COMPACT OF FREE ASSOCIATION

Fiscal Procedures

Agreement between
the UNITED STATES OF AMERICA
and the MARSHALL ISLANDS

Signed at Majuro March 23, 2004

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

MARSHALL ISLANDS

Compact of Free Association: Fiscal Procedures

Agreement signed at Majuro March 23, 2004;
Entered into force May 1, 2004.

Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as amended, of Free Association Between the Government of the United States of America and the Government of the Republic of the Marshall Islands

This Agreement is entered into by the Government of the United States and the Government of the Republic of the Marshall Islands in recognition of their mutual desire to fulfill their obligations and responsibilities in the implementation of United States Economic Assistance, Programs, and Services as Set Forth in Title Two of the Compact, as amended, and section 105(f)(1)(B) of the Compact of Free Association Amendments Act of 2003. The purpose of this Agreement is to record the procedures that are most efficient, economical, and beneficial to the discharge of the obligations and responsibilities of each government and which each party agrees to implement and abide by. Except as otherwise provided, this Agreement shall be construed and implemented in a manner consistent with the Compact, as amended.

Article I
Definition of Terms

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

"Agreement" means this Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as amended, of Free Association Between the Government of the United States of America and the Government of the Republic of the Marshall Islands.

"Accrued Expenditures" means the charges incurred by the Government of the Republic of the Marshall Islands during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, Sub-Grantees, subcontractors, and other third party non-contractors; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Allowable Costs" mean those necessary and reasonable costs allocable to a Grant that comply with the limitations of any agreement relating to such Grant as well as to applicable laws and regulations, are allocated to the Grant on a basis consistent with policies that apply to all activities of the Grant, are accounted for consistently and in accordance with generally accepted accounting principles, are adequately documented, and are net of all applicable credits.

"Annual Report" has the meaning assigned to such term in Article V, section 1(d).

"Appeal" means the right of a Grantee to request a hearing from the director of the United States Department of the Interior's Office of Hearings and Appeals regarding an adverse agency decision (43 C.F.R. Part 4). An ad hoc appeals board of two or more administrative law judges may be appointed by the director to hear the dispute at the Grantee's written request. Decisions will be in writing and signed by a majority of board

members. Grantees (and their representatives) who appear before the board are governed by specific rules of practice (43 C.F.R. Part 1).

"Audits" mean financial, program and management audits, including the determination as to whether the Government of the Republic of the Marshall Islands has met the requirements set forth in the Compact, as amended, or its related agreements regarding the purposes for which Grants or other assistance are to be used; determinations as to the propriety of the financial transactions of the Government of the Republic of the Marshall Islands with respect to such Grants or assistance; and the substantiation of appropriate follow-up actions by the Government of the United States and the Government of the Republic of the Marshall Islands.

"Committee" has the meaning assigned to such term in Article III.

"HARMI" has the meaning assigned to such term in Article II, section 2.

"Closeout" means the normal process by which the awarding agency determines that all applicable administrative actions and all required work on the annual Grant have been completed.

"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 Republic of the Marshall Islands on October 21, 1986.

"Compact, as amended," 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 Republic of the Marshall Islands on October 21, 1986, as amended with respect to the Republic of the Marshall Islands, following exchange of instruments of approval confirming the completion of the necessary domestic processes for entry into force by both parties.

"Contract" means a procurement Contract under a Grant or Sub-Grant. It also means a procurement sub-contract under a contract.

"Core Labor Standards" mean those fundamental rights that are guaranteed to all workers in the Republic of the Marshall Islands, including but not limited to freedom of association, non-discrimination in employment, the prohibition of forced labor, and the prohibition of exploitive child labor.

"Cost Accounting" means the method by which incurred costs are allocated to Grants by classification or type of expenditure linked to performance goals or, in lieu of performance budgeting, as line items of a traditional budget. Regardless of format, Cost Accounting structures for performance budgets should be capable of reporting on the cost of operations at three levels: (1) on an entity-wide (or agency basis); (2) by responsibility segment, defined as a component of the reporting entity that is responsible for carrying out a mission, conducting a major line of activity, or producing one or a group of related products or services; and (3) by segment outputs, that is, the cost centers associated with the separate types of outputs produced within each responsibility segment.

"Economic Assistance, Programs, and Services as Set Forth in Title Two" means the annual assistance provided to the Government of the Republic of the Marshall Islands by the Government of the United States under the Compact, as amended. It does not include annual payments under section 212 of the Compact, as amended. It would include any financial assistance provided pursuant to section 222 of the Compact, as amended.

"Equipment" means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. The Government of the Republic of the Marshall Islands may use its own definition of Equipment provided it at least includes all Equipment defined above.

"Expenditure Report" means: (1) for non-construction Grants, the financial status or other equivalent report, and (2) for construction Grants, the outlay report and request for reimbursement or other equivalent report.

"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.

"Government of the United States" means the federal government of the United States of America.

"Government of the Republic of the Marshall Islands" means the Government established and organized by the Constitution of the Republic of the Marshall Islands including all the political subdivisions and entities comprising that Government.

"Grant" means an award of sector-based or other financial assistance, or an award under the Supplemental Education Grant, including cooperative agreements, in the form of money, or property in lieu of money, by the Government of the United States to the Government of the Republic of the Marshall Islands in accordance with section 211 of Title Two of the Compact, as amended, or section 105(f)(1)(B) of the Compact of Free Association Amendments Act of 2003. The term does not include technical assistance instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Acceptance of a Grant from the Government of the United States creates a legal duty on the part of the Government of the Republic of the Marshall Islands to use funds in accordance with the terms and conditions of the Grant.

"Grantee" means the recipient of a Grant under the Compact, as amended, or hereunder.

"Grants Administration" means those matters common to Grants in general, such as financial management, kinds and frequency of reports and records retention. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or Grant-by-Grant basis, such as activities supported by Grants.

"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.

"IDMP" has the meaning assigned to such term in Article V, section 1(e).

"IMF" has the meaning assigned to such term in Article VII, section 7.

"Implementing Agency" means the United States Federal agency that is authorized by the United States Congress to receive, disburse, and monitor financial assistance pursuant to Title Two of the Compact, as amended.

"Indirect Costs" mean costs incurred for common institution-wide or joint objectives that cannot be identified readily and specifically with a particular program or activity, such as general administration not associated with a Grant or project funded under the Compact, as amended.

"Matching" means the value of the in-kind contributions or the portion of the costs of a project or program of the Government of the United States that is required to be borne by the Government of the Republic of the Marshall Islands.

"MTBIF" has the meaning assigned to such term in Article V, section 1.

"MUORA" means the "Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association," as amended.

"Obligations" means the amounts of orders placed, Contracts and subcontracts awarded, goods and services received and similar transactions during a given period that will require payment by the Government of the Republic of the Marshall Islands during the same or future period.

"Operational Costs" means the customary and usual direct costs associated with the operations of a Grant program that continue from a given period to a subsequent period.

"Operational Grants" means the grants associated with a Grant program that continue from a given period to a subsequent period.

"Payment Bond" has the meaning assigned to such term in Article VI, section 1(j)(13)(iii).

"Performance Bond" has the meaning assigned to such term in Article VI, section 1(j)(13)(ii).

"Prior Approval" means documentation evidencing consent of the awarding agency of the Government of the United States prior to incurring specific cost.

"Program Income" has the meaning assigned to such term in Article VI, section 1(i).

"Real Property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and Equipment.

"Sector Grant" means a Grant described in Article II, section 1 for education, health care, public infrastructure, the environment, public sector capacity building, or private sector development, but does not include the Supplemental Education Grant.

"Standard Form SF-269" has the meaning assigned to such term in Article VI, section 1(b)(1)(iii).

"Standard Form SF-272" has the meaning assigned to such term in Article VI, section 1(b)(1)(iii).

"Sub-Grant" means an award of financial assistance in the form of money, or property in lieu of money, made by the Government of the Republic of the Marshall Islands to an eligible Grantee, including but not limited to local governments. The Government of the Republic of the Marshall Islands, as the legal entity to which United States financial assistance is awarded, is accountable for the use of all such funds by its Sub-Grantees.

"Sub-Grantee" means the recipient of a Sub-Grant under the Compact, as amended, or hereunder.

