

Agreement Between
the Government of the United States of America and
the Government of the Federated States of Micronesia
Implementing Section 215 and Section 216 of the Compact, as Amended
Regarding a Trust Fund

The Government of the United States of America and the Government of the Government of the Federated States of Micronesia (hereafter the Original Parties);

Desiring to contribute to the long-term budgetary self-reliance of the Federated States of Micronesia by establishing a trust fund to provide the Government of the Federated States of Micronesia with an ongoing source of revenue after Fiscal Year 2023;

Recognizing that it is the mutual intention of the Governments of the United States and the Federated States of Micronesia that the Government of the United States discontinue Annual Grant Assistance beyond fiscal year 2023;

Have agreed as follows:

Part I
Definitions

Article 1
Definitions of Terms

For purposes of this Agreement, the following terms shall have the following meanings when capitalized:

“A Account” has the meaning assigned to such term in Article 16, paragraph 2.

“Agreement” means this Agreement Between the Government of the Federated States of Micronesia and the Government of the United States of America Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund.

“Allowable Expenses” means expenses related to rental of hotel meeting space, and incidentals thereto, but does not include salaries, honoraria, travel or per diem expenses.

“Annual Income” means the Income credited to any given Fiscal Year.

“Annual Grant Assistance” means annual monetary assistance provided by the Government of the United States to the Government of the Federated States of Micronesia for the purposes set forth in section 211 of the Compact, as amended.

“Auditor” has the meaning assigned to such term in Article 19, paragraph 1.

"B Account" has the meaning assigned to such term in Article 16, paragraph 4.

"C Account" has the meaning assigned to such term in Article 16, paragraph 5.

"Compact" means the Compact of Free Association Between the United States and the Federated States of Micronesia and the Marshall Islands, that was approved by the United States Congress in section 201 of Public Law 99-239 (Jan. 14, 1986) and went into effect with respect to the Federated States of Micronesia on November 3, 1986.

"Compact, as amended" means the Compact of Free Association Between the United States and the Federated States of Micronesia, as amended. The effective date of the Compact, as amended, shall be on a date to be determined by the President of the United States, and agreed to by the Government of the Federated States of Micronesia, following formal approval of the Compact, as amended, in accordance with section 411 of this Compact, as amended.

"Contributor" means a government, international organization, financial institution, or other entity or person who grants, not lends, funds into the Fund.

"Corpus" means a collection of bonds, stocks or other holdings which form the Principal. It also includes all accumulated Income that has been reinvested and not available for distribution.

"Cumulative Full Inflation" means the Full Inflation applied each Fiscal Year up to the specified Fiscal Year.

"Depository" means the office or bureau within the United States Department of State which retains copies of all international agreements, and documents of withdrawal from agreements.

"Distribution" means the transfer of funds from the Fund to the Government of the Federated States of Micronesia.

"Fiscal Year" means each one year period beginning October 1 and ending on the next following September 30. Each Fiscal Year shall be designated by the number of the calendar year in which such Fiscal Year ends. For example, "Fiscal Year 2022" means the Fiscal Year ending in calendar year 2022.

"Full Inflation" means the full percent change in the United States Gross Domestic Product implicit price deflator in the applicable Fiscal Year compared to the immediate preceding Fiscal Year.

"Fund" has the meaning assigned to such term in Article 2, paragraph 1.

“Government of the Federated States of Micronesia” means the Government established and organized by the Constitution of the Federated States of Micronesia including all the political subdivisions and entities comprising that Government.

“Government of the United States” means the federal government of the United States of America.

“Gross Domestic Product Implicit Price Deflator” means the “Gross Domestic Product Implicit Price Deflator” as published from time to time in the *Survey of Current Business* by the Bureau of Economic Analysis of the United States Department of Commerce, or any successor thereto. It is a weighted average of the detailed price indices used in the deflation of the United States Gross Domestic Product. In each period, it uses as weights the composition of constant dollar output in that period. Changes in the implicit price deflator reflect both changes in prices and changes in the composition of output.

“Income” means the profit or increase in market value of the Fund, including dividends and interest and other special items allocated to income.

“Investment Adviser” means the individual or firm responsible for: providing investment advice to the Joint Trust Fund Committee; taking direction from the Joint Trust Fund Committee regarding investments; and, overseeing day-to-day investments by the money managers.

“Joint Trust Fund Committee” means the governing body of the Fund.

“Majority Vote” means controlling vote on the Joint Trust Fund Committee.

“Money Manager” means the individual or firm who contracts with the Joint Trust Fund Committee to invest funds in a particular investment vehicle or category.

“Original Party” means the Government of the United States or the Government of the Federated States of Micronesia, “Original Parties” means, collectively, the Government of the United States and the Government of the Federated States of Micronesia.

“Party” means any one of the Original Parties or a Subsequent Contributor granted membership in the Joint Trust Fund Committee.

