

STANDING COMMITTEE REPORT NO. 23-04

RE: C.R. NO. 23-08 (P.C. NOS. 23-15 AND 23-27)
COMMITTEE ON EXTERNAL AFFAIRS

SUBJECT: RESOLUTION RATIFYING 2023 AMENDMENT TO THE
COMPACT

JULY 14, 2023

The Honorable Esmond B. Moses
Speaker, Twenty-Third Congress
Federated States of Micronesia
First Special Session, 2023

Dear Mr. Speaker:

Your Committee on External Affairs, to which was referred
Presidential Communication No. 23-15, regarding Congressional
Resolution No. 23-08, entitled:

“A RESOLUTION TO APPROVE AND RATIFY THE 2023
AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES
OF MICRONESIA, TO AMEND THE COMPACT OF FREE
ASSOCIATION, AS AMENDED.”,

begs leave to report as follows:

The intent and purpose of this resolution are expressed in its
title.

Your Committee has reviewed Congressional Resolution No. 23-08,
and the accompanying documents and message as set forth in
Presidential Communication No 23-15. It has also reviewed
Presidential Communication No. 23-27 which transmitted the above

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captioned resolution. Your Committee addresses the recommended ratification of C.R. No. 23-08 as follows:

The Amended Compact of Free Association between the United States of America and the Federated States of Micronesia was further amended by these two countries in an agreement signed on May 23, 2023. This amended agreement evidences the desire of the United States of America and the Federated States of Micronesia to continue their close government-to-government relationship. Further, it specifically is the intent of this agreement to make amendments to the original agreement, and to continue funding and services, including funding for the FSM for necessary sectors such as health and education. It is noted several sections of the original agreement which have been changed under the amendments, including reporting requirements for the sector grants under Compact and possible distribution options under the FSM Compact Trust Fund.

After careful review of all the documents submitted to your Committee, it recommends the adoption of C.R. No. 23-08. It is understood by this Committee that time is of the essence to adopt this resolution in order to ensure that funding for FY24 is not delayed, for sectors and divisions receiving assistance. Your Committee seeks in this report to highlight the substantive changes between the current Amended Compact and the agreement as amended on May 23, 2023, herein referred to as "2023 Amended Compact".

For the purposes of this report your Committee has reviewed the following documents:

1. The Agreement between the Government of the United States of America and the Government of the Federated States of Micronesia to Amend the Compact of Free Association, as Amended.
2. Subsidiary Agreements
 - a. The Agreement Concerning Procedures for the Implementation of the United States Economic

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Assistance Provided in the 2023 Amended Compact
Between the Government of the United States of
America and the Government the Federated States of
Micronesia. (2023 Fiscal Procedures Agreement).

- b. The Agreement Between the Government of the United
States of America and the Government of the
Federated States of Micronesia Regarding the Compact
Trust Fund.

The resolution that is the subject of this report, C.R. No. 23-08, speaks to the ratification of the primary agreement as identified in point number one, together with two listed subsidiary agreements. No additional subsidiary agreements are with Congress at this time, and therefore, shall be referred to only to note their absence.

**THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF
AMERICA AND THE GOVERNMENT OF THE FEDERATED STATES OF
MICRONESIA TO AMEND THE COMPACT OF FREE ASSOCIATION, AS
AMENDED**

Title Two, Economic Relations, Article I, Grant Assistance

The following table maps certain sections of the Amended Compact that provide historical context to the 2023 Amended Compact, and to clearly which sections should be read together.

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Section title	Article I-Grant Assistance Amended Compact and Compact III Section Number	New Article IV-Grant Assistance Compact III Section number
Grants	211	261
Accountability	212	262
JEMCO	213	263
Annual Report	214	264
Trust Fund	215	265
Sector Grant Funding and Trust Fund Contributions	216	266
Inflation Adjustment	217	not addressed
Sector Carry Over	218	267

Article 1 contains some minor clerical and technical changes, but also reiterates important historical context and a transition guidance for the 2023 Amended Compact period.

Specifically, **Section 211 (a)(6)(ii)** provides that the Infrastructure and Maintenance Fund shall be governed by the 2004 Fiscal Procedures Act through Fiscal Year 2023. Likewise, **Section 211 (c)** through Fiscal Year 2023 the FSM Development Plan shall be prepared as in the previous twenty years under the Amended Compact, and **Section 211 (d)** regarding the Disaster Assistance Emergency Fund shall be adhere to the previous guidelines through Fiscal Year 2023.

Note: Affirmatively reiterates that the fiscal procedures under the 2004 Fiscal Procedures Act apply only through FY23. The 2023 Fiscal Procedures Agreement, as well as, reporting requirements and timeframes as set forth in Section 261 of Article IV are applicable from October 1, 2023, commencing FY24, or as soon thereafter as 2023 Amended Compact goes into force.

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Section 211 (a)

The six sectors receiving funding under the Amended Compact will remain the same in the 2023 Amended Compact. The priorities and activities of these sectors: education, health, private sector development, capacity building in the public sector, environment, and public infrastructure remain the same from this section under the Amended Compact, and are reiterated in the new Section 261 of the 2023 Amended Compact. In the new agreement section 261 adds a seventh use for reporting and accountability discussed below.

Note: The priorities and activities for the sectors remain the same for the original six sectors in the coming 2023 Amended Compact. There is no guidance or agreement in Section 211 or the new Section 261 as to a possible shift in priorities.

Section 211 (b)

The Humanitarian Assistance in the previous Amended Compact, includes the emphasis on providing assistance for health, education and infrastructure needs. The terms and conditions of this assistance shall continue to be provided for under the Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia. Funding for this item comes from the Sector Grant Funding.

Note: Under 2023 Amended Compact funding for Humanitarian Assistance is still available to the FSM, however, it is explicitly set forth that funding will continue to come from Sector Grant Funding.

Also, noted no revised Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia as a new subsidiary agreement has been transmitted to Congress, nor has there been a formal transmission that the current agreement will remain in force unchanged. Further confirmation regarding this matter is needed before additional analysis is made.

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Section 212-Accountability

Section 212 (a): This subsection expressly states that the through FY23 the 2004 Fiscal Procedures Agreement will apply to the sector grants.

Section 212(b): The U.S. will grant for each period of twenty fiscal years the lesser of \$500,000 or half of the reasonable audit costs incurred each fiscal year to comply with the audit requirements of the 2004 Fiscal Procedures Act.

Note: Audit grant funding was available for the past twenty years under the Amended Compact under the above subsection (b). The cost of the annual audit under 2023 Amended Compact is to be borne by the FSM as set forth in Section 262 (b).

Sections 213-217: The JEMCO committee guidelines, Annual Report requirements, Compact Trust Fund, Sector Grant Funding and Trust Fund Contributions and Inflation Adjustment under the Amended Compact remain in force until the end of FY23.

Note: There is no amendment for an inflation adjustment for the 2023 Amended Compact beginning FY24. Nothing is reflected in the new grant funding schedule in Section 266.

Section 218- Carry-Over of Unused Funds

This amended section specifically states that the unused funds, meaning unobligated funds, for all sectors will lapse at the end of each fiscal year and these funds will be governed by the new 2023 Fiscal Procedures Agreement Article IX for FY24 commencing October 1, 2023.

