described in the M&E Plan and (iv) provide all reports, data and documentation as may be necessary or requested by MCA-Tanzania for the compliance by the Government with its obligations under the M&E Plan.

(f) Maintain mechanisms for alignment and harmonization of the official development assistance for road infrastructure among the Government of Zanzibar, the Zanzibar Department of Environment, MCA-Tanzania and other donors.

2.3 The Parties acknowledge and agree that new activities and obligations may be agreed to in writing between the Government of Zanzibar and MCA-Tanzania for purposes of implementing the Activity, subject to the comments and no objection from MCC, which activities and obligations shall be consistent with and performed in accordance to the Compact and any related agreements. Notwithstanding the foregoing, the incorporation of new activities and obligations of the Parties will not alter or undermine the obligations assumed by the Government of Zanzibar or MCA-Tanzania under the Compact and any applicable related agreements.

2.4 MoCT shall not be entitled to, nor shall it receive, any compensation or payment of any kind under this Agreement.

ARTICLE 3

COMMUNICATIONS

3.1 Any notice, certificate, request, report, approval, document or other communication required, permitted, or submitted by either Party to the other under this Agreement shall be (a) in writing, in English and (b) deemed duly given: (i) upon personal delivery to the Party to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours, if not, then on the next business day; or (iii) after confirmation of delivery, if sent by courier, to the Party to be notified at the address indicated below, or at such other address as such Party may designate by notice to the other Party:

To MCA-Tanzania:

Millennium Challenge Account-Tanzania

Attention: Chief Executive Officer
Address: Kivukoni Front/Ohio Street
P.O. Box 8327
Dar es Salaam, Tanzania
Phone: 255 22 2124634
Facsimile: 255 22 2124644
Email: benmchomvu@yahoo.com

To MoCT:

Ministry of Communications and Transport

Attention: Principal Secretary
Address: Mizingani Street
P. O. Box 266
Zanzibar, Tanzania
Phone: 255 24 2232841
Fax: 255 24 2233674
E-mail: moct@zanzinet.com

ARTICLE 4

TERMINATION

4.1 Subject to written approval of MCC, this Agreement shall terminate upon the first to occur of the following:

(a) Either Party terminates this Agreement at any time upon not less than thirty (30) days' written notice to the other Party;

(b) In the event of a material breach by MoCT of a representation, covenant, obligation or responsibility under this Agreement, MCA-Tanzania elects to terminate this Agreement by written notice; or

(c) The Compact terminates or expires in accordance with its terms or otherwise; *provided*, the terms of this Agreement may be extended by notice from MCA-Tanzania in writing for a longer period following the termination or expiration of the Compact if MCC instructs MCA-Tanzania to so extend this Agreement, including if MCC determines that additional time is required to resolve any litigation, claims or audit findings or any statutory requirements.

4.2 Upon termination of this Agreement, the MoCT shall ensure the orderly and timely transfer of all Project and Activity assets and all records, documents and information (including all documents containing or relating to confidential information) in its possession, together with all electronic copies thereof, to MCA-Tanzania or such other agent or representative designated by MCA-Tanzania, and the MoCT shall take, or cause to be taken, any other actions reasonably requested by MCA-Tanzania to ensure the proper transition of any activities performed by the MoCT pursuant to this Agreement.

ARTICLE 5

MISCELLANEOUS

5.1 For all purposes relevant to this Agreement, MoCT shall be represented by the individual holding the position of Principal Secretary (the “***Principal Representative***” of MoCT) and MCA-Tanzania shall be represented by the individual holding the position of, or acting as, the Chief Executive Officer (the “***Principal Representative***” of MCA-Tanzania), each of whom, by written notice, may designate one or more additional representatives (each, an “***Additional Representative***”) for all purposes other than signing amendments to this Agreement. The names of each Party’s Principal Representative and any Additional Representatives shall be provided, with specimen signatures, to the other Party, and each Party may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Agreement. A Party may replace its Principal Representative with an individual of equivalent or higher rank and seniority upon written notice to the other Party, which notice will include the specimen signature of such new Principal Representative.

5.2 MoCT shall not assign, delegate or otherwise transfer its rights or obligations under this Agreement without the prior written consent of MCA-Tanzania and MCC.

