

**Agreement Regarding the Military Use and Operating Rights of the
Government of the United States in the Federated States of Micronesia
Concluded Pursuant to Sections 211(b), 321 and 323 of The Compact of Free
Association, as amended**

This Agreement sets forth:

(a) The conditions under which the Government of the United States shall make available the Humanitarian Assistance – Federated States of Micronesia (HAFSM) Program to the Government of the Federated States of Micronesia pursuant to Section 211(b), Title Two, of the Compact of Free Association, as amended; and

(b) The military use and operating rights of the Government of the United States in the Federated States of Micronesia pursuant to Sections 321 and 323, Title Three, of the Compact, as amended.

Article I
Definitions

1. The Definition of Terms set forth in Article VI of Title Four of the Compact, as amended and the Definitions set forth in paragraph 2 of Article I of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact, as amended (the Status of Forces Agreement) are incorporated in this Agreement.

2. For the purpose of this Agreement only, the following terms shall have the following meanings:

(a) “Humanitarian Assistance – Federated States of Micronesia Project Team” is a unit consisting of members of the force which is organized to undertake civic and humanitarian projects.

(b) “HAFSM Project Team Base Camp” is a “defense site” as set forth in paragraph 2(g) of Article I of the Status of Forces Agreement. A HAFSM work site, however, is not a “defense site”.

Article II
Applicability of Status of Forces Agreement

The provisions of the Status of Forces Agreement shall apply.

Article III Provision of the Defense Sites

1. The Government of the Federated States of Micronesia shall provide to the Government of the United States the defense sites identified for HAFSM projects in accordance with Annex A to this Agreement.

(a) The provision of defense sites shall include all the necessary land and use rights for such sites, rights of access thereto, and road, pipeline and powerline easements as may be required.

(b) Any rent or other use charges or other consideration to owners of the lands in the defense sites shall be as provided in this Agreement. Such payments shall be made by the Government of the United States to the Government of the Federated States of Micronesia on behalf of its citizens.

2. Specific arrangements for establishment and use by the Government of the United States of defense sites in addition to those set forth in accordance with Annex A to this Agreement shall be between the Governments of the United States and the Federated States of Micronesia in accordance with Section 321 of the Compact, as amended.

3. The Government of the United States affirms that it has no present need for or present intention to seek the use of defense sites other than those identified for HAFSM projects in accordance with Annex A of this Agreement.

4. The Government of the United States shall notify the Government of the Federated States of Micronesia when it no longer has a requirement to retain any of the defense sites, or portions thereof, designated in this Agreement. Such defense sites, or portions thereof, shall then revert to the full and complete control of the Government of the Federated States of Micronesia for disposition to their lawful owners as determined by the Government of the Federated States of Micronesia in accordance with its constitutional processes.

Article IV General Military Use and Operating Rights

1. Consistent with Section 352 of the Compact, as amended, the Government of the United States has free access to and unrestricted control of the defense sites, including the right to control entry to and exit from any or all defense sites and the right to take necessary measures for their establishment, use and operation. The Government of the United States may take, within the defense sites and within the seabeds, water areas and air space adjacent to or in the vicinity of the defense sites, such measures as are necessary for their use, security and defense. These measures include the right:

(a) To maintain the defense sites and to construct structures and improvements thereon;

(b) To improve and deepen the harbors, channels, entrances, and anchorages, to dredge and fill, and generally to fit the premises to their intended use;

(c) To control anchorages and moorings, the movements of ships and waterborne craft, aircraft operations and land movements;

(d) To regulate and control all communications of the Government of the United States to, from, and within the defense sites; and

(e) To install, maintain, use and operate defense-related oceanographic, aeronautical, space communications, and other military or scientific systems and equipment.