Note: Article IX of the 2023 Fiscal Procedures Agreement is a significant departure from the use of carry-over under the Amended Compact and is cited in full in the appropriate section of this report.

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Article II, Services and Program Assistance

A new Article II sections 221-224 for the 2023 Amended Compact replaces Article II under the Amended Compact. Under **Section 221 (a)** the FSM will continue to be provided the following services: the United States Weather Service; the United States Postal Service, the United States Federal Aviation Administration, the United States Department of Transportation, the Federal Deposit Insurance Corporation and the Federal Emergency Management Agency services.

Note: The six new above mentioned program and service agreements have not been transmitted to Congress, therefore, this Committee can make no comparison or comment on these agreements at this time.

Section 221 (b): The Government of the United States intends under (b) of Section 221 to continue all programs previously available to the FSM unless the U.S. Congress provides otherwise. However, this agreement further states that under Section 221 subsection (c) that the U.S. shall have and exercise such authority as is necessary to carry out its responsibilities and a separate agreement under Section 231 including the authority to monitor and administer all service and program assistance provided by that government, that is entitled "Federal Programs and Services Agreement".

Note: Although both nations state in the 2023 Amended Compact that they intend, at the present time, to continue the above six programs and services the final decision rests with U.S. Congress.

Also, if the above-mentioned Federal Programs and Services Agreement is a new revised agreement it has not been transmitted to Congress. The Federal Programs and Services Agreement appears to set forth guidelines and contractual arrangements for the six program and service agreements but your Committee can make no further comparison or comment at this time.

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Section 223 provides that the FSM will make available facilities and areas in the FSM as may be necessary for the provision of the services and programs under this new Article II of the 2023 Amended Compact. This language has changed and now refers to "areas" not land. The FSM no longer has to provide these facilities or areas at no cost.

Note: The reference change from land to areas increases the possible scope and size of the FSM utilized under this section. Now it is possible to envision FSM air space, below ground spaces, and FSM territorial waters and the EEZ may be considered necessary for use here.

Section 223 is a mandate as the FSM shall provide facilities and areas necessary for operations and programs.

Whether or not the FSM will request compensation under this Section 223, or any possible mechanism for such compensation are not addressed here.

Article III

Section 232, the U.S., in consultation with FSM, shall determine and implement procedures for audits of all grants and other assistance under Article I and Article VI of the 2023 Amended Compact.

Note: Article VI is completely revised under the 2023 Amended Compact. As discussed below the reporting and document requirements are more stringent. It is observed that the U.S. "shall" determine and implement procedures for audits is an example of use of more mandatory language enforcing obligations in reporting and accountability by the FSM to the U.S.

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Article IV

Section 261-Grants, and provides that each of the sectors will be guided by the new 2023 Fiscal Procedures Agreement. As cited above the original six sectors under the Amended Compact are defined the same in the 2023 Amended Compact, with the same priorities and activities. In **subsection (a) (7)** funding for a more fully developed section of "Enhanced Reporting and Accountability" is emphasized to address the costs of compliance in meeting these reporting and accounting responsibilities for the six sectors. This will be built into the FSM Development Plan which is referenced in **subsection (c)**, and this section will be subject to the Joint Economic Management Committee (JEMCO) approval not the concurrence of the Government of the United States as it had been under Amended Compact.

Note: The funding for Enhanced Reporting and Accountability is to be used for the compliance and reporting requirements for the six sectors. It should be noted that this will come out of the Sector Grant Funding under Section 266, which means there will be less available for use in the six sectors.

It is also noted that JEMCO will approve the use for the Enhanced Reporting and Accountability, and guide the mechanism for its use. This may lead to significant expenditures, for items, for example, like the new requirement under Article VI 2(b) of the 2023 Fiscal Procedures Agreement that the FSM shall retain a third-party consultant to assist in preparation of mandatory reports, if it is to be funded from the Sector Grant Funding.

Section 261(b): The Infrastructure Maintenance Fund beginning in FY24 will be governed by the 2023 Fiscal Procedures Agreement, and is fully detailed later in this report.

Section 261(c): The FSM Development Plan structure remains the same from the Amended Compact to the 2023 Amended Compact, however, it is to be prepared and submitted according the

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guidelines and timeframes of the 2023 Fiscal Procedures Agreement and subject to the concurrence of JEMCO.

Note: As fully discussed in the portion of this report on the 2023 Fiscal Procedures Agreement while the structure of some mandatory reporting and planning documents, specifically here, the FSM Development Plan, may remain the same in the 2023 Amended Compact, the timeframes for submission and lack of waiver of requirements may make this process more challenging in the coming period.

Section 261 (d) Beginning FY24 the Disaster Assistance Emergency Fund can be used for assistance and rehabilitation resulting from disasters and emergencies or for disaster preparedness. The U.S. shall continue under Compact III as in the Amended Compact, to provide \$200,000 annually with an equal contribution from the FSM to the Disaster Assistance Emergency Fund.

Note: The Committee observes the Disaster Assistance Emergency Fund as referenced in subsection **261(d)** is now expanded and may now include activities related to disaster preparedness.

Section 262(a): This specifically references changes accountability provisions for sector funding which shall be governed by the new 2023 Fiscal Procedures Agreement. As in the previous Amended Compact the FSM is to assist the U.S. if reasonably requested, to investigate in the improper use of Compact funds. Failure to comply with an investigation, including one stemming from failure to comply with the new reporting requirements under the 2023 Fiscal Procedures Agreement may result in withholding of funding assistance.

Note: The 2023 Fiscal Procedures Agreement has new additional requirements, as detailed below. This may present challenges that could lead to the withholding of funding assistance until cured.

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Section 262(b): The cost of the annual audit under Article VIII (2) of the 2023 Fiscal Procedures Agreement is to be borne in its entirety by the FSM. The cost of the annual audit may be paid from Sector Grant Funds.

Note: Under the Amended Compact up to \$500,000 had been separately made available under Section 212(b) for the annual audit. Beginning with FY24 under the 2023 Amended Compact this separate funding is no longer available and this is another item that must be funded from Sector Grant Funds or from an outside source.

Section 263: JEMCO will be governed by the new 2023 Fiscal Procedures Agreement and be composed of three members from the U.S. and three members from the FSM.

Note: There is a technical change to the members of the JEMCO committee as stated above, however, under the 2023 Fiscal Procedures Agreement the JEMCO committee responsibilities and composition are more fully detailed, and in Article III it states that the U.S. is the permanent chair of the committee and it has tie-breaking authority.

Section 264: The FSM shall report to the U.S. in a biennial report on the grant assistance, and their progress meeting program and economic goals. JEMCO shall review and comment on the biennial report.

Note: The parameters for the biennial report are the same as previously under the Amended Compact for the annual report under Section 214. The biennial report is subject to the new requirements under the 2023 Fiscal Procedures Agreement detailed below.