"Supplemental Education Grant" means the Grant described in section 105(f)(1)(B)(iii) of the Compact of Free Association Amendments Act of 2003 supplementing the Sector Grant for education.

"Supplies" mean all tangible personal property other than "Equipment" as defined in this Article.

"Suspension" means, depending on the context, either (1) temporary withdrawal of the authority to obligate Grant funds pending corrective action by the Government of the Republic of the Marshall Islands or its Sub-Grantee; (2) a decision to terminate the Grant; or (3) an action taken to immediately exclude a person from participating in Grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously awarded Grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the Government of the Republic of the Marshall Islands or its Sub-Grantee. It does not include: (1) withdrawal of funds awarded on the basis of an underestimation of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a Grant; (3) refusal to extend a Grant or award additional funds; or (4) voiding of a Grant upon determination

that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"United States" means the United States of America.

"Withholding" means the retention of payments including reimbursements, by the Government of the United States, with respect to any Grant if the Government of the Republic of the Marshall Islands is in breach of the terms and conditions of Title Two of the Compact, as amended, or this Agreement with respect to such Grant, fails to comply with any award condition with respect to such Grant, or is indebted to the Government of the United States. Further description of Withholding is in Article IV, section 5(c)(1).

Article II
Economic Assistance Implementation

1. Subject to the terms and conditions of this Agreement, and except as otherwise provided, the Government of the United States shall provide financial assistance on an annual grant basis for a period of 20 years (or longer in the case of assistance provided under section 211(b) of the Compact, as amended) in the amounts set forth in section 217 of Title Two of the Compact, as amended. Such Grants shall be used for assistance in education, health care, public infrastructure, the environment, public sector capacity building and private sector development, or for other areas as mutually agreed, with priorities in the education and health care sectors. To the extent appropriated for that purpose, the Government of the United States shall also provide the Supplemental Education Grant in the amount of $6,100,000 for fiscal year 2005, and an equivalent amount, as adjusted for inflation under section 218 of the Compact, as amended, for each of fiscal years 2006 through 2023.

(a) 1. The education Sector Grant shall support and improve the educational system of the Republic of the Marshall Islands, and develop the human and material resources necessary for the Republic of the Marshall Islands to perform these services. Emphasis should be on advancing a quality basic education system by increasing the achievement levels of students in the primary and secondary education system based on performance standards and assessments appropriate for the Republic of the Marshall Islands; providing secondary education or vocational training to qualified students; improving management and accountability within the educational system; raising the level of staff quality, including teacher training, with the ultimate aspiration of increasing the number of highly qualified teachers in the classroom; and improving the relevance of education to the needs of the economy.

2. Funds awarded under the Supplemental Education Grant shall be used to support the goals and objectives of the education portion of the Medium-Term Budget and Investment Framework and shall be used to support additional direct educational services at the local school level focused on school readiness, early childhood education, primary and secondary education, vocational training, adult and family literacy, and the smooth transition of students from high school

to postsecondary educational pursuits or rewarding career endeavors. Direct educational services include but are not limited to: activities designed to prepare and enable students to participate in early childhood educational activities, including nutritional health, transportation, and social services; activities designed to improve student achievement or the quality of education; instructional services for students that enhance the services supported by the education Sector Grant, e.g., technology labs or specialized reading programs; teacher training and professional development; curriculum development; and instructional materials; workforce and manpower development training programs and assistance; alternate secondary programs for out of school and pushed out youth; and activities to improve parental and community involvement at all levels of education. Funds may also be used to provide aid to students at post-secondary institutions based on financial need, and to design and develop innovative and strategic programs or activities that enable the education system to provide improved direct educational services and meet performance accountability requirements. Funds awarded under the Supplemental Education Grant shall not be used for school construction or remodeling; general operational costs (other than general operational costs of programs and activities funded by the Supplemental Educational Grant); or teacher salaries, except for the salaries of teachers, teaching assistants, paraprofessionals, or instructors who are needed to carry out programs or activities supported by the Supplemental Education Grant. Funds awarded under the Supplemental Education Grant are not to be taken into account when satisfying the priority to be given to education and health when awarding Sector Grants under paragraphs (a)(1) above and (b) below.

(b) The health Sector Grant shall support and improve the delivery of preventive, curative and environmental care, and develop the human and material resources necessary for the Republic of the Marshall Islands to perform these services. Priority should be given to establishing sustainable funding mechanisms for operating a community-based system with emphasis on prevention, primary care, mental health, substance abuse prevention, and the operation of hospitals to provide secondary care at appropriate levels and reduce reliance on medical referrals abroad.

(c) The Sector Grant for private sector development shall support the efforts of the Government of the Republic of the Marshall Islands to attract new foreign investment and increase indigenous business activity by vitalizing the commercial environment, ensuring fair and equitable application of the law, promoting adherence to Core Labor Standards, maintaining progress toward the privatization of state-owned and partially state-owned enterprises, and engaging in other reforms. Priorities should be given to advancing the private development of fisheries, tourism and agriculture; employing new telecommunications technologies; and analyzing and developing new systems, laws, regulations and policies to foster private sector development, to facilitate investment by potential private investors, and to develop business and entrepreneurial skills.

(d) The Sector Grant for capacity building shall support the efforts of the Republic of the Marshall Islands to build effective, accountable, and transparent

national and local government and other public sector institutions and systems. Priority should be given to improving economic planning, financial management, auditing, law enforcement, immigration controls, the judiciary, and the compilation and analysis of appropriate statistical indicators with the goal of ensuring that essential functions can be carried out and that essential positions are filled with qualified personnel.

(e) The environment Sector Grant shall increase environmental protection; establish and manage conservation (sustainable use) areas; engage in environmental infrastructure planning, design construction, and operation; and involve the citizens of the Republic of the Marshall Islands in the process of conserving their country's natural resources.

(f) In accordance with section 211(d) of the Compact, as amended, unless otherwise agreed, not less than 30 percent or more than 50 percent of United States annual Grant assistance shall be made available for public infrastructure assistance. With respect to the public infrastructure Sector Grant, the highest priority shall be given to primary and secondary education capital projects and projects that directly affect health and safety, including water and wastewater projects, solid waste disposal projects, and health care facilities. Second priority shall be given to economic development-related projects, including airport and seaport improvements, roads, sea walls, and electrical power expansion that cannot be funded through the rate structure.

(g) For each sector mentioned in this Article, annual financial assistance to support the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll as specified in section 211(b)(1) of Title Two of the Compact, as amended, shall be included in the medium-term strategic budget and investment framework referenced in section 211(e) of the Compact, as amended, submitted by the Government of the Republic of the Marshall Islands, and distributed among the Grants annually awarded to and managed by that Government. Such assistance shall cover the period as set forth in the MUORA.

(h) In conjunction with section 321(a) of the Compact, as amended, the Government of the United States shall provide to the Government of the Republic of the Marshall Islands annual Grants of $1.9 million adjusted for inflation under section 218 of the Compact, as amended, in accordance with section 211(b)(2) thereof which shall be included in the medium-term budget and investment framework referenced in section 211(e) of the Compact, as amended, to address the special needs of the community at Ebeye, Kwajalein Atoll and other Marshallese communities within the Kwajalein Atoll with the emphasis on the Kwajalein landowners most impacted by the United States presence on Kwajalein Atoll. This assistance shall be used for purposes of affordable housing, educational and general health improvements, and other general living condition improvements for that community.

2. In recognition of the special development needs of the Republic of the Marshall Islands, the Government of the United States shall make available a Humanitarian Assistance – Republic of the Marshall Islands ("HARMI") Program upon request. Emphasis shall be on health, education, and infrastructure projects, including transportation, and such other projects as mutually agreed. The specific terms and conditions for requesting HARMI assistance and for deducting costs from a Sector Grant(s) awarded to the Government of the Republic of the Marshall Islands, are set forth in a separate agreement which shall enter into force simultaneously with the Compact, as amended.

3. The Government of the United States shall make annual contributions on or about the beginning of the Fiscal Year, into a trust fund established in accordance with sections 216 and 217 of Title Two of the Compact, as amended. Specific terms regarding fund investment, management, and use of proceeds are set forth in a separate agreement which shall enter into force simultaneously with the Compact, as amended.