2. In conducting activities pursuant to paragraph 1 of this Article, the Government of the United States shall use its best efforts to:

(a) Avoid interference with commercial activities in the Federated States of Micronesia;

(b) Avoid interference with access by fishermen to shoreline areas;

(c) Avoid interference with navigation, aviation, communication and land or water travel in the Federated States of Micronesia;

(d) Avoid impeding access to recreational areas, particularly beach areas, by residents of and visitors to the Federated States of Micronesia;

- (e) Minimize damage to the terrain and to reef areas;
- (f) Avoid harm to the environment, including water areas;
- (g) Avoid activities which would adversely affect the well-being of the residents of the Federated States of Micronesia; and
- (h) Notify the Government of the Federated States of Micronesia of non-routine activities so that the Government of the Federated States of Micronesia may take steps to assist the Government of the United States in executing its responsibilities to minimize any adverse impact of such activities.

Article V Aids to Navigation

The Government of the United States shall place or establish and maintain in the defense sites and the water areas adjacent thereto or in the vicinity thereof, lights and other fixed and floating aids to navigation of vessels and aircraft necessary for operations pursuant to this Agreement. The Government of the United States shall consult with the Government of the Federated States of Micronesia on the position or characteristics of and any alterations to such aids to navigation.

Article VI Community Relations Council

The Government of the United States and the Government of the Federated States of Micronesia may each designate representatives to a Community Relations Council whose purpose will be to identify and consider all matters affecting relations between the Defense Site Commander and local Federated States of Micronesia communities and to recommend actions as appropriate.

Article VII Miscellaneous

1. No proprietary rights to minerals, including oil, antiquities and treasure trove in a defense site, nor rights relating thereto pass to the Government of the United States by virtue of this agreement but any exploitation thereof shall require the prior concurrence of the Government of the United States.

2. Unless otherwise provided, all issues or disputes that may arise under this Agreement which cannot be resolved locally shall be referred for resolution to the Joint Committee established pursuant to Section 351 of the Compact, as amended.

3. In the event of an emergency the Government of the United States, consistent with military requirements, shall make available to the Government of the Federated States of Micronesia, on a cost-reimbursable basis, military fuels and oils.

4. The Government of the United States may station in the Federated States of Micronesia United States personnel required in its use of the defense sites authorized under this Agreement. Except for United States personnel stationed in the Federated States of Micronesia pursuant to this Agreement, or limited numbers of United States personnel in the Federated States of Micronesia on official duty in connection with naval port visits, aircraft transits or other temporary duty, the Government of the United States shall not establish in the Federated States of Micronesia a formal rest, relaxation or recuperation program, without the consent of the Government of the Federated States of Micronesia.

5. The Government of the United States shall not use nuclear power plants or reactors in the Federated States of Micronesia, except on military ships and vessels under the ownership or control of the Government of the United States.

6. Consistent with Article V, paragraph 7 of the Status of Forces Agreement and Article II of this Agreement, the Designated Representatives of the Signatory Governments shall enter into agreed arrangements regarding notice and taxation of major transfers of personal property by United States personnel to non-tax exempt persons in the Federated States of Micronesia.

Article VIII

Effective Date, Amendment and Duration

1. This Agreement shall come into effect simultaneously with the Compact, as amended.

2. This Agreement may be amended at any time by the mutual consent of the Government of the Federated States of Micronesia and the Government of the United States.

3. With the exception of Annex A, this Agreement shall remain in full force and effect for the period of effectiveness of Title Three of the Compact, as amended. Annex A shall remain in full force and effect for 20 years, unless otherwise agreed.

DONE at Palikir, in duplicate, this 14th day of May, 2003, each text being equally authentic.

ANNEX A

Establishment of a Humanitarian Assistance – Federated States of Micronesia (HAFSM) Program

This Annex supersedes Annex A and B to the Military Use and Operating Rights Agreement concluded between the Government of the United States of America and the Government of the Federated States of Micronesia (the Parties) pursuant to their Compact of Free Association signed on October 1, 1982, approved by the Congress of the United States on January 14, 1986, and which took effect November 3, 1986, concerning the provision of civic action teams. In place of the Military Civic Action Teams, the FSM will have access to a Humanitarian Assistance – Federated States of Micronesia (HAFSM) Program under the terms and conditions laid out in this Annex.