Section 265: The Compact Trust Fund is governed by a new agreement, the 2023 Joint Trust Fund Agreement. Under Section 265(b) the 2023 Trust Fund Agreement or any successor must provide for

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- (1) Exemption from federal and state taxes in the FSM and U.S. of all funds derived from the U.S. investment.
- (2) Annual reports to the FSM and the U.S.
- (3) Distributions from the Trust Fund to provide an ongoing source of support of certain needs of the FSM while protecting the sustainability of the Trust Fund.
- (4) Fiscal Procedures sufficient to provide oversight for the Trust Fund, including for the expending of and accounting for distributions, and to ensure that the distributions are used for the purposes described in Section 261(a).
- (5) The Joint Trust Fund Committee is composed three voting members appointed by the U.S. and will include the chair of the Joint Trust Fund Committee, and three voting members from the FSM.
- (6) Appropriated remedies for the gross failure of the FSM to use Trust Fund distributions in accordance with the 2023 Trust Fund Agreement, including the return of the present market value of contributions to the Trust Fund and the present market value of any undistributed income derived.

Note: The purpose of the Trust Fund continues to be providing future funding for the six sectors under Section 261(a), which are the same as under the Amended Compact, and now include the addition of the Enhanced Accounting and Reporting. This reiterates that the priorities and activities that are being funded remain the same.

Under the 2023 Joint Trust Fund Agreement the composition of the Joint Trust Fund Committee changes. Going forward the U.S. has three members and the FSM has three members. However, the U.S. has the permanent chair allowing it tie-breaking power in the event that the vote is evenly divided.

Section 265 (6) provides for very strong remedies for gross failure of the FSM to appropriately use a trust fund distribution, including the possibility of return of the present

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market value of contributions or undistributed income. The definition of "gross failure" is not defined.

Further changes under the 2023 Joint Trust Agreement regarding management, investment, governance and distribution are set forth in detail under the section relating to that subsidiary agreement.

Section 266: The Sector Grants detailed in Sections 261 (a) and 265 of the 2023 Amended Compact shall be funded at \$140 million per year FY2024-2043. There is no provision for adjustment for inflation. Two contributions of \$250 million will be made by the U.S to the Trust Fund., one in FY24 and one in FY25.

Note: No provision has been made for an inflation adjustment to Grant Sector Funds under the 2023 Amended Compact from FY24 throughout the twenty-year period to FY43. The annual \$140 million will remain constant for the entire twenty-year period.

Final Provisions:

1. All internal provisions for ratification of this agreement must be completed before the countries exchange diplomatic notes and this agreement enters into force.

Note: The 2023 Amended Compact does not come into force until both nations satisfy all of their domestic legal requirements. It is clear that the Amended Compact funding provisions terminate on September 30, 2023 and that the 2023 Amended Compact intends that the above amendments to take their place on October 1, 2023. No bridge or transition funding is referenced in this section or in any other section.

2. The FSM and U.S. may agree to continuation of sector grants, trust fund contributions and federal programs beyond FY43 subject to Part 1 of Compact III, the 2023 Fiscal Procedures Agreement and the 2023 Trust Fund Agreement.

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**AGREEMENT CONCERNING PROCEDURES FOR THE IMPLEMENTATION OF THE
UNITED STATES ECONOMIC ASSISTANCE PROVIDED IN THE 2023
AMENDED COMPACT BETWEEN THE GOVERNMENT OF THE FEDERATED
STATES OF MICRONESIA AND THE GOVERNMENT OF THE UNITED STATES
OF AMERICA**

The above agreement commonly is referenced as the "2023 Fiscal Procedures Agreement".

Article I-Definition of Terms

Article II-Direct Economic Assistance Implementation

Section 1: The new 2023 Fiscal Procedures Agreement governs all funding provided by the U.S. for the next twenty-year period under the 2023 Amended Compact, for fiscal years 2024 to 2043.

Section 2 & 3: The six grant sectors and Enhanced Reporting and Accountability are covered by the 2023 Fiscal Procedures Agreement, as well as, the Humanitarian Assistance.

Section 4: Sector Grant Funds provided under the 2023 Amended Compact shall be considered local revenue by the FSM when used as local share required to obtain federal programs and services that enhance the ability to meet its performance goals.

Note: This will make the Sector Grant Funds used for the Enhanced Reporting and Accountability activities considered local revenue by the FSM, and as explained elsewhere in this report those activities are expanded under the 2023 Amended Compact.

Section 6: The Signatory Governments may mutually decide on unallowed uses of the Sector Grant Funding.

Note: There is the opportunity for the FSM to request use outside of the stated Sector Grant Fund uses.

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Article III-Joint Economic Management

Section 2: There is a transition period of four months where decisions under the past twenty years of the Amended Compact can be reconsidered by request. Decisions regarding this request, including the decision to amend or rescind the previous decision. JEMCO has to complete its review any such request within a year of its receipt. Requests for reconsideration will be decided by a majority.

Note: The timeframe for requesting a reconsideration of previous decisions by JEMCO under the Amended Compact is very short. The challenge for the FSM will be to have all possible items for reconsideration ready to put forward immediately when the 2023 Amended Compact goes into force.

Sections 2-6: The new JEMCO will be composed of six members, three from the U.S, and three from the FSM. The U.S. is permanent chair of the committee and has the power to cast the vote in case of a tie.

Note: The U.S. retains the balance of power in the JEMCO committee with its tie breaking power. It is observed that with the additional responsibilities and powers of this JEMCO committee there may be increasing divergence from the FSM priorities over time.

The duties of the JEMCO committee have changed, with tighter timelines, more authority and specific responses for rejection/non-compliance, which are noted as follows:

Section 7 (a)(b): The Committee now must review and concur with the Strategic Development Plan within 60 days of submission by the FSM, and it may reject only portions that do not meet the uses specified for the sector grants or infrastructure.

Section 7 (c): The Committee may also reject the FSM's proposed allocation of the sector grants. It may do so also for failure

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to submit a "proper Development Plan, Infrastructure Plan, Annual Implementation Plan or Performance Report".

Section 7(d)(e) &(f): The Committee monitors the use of the development assistance from all sources as it relates to the Grants and must review within 30 days of submission the Section 264 Report, Annual Financial Report and the Annual Performance Report. It also monitors the use of development assistance from all sources as it relates to grants, and reviews the required under Article VIII and take all actions on its findings.

Section 7(g)(h)(j) &(k): The Committee reviews performance outcomes, other reported data, evaluates progress, management, identifies ways to increase effectiveness, and this includes the broad goals identified in the Strategic Development Plan.

Note: The JEMCO committee will have much more review work and under short timeframes. FSM submissions to the committee must be timely, and the committee itself must meet on a timely basis to avoid delays in approval, which in turn, could result in delays in funding disbursement.

Section 8: Before withholding its consent regarding any of the plans JEMCO will consult with the FSM and give opportunity to address concerns.

Article IV-Sector Grants Administration

Section 4: Sector Grant Terms and Conditions have changed in subsection (a) to include that the U.S. unilaterally may attach terms and conditions but only to the extent that is necessary to facilitate the implementation of the plans, strategies and budgets of the FSM. This also includes infrastructure projects, specifications, architectural and engineering specifications and performance standards.

Section 4 Subsection (b): also states that the U.S. may impose additional administrative terms and conditions on Sector Grants

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that were not in subsection (a) if it determines they are necessary to ensure the compliance with the Agreement.

Note: The U.S. continues to be able to impose additional terms and conditions, however, where in the 2004 Fiscal Procedures Agreement there was a specific list of what the FSM may expect in terms of additional conditions, there is under 2023 Fiscal Procedures Agreement there is no longer any specificity. The U.S. need only set forth the new terms and conditions, how they are administrative in nature and would not have a substantive impact on the use of Sector Funds.