“Present Market Value” means, as of any time, the value of the Fund assets if those assets were liquidated or sold at such time.

“Principal” means the contributions to the Fund by the Parties, that are invested in bonds, stocks, or other holdings.

“Qualified Instruments” means all stocks, bonds, and other securities issued or recognized in any United States stock exchange, or other Trust Fund Committee-approved instruments.

“Special Needs” means projects that the Government of the Federated States of Micronesia deems necessary as a supplement to that portion of an annual budget to be financed by the Fund, so long as the project(s) are for the purposes of Section 211 of the Compact, as amended.

“Subsequent Contributor” means any government, international organization, financial institution, or other entity or person who grants, not lends, funds into the Fund, not including the Original Parties.

“Trustee” means the financial institution holding legal custody of the Fund.

“Trust Fund Period” means the period that begins twenty (20) years after the effective date of the Compact, as amended.

“United States” means the United States of America.

Part II
Establishment

Article 2
Establishment of a
Trust Fund for the People of the Federated States of Micronesia

1. A trust fund known as the "Trust Fund for the People of the Federated States of Micronesia" (in this Agreement called the "Fund") shall be established:
 - (a) by the Government of the United States in consultation with the Government of the Federated States of Micronesia pending Joint Trust Fund Committee operations; or,
 - (b) by the Joint Trust Fund Committee, if the Joint Trust Fund Committee is operational when the Compact, as amended, takes effect.
2. The Fund shall be governed by the provisions of this Agreement.
3. The situs of the Fund shall be within the United States. The governing law of the Fund shall be the law from any appropriate jurisdiction within the United States.
4. The Original Parties to this Agreement shall be the Government of the United States and the Government of the Federated States of Micronesia. The Original Parties shall contribute to the Fund in accordance with section 215 and section 216 of the Compact, as amended.
5. Subsequent Contributors to the Fund shall be approved by the Joint Trust Fund Committee.

Article 3
Purpose of the Fund

The purpose of the Fund is to contribute to the economic advancement and long-term budgetary self-reliance of the Federated States of Micronesia by providing an annual source of revenue, after Fiscal Year 2023, for assistance in the sectors described in Section 211 of the Compact, as amended, or other sectors as mutually agreed by the Original Parties, with priorities in education and health care.

Article 4
Powers of the Fund

The Fund shall have all powers necessary, consistent with this Agreement, to fulfill its purpose.

Article 5
Limitation of Liability

1. No Party to the Fund shall be liable, by reason of being a Party or for acts or obligations of the Fund.
2. Obligations of the Fund are not obligations of the Governments of the Federated States of Micronesia, the United States of America, or any other Party.
3. Members of the Joint Trust Fund Committee shall have a fiduciary relationship to the Fund. No member of the Joint Trust Fund Committee shall be responsible for any loss or depreciation in value of any assets held in the Fund, except by reason of such member's gross negligence or willful default. Every decision made by a member of the Joint Trust Fund Committee shall be deemed to have been made with reasonable care and diligence unless the contrary is proved by affirmative evidence and any such action shall be conclusively binding upon all parties interested in the Fund.

Article 6
Legal Status, Privileges and Immunities

1. To enable the Fund to carry out its purpose, each Party shall accord to the Fund in its territory, the legal status, privileges and immunities set out in this Article.
2. The Fund shall possess juridical personality and in particular capacity to:
 - (a) contract;
 - (b) acquire and dispose of immovable and movable property;
 - (c) institute legal proceedings; and,
 - (d) take other action to protect the Fund.
3. The Fund shall be exempt from any exchange control regulations, restriction or moratoria.
4. In accordance with section 215 of the Compact, as amended, within the scope of its official activities, the Fund, its property, and its assets shall be exempt from taxation.

Part III
Joint Trust Fund Committee

Article 7
Joint Trust Fund Committee

1. There shall be a Joint Trust Fund Committee composed of voting and, when applicable, non-voting members to administer the Fund.
2. Unless otherwise amended in accordance with Article 23, the composition of the Joint Trust Fund Committee shall be:
 - (a) three voting members appointed by the Government of the United States, which shall include the Chairman of the Joint Trust Fund Committee; and, two voting members appointed by the Federated States of Micronesia. The Government of the United States shall consult with the Government of the Federated States of Micronesia in appointing the Chairman, and the Federated States of Micronesia shall have an opportunity to present its views, which shall be considered; and,
 - (b) in addition, by a Majority Vote of the Joint Trust Fund Committee, other voting or non-voting members may be appointed from Subsequent Contributors that contribute to the Fund from time to time, provided that the United States maintains the Majority Vote in the Joint Trust Fund Committee.
 - (c) after the initial twenty (20) years (beginning October 1, 2023), the Original Parties will consult regarding the future composition of the Joint Trust Fund Committee. The Joint Trust Fund Committee shall remain the same, unless otherwise agreed by the Original Parties.
3. If a voting member is temporarily unable to attend a meeting of the Joint Trust Fund Committee, an alternate shall be designated by the Party appointing the voting member under paragraph 2 of this Article, and the designated alternate shall participate and vote in such meeting of the Joint Trust Fund Committee.
4. All the powers of the Fund shall be vested in and exercisable by the Joint Trust Fund Committee.
5. The functions of the Joint Trust Fund Committee shall include overseeing:
 - (a) the operation, supervision, and management of the Fund;
 - (b) the investment and distribution of resources of the Fund; and
 - (c) the conclusion of agreements and arrangements with Subsequent Contributors and other organizations.