A. The Government of the United States shall make available to the Government of the Federated States of Micronesia a HAFSM for such activities/projects as may be identified by the Government of the Federated States of Micronesia and mutually agreed by the Parties.

B. The Government of the United States shall make available to the Government of the Federated States of Micronesia HAFSM Projects under the following provisions:

1. The establishment of an annually agreed work program, in accordance with Paragraph E of this Annex, designed to assist in the fulfillment of the national developmental goals of the Federated States of Micronesia; and

2. A HAFSM Project may be suspended, re-evaluated or terminated under any of the following conditions:

(a) At the request of the Government of the Federated States of Micronesia;

(b) United States military necessity;

(c) Failure of the United States Congress to appropriate the necessary funds; or

(d) Failure of the Government of the Federated States of Micronesia to provide access to Project sites or necessary permits for Project execution.

C. The entire costs of the HAFSM Projects, excluding salaries of U.S. military personnel, (hereinafter referred to as “cost of the Project(s)”) shall be funded in accordance with paragraph E.3 of this Annex. The Government of the Federated States of Micronesia shall accept the completed HAFSM Projects in writing not later than 30 days after the United States gives notice of completion. Failure to respond to the notice of completion not later than 30 days after notice is given shall constitute acceptance of the HAFSM Project. Costs of maintenance for the HAFSM Projects upon completion shall be borne by the Government of the Federated States of Micronesia.

1. These HAFSM Projects may be executed as:

(a) Projects using military labor, including Reserve and Guard component units if possible;

(b) Contracts with private firms, using military planning, design and oversight; or

(c) A combination of military labor and private contractors.

(d) The Government of the United States shall assume all responsibility associated with the execution of the HAFSM Projects, with the exception that the Government of the Federated States of Micronesia shall provide:

(1) Suitable public or private land, as required, for HAFSM Project Team base camps; and

(2) All necessary access and entry clearances into public and private land and all permits for HAFSM Projects.

2. Consistent with Article IV of the Status of Forces Agreement concluded pursuant to Section 323 of the Compact of Free Association, HAFSM projects shall be

executed utilizing FSM labor and locally procured materials to the maximum extent that is feasible, appropriate and in the interest of timely completion of the project.

D. The Government of the Federated States of Micronesia may use the HAFSM program, as needed, in years in which it desires to execute HAFSM Projects; and, shall fund projects from grant assistance in accordance with paragraph E.3. Projects shall be planned as far in advance as possible to allow sufficient time for planning, coordinating, and transferring of funds.

E. The Government of the United States and the Government of the Federated States of Micronesia shall review, on an annual basis, normally during the scheduled Joint Committee Meetings (JCM), or otherwise as may be mutually agreed, all matters relating to the execution and content of the HAFSM Projects.

1. The Government of the Federated States of Micronesia shall nominate prioritized projects through the U.S. Embassy in Pohnpei to the Commander, U.S. Pacific Command (CDRUSPACOM), according to a schedule established by CDRUSPACOM.

2. The annual review shall include: (a) review of the manner in which HAFSM Projects are selected from those nominated, (b) review the planning for the projects and of associated costs, (c) review of the status and execution of existing projects. 3. After the annual review, the Government of the Federated States of Micronesia shall determine which new HAFSM Project(s) it wants to pursue and make its request known through the U.S. Embassy to CDRUSPACOM. When a HAFSM project(s) has been mutually agreed by the Parties pursuant to this Annex, the cost of the Project(s) shall be deducted from the applicable sector grant(s) awarded to the Government of the Federated States of Micronesia in the year the request is approved. The U.S. Department of Interior shall transfer funds in accordance with statutory and regulatory guidelines, to the Department of Defense, or a component thereof, in the amount requested by CDRUSPACOM for that project.