Section 5(b)(i): Payment Procedures payments will be made in advance on the first day of the fiscal quarter.

Note: There is no reference in the 2023 Fiscal Procedures Agreement of a continued requirement for the FSM to maintain an Operational Reserve Account.

Section 5(b)(ii): All infrastructure projects will be paid on an Accrued Expenditures basis, however, the U.S. under the 2023 Fiscal Procedures Agreement may now unilaterally request a set of construction plans and specifications, a revised detailed cost estimate or a detailed construction schedule prior to disbursing funds.

Note: This adds an additional set of evaluators to satisfy prior to disbursement of funds. There is no detail available where and how this possible requirement fits into the infrastructure approval process.

Section 5(c)(i): Payments for any grant by the U.S., therefore Sector Grant Funds and infrastructure funding, may be withheld if there is a breach of Title II which includes the reporting requirements under the 2023 Fiscal Procedures Agreement. Payments will be released upon compliance. The FSM has 30 days to lodge an appeal with the U.S. if it disputes the withholding.

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Section 5(c)(ii): As under the 2004 Fiscal Procedures Agreement suspension of payments under the 2023 Fiscal Procedures Agreement may be done by the U.S. if it reasonably determines that the FSM has engaged in gross negligence, willful misconduct or material breach of the grant terms.

Note: As noted elsewhere in this report additional requirements, lack of waiver for noncompliance and lack of the ability to request for expansion of time have changed the terms of the 2023 Fiscal Procedures Agreement in certain areas.

Article V –Pre-Award Requirements

Section 1: This section requires the FSM to submit its Strategic Development Plan to the U.S. by March 31 of the Fiscal Year after the Fiscal Year that the 2023 Amended Compact goes into force for Sector Grants, including infrastructure. This is a multi-year plan and would be supplemented at regular intervals thereafter. This must include plans for each of the grant sectors set out to achieve each their stated goals under the 2023 Amended Compact Section 261 (a), as well as, broad FSM goals and strategies for economic advancement and self-reliance. There is also a requirement that the Strategic Development Plan be formally adopted according to the processes of the FSM government. The portions of the Strategic Development Plan dealing with Sector Grant Funds requires approval of JEMCO.

Note: If the 2023 Amended Compact goes into force in FY24 the first Strategic Development Plan would be required by March 31 of FY25. Prior to submission of the Strategic Development Plan to the U.S. the FSM must certify that its own internal government processes have been completed to adopt the plan. Then JEMCO would need to approve at least the portions of the Strategic Development Plan which utilizes sector grant funding.

Section 2(a): The FSM must submit to the U.S. an Infrastructure Development Plan no later than March 31 of the Fiscal Year after the Fiscal Year that Compact III goes into force. This plan is

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to be supplemented at appropriate intervals. Portions of the Infrastructure Development Plan that contemplate use of the Sector Grants require approval of JEMCO.

Section 2(b): The Infrastructure Development Plan must include:

- (i) A single, integrated list of state and national projects and reconstructed capital infrastructure to be funded with Sector Grants for public infrastructure;
- (ii) For each project, a preliminary cost estimate, scope of work and implementation schedule.

Section 2(c): The Infrastructure Development Plan may only include proposed infrastructure projects and directly related administrative and management support. Each proposed infrastructure project must reasonably further one or more of the goals or strategies of the Strategic Development Plan.

Note: The timing is identical to that for section (a), if the 2023 Amended Compact goes into force in FY24 then the Infrastructure Development Plan must be submitted by March 31 of FY25. It has the additional requirement of coordination with the Strategic Development Plan so it is inferred that these two plans would be drafted in tandem. JEMCO approval is also required for the portion that will use grant funding.

Section 3(b)(I & ii): Each year no later than July 15 the FSM must provide its Annual Implementation Plan to the U.S. for the six sectors utilizing Sector Grant Funding, and must include the same information as previously required under the 2004 Fiscal Procedures Agreement.

Note: The intensive annual budget consultation under the Amended Compact has been deleted under the 2023 Fiscal Procedures Agreement. This may be in part due to the new third party consultant requirement under Article VI 2(a) for a program monitor who will be tasked with assisting in data gathering and

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report preparation, among other responsibilities. The Annual Implementation Plan is due July 15.

Section 3(b)(iii): For the infrastructure portion of the Annual Implementation Plan the following documents must now be included:

- a. Evidence of title, leasehold agreement, or other legal authority to use the land upon which the capital improvement project is to be constructed.
- b. A detailed preliminary project budget for each capital development project, signed by a certified professional engineer or architect. The budget must include a breakdown of costs for planning, engineering and design, real estate costs, supervision and administration, construction and construction management inspection.
- c. A scope of the work that describes the work to be performed and schedules from planning through completion of construction, and be signed by a certified professional engineer or architect.

Note: The above is the same requirement as under the 2004 Fiscal Procedures Agreement to develop separate Infrastructure Development Plan (IDP). However, the new requirements under the 2023 Fiscal Procedures Agreement are much more detailed and require professionals to assist in development of the infrastructure project plan, including budgets, design, supervision and administration to be included in the Annual Implementation Plan and not just at the start of each proposed project. As stated above, this will be without the benefit of an annual consultation with the U.S.

Section 3(c-g): The Annual Implementation Plan must be consistent with any special conditions attached by JEMCO, not propose to use funds for unallowed uses, not propose to use funds in excess of amounts set forth in Section 266, be could propose to use funds for an activity previously not allowed if there is new evidence showing it could be successful, and must

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be reasonably tied to one of the Strategic Development Plan goals.

Section 4: JEMCO may extend the due date of the Strategic Development Plan, the Infrastructure Development Plan, or the Annual Implementation Plan upon receiving a justified request from the FSM.

Note: There remains a possibility to be granted an expansion of time for the submission of the three plans, however, it is JEMCO that holds the power to make this determination.

Section 5: The U.S. will send an official grant award notice as soon as practicable after October 1 each year. Regarding the grant awards for specific infrastructure projects approval or disapproval will be made within 30 days of submission of the report.

Section 6: FSM shall submit an Annual Implementation Plan in the Fiscal Year when the 2023 Amended Compact enters into force. JEMCO will determine the due date for such submission. JEMCO may waive the requirements for sector allocations to be tied to a specific purpose in the Strategic Development Plan.

Note: This section (6) provides a transition process for the fiscal year that Compact III comes into force, so presumably FY24. JEMCO will be making the decisions as to waiver requirements that subsequently be in the Strategic Development Plan.

Article VI-Post-Award Requirements

Section 1(a): The FSM must amend all its internal procedures in all its Financial Management Systems to conform with the 2023 Fiscal Procedures Agreement.

The financial management systems included under the 2023 Amended Compact are the same as those in the Amended Compact, including:

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Financial Reporting, Accounting Records, Internal Control, Budget Control, Allowable Cost, Source Documentation and Cash Management.

Section 1(b(i)): No later than 180 days after the end of each fiscal year the FSM shall submit an Annual Financial Report to the U.S. and JEMCO. This shall include:

- a. A statement of revenues and expenditures for each grant and comparison of budget and actual expenditure.
- b. A report for all operational grants including a budget execution report for each function and specifying major offices, cost centers and budget activities.
- c. A federal financial report for each grant on U.S. government form SF-425.