4. In addition to amounts provided under Section 211(a)(4) of Title Two of the Compact, as amended, the Government of the United States shall provide funding adjusted for inflation in accordance with section 218 of the Compact, as amended, and section 104(j) of the Compact of Free Association Amendments Act of 2003, for each fiscal year from 2004 through 2023 for the training of judges and officials of the judiciary of the Republic of the Marshall Islands, in cooperation with the Pacific Islands Committee of the Ninth Circuit Judicial Council. The Implementing Agency shall provide an annual grant for this purpose based on a scope of work, including specific performance indicators, as the Implementing Agency may agree with the Government of the Republic of the Marshall Islands and the Pacific Islands Committee of the Ninth Circuit Judicial Council. The annual grant shall be subject to Article VI of this Agreement or to other grant regulations appropriate to the grantee.

5. Except as otherwise provided in the Compact, as amended, and in this Agreement, the amounts stated in Title Two of the Compact, as amended, shall be adjusted for each Fiscal Year by the percent that equals two-thirds of the percent change in the United States Gross Domestic Product Implicit Price Deflator, or five percent, whichever is less in the applicable Fiscal Year, using the beginning of Fiscal Year 2004 as a base. Notwithstanding section 218 of the Compact, as amended, as of Fiscal Year 2015, if the United States Gross Domestic Product Implicit Price Deflator average for Fiscal Years 2009 through 2013 is greater than the United States Gross Domestic Product Implicit Price Deflator average for Fiscal Years 2004 through 2008, then the amounts stated in Title Two of the Compact, as amended, and amounts awarded under the Supplemental Education Grant shall be adjusted for each Fiscal Year by the percent that equals the full percent change in the United States Gross Domestic Product Implicit Price Deflator, using the beginning of Fiscal Year 2014 as a base. The inflation adjustment shall be done prior to depositing the amounts set forth in section 217 of Title Two of the Compact, as amended, into the trust fund. After year one, the annual change will use an additive percentage change formula. The percent change shall be calculated to two decimal points (xx.xx%) by subtracting the previous calendar year third quarter GDP index from the GDP index of the current calendar year's third quarter, dividing the result by the base

year's index (normalized base year equals 100). Funds arising from inflation adjustments shall be available in accordance with the Compact, as amended.

6. Funds provided under section 211(a) of the Compact, as amended, shall be considered to be local revenues of the Government of the Republic of the Marshall Islands when used as the local share required to obtain federal programs and services that enhance its ability to meet stated performance goals.

7. The Government of the Republic of the Marshall Islands shall not issue negotiable or transferable obligations evidencing indebtedness or encumbrance of funds received under Section 211 of Title Two. On a case-by-case basis, as part of the grant formulation process, the Committee may consider requests by the Republic of the Marshall Islands for commitment of Section 211 funds beyond the current Fiscal Year.

Article III
Joint Economic Management

1. A Joint Economic Management and Financial Accountability Committee (the "Committee") shall be established to strengthen management and accountability with regard to assistance provided under the Compact, as amended, and to promote the effective use of funding provided thereunder.

2. The Committee shall be composed of five members, three of which shall be from the Government of the United States and two from the Government of the Republic of the Marshall Islands.

3. The chairperson of the Committee shall be from the Government of the United States. The Government of the United States shall consult with the Government of the Republic of the Marshall Islands when making the appointment, and the Government of the Republic of the Marshall Islands shall have an opportunity to present its views which shall be considered.

4. Appointments by the Government of the United States and the Government of the Republic of the Marshall Islands shall be made not later than 90 days after the entry into force of this Agreement. The chairperson and members of the Committee shall serve a term of two years and may be reappointed.

5. The duties of the Committee shall be to:

(a) Review the medium-term budget and investment framework of the Government of the Republic of the Marshall Islands, and evaluate the progress made by the Government of the Republic of the Marshall Islands to foster economic advancement and budgetary self-reliance in relation to its written goals and performance measures;

(b) Consult with providers of United States Federal Grant programs and services and other bilateral and multilateral partners to coordinate the use of development assistance from all sources-as it relates to the allocation of financial assistance under the Compact, as amended.

(c) Review Audits called for in the Compact, as amended, or this Agreement and actions taken or being taken to reconcile problems and qualified findings;

(d) Review performance outcomes and other reported data in relation to the previous year's Grant funding levels, terms, and conditions;

(e) Review and approve Grant allocations, performance objectives, and, where appropriate, assessment tools for the upcoming year;

(f) Review and approve any change proposed by the Government of the Republic of the Marshall Islands to the sectors or other areas to receive economic assistance set forth in Title Two of the Compact, as amended.

(g) Evaluate progress, management problems and any shifts in priorities in each sector or other area, and identify ways to increase the effectiveness of United States assistance;

(h) Review quarterly trust fund investment reports;

(i) Comment on the comprehensive report prepared by the Government of the Republic of the Marshall Islands as required by section 215 of Title Two of the Compact, as amended, before it is submitted to the President of the United States; and

(j) Attach special conditions to any or all annual Grant awards to improve program performance and fiscal accountability, and ensure progress toward macroeconomic goals.

6. The Committee shall meet at least once annually but no later than 30 days before the beginning of each Fiscal Year.

7. Sector or other Grant allocation decisions of the Committee shall be binding. In the event that the Government of the Republic of the Marshall Islands overrides all or part of these decisions, the Government of the United States may withhold Grant payments until the issues in dispute are resolved.

8. Each government shall provide the necessary staff support to its representatives on the Committee, to enable the parties to monitor closely the use of assistance under the Compact, as amended. No United States funding shall be used to support the travel or honoraria of Committee members from the Government of the Republic of the Marshall Islands, or any special salaries paid for serving as members of the Committee.

9. In making decisions concerning the use of funds in the Supplemental Education Grant, the Committee shall take appropriate account of plans for such use initiated by (i) the Government of the Republic of the Marshall Islands; (ii) the agreement between the United States Secretaries of Education, Health and Human Services, Labor, and the Interior; and, (iii) Article II, Paragraph 1(a)(2) of the Agreement.

Article IV
Grants Administration

1. Grant funds, may not be used for any purpose other than that for which they are awarded. Unobligated funds shall carry over to the following Fiscal Year for reallocation to the applicable Grant, unless otherwise provided in this Agreement or the Compact, as amended.

2. All terms and conditions imposed on the Government of the Republic of the Marshall Islands shall apply to Sub-Grantees.

3. The President of the Republic of the Marshall Islands, acting on behalf of the national and local governments of the Republic of the Marshall Islands, shall be responsible for all certifications to the Government of the United States pursuant to this Agreement.

4. Grant Conditions:

(a) General terms and conditions of Grants shall include conformance to the plans, strategies, budgets, project specifications, architectural and engineering specifications, performance standards, and other criteria developed by the Government of the Republic of the Marshall Islands and concurred with by the Committee.

(b) After consultation with the Government of the Republic of the Marshall Islands, the Government of the United States may recommend that the Committee attach certain terms and conditions to an annual allocation to assist the Government of the Republic of the Marshall Islands to achieve the goals of the Grant.

(c) Other special conditions or restrictions may be required by the Government of the United States during the course of the Grant year if it determines that the Government of the Republic of the Marshall Islands or a Sub-Grantee has a history of unsatisfactory performance, is not financially stable, has not conformed to terms and conditions of previous awards, or is otherwise not responsible. Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase of the Grant until receipt of evidence of acceptable performance within a given period;

(3) Requiring additional, more frequent and/or detailed financial reports;

(4) Providing for additional project monitoring;

(5) Requiring the acquisition of technical or management assistance; and

(6) Requiring additional Prior Approvals.

(d) If the Government of the United States imposes such conditions as stated above in clause (c), it shall immediately notify the Government of the Republic of the Marshall Islands in writing of its intent. This notification shall include a description of the:

(1) Nature of the special conditions or restrictions;

(2) Reasons for imposing them;

(3) Corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and,

(4) Method of requesting reconsideration of the conditions and restrictions imposed.