5.3 Except otherwise provided herein, this Agreement may be amended or modified only by written agreement, signed by the Principal Representatives of MCA-Tanzania and the MoCT, and with prior approval by MCC, notwithstanding any law, regulation, or decree that purports to amend or modify any term or condition thereof.

5.4 This Agreement shall become effective on the later of (a) the date on which the Principal Representatives of MCA-Tanzania and the MoCT have signed this Agreement and (b) the date on which MCC provides written approval of this Agreement (the “***Effective Date***”).

5.5 Each Party hereby covenants and agrees, without necessity of any further consideration, to execute and deliver any and all such further documents and take any and all such other action as may be reasonably necessary or appropriate to carry out the intent and purposes of this Agreement, including, but not limited to, legal documents, M&E Plans and work plans.

5.6 Each annex and schedule to this Agreement constitutes an integral part of this Agreement.

5.7 This Agreement is prepared and executed in English and in the event that any ambiguity or conflict between this official English version and any other version, this official English language version shall prevail.

5.8 This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, each Party, acting through its duly authorized representative, has caused this Agreement to be executed on the date set forth below for each such Party.

MoCT
Dr. Vuai I. Lila
Principal Secretary

MCA-Tanzania
Bernard Mchomvu
Chief Executive Officer

Annex I General Provisions

Capitalized terms that are used but not defined in this Annex shall have the meaning given to them in the Agreement and the Compact (as amended from time to time).

A. MCC Status; Reserved Rights; Intended Beneficiary

1. MCC Status. MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of the Compact. As such, MCC has no liability under this Agreement, and is immune from any action or proceeding arising under or relating to this Agreement. In matters arising under or relating to this Agreement, MCC is not subject to the jurisdiction of the courts or any other juridical or other body of any jurisdiction.

2. MCC Reserved Rights.

(a) Certain rights are expressly reserved to MCC under this Agreement, the Compact and other related Compact documents, including the right to approve the terms and conditions of this Agreement, as well as any amendments or modifications hereto, and the right to suspend or terminate this Agreement.

(b) MCC, in reserving such rights under this Agreement, the Compact or other related Compact documents, has acted solely as a funding entity to assure the proper use of United States Government funds, and any decision by MCC to exercise or refrain from exercising these rights shall be made as a funding entity in the course of funding the activity and shall not be construed as making MCC a party to this Agreement.

(c) MCC may, from time to time, exercise its rights, or discuss matters related to this Agreement with the parties to this Agreement, the Government or MCA-Tanzania, as appropriate, jointly or separately, without thereby incurring any responsibility or liability to any party.

(d) Any approval (or failure to approve) or exercise of (or failure to exercise) any rights by MCC shall not bar the Government, MCA-Tanzania, MCC or any other person or entity from asserting any right against the MoCT, or relieve MoCT of any liability which such entity might otherwise have to MCA-Tanzania, MCC, or any other party. For the purposes of this clause (d), MCC shall be deemed to include any MCC officer, director, employee, Affiliate, contractor, agent or representative.

3. Intended Beneficiary.

(a) MCC shall be deemed to be an intended beneficiary under this Agreement. MoCT acknowledges and agrees to all of the rights provided to or reserved for MCC throughout this Agreement. Further, in the event any of MCC's rights under this Agreement are not enforceable by MCC in any jurisdiction or are otherwise invalid for any reason, MoCT agrees to the fullest extent permitted by law that such rights are hereby granted to MCA-Tanzania and hereby further agrees and consents to the fullest extent permitted by law to the assignment of those rights by MCA-Tanzania to MCC.

(b) For the avoidance of doubt, MCC shall incur no obligations or liabilities under this Agreement, whether as a result of its intended beneficiary status or otherwise. In no event shall anything in this Agreement be construed as a waiver of immunity from, or submission by MCC to, the jurisdiction of the courts of Tanzania or of any other jurisdiction, or to any other body.

B. Other Applicable Provisions.

The following provisions contained in General Provisions found in the MCC Website are incorporate herein by reference and are deemed part of this Agreement, with the MoCT being deemed for purposes of this Agreement the “Contracting Party” thereunder: Compliance with Terrorist Financing Statutes and Other Restrictions; Publicity, Information and Marking; Inconsistencies; and Other Provisions.