Note: The Annual Financial Report replaces the Quarterly Financial Reports under the Amended Compact. The information included in the Annual Financial Report remains the same as under the previous period in the Quarterly Financial Reports.

Section 1(c): The period of availability of Grant Funds is as follows:

- i. Funding for Operational Grants shall be available for one year. For grants for public infrastructure obligation time is set forth in the Sector Grant section.
- ii. FSM shall liquidate all Accrued Expenditures under a Grant not later than 120 days after the end of the funding period so that information may be included in the Annual Report.

Note: As discussed elsewhere this subsection explicitly refers to Sector Grant Funds being made available for a one year funding cycle only. The availability of infrastructure project grants is discussed in full later in this section.

Section 1(d)-(n): The remainder of the terms and conditions for Financial Administration of the Grant Awards remain the same in

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the 2023 Fiscal Procedures Agreement as they were in the 2004 Fiscal Procedures Agreement.

Section 2(a): The FSM shall be responsible for all management and monitoring of day-to-day operations of all Sector Grants and their activities to assure compliance with the Sector Grant terms and conditions. A Performance Report by the FSM to the U.S. and JEMCO is due 180 days after the end of each Fiscal Year.

Note: The timing of the Performance Report has changed to 180 days after the end of the relevant fiscal year, but the performance indicators to be included in the report remain the same as under the 2004 Fiscal Procedures Agreement.

Section 2(b): Under the 2023 Fiscal Procedures Agreement there is now a mandatory requirement to retain a qualified third party to assist with the Annual Financial Report and the Annual Performance Report. The FSM must consult the U.S. in the hiring of the consultant. The responsibilities of the consultant under Section 2(b)(iii) include:

- a. Assisting the FSM in collecting information necessary to formulate the reports under required under the 2023 Fiscal Procedures Agreement.
- b. Assisting the FSM in analyzing the information collected.
- c. Assisting the FSM in drafting the required reports under the 2023 Fiscal Procedures Agreement.
- d. Conducting training and capacity building in producing verifiable and reliable data relating to sector performance outcomes.

Note: The scope of tasks for the new consultant is very large. The cost of this position may be extensive and it may come from the Sector Grant Funds for Enhanced Reporting and Accountability. This addition of a consultant is another indication that the complete and timely reporting is fully contemplated under the 2023 Fiscal Procedures Agreement.

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There is no explicit section in this portion of the 2023 Fiscal Procedures Agreement that addresses waivers and extensions of time as there had been in the 2004 Fiscal Procedures Agreement.

The remainder of Article VI includes the same terms in the 2023 Fiscal Procedures Agreement as the previous sections addressing those issues in the 2004 Fiscal Procedures Agreement.

Article VII-Terms and Conditions of Infrastructure Assistance

Sections 1-3: FSM public infrastructure using Sector Grants now has the explicit language that they are required to adhere to the latest edition of the International Building Code or its equivalent and shall be delivered through a process that ensures adherence to best practices and requires effective, transparent and competitive contracts, and project administration utilizing qualified professionals.

It is also required that project documents shall be based upon the latest published edition of the family of contracts, forms and exhibits of the American Institute of Architects or of the Engineers Joint Contract Documents Committee, whichever is appropriate for a particular project.

Note: If the building code, form types or contracts change to an updated version, even though an update version changes may not be substantive, and the FSM used an older version of the form, exhibit, ect. It is a technical violation of this section of the agreement. This may open up the possibilities for negative impacts including, higher costs of performance or delays.

Further new requirements for specific additional qualified professionals are detailed elsewhere in this report.

Sections 4-5: This Article VII applies to all Sector Grants for public infrastructure. Sectors Grants for public infrastructure

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may be used for preliminary engineering and design of infrastructure projects if approved by JEMCO.

Section 9(a): The Infrastructure Maintenance Fund - The U.S. shall make annual contributions from the amounts available under the Sector Grants to the Infrastructure Maintenance Fund. Beginning in FY24 at 7 percent of the \$140,000,000 Sector Grants, and increasing in subsequent years. The FY24 amount is \$9,800,000. The fund contribution increases every year until it is 10 percent of the total of the Sector Grants, or \$14,000,000.

Note: Previously the Infrastructure Maintenance Fund contribution from the Sector Grants under the 2004 Fiscal Procedures Agreement was 5% with a matching contribution by the FSM. This was a consistent percentage over the twenty-year period. As the percentage contribution from the Sector Grants now increases over time and the total of the Sector Grants is not inflation adjusted going forward under the 2023 Fiscal Procedures Agreement it will be an ever more significant portion of the use of funds later in this 2023 Amended Compact funding period.

Section 9(b): The FSM may choose to contribute to the Infrastructure Maintenance Fund but this is not mandatory.

Section 9(f): The Infrastructure Maintenance Fund shall be a segregated account and used only for repair and maintenance of U.S. funded infrastructure. It may not be used for extensions, expansions or repurposing of earlier infrastructure projects.

Note: With a much-enlarged fund designated for maintenance and repairs solely planning to effectively use these funds may need additional emphasis.

Section 9(g): The FSM may allocate additional amounts for infrastructure maintenance from the health and education Sector Grants to fund the maintenance requirements of those sectors.

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Note: This highlights that health and education are still considered the priority sectors. It also emphasizes that maintenance of project facilities is a priority going forward.

Section 10: A report in the form of the SF-425 report must be prepared and submitted annually within 180 days after the end of the fiscal year to which it applies. This report shall include accounting information and the status of progress for each project funded by the Grants.

Note: The timing and frequency of reporting requirements have changed. There had been under the 2004 Fiscal Procedures Agreement a quarterly report requirement. This is now an annual report on the SF-425 form.

Article VIII-Audit

The scope and standards for the required audits under the 2023 Fiscal Procedures Agreement remain the same as those for the 2004 Fiscal Procedures Agreement.

Article IX-Annual Reconciliation and End-of-Grant Requirements

The transition process for Grant Sector Funds at the end of FY23 is stated below:

Section 3(a): For grant sectors other than public infrastructure the following end-of-grant terms apply:

- i. If sector funding has not been granted by the U.S. at the end of FY23 funds shall be deposited into the Compact Trust Fund as a contribution from the FSM.
- ii. If sector funding has been granted by the U.S. at the end of FY23 it shall remain available to be obligated by the FSM until the end of FY24, and during that time such funds will continue to be governed by the 2004 Fiscal Procedures Agreement. Any funds that remain unobligated at the end of FY24 shall be returned to the U.S. and

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deposited into the Compact Trust Fund as a contribution from the FSM government.

- iii. Sector funds that have been granted by the U.S. and obligated by the U.S. and are on an active grant at the end of FY23 shall remain active grant status, and shall be governed by the 2023 Fiscal Procedures Agreement.
- iv. Sector Grant Funds that have been returned to the U.S. following the closeout of a Grant shall be deposited into the Compact Trust Fund as a contribution from the FSM.