(e) If the explanation from the Government of the United States or any subsequent discussion between the Government of the United States and the Government of the Republic of the Marshall Islands is disputed, the Government of the Republic of the Marshall Islands may submit an Appeal in writing to the Implementing Agency of the Government of the United States. This Appeal must be initiated within 30 days of the receipt of a Grant award or a notification of intent to impose special conditions. In such case, the Appeal for reconsideration will be handled in accordance with established administrative procedures of the Implementing Agency.

5. Payment Procedures:

(a) Establishment of Account. The Government of the Republic of the Marshall Islands shall establish an account with a bank or commercial financial institution organized in accordance with the laws of the United States or a State of the United States; or, subject to the approval of the Government of the United States, a bank or commercial financial institution in accordance with the laws of the Republic of the Marshall Islands, in either case for the purpose of receiving payments of Grant funds pursuant to the Compact, as amended, and this Agreement. The Government of the Republic of the Marshall Islands shall provide the Government of the United States with wiring instructions with respect to such account.

(b) Advance Payment. In general, payments for Operational Grants under the Compact, as amended, shall be made monthly, as set forth below, in advance. The amounts of the payments will match the percentage of the Fiscal Year to be completed during the advance period, or may be based on an outlay analysis performed by the Government of the Republic of the Marshall Islands and concurred with by the Government of the United States.

(1) The first payment of each Fiscal Year for Operational Grants will be sufficient to fund financial requirements for the first two months

of each Fiscal Year. All other payments will be made on or about the first Business Day of each month (except that no payment shall be made on the second month of each Fiscal Year) to fund financial requirements of that month.

(2) Advances for Accrued Expenditures. All infrastructure projects and projects that are not funded by Operational Grants will be paid on the basis of Accrued Expenditures, provided the Government of the Republic of the Marshall Islands maintains procedures to minimize the time elapsing between transfer of funds and their disbursement.

(c) Breach of Terms and Conditions:

(1) Withholding of Payments. The Government of the United States may Withhold payments, including reimbursements, with respect to any Grant if the Government of the Republic of the Marshall Islands is in breach of the terms and conditions of Title Two of the Compact, as amended, or this Agreement with respect to such Grant, fails to comply with any award condition with respect to such Grant, or is indebted to the Government of the United States. The amount of the Withholding shall be proportional to the breach of the term or condition. If the Government of the Republic of the Marshall Islands disputes the Withholding of payments with respect to a Grant, it may submit an Appeal in writing to the Implementing Agency of the Government of the United States. That Appeal must be initiated within 30 days of the receipt of notice of Withholding of payment. In such case, the Appeal for reconsideration must be handled in accordance with established administrative procedures of the Implementing Agency. Cash withheld for failure to comply with Grant terms shall be released upon subsequent compliance, provided that such Grant has not been revoked pursuant to any applicable Appeal or dispute resolution proceeding.

(2) Suspension. Notwithstanding any other provision of this Agreement, the Government of the United States may suspend payment with respect to any or all sectors and areas in the event that the Government of the United States reasonably determines that the Government of the Republic of the Marshall Islands has engaged in a pattern of gross negligence, willful misconduct or material breach of terms and conditions with respect to the use of financial assistance provided under the Compact, as amended, provided that such determination is made on a sector by sector or area basis. If the Government of the Republic of the Marshall Islands disputes the Suspension of Grant assistance under this sub-paragraph, it may seek to resolve the matter through the conference and dispute resolution procedures set forth in Article II of Title

Four of the Compact, as amended. The Suspension shall stand unless otherwise determined through the conference and dispute resolution process of Article II of Title Four of the Compact, as amended.

Article V
Pre-Award Requirements

1. Planning As a Requirement of Economic Assistance:

(a) No later than 90 days after the entry into force of Title Two of the Compact, as amended, and thereafter at intervals no greater than three years from that date, the Government of the Republic of the Marshall Islands shall submit to the Government of the United States a "Medium-Term Budget and Investment Framework" pursuant to section 211(f) of Title Two of the Compact, as amended, (the "MTBIF"). The MTBIF shall be strategic in nature, identify the multi-year priorities, budget and implementation plan of the Government of the Republic of the Marshall Islands to promote economic advancement and budgetary self-reliance, and contain the goals for the sectors described in section 211(a) of the Compact, as amended, for the assistance described in section 211(b) thereof, and for the Supplemental Education Grant. Each of the sectors or areas so named, or other sectors as agreed by the Committee, shall be accorded specific treatment in the framework. Such sector or other strategies and goals shall be continuously reviewed and updated though the annual budget process. Those portions of the MTBIF that contemplate use of United States Grant funds require the concurrence of the Committee.

(b) United States Grant assistance shall be made available in accordance with annually updated MTBIF implementation steps developed by the Government of the Republic of the Marshall Islands in conjunction with its budget process. The Government of the Republic of the Marshall Islands shall submit its proposal for the division of annual economic assistance among the sectors or other areas described in Article II of this Agreement and, for each sector or area, expenditures and related performance goals and measures for the next Fiscal Year to the Government of the United States for review no later than 90 days prior to the beginning of the Fiscal Year. The implementation plan shall also address which activities are to be funded by the Supplemental Education Grant. Annual Grant budgets by sector or other area should provide:

(1) Actual expenditures in the most recently completed Fiscal Year;

(2) Appropriated Grant amounts and estimated expenditures in the current Fiscal Year;

(3) Estimated Grant requirements for the upcoming Fiscal Year, including a detailed breakdown of personnel expenditures and compensable staff years, travel and other objects;

(4) Grant objectives, specific performance indicators and assessment methods for each sector or area, including, in the case of education, programs and activities supported by the Supplemental Education Grant.

(5) Funds provided to each sector or other area in the current and upcoming Fiscal Years by United States Federal programs, international donors and local or national governments; and

(6) Any available planning estimates for ensuing Fiscal Years.

(c) Changes to Grant priorities or performance goals of the Government of the Republic of the Marshall Islands during the course of the Grant year shall have the concurrence of the Government of the United States.

(d) In accordance with section 215 of Title Two of the Compact, as amended, the Government of the Republic of the Marshall Islands shall prepare and submit an Annual Report in February of each year to the President of the United States on the use of Grant assistance and other assistance provided by the Government of the United States during the previous Fiscal Year, and on the progress of the Republic of the Marshall Islands in meeting mutually agreed program and economic goals.

(e) The Government of the Republic of the Marshall Islands shall develop and submit an infrastructure development and maintenance plan ("IDMP") to the Government of the United States for review. The IDMP may be included as part of the MTBIF. Projects may be phased over two or more years. The Government of the Republic of the Marshall Islands shall maintain and update a list of integrated priorities for new and reconstructed capital infrastructure and cost requirements in conjunction with its annual budget process. This project list and any revision thereto shall be submitted to the Government of the United States. Insofar as Grant funds are involved, the IDMP shall be subject to the concurrence of the Committee.

2. Annual Budget Consultation:

(a) The Government of the United States shall evaluate the proposed Grant budgets of the Government of the Republic of the Marshall Islands to ascertain consistency with the funding requirements of the Compact, as amended, and its related agreements, the appropriateness of performance objectives and indicators, and the adequacy of expenditures in achieving stated purposes. Upon the completion of the review, the Government of the United States and the Government of the Republic of the Marshall Islands shall confer to discuss any need for special terms or conditions and to make adjustments to the annual Grant budgets or implementation plans as may be appropriate prior to the awarding of Grants. This consultation shall occur before the meeting of the Committee but not later than 30 days after the receipt of the implementation plans and proposed budgets by the Government of the United States.

(b) The Committee shall receive and review the progress reports and annual proposed budgets and implementation steps and strategies of the Government of the Republic of the Marshall Islands, and approve Grant allocations no later than 30 days before the beginning of the Fiscal Year. Consistent with the provisions set forth in Article III of this Agreement, the Committee may establish special Grant

terms and conditions or other actions it deems appropriate to help the Government of the Republic of the Marshall Islands meet the stated goals and objectives of the Compact, as amended.

3. Notification of Grant Acceptance:

(a) The Government of the United States shall forward official Grant award notices to the Government of the Republic of the Marshall Islands no later than October 1 of each year.

(b) Return of signed Grant awards by the President of the Republic of the Marshall Islands shall signify acceptance of the funding amounts and any Grant terms and conditions that may be attached to the sector or other Grants.