6. Voting and non-voting members shall serve as such without payment of salaries, honoraria, or expenses, including travel, from the Fund. Allowable expenses, as defined, may be covered from the Income, but not from the Corpus, except as provided in Article 16, paragraph 3.

7. The Joint Trust Fund Committee shall meet at least annually or as necessary, and reasonable notice shall be given of meetings.

8. For the purposes of meetings, all voting members of the Joint Trust Fund Committee, or their designated alternates when a voting member may be unable to attend, shall constitute a quorum. Meetings may be in person, via video conferencing or by other technological means.

9. Except where otherwise provided in this Agreement, questions before the Joint Trust Fund Committee shall be decided by a Majority Vote of all the voting members or their designated alternate(s).

10. The Joint Trust Fund Committee shall establish rules of procedure consistent with this Agreement.

Article 8 Technical Assistance

From time to time, the Joint Trust Fund Committee may obtain technical advisory services as needed and appropriate.

Part IV
Resources of the Fund

Article 9
Resources

The resources of the Fund shall consist of all contributions to the Fund, from whatever sources, and all Income. The resources of the Fund shall be held in trust and administered by the Joint Trust Fund Committee and used only for the purpose of, and in accordance with, this Agreement.

Article 10
Initial Contributions by Parties

1. Each Original Party agrees to contribute to the Fund at least the amounts specified in section 215 and 216 of the Compact, as amended, subject to the provisions of Article 5 of Title IV of the Compact, as (sections 451(b), 452(b), and 453(c)).
2. Any Subsequent Contributor that accedes to this Agreement in accordance with the provisions of Article 26 shall make contributions to the Fund in accordance with arrangements agreed by the Joint Trust Fund Committee with the agreement of all voting members.
3. The Fund may accept additional contributions from Subsequent Contributors, in accordance with Article 11, in the form of a grant.
4. The Joint Trust Fund Committee may refuse a contribution if it considers that it would not be in the interest of the Fund, the United States, or the Federated States of Micronesia.
5. The Fund shall not issue negotiable or transferable obligations evidencing indebtedness for contributions received under paragraph 3 of this Article. Further, the Corpus may not be encumbered in any way.

Article 11
Conditions Governing Contributions

1. No contributions to the Fund shall be refunded except in accordance with Articles 21 and 22.
2. The provisions of sections 451 through 453, inclusive, of the Compact, as amended, and Article 22 of this Agreement, in the event the Compact, as amended, is terminated, shall govern treatment of any Government of the United States contributions to the Fund and accrued interest thereon.
3. The Original Parties shall seek contributions to the Fund from other sources.

Part V
Trustee(s), Investment Adviser(s), Money Manager(s)

Article 12
Appointment of Trustee(s)

1. Appointment of Trustee(s)

(a) If, pursuant to Article 2, paragraph 1(a), the Government of the United States establishes the Fund, the Government of the United States shall appoint one or more Trustees. Thereafter, the Joint Trust Fund Committee may appoint and employ, pursuant to the terms of this Agreement, a successor Trustee(s).

(b) If, pursuant to Article 2, paragraph 1(b), the Joint Trust Fund Committee establishes the Fund, the Joint Trust Fund Committee shall appoint and employ the initial Trustee(s), pursuant to the terms of this Agreement.

2. The Joint Trust Fund Committee shall be empowered to remove any Trustee acting hereunder or to appoint or select a successor Trustee(s). Any Trustee hereunder may, for cause, be removed by the Joint Trust Fund Committee by giving thirty (30) days written notice to the Trustee.

3. The Trustee(s) and any successor Trustee(s) shall:

(a) be selected from among trust institutions organized in the United States;

(b) have a net worth in excess of \$100 million;

(c) have at least 10 years experience as a custodian of financial assets; and

(d) have experience in managing trust funds of at least \$500 million.

4. When applicable, upon the appointment of a successor Trustee(s), the resigning or removed Trustee(s) shall transfer and deliver the Fund and any such records pertaining thereto to the successor Trustee(s) after reserving, as Trustee(s), such reasonable amount from the Income to provide for his expenses in the settlement of the Fund account and the amount of any compensation due to him. However, any such amounts so reserved by, and eventually paid to, the resigning or removed Trustee(s) shall be subject to the written approval of the Joint Trust Fund Committee.