Section 3(b): For grant funds that have been allocated by JEMCO for public infrastructure:

- i. If funds have not been granted by the U.S. at the end of FY23 they shall remain available through FY43 to be granted in accordance with the Committee's Sector Allocation. These funds shall be governed by the 2023 Fiscal Procedures Agreement. If funds have not been granted by the end of FY43 they shall be deposited into the Compact Trust Fund as a contribution from the FSM.
- ii. If funds have been granted by the U.S. by the end of FY23, regardless of whether they have been obligated by the FSM they shall remain active grant status and governed by the 2004 Fiscal Procedures Agreement.
- iii. If funds have been returned to the U.S. following a closeout of a grant they shall remain available for public infrastructure through FY43, after which any that are not on active grant status shall be deposited into the Compact Trust Fund as a contribution from the FSM.

Section 4: For all Sector Grant Funds in Section 261(a) of the 2023 Amended Compact:

- (a) At the end of FY25 any funds from the prior fiscal year shall be deposited into the Compact Trust Fund as a contribution by the FSM if such funds have either:
 - i. Not been allocated by JEMCO, or

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- ii. Have been allocated by JEMCO for a sector other than public infrastructure and have not been granted by the U.S. or have not been obligated by the FSM.
- (b) Any funds that have been allocated by JEMCO for public infrastructure and have not been granted by U.S. remain available through FY43 to be granted by JEMCO. The governments may decide at that all or a portion of these funds may deposited in the Compact Trust Fund as a contribution by the FSM. If any funds have not been granted by JEMCO in FY43 they will be deposited into the Compact Trust Fund as a contribution from the FSM.
- (c) Any funds that have been granted by the U.S. and remain active on a Grant at the end of each fiscal year covered by Compact III shall remain active consistent with the terms of the grant.
- (d) (i) At the end of FY43 any funds that remain unallocated or not granted shall be deposited into the Compact Trust Fund as a contribution from the FSM.
(ii) Any funds that have been granted by the U.S. and remain active in FY44 shall remain available according to the terms of the Grant and this Agreement.

Section 5: Any funds deposited into the Compact Trust Fund under the above section 3 and 4 and any distributions made from these deposits shall be governed by the 2023 Trust Fund Agreement.

Article X- Entry Into Force, Amendment and Duration

1. The Agreement shall enter into force on the date of the later note in an exchange of notes between the Signatory Governments that each government has completed its internal procedures for entry into force.
2. The Agreement can be amended any time in writing by agreement of the parties.
3. The Agreement remains in force unless terminated by mutual agreement of the parties or all funds have been expended or contributed to the Compact Trust Fund.

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4. The parties shall consult with each other regarding implementation of this Agreement after 10 years of its entry into force regarding whether amendments are desirable.

5. Any dispute under this Agreement shall be addressed:
a. At first instance through the JEMCO committee
b. Or through mechanisms expressly provided in the Agreement.

*only if disputes are not resolved may the parties seek resolution set forth in Article II of Compact III.

**AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERATED STATES OF
MICRONESIA AND THE GOVERNMENT OF THE UNITED STATES OF
AMERICA REGARDING THE COMPACT TRUST FUND**

This agreement shall be referred to as the "2023 Joint Trust Fund Agreement"

Substantive changes between the 2003 Trust Fund Agreement and the 2023 Trust Fund Agreement are as follows:

Part II-Status of the Trust Fund
Article 3-Purpose of the Trust Fund

The amended purpose of the Trust Fund is to contribute to the economic advancement and long-term budgetary self-reliance of the FSM by (i) providing an annual source of revenue after FY43 for those sectors set forth in Section 261(a) of the 2023 Amended Compact and (ii) providing for certain needs of the FSM beginning FY24 as described in Article 18 (Resiliency Distribution), Article 19 (Special Need Distribution) and Article 20 (Unspent Economic Assistance Distribution).

Part III- Joint Trust Fund Committee
Article 7-Joint Trust Fund Committee

Section 1-3: Under the 2023 Joint Trust Fund Agreement the composition of the Joint Trust Fund Committee has changed the

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U.S. may appoint three members and the FSM may appoint three members. In the previous 2004 Trust Fund Agreement the FSM was allowed to appoint two members to the committee. The U.S. permanently holds the chair of the 2023 Trust Fund Committee, and therefore, has tie-breaking authority.

In the 2004 Trust Fund Agreement Subsequent Contributors to the Trust Fund could appoint either voting or non-voting members to the Trust Fund Committee by majority of votes by the committee. This has changed under the 2023 Trust Fund Agreement Subsequent Contributors to the Trust Fund can only appoint non-voting members to the Trust Fund Committee which would in turn have to be approved by a majority vote of the committee.

Note: The FSM now has an additional voting member on the 2023 Joint Trust Fund Committee so the two countries now have an even number of members on the committee. This is only a technical change. With the permanent chair still being retained by the U.S. the balance of power remains with them.

Section 6: There is no change in the powers vested in the Joint Trust Fund Committee. The 2023 Joint Trust Fund Committee will oversee:

- a. The operation, supervision and management of the Trust Fund.
- b. The investment and disbursement of resources of the Trust Fund.
- c. The conclusion of agreements and arrangements with Subsequent Contributors and other organizations.

Section 7: Voting and non-voting members of the 2023 Trust Fund Committee continue to serve without compensation or per diem. Incidental expenses such as the cost of rental space can be covered by the Trust Fund as in the previous agreement.

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Article 8-Technical and Administrative Assistance

Where previously in the 2003 Trust Fund Agreement the Joint Trust Fund Committee may obtain technical advisory services as needed or appropriate the 2023 Joint Trust Fund Committee has an expanded definition as follows:

The Joint Trust Fund Committee may obtain administrative or technical advisory services as are necessary to ensure the orderly operation of the Trust Fund. Such administrative and technical advisory service providers shall be entitled to reasonable fees and expenses as compensation for their services. Such fees and expenses shall be subject to the prior written approval of the Joint Trust Fund Committee.

Note: Several new references to the Custodian (financial institution holding the custody of the Trust Fund), the Investment Advisor, and Money Manager are made throughout the 2023 Trust Fund Agreement than in the previous agreement. It may be anticipated that additional activities and expenses will follow in this next period.

Part IV-Resources of the Trust Fund

Article 10-Contributions

Section 1: Under the 2023 Joint Trust Fund Agreement contributions by the U.S. shall be in accordance with Sections 265 and 266 of the 2023 Amended Compact.

There is no contribution requirement under the 2023 Trust Fund Agreement for the FSM as previously required as under the 2003 Joint Trust Fund agreement.

Sections 2-4: The 2023 Joint Trust Fund provisions regarding Subsequent Contributors remains the same as in the previous agreement. The Trust Fund shall seek outside contributions, it may accept such contributions with approval of all voting

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members and may refuse a contribution if it is not in the interests of the U.S. or the FSM.

Article 11-Conditions Governing Contributions

Section 1: No Contributions to the Trust Fund shall be withdrawn or refunded under the 2023 Joint Trust Fund Agreement except as in accordance with Articles 26 and 27 of this Agreement.

Note: Article 26-Withdrawal of Contributions and Article 27-Discontinuation and Dissolution of the 2023 Joint Trust Fund Agreement mirror the 2003 Joint Trust Fund Agreement Articles 21-Withdrawal of Contributions and Article 22 Termination and Distribution of Assets so the does not substantively change this section.

Part V-Custodians, Investment Advisers, Money Managers

Article 12-Appointment of Custodian

"Custodian" in the 2023 Joint Trust Fund Agreement replaces "Trustee" from the 2003 Joint Trust Fund Agreement with the same definition.