Article VI
Post-Award Requirements

1. Financial Administration:

(a) Standards for Financial Management Systems:

(1) The Government of the Republic of the Marshall Islands shall expend and account for funds provided pursuant to the Compact, as amended, in accordance with its laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the Government of the Republic of the Marshall Islands, as well as its Sub-Grantees and cost-type contractors, shall be sufficient to:

(i) Permit preparation of reports required by this Agreement and the Compact, as amended, and,

(ii) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have been used in compliance with the provisions of the Compact, as amended, and applicable agreements.

(2) The financial management systems used by the Government of the Republic of the Marshall Islands shall meet the following standards:

(i) Financial Reporting. Accurate, current, and complete disclosure of the financial results of United States funded activities shall be in accordance with the reporting requirements of the Grant or Sub-Grant.

(ii) Accounting Records. Accounting records shall adequately identify the source and application of funds provided for all Grant activities. These records must contain information pertaining to awards and authorizations, Obligations,

unobligated balances, assets, liabilities, outlays or expenditures, and income.

(iii) Internal Control. The system shall maintain effective controls and accountability for all Grant and Sub-Grant cash, Real Property and personal property, and other assets to safeguard and ensure uses are solely for authorized purposes.

(iv) Budget Control. Actual expenditures or outlays must be compared with budgeted amounts for each Grant or Sub-Grant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the Grant terms and conditions. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(v) Allowable Cost. Applicable cost principles and Grant terms shall be followed in determining the reasonableness and allowability of costs. An Indirect Cost rate may not be charged against funds provided pursuant to the Compact, as amended.

(vi) Source Documentation. Accounting records shall be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, Contract and Sub-Grant award documents, and other financial data.

(vii) Cash Management. Compact payments shall be made in accordance with Article IV of this Agreement. To the extent that the Government of the Republic of the Marshall Islands awards Sub-Grants to local governments or other entities, it shall establish reasonable procedures to ensure the timely receipt of reports on cash balances and cash disbursements to enable the preparation of complete and accurate cash transactions reports.

(viii) The Government of the United States may review the adequacy of the financial management system of any recipient of financial assistance provided pursuant to the Compact, as amended, at any time.

(b) Financial Reports:

(1) Quarterly Financial Reports. The Government of the Republic of the Marshall Islands shall provide the following financial reports each fiscal quarter to the Government of the United States. These

reports will be used to monitor the general budget and fiscal performance of the Government of Republic of the Marshall Islands and to monitor disbursement or outlay information for each sector or other Grant.

(i) The Government of the Republic of the Marshall Islands shall submit the following reports 30 days after the end of each fiscal quarter: (1) a statement of revenues and expenditures for governmental fund types, and (2) a comparison of budget and actual expenditures by function for governmental fund types.

(ii) The quarterly report for all Operational Grants shall contain a budget execution report for each function and include major offices, cost centers and budget activities.

(iii) For all Grants provided pursuant to the Compact, as amended, the Government of the Republic of the Marshall Islands shall submit a quarterly financial status report on form SF-269 or any successor thereto, as issued by the Government of the United States from time to time ("Standard Form SF-269") and a quarterly federal cash transactions report on form SF-272 or any successor thereto, as issued by the Government of the United States from time to time ("Standard Form SF-272"). The Government of the Republic of the Marshall Islands may use the Federal forms available for this purpose or, as mutually agreed, provide the information in an alternative format.

(2) Annual Financial Report(s). The Government of the Republic of the Marshall Islands shall submit a final cash transactions report for each sector or other Grant 90 days after the end of the funding period. For Operational Grants, the purpose of this report is to establish the amount of unobligated Grant funding that will carry over to subsequent Fiscal Years.

(3) The Government of the United States may extend the due date of any financial report upon receiving a justified request from the Government of the Republic of the Marshall Islands.

(4) Accounting Basis. The Government of the Republic of the Marshall Islands shall report on a cash or accrual basis consistent with its own policies. Provided the information is not changed in substance, the format of the report may be adapted when reporting is accomplished with the aid of automated data processing Equipment.

(c) Period of Availability of Grant Funds:

(1) Funding for each Grant, other than Grants for infrastructure and other Grants that are not Operational Grants, shall generally be available for one year. Funding for infrastructure and projects that are not funded by Operational Grants shall be available for obligation for the time period described in the terms and conditions of the Grants.

(2) The Government of the Republic of the Marshall Islands shall liquidate all Obligations incurred under a Grant not later than 90 days after the end of the funding period or as otherwise mutually agreed, to coincide with the submission of the final annual cash transactions report.

(d) Changes, Property, and Sub-Awards:

(1) Budget Changes. Re-allocation of funds from one sector to another sector shall not be permitted during the course of the Grant year. Re-allocation of Supplemental Education Grant funds for activities outside of those approved to be supported by that Grant is prohibited. Except as set forth below, the Government of the Republic of the Marshall Islands may reprogram up to 15 percent of the total budget or $500,000, whichever is less, within either an approved Sector Grant or the Supplemental Education Grant to meet unanticipated requirements and make limited program changes to approved projects. However, unless waived by the Government of the United States, the following changes in budgets and projects during the course of the Grant year shall require prior written approval of the United States:

(i) Budget Changes in Non-Construction Projects. Except as stated in the Grant document, the Government of the Republic of the Marshall Islands shall obtain Prior Approval whenever any of the following changes is anticipated: (1) any revision that would result in the need for additional funding over and above the original award, and (2) cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities that exceed or are expected to exceed the threshold described above in sub-clause (1) of clause (d).

(ii) Construction Projects. The Government of Republic of the Marshall Islands shall obtain prior written approval for any budget revision that would result in the need for additional funds.

(2) Programmatic Changes. The Government of the Republic of the Marshall Islands shall obtain Prior Approval whenever any of the following actions is anticipated:

(i) Any revision of the scope or performance objectives of the Grant or infrastructure project;

(ii) The need to extend the period of funding availability;

(iii) Changes in key persons specifically named in a Grant award; and,

(iv) The contracting out or otherwise obtaining the services of a third party to perform non-construction related activities that are central to the purposes of the Grant. This approval is in addition to the requirements described below in clause (j) but does not apply to the procurement of Equipment, Supplies, and general support services.

(e) Real Property:

(1) Title or Long-Term Use Rights. Subject to the Obligations and conditions set forth in this section, title or long-term use rights to Real Property acquired with funds provided pursuant to the Compact, as amended, shall vest upon acquisition in the Government of the Republic of the Marshall Islands.

(2) Use. Except as mutually agreed by the Government of the Republic of the Marshall Islands and the Government of the United States, Real Property acquired with funds provided pursuant to the Compact, as amended, shall be used as long as needed for the purposes originally authorized, and the Government of the Republic of the Marshall Islands shall not dispose of or encumber Real Property titles or other interests.

(3) Disposition. When Real Property is no longer needed for the originally authorized purpose, the Government of the Republic of the Marshall Islands and the Government of the United States shall consult on the choice of one of the following disposition alternatives:

(i) Retention of Title or Long-Term Use Rights. If the Real Property will continue to be used for a public purpose, the Government of the Republic of the Marshall Islands shall retain title or long-term use rights.

(ii) Sale of Property. The Government of the Republic of the Marshall Islands may sell the property, if owned, and reimburse the Compact accounts held by the Government of the United States. The amount due shall be calculated by

applying the percentage of the original price paid by United States funding to the proceeds of the sale after deducting any actual and reasonable expenses. Any funds reimbursed shall be considered unobligated funding under the Compact, as amended, to be reallocated to sector or other Grants.

(iii) Transfer of Title. The Government of the Republic of the Marshall Islands may transfer title to a third party approved by the Government of the United States.

(f) Equipment:

(1) Title. Subject to the Obligations and conditions set forth in this section, title to Equipment acquired with funds provided pursuant to the Compact, as amended, will vest upon acquisition in the Government of the Republic of the Marshall Islands.

(2) Consistent with paragraphs (3) through (5) of this clause (f), the Government of the Republic of the Marshall Islands shall use, manage and dispose of Equipment acquired with funds provided pursuant to the Compact, as amended, in accordance with its laws and procedures.

(3) Use:

(i) Equipment shall be used in the program or project for which it was acquired as long as needed. When no longer needed for the original purpose, the Equipment may be used in other activities currently or previously supported by an agency of the Government of the United States.