5. The Trustee(s) may resign by filing with the Joint Trust Fund Committee and the Original Parties his written resignation. No such resignation shall take effect until sixty (60) days from the date said resignation is filed with the Joint Trust Fund Committee and the Original Parties unless prior thereto a successor Trustee(s) shall have been appointed by the Joint Trust Fund Committee.

6. The Trustee(s) shall hold the Corpus, in trust, for the use and benefit of the people of the Federated States of Micronesia in accordance with the provisions of this Agreement and the Compact, as amended.

Article 13
Trustee's Powers and Duties

1. The Trustee shall use reasonable and prudent care and reasonable and prudent diligence in the exercise of his/her powers and the performance of his/her duties as Trustee.

2. With respect to the Fund, the Trustee shall have the following duties and powers, in addition to and not in limitation of the powers granted or conferred by law, all of which shall be exercised in a fiduciary capacity:

(a) To collect and receive any and all money and other property of whatever kind or nature due or owing or belonging to the Fund and to give full discharge and acquittance therefor, and to extend for a reasonable period of time, the time of payment of any obligation at any time owing to the Fund.

(b) To disburse Income or Corpus only pursuant to the conditions set forth in Articles 16, 21, and 22 of this Agreement.

3. The Trustee shall follow the written directions of the Joint Trust Fund Committee with respect to the retention, purchase, sale or encumbrance of trust property and the investment and reinvestment of Principal and Income held hereunder, the sole authority and discretion for which shall belong to the Joint Trust Fund Committee (provided, however, that the Joint Trust Fund Committee shall not be authorized to direct the Trustee to purchase any asset that would violate federal, state or local law, or the provisions of this Agreement). The Joint Trust Fund Committee shall have full authority to direct the Trustee to take any action with respect to the trust assets that the Trustee is authorized to take under this Agreement.

4. The Trustee shall not be accountable for any loss or depreciation in value sustained by reason of action taken pursuant to direction of the Joint Trust Fund Committee.

5. The Trustee shall have the entire care and custody of all of the assets comprising the Fund and shall have sole responsibility for:

(a) making all payment of liabilities and administration expenses; and,

(b) effecting all distributions pursuant to the instruction of the Joint Trust Fund Committee, whether of Principal or of Income, to the Federated States of Micronesia under this Agreement.

6. The Trustee shall maintain full and accurate books of account and records of all financial transactions relative to the Fund, which shall be available at all reasonable times for inspection by the Joint Trust Fund Committee or its representatives.

7. The Trustee shall be entitled to reasonable fees and expenses as compensation for his services as Trustee hereunder. Such fees shall be subject to the prior written agreement and approval by the Joint Trust Fund Committee. Such fees and expenses shall be paid from Income or, when necessary, from the Corpus, pursuant to the terms of Article 16.

Article 14 Investment Adviser(s) and Money Manager(s)

1. The Joint Trust Fund Committee, at any time and from time to time, shall have the power and authority to:

(a) select one or more Investment Adviser(s), including the corporate Trustee(s) or any of its affiliates;

(b) negotiate the terms of, and execute management agreements with, such Investment Advisers; and

(c) direct the Trustee to pay the compensation and costs of such Investment Advisers(s) from the assets of the Fund, in accordance with Article 16 of this Agreement.

2. The Investment Adviser(s) shall advise and recommend to the Joint Trust Fund Committee, one or more Money Managers who will invest the assets of the Fund to produce a diversified portfolio. The Investment Adviser(s) shall provide the Joint Trust Fund Committee with data relating to any prospective Money Manager, indicating performance and relevant comparisons with similar money managers, to assist the Joint Trust Fund Committee in evaluating the performance of the prospective Money Managers.

3. Money Managers shall enter into separate agreements with the Joint Trust Fund Committee.

4. The Joint Trust Fund Committee, at any time and from time to time, shall have the power and authority to direct brokerage instructions through the Investment Adviser(s) for any security transactions executed with respect to the Fund. In connection therewith, the Joint Trust Fund Committee may:

(a) enter into such contracts, agreements or other arrangements as the Joint Trust Fund Committee deems appropriate with such Investment Adviser(s) and Money Manager(s).

(b) direct the Trustee, in writing, to pay the compensation and costs of brokers, as previously negotiated and agreed, from the Fund assets, in accordance with Article 16.

5. The rights and powers herein conferred on the Joint Trust Fund Committee shall be exercisable only in a fiduciary capacity, and any Investment Adviser(s) accepting the delegation of a discretionary function of the Joint Trust Fund Committee also shall be considered to be acting in a fiduciary capacity.