Section 1: The Custodian may now be removed by the 2023 Joint Trust Fund Committee without cause with 30 days-notice.

Section 2: The qualifications of the Custodian remain the same as those under the previous agreement for the Trustee, but for, the Custodian must have 15 years' experience as a custodian financial assets not 10 years' experience as was previously the case.

Note: A section from the 2003 Joint Trust Fund Agreement has not been included in the 2023 Joint Trust Fund Agreement. This previous section cited an affirmative duty of the Trustee to hold in trust the trust fund for the benefit of the FSM. It reads in full:

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Article 12, Section 6: The Trustee 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-Custodian's Powers and Duties

Section 2: The Custodian has expanded powers under the 2023 Joint Trust Fund Agreement. In addition to making final disbursement of the Trust Fund and paying expenses the Custodian is now responsible for disbursement of the distributions under Article 17 (Sector Distribution), Article 18 (Resiliency Distribution), Article 19 (Special Needs Distribution) and Article 20 (Unspent Economic Assistance Distribution).

Section 5: The Custodian or a competent entity selected by the 2023 Joint Trust Fund Committee shall pay all liabilities and administrative expenses, effect all Distributions to the FSM by instruction of the Joint Trust Committee and maintain the accounting and records.

Note: While the Custodian has expended duties under this Article 13 now these duties may be shared with another authorized entity. This may lead to additional layers of administration.

Part VI-Operation of the Trust Fund

Article 16-Account Structure of the Trust Fund

Significant changes to the structure has been made to the Trust Fund under the 2023 Joint Trust Fund Agreement as follows:

Section 1: The Trust Fund is reorganized to consist of three accounts "Account 1, Account 2 and Account 3".

Section 2: Account 1 shall consist of A Account, B Account, and C Account as denoted under the 2003 Joint Trust Fund Agreement. The parameters of Account 1 are as follows:

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- a. Account 1 shall consist of the A Account, the B Account and the C Account. These three accounts are consolidated into a single account and any income derived from it shall be reinvested in Account 1.
- b. Account 1 shall be used only for payment of fees, expenses, compensation and costs under this Agreement, (ii) transfers to Account 2 of amounts from the Sector Distributions, Resiliency Distributions and Special Needs Distributions (iii) withdrawal and payment of Contributions and Income in Articles 26 and 27.

Section 3: Account 2 shall hold the following funds:

- a. Account 2 is holding account that shall consist of all amounts transferred from Account 1 for disbursement from Sector Distributions, Special Needs Distributions, and Resiliency Distributions.
- b. Account 2 shall only be used for disbursement of the Sector Distributions, Resiliency Distributions, and Special Needs Distributions.
- c. Account 2 shall maintain sufficient liquidity at all times to meet the relevant Distribution needs.
- d. Any amounts remaining in Account 2 at the end of the Fiscal Year in which the amount was supposed to be disbursed shall be returned to Account 1 within 90 days of the close of that Fiscal Year.

Section 4: Account 3 shall hold the following funds:

- a. Account 3 shall consist of all amounts transferred to the Trust Fund under Article IX of the 2023 Fiscal Procedures Agreement (sector grant carry over from the Amended Compact). Any income from Account 3 shall be deposited into Account 1 within 90 days of the end of each Fiscal Year unless the Joint Trust Fund Committee decides to waive this requirement.
- b. Account 3 shall be used only for disbursement of the Unspent Economic Assistance Distribution.

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- c. Account 3 shall maintain sufficient liquidity to meet the relevant Distribution needs.
- d. At the end of FY43 any amounts remaining in Account 3 shall be deposited in Account 1 and Account 3 shall be closed.

Section 5: A special account, Account 4, may be established to allow contributions by the FSM of revenues or income from unanticipated sources. Account 4 shall not be mixed with any other account and shall have a separate account number. Account 4 may be used by the FSM to meet unanticipated shortfalls or for other purposes.

Part VII-Distributions

Article 17-Sector Distribution

Section 1-4: Sector Distribution shall be **available for distribution beginning October 1, 2043**, in amounts not to exceed the Sector Distribution Cap as calculated according to the formula included as Attachment #1 to this report. The Sector Distribution shall be used only to support the Section 261 (a) of 2023 Amended Compact or as mutually agreed by the FSM and the U.S.

Section 5: The FSM may request disbursements beginning in 2043 by submitting a request to the Joint Trust Fund Committee according to these procedures:

- a. No later than July 15 each year the FSM shall submit a budget to the Joint Trust Fund Committee.
- b. No later than August 30 each year the Joint Trust Fund Committee shall review and make a decision on the FSM Sector Distribution budget.

Sections 6-8: The approved Sector Distribution shall be transferred from Account 1 to Account 2 no later than September 15 every year, beginning in 2043. Any amounts disbursed to the FSM that are not obligated at the end of the Fiscal Year they

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were disbursed shall be returned to Account 1 within 180 days of the close of that Fiscal Year.

Article 18-Resiliency Distribution

Sections 1-4: The Resiliency Distribution may be used to support the Section 261(a) sectors under the 2023 Amended Compact, or for other sectors as agreed by the parties. Any amounts remaining below the Resiliency Distribution Cap not used for Section 261 (a) sectors may be used for the environment and infrastructure sectors.

The Resiliency Distribution shall be available for disbursement only in Fiscal Years 2024-2043 in amounts for disbursement are not to exceed the Resiliency Distribution Cap, the formula for which is Attachment #2 to this report. The information used to calculate the Resiliency Distribution Cap shall come from the most recent Annual Report. The Resiliency Distribution may also be calculated according to a formula using the U.S. Gross Domestic Product Implicit Price Deflator (IPD), which is included in this report as Attachment #2.

Section 5-9: The FSM may request a disbursement up to the amount of the Resiliency Distribution Cap:

- by submitting a request and budget to the Joint Trust Fund Committee by no later than July 15 each year through 2042.
- By no later than August 30 the Joint Trust Fund must review and make a decision on the proposed budget.
- The amount equal to the Resiliency Distribution shall be transferred from Account 1 to Account 2 no later than September 15 every year through 2043.
- Any amount of the Resiliency Distribution not obligated by the end of the Fiscal Year will be returned to Account 1 within 180 days of the close of that Fiscal Year.

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Note: A request by the FSM of a Resiliency Distribution does not require unusual need on the part of the nation. The Resiliency Distribution requires only normal documentation and monitoring.

Article 19-Special Needs Distribution

Section 1: The Special Needs Distribution may be used in any year from FY24 forward without an end date. The amount of the distribution shall not exceed the Special Needs Distribution Cap.

Section 2: The Special Needs Distribution shall only be used for unforeseen expenses by the FSM relating to projects that cannot be reasonably financed from other sources of revenue, so long as they support the Section 261(a) sectors of the 2023 Amended Compact.

Sections 3-4: The Special Needs Distribution Cap shall be calculated by the Joint Trust Fund Committee every year by March 31 using the Annual Reports. The Special Needs Distribution Cap shall be calculated using a formula attached to this report as Attachment #2.