(ii) Equipment acquired with Grant funds provided pursuant to the Compact, as amended, may be used by other projects or programs currently or previously supported by the Government of the United States, provided such use does not interfere with the work on activities funded pursuant to the Compact, as amended, for which such Equipment was originally acquired.

(iii) Unless specifically permitted by Grant terms and conditions, Equipment acquired with funds provided pursuant to the Compact, as amended, to provide services for a fee may not be used to compete unfairly with private companies that provide equivalent services.

(4) Management Requirements. Procedures for managing Equipment, whether acquired in whole or in part with funds provided pursuant to the Compact, as amended, shall meet the following minimum requirements:

(i) Property records shall be maintained which include: (1) a description of the property, (2) a serial number or other identification number, (3) the source of property, (4) who holds title, (5) the acquisition date and cost of the property, (6) the percentage of United States funding used in the purchase, (7) the location, use and condition of the property, and (8) any ultimate disposition data including the date of disposal and sale price.

(ii) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(iii) A control system shall be developed to ensure adequate safeguards against property loss, damage or theft. Any loss, damage, or theft shall be investigated.

(iv) Adequate maintenance procedures shall be developed to keep the property in good condition.

(v) If the property is sold, proper sales procedures shall be established to ensure the highest possible return.

(5) Disposition. When Equipment acquired with funds provided pursuant to the Compact, as amended, is no longer needed for the original project or program, or for other activities supported by other agencies of the Government of the United States, it shall be disposed as follows:

(i) Items of Equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the Government of the United States.

(ii) Items of Equipment with a current per unit fair market value in excess of $5,000 may be retained or sold. The Government of the Republic of the Marshall Islands may sell the property at fair market value and reimburse the Compact accounts held by the Government of the United States. Any such funds shall be considered unobligated funding for reallocation to sector or other Grants.

(g) Supplies. Title to Supplies acquired with funds provided pursuant to the Compact, as amended, will vest, upon acquisition, in the Government of the Republic of the Marshall Islands.

(h) Sub-Awards to Debarred and Suspended Parties. The Government of the Republic of the Marshall Islands shall not award funds received pursuant to the Compact, as amended, to any party which is debarred, suspended or otherwise excluded from and ineligible for participation in United States assistance

programs under Executive Order 12549, "Debarment and Suspension," issued by the President of the United States on February 18, 1986.

(i) Program Income. For the purposes of this Agreement, "Program Income" shall include: (1) earnings from the use or rental of Real Property or personal property acquired with funds provided pursuant to the Compact, as amended; (2) the sale of commodities or items fabricated under a sector or other Grant; and (3) fees assessed in the areas of public utilities, health services and any other activities provided by government or government-owned enterprises that are supported by sector or other Grants.

(1) The Government of the Republic of the Marshall Islands shall seek opportunities to earn Program Income to defray government program costs and shall establish fees for services in the areas of public utilities, health services, and any other government-owned or operated enterprises to comply with the terms and conditions of certain sector or other Grants.

(2) Unless otherwise authorized by the Grant, Program Income shall remain with the programs in which they are earned, to offset Operational Costs and capital costs not covered by funds provided pursuant to the Compact, as amended.

(j) Procurement:

(1) The Government of the Republic of the Marshall Islands may use its own procedures for procurement, whether done by government or its Sub-Grantees, provided that they meet the standards identified in this section.

(2) The Government of the Republic of the Marshall Islands shall maintain a Contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their Contracts or purchase orders.

(3) A written code of conduct shall be maintained by the Government of the Republic of the Marshall Islands to govern the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent of the Government of the Republic of the Marshall Islands shall participate in the selection, award, or administration of a Contract supported by funds provided pursuant to the Compact, as amended, if a conflict of interest, real or apparent, is involved.

(i) Officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

(ii) The Government of the Republic of the Marshall Islands may set minimum rules where the financial interest is not substantial or the gift is unsolicited and of nominal intrinsic value.

(iii) To the extent permitted by law or regulations of the Government of the Republic of the Marshall Islands, the standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations.

(4) Awards shall be made only to contractors who possess the ability to perform responsibly and successfully under the terms and conditions of a proposed procurement. Selection must consider contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(5) Records shall be maintained with sufficient detail to document the history of a procurement, including but not limited to the rationale for and method of procurement, the selection of Contract type, contractor selection or rejection, and the basis for the Contract price.

(6) The Government of the Republic of the Marshall Islands shall use time and material type Contracts only after determining that no other Contract is suitable and if the Contract includes a ceiling price that the contractor exceeds at its own risk.

(7) The Government of the Republic of the Marshall Islands shall be solely responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These issues include but are not limited to source evaluation, protests, disputes, and claims.

(8) The Government of the Republic of the Marshall Islands shall have protest procedures to handle and resolve procurement disputes.

(9) Competition:

(i) All procurement transactions shall be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) requiring unnecessary experience and excessive bonding; (3) noncompetitive pricing practices between firms or between affiliated companies; (4) making noncompetitive awards to consultants on retainer; (5) organizational conflicts of interest; (6) specifying a "brand

name" instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and (7) any arbitrary action in the procurement process.

(ii) Geographic preferences shall be allowed only if its application leaves an appropriate number of qualified firms to compete in the contract, and if there is no discrimination against race, religion or national origin.

(iii) Written selection procedures shall govern procurement. These procedures shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurement, contain features that unduly restrict competition.

(iv) The Government of the Republic of the Marshall Islands shall ensure that all pre-qualified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Potential bidders shall not be precluded from qualifying during the solicitation period.

(10) Methods of Procurement:

(i) Procurement By Small Purchase Procedures. Small purchase procedures are those relatively simple and informal methods for securing services, Supplies, or other property that do not cost more than $100,000. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(ii) Procurement By Sealed Bids. Sealed bids are those bids that are publicly solicited for which a firm-fixed-price Contract is awarded to the lowest bidder who meets all the terms and conditions of the invitation. The sealed bid method is the preferred method for procuring construction, if the conditions of sub-clause (10)(iii) apply.

(iii) The following conditions shall apply to sealed bidding: (1) a complete, adequate, and realistic specification or purchase description must be available; (2) two or more responsible bidders must be willing and able to compete effectively and for the business; (3) the procurement must lend itself to a firm fixed price contract; and (4) the selection of the successful bidder can be made principally on the basis of price.

(iv) The following requirements shall apply if sealed bids are used: (1) the invitation for bids shall be publicly advertised, solicited from an adequate number of known suppliers, and provide bidders with sufficient time to respond; (2) the invitation shall include any specifications and pertinent attachments, and define the items or services to allow the bidder to respond properly; (3) all bids shall be publicly opened at the time and place prescribed in the invitation for bids; and (4) a firm fixed-price Contract award shall be made in writing to the lowest responsive and responsible bidder. Any or all bids may be rejected if there is a sound documented reason.

(v) Procurement By Competitive Proposals. Competitive proposals are normally conducted when more than one source submits an offer for either a fixed-price or cost-reimbursement type contract, and when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements shall apply: (1) requests for proposals shall be publicized and identify all evaluation factors and their relative importance; (2) proposals shall be solicited from an adequate number of qualified sources; (3) the Government of the Republic of the Marshall Islands shall have a method for conducting technical evaluations of the proposals and for selecting awardees; and (4) awards shall be made to the firm whose proposal is most advantageous to the program. Competitive proposals may also be used when price is not a factor but only to procure architectural and engineering services. It cannot be used to purchase other types of services provided by architectural and engineering firms that are a potential source to perform the proposed effort.

(vi) Procurement By Noncompetitive Proposals. Noncompetitive proposals are procurement through the solicitation of only one source or when competition is determined inadequate after soliciting a number of sources. This method shall be used only when the award of a Contract is infeasible under either procedures for small purchase, sealed bids or competitive proposals, and when one of the following circumstances applies: (1) the item is available only from a single source; (2) public exigency or emergency will not permit a delay resulting from competitive solicitation; or (3) competition is determined to be inadequate after the solicitation of a number of sources. Cost analysis shall be required to verify the proposed cost

data, the projections of the data, and the evaluation of the specific elements of costs and profits.