Section 5: The FSM may request disbursements at any time up to the amount of the Special Needs Distribution Cap according to these procedures:

- a. Submitting to the Joint Trust Fund Committee a detailed budget which must include the basis for the extraordinary need.
- b. The Joint Trust Fund Committee will decide whether to grant the distribution based on the urgency and importance of the need. It will also take into consideration the distributions impact on the Sector and Resiliency Distributions.
- c. The FSM may revise the approved budget for a Special Needs Distribution only with the approval of the Joint Trust Fund Committee.

STANDING COMMITTEE REPORT NO. 23-04

RE: C.R. NO. 23-08 (P.C. NOS. 23-15 AND 23-27)
COMMITTEE ON EXTERNAL AFFAIRS

SUBJECT: RESOLUTION RATIFYING 2023 AMENDMENT TO THE
COMPACT

JULY 14, 2023

Sections 7 & 8: The Special Needs Distribution funds shall be transferred from Account 1 to Account 2 as soon as practicable. Any funds not obligated at the end of the Fiscal Year in which they were disbursed shall be returned to Account 1 within 180 days of the close of that Fiscal Year.

Article 20-Unspent Economic Assistance Distribution

Section 1 & 2: The Unspent Economic Assistance Distribution will be available for disbursement only FY24 to FY43 and shall not exceed the Unspent Economic Assistance Distribution Cap. This type of distribution shall be used only to support the 261(a) 2023 Amended Compact sectors or other sectors as agreed by the U.S. and the FSM.

Section 3 & 4: The Unspent Economic Assistance Distribution Cap for the upcoming Fiscal Year shall be calculated by the Joint Trust Fund Committee by March 31 every year through 2042 based on the information from the most recent Annual Reports. The Unspent Economic Assistance Distribution Cap shall equal the undisbursed amounts transferred to Account 3.

Section 5: The FSM may request disbursements up to the amount of the Unspent Economic Assistance Distribution Cap for use for the 261(a) 2023 Amended Compact sectors or other sectors as agreed by the U.S. and the FSM according to the following procedures:

- a. The FSM may at any time submit a request with a detailed budget to the Joint Trust Fund Committee.
- b. The Joint Trust Fund Committee shall review the FSM request as soon as practicable and take decision.

Sections 6-8: The FSM may revise the approved Unspent Economic Assistance budget only with approval by the Joint Trust Fund Committee. Any disbursed amount that are not obligated at the end of the Fiscal Year shall be returned to Account 3 within 180 days of the Fiscal Year.

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Note: A request by the FSM of an Unspent Economic Assistance Distribution does not require unusual need on the part of the nation. The Unspent Economic Assistance Distribution requires only normal documentation and monitoring.

Article 21-Fiscal Procedures for Distribution

Article 21 of the 2023 Joint Trust Fund Agreement is a mirror of the requirements of Article VI-Post-Award Requirements of the 2023 Amended Compact.

Article 24-Trust Fund Audit

Article 24 of the 2023 Joint Trust Fund Agreement mirrord of the requirements of Article 19 of the 2004 Trust Fund Agreement.

Article 25-Trust Fund Annual Reports

By March 31 every year the Joint Trust Fund Committee shall publish and submit to the governments of the FSM and U.S., and Subsequent Contributors and Annual Report. To carry out this responsibility it can request the assistance of the Investment Advisor.

The Annual Report shall contain information on the activities, management and status of each of the accounts.

Part VIII-Withdrawal and Discontinuation of the Trust Fund

Article 26-Withdrawal of Contributions

Section 1: The U.S. may withdraw the Present Mart Value of Contributions and any remaining income derived therefrom: (a) in the event that the U.S. determines that the FSM has grossly failed to use the Distributions for purposes described in this Agreement., or (b) that the FSM has failed to meet its obligations under the separate security agreement Sections 321

STANDING COMMITTEE REPORT NO. 23-04

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and 323 of the original Compact of Free Association signed
October 1, 1982.

Section 2 & 3: Other Contributors may withdraw the Present
Market Value of their contributions with notice to the Joint
Trust Fund Committee minus expenses and associated fees.

Article 27-Discontinuation and Dissolution of the Trust Fund

Section 4: In the event the Trust Fund is discontinued no
payment of assets shall be made until all liabilities have been
discharged. Subsequently, the assets of the Trust Fund shall be
paid as follows:

- (a) **The Present Market Value of the Principal and Income
attributable to the U.S. shall be paid back to the U.S.**
- (b) **The Present Market Value of the Principal and Income
attributable to the FSM shall be paid back to the FSM.**
- (c) **The Present Market Value of the Principal and Income
attributable to the Subsequent Contributors shall be
paid back to those Subsequent Contributors, unless such
Subsequent Contributors decide otherwise.**

Article 30-Final Provisions

This Agreement shall enter into force on the date of the later
note in an exchange of notes between the governments indicating
that each has completed its internal procedures.

Upon entry into force of this Agreement the 2003 Trust Fund
Agreement shall be terminated.

Congressional Resolution No. 23-08

The resolution was transmitted in Presidential Communication No.
23-27. The second page, line 13, of the resolution as
originally transmitted reads as follows:

STANDING COMMITTEE REPORT NO. 23-04

RE: C.R. NO. 23-08 (P.C. NOS. 23-15 AND 23-27)
COMMITTEE ON EXTERNAL AFFAIRS

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"WHEREAS, taking into consideration that the 2023 Amendment Compact does not involve delegation of a major power or substantial reduction of Compact benefits, no further approval by the State Legislatures shall be required by law; and"

The 12th State and National Leadership Conference took place June 21-23, 2023. Resolution No. 4, representing the will of the State and National leadership, states its support for the ratification of the 2023 Amended Compact, recognizes the obligation of both the FSM Congress and the state legislative bodies to ratify this agreement, and recommends action by all bodies by the end of July 2023.

It is the intention of your Committee to defer to the wishes of the State and National Leadership regarding the internal procedures to complete the ratification process, including the legal analysis that informed the drafting of this resolution.

For this reason, your Committee recommends that the above referenced paragraph in C.R. No. 23-08 beginning on page 2, line 13 and ending on page 2, line 16, be deleted in its entirety.

Your Committee has included a detailed analysis of the 2023 Amended Compact and the two subsidiary agreements to advise and inform the Congress as a whole, and all relevant parties. As discussed above action must move forward to ensure ratification is done in a swift and orderly manner.

Based on careful review of Congressional Resolution No. 23-08, the accompanying documents and agreements from the President your Committee on External Affairs finds ratification of the 2023 Amended Compact is in the best interests of our Nation. Therefore, your Committee recommends adoption of Congressional Resolution No. 23-08 C.D.1.

STANDING COMMITTEE REPORT NO. 23-04

RE: C.R. NO. 23-08 (P.C. NOS. 23-15 AND 23-27)
COMMITTEE ON EXTERNAL AFFAIRS

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JULY 14, 2023

Respectfully submitted,

/s/ Paliknoa K. Welly
Paliknoa K. Welly, chairman

/s/ Tiwiter Aritos
Tiwiter Aritios, member

/s/ Joseph J. Urusemal
Joseph J. Urusemal, member

/s/ Victor V. Gouland
Victor V. Gouland, member

/s/ Peter M. Christian
Peter M. Christian, member

/s/ Robson U. Romolow
Robson U. Romolow, member

/s/ Quincy Lawrence
Quincy Lawrence, member