(11) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(12) United States Review:

(i) The Government of Republic of the Marshall Islands shall make available, upon request of the Government of the United States, technical specifications on proposed procurements.

(ii) The Government of Republic of the Marshall Islands shall make available, upon request of the Government of the United States, pre-award procurement documents, including but not limited to requests for proposals or invitations for bids and independent cost estimates, when: (1) procurement procedures fail to comply with the standards set forth in this section; (2) the procurement is expected to exceed $100,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; (3) the proposed award is more than $100,000 and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or (4) a proposed Contract modification changes the scope of a Contract or increases the Contract amount by more than $100,000.

(13) Bonding Requirements. For construction or facility improvement Contracts or sub-Contracts exceeding $100,000, the Government of the United States may accept the bonding policy and requirements of the Grantee or Sub-Grantee provided the United States determines that its interests are adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(i) Bid Guarantee. Each bidder shall guarantee an equivalent of five percent of the bid price pursuant to a bid guarantee that complies with the requirements of this clause (i). The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(ii) Performance Bond. The contractor shall execute a Performance Bond for one hundred percent of the Contract price. A Performance Bond is one executed in connection

with a Contract to secure fulfillment of all the contractor's obligations under such contract.

(iii) Payment Bond. The contractor shall execute a Payment Bond for one hundred percent of the Contract price. A Payment Bond is one executed in connection with a Contract to assure the lawful payment of all persons supplying labor and material in the execution of the contract.

(14) Contract Provisions. All Contracts paid with funds provided pursuant to the Compact, as amended, shall contain the following provisions:

(i) For Contracts in excess of $100,000: administrative, contractual, or legal remedies in instances where contractors violate or breach Contract terms, and the provision of such sanctions and penalties as appropriate;

(ii) For Contracts in excess of $100,000: Termination for cause and for convenience by the Grantee or Sub-Grantee including the manner by which it will be effected and the basis for settlement;

(iii) Compliance with the local statutes regarding kickbacks and corrupt practices;

(iv) Access by the Government of the Republic of the Marshall Islands and its Sub-Grantees, the Government of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific Contract for the purpose of making audit, examination, excerpts, and transcriptions;

(v) Retention of all required records for three years after Grantees or Sub-Grantees make final payments and all other pending matters are closed; and

(vi) Compliance with all applicable standards, orders, or requirements issued under local environmental laws.

(k) Sub-Grants:

(1) The Government of the Republic of the Marshall Islands will follow its laws and procedures when awarding and administering Sub-Grants. The Governments shall ensure that:

(i) Every Sub-Grant includes any clauses required by the Compact, as amended, Grant awards and this Agreement;

(ii) Sub-Grantees are aware of requirements imposed upon them by the Compact, as amended, Grant awards and this Agreement; and

(iii) The Sub-Grantee can meet the financial management standards of this Agreement.

2. Program Monitoring, Performance Reports and Records Retention:

(a) Monitoring and reporting Grant program performance by the Government of the Republic of the Marshall Islands:

(1) The Government of the Republic of the Marshall Islands shall be responsible for the management and monitoring of the day-to-day operations of all Grants and their activities, to assure compliance with all applicable Grant terms and conditions. Monitoring shall cover each program, function, or activity to ensure the achievement of performance goals.

(2) The Government of the Republic of the Marshall Islands shall submit quarterly performance reports on each Grant. The reports shall be due 30 days after the reporting period.

(3) The Government of the Republic of the Marshall Islands and the Government of the United States shall agree on a uniform format for performance reports. Performance reports for each Grant shall contain a summary of the following:

(i) A comparison of actual accomplishments to the objectives and indicators established for the period;

(ii) Any positive events that accelerate performance outcomes;

(iii) Any problems or issues encountered, reasons, and impact on Grant activities and performance measures;

(iv) Additional pertinent information including, when appropriate, an analysis and explanation of cost overruns.

(4) The Government of the Republic of the Marshall Islands shall require performance reports from its Sub-Grantees.

(b) Construction Performance Reports. Unless otherwise agreed, the Government of the Republic of the Marshall Islands shall submit quarterly performance reports on each project funded pursuant to the Compact, as amended, to the Government of the United States.

(c) Significant Developments. Events may occur between the scheduled performance reporting dates that have significant impact upon a Grant supported activity. In such cases, the Government of the Republic of the Marshall Islands

shall immediately inform the Government of the United States when the following conditions arise:

(1) Problems, delays, or adverse conditions that will materially impair the ability of the Government of the Republic of the Marshall Islands to meet the terms and conditions of Grant. This disclosure must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments that enable the meeting of time schedules and objectives sooner or at less cost than anticipated, or that produce more beneficial results than anticipated.

(d) The Government of the United States may make site visits as warranted by program needs.

(e) Waivers and Extensions:

(1) The Government of the United States may waive any required performance report.

(2) The Government of the Republic of the Marshall Islands may extend the due date for any performance report from a Sub-Grantee provided its reporting obligations to the Government of the United States are met.

(f) Frequency:

(1) The Government of the United States may prescribe an alternative reporting frequency for a project or program. If no frequency is specified, the report shall be submitted annually.

(2) A final report shall be required upon the completion or termination of each infrastructure or capacity building project.

(g) Due Date:

(1) When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the end of the Grant year.

(2) Final reports shall be due 90 days after the completion or termination of each infrastructure or capacity building Grant project.

(h) Retention and Access Requirements for Records:

(1) Applicability. This clause (h) applies to all financial and programmatic records, supporting documents, statistical records, and other records of the Government of the Republic of the

Marshall Islands or its Sub-Grantees which are required to be maintained by this Agreement, program regulations or the Grant agreement, or are otherwise considered as pertinent to program regulations or the Grant agreement. Records of contractors or subcontractors are exempt from the requirements of this clause (h).

(2) Length of Retention. Except as otherwise provided, records must be retained for three years from the date the Government of the Republic of the Marshall Islands submits the final project report to the Government of the United States.

(3) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

(4) Access to Records of the Government of the Republic of the Marshall Islands and Its Sub-Grantees. The Government of the United States shall have the right of access to any pertinent books, documents, papers, or other records of the Government of the Republic of the Marshall Islands and its Sub-Grantees which are pertinent to the Grant, in order to make Audits, examinations, excerpts, and transcripts.

3. Enforcement:

(a) Remedies for Noncompliance. If the Government of the Republic of the Marshall Islands or its Sub-Grantee materially fails to comply with any term or condition relating to records retention or to the reporting on and monitoring of a Grant during the course of the Grant year, the United States may take one or more of the following actions:

(1) Temporarily withhold cash payments pending correction of the deficiency by the Government of the Republic of the Marshall Islands.

(2) Disallow the use of funds provided pursuant to the Compact, as amended, or the Supplemental Education Grant, and disallow Matching credit for all or part of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Take other remedies that may be legally available.

(b) Hearings and Appeals. In taking an enforcement action, the Government of the United States will provide the Government of the Republic of the Marshall Islands an opportunity to a hearing, Appeal, or other administrative proceeding to which it is entitled under this Agreement.

(c) Effects of Suspension and Termination. The Government of the Republic of the Marshall Islands shall not obligate funds during a Suspension or after Termination of an award unless expressly authorized by the Government of the United States. Costs which are necessary and reasonably unavoidable are allowable if:

(1) The costs result from Obligations that were properly incurred before the effective date of Suspension or Termination, are not in anticipation of it, and, in the case of a Termination, are non-cancelable.

(2) The costs otherwise would be allowed if the award were not suspended or expired normally at the end of the funding period in which the Termination takes effect.

Article VII
Terms and Conditions of Infrastructure Assistance

1. Infrastructure Grants shall be subject to all laws and regulations governing the use of Grant funds provided by the Government of the United States to the extent these apply to this Agreement. Grant funds may not be used for any purpose other than for which they are offered.

2. Draw downs for reimbursement of actual or Accrued Expenditures shall be accomplished using a format provided by the Government of the United States or as mutually agreed.

3. Prior to the draw down of funds, the Government of the Republic of the Marshall Islands shall provide the following documentation to the Government of the United States:

(a) Evidence of title, leasehold agreement, or other legal authority for use of the land upon which the capital improvement project(s) is to be constructed.

(b) A detailed project budget for each capital development project. The budget shall include a breakdown of costs (in-house and contracts) for planning, engineering and design, real estate costs, supervision and administration, construction, and construction management and inspection. The format of this submission shall be as mutually agreed by the Government of the Republic of the Marshall Islands and the Government of the United States.

(c) A scope of work that describes the work to be performed and the schedule from planning through completion of construction. A certified professional engineer or architect shall sign both the scope of work and budget for each construction project.

4. Prior to the draw down of funds for actual project construction, the Government of the United States may request to review the set of construction plans and specifications, a revised detailed cost estimate, and a detailed construction schedule.

5. All Grant monies shall remain available until expended, unless otherwise provided in this Agreement.

6. Failure to comply with program objectives, terms and conditions, or reporting requirements may result in the Suspension of Grant payments until the deficiency is corrected.

7. Infrastructure Maintenance Fund. Five percent of the annual public infrastructure Grant shall be set aside, with an equal contribution from the Government of the Republic of the Marshall Islands, as a contribution to an infrastructure maintenance fund to be established, maintained and utilized pursuant to the terms and conditions of this section 7 (the "IMF"). The Government of the Republic of the Marshall Islands may also allocate additional amounts from the health and education Sector Grants to fund the maintenance requirements of those sectors.

(a) The funds shall be deposited in an operations and maintenance assistance account established by the Government of the Republic of the Marshall Islands.

(b) The Government of the United States shall deposit its contribution upon: certification by the Government of the Republic of the Marshall Islands that local Matching funds have been deposited or upon receipt of a deposit schedule and, beginning in Fiscal Year 2005, an annual financial report from the previous year showing the deposits of both the Government of the United States and the Government of the Republic of the Marshall Islands, the amount of income generated during the Fiscal Year, and the fund balance.

(c) The IMF shall be available for use following the annual transmittal of an infrastructure maintenance plan by the Government of the Republic of the Marshall Islands for concurrence in writing by the Government of the United States.

8. Reporting Requirements:

(a) A Standard Form SF 269 or a reasonable facsimile thereof approved by the Government of the United States, shall be prepared quarterly and submitted within 30 days after the end of the quarter to which it applies. The report shall include accounting information and a status of progress for each project funded by the Grant.

(b) A Federal Cash Transactions Report, or Standard Form SF 272 of the Government of the United States or a reasonable facsimile thereof approved by the Government of the United States, shall be submitted quarterly within 30 days of the end of the quarter to which it applies. Actual dates, project identification, and amounts of draw downs for the quarter should be supplied in the "Remarks" section of the form.

Article VIII
Audit

1. Standards and Scope of Audit Authority of the Government of the United States:

Audit officials or agents of the Government of the United States, acting pursuant to and in accordance with section 232 of the Compact, as amended, may perform Audits on the use of all funding provided pursuant to the Compact, as amended, including Grants, programs and services, and other assistance provided to the Government of the Republic of the Marshall Islands. The Government of the United States is responsible for all costs attendant to the discharge of this authority.

2. Audit Responsibility of the Government of the Republic of the Marshall Islands:

(a) A financial and compliance audit, within the meaning of the Single Audit Act, as amended (31 U.S.C. 7501 et seq.), of the uses of the funding provided pursuant to the Compact, as amended, by the Government of the Republic of the Marshall Islands, shall be performed for each Fiscal Year during which Title Two of the Compact, as amended, is in force. The results of these Audits shall be available not later than the beginning of the third fiscal quarter following the end of the Fiscal Year under review.

(b) For purposes of these Audits, the laws and regulations of the United States shall apply which are relevant to the Compact and Compact, as amended, related agreements, and such other instruments as may be made expressly applicable pursuant to mutual agreement by the Government of the United States and the Government of the Republic of the Marshall Islands. In general, the applicable laws and regulations are those promulgated under the authority, and at the discretion, of the Government of the Republic of the Marshall Islands and which relate in a material, substantial or direct way to that Government's financial statements and operations.

(c) The authority of the Government of the United States set forth in section 232 of the Compact, as amended, and this Article shall continue for at least three years after the last Grant or element of assistance by the Government of the United States has been provided and expended.

3. Audit Officials:

(a) Audit officials from the Government of the United States are the officials and employees of the Government of the United States who are responsible for the discharge of its audit responsibilities, including those of the Comptroller General of the United States and any Inspector General of an agency of the Government of the United States, with programs operating in or otherwise serving the Republic of the Marshall Islands. While present in the Republic of the Marshall Islands for the purposes of this Agreement, audit officials from the Government of the United States shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may

be expressly waived by the Government of the United States. The Comptroller General and his duly authorized representatives and other audit officials from the Government of the United States shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents. Such persons shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations. The privileges, exemptions and immunities accorded under this paragraph are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government of the Republic of the Marshall Islands.

(b) Audit officials from the Government of the United States shall provide the Government of the Republic of the Marshall Islands with advance notice of the specific dates and nature of their visits prior to entering the Republic of the Marshall Islands and shall show verifiable identification to officials of the Government of the Republic of the Marshall Islands when seeking access to records. In the performance of their responsibilities under this Agreement, audit officials from the Government of the United States shall have due regard for the laws of the Republic of the Marshall Islands and the duties and responsibilities of the officials of the Government of the Republic of the Marshall Islands. Officials of the Government of the Republic of the Marshall Islands shall cooperate fully to the extent practicable with the United States audit officials to enable the full discharge of their responsibilities. Questions with respect to the identity or authorization of United States audit officials shall be referred for resolution to the United States Representative referred to in Article V of Title One of the Compact, as amended.

(c) The Comptroller General of the United States, and officials of the United States General Accounting Office acting on his or her behalf, shall have coextensive authority with the executive branch of the Government of the United States as provided in this Article of this Agreement and section 232 of the Compact, as amended. The audit officials from the executive branch of the Government of the United States shall avoid duplication between their audit programs and those of the United States General Accounting Office. The Government of the Republic of the Marshall Islands shall cooperate fully to the extent practicable with the Comptroller General of the United States in the conduct of such Audits as the Comptroller General of the United States determines necessary in accordance with this Article to enable the full discharge of his responsibilities.

4. Access to Records:

(a) The Government of the Republic of the Marshall Islands shall provide audit officials from the Government of the United States with access, without cost

and during normal working hours, to all records, documents, working papers, automated data, and files which are relevant to the uses of funding received pursuant to the Compact, as amended, by the Government of the Republic of the Marshall Islands. To the extent that such information is contained in confidential official documents, the Government of the Republic of the Marshall Islands shall undertake to extract information that is not of a confidential nature and make it available to the audit officials from the Government of the United States in the same manner as other relevant information or to provide such information from other sources.

(b) In order to reduce the level of interference in the daily operation of the activities of the Government of the Republic of the Marshall Islands, audit officials from the Government of the United States shall, to the extent practicable, inform the Government of the Republic of the Marshall Islands of their need for information, including the type of information and its relation to their annual audit schedule. To the extent practicable, the Government of the Republic of the Marshall Islands shall make available the information requested by audit officials from the Government of the United States relevant to Audits and available in a manner consistent with generally accepted accounting procedures that allows for the distinction of the Grants, assistance, and payments provided by the Government of the United States from any other funds of the Government of the Republic of the Marshall Islands. Such information shall be used and returned as quickly as accurate audit testing and surveying allow.

(c) The Government of the Republic of the Marshall Islands shall maintain records, documents, working papers, automated data, files, and other information regarding each such Grant or other assistance for at least three years after such Grant or assistance was provided.

5. Review of Audits:

Audit organizations and officials from the Government of the United States, including the Comptroller General of the United States and his duly authorized representatives, shall provide the Government of the Republic of the Marshall Islands with at least 45 days to review and comment on draft audit reports prior to the release of the reports. The comments of the Government of the Republic of the Marshall Islands shall be included, in full, in the final audit reports. Should a draft audit report be revised based on the comments of the Government of the Republic of the Marshall Islands, the Government of the Republic of the Marshall Islands shall have an additional period to review and comment on the report prior to its release.

Article IX
Annual Reconciliation and End-of-Grant Requirements

1. The Government of the United States shall reconcile Operational Grants at least annually, and evaluate program performance and financial reports to determine work progress, outcomes, and compliance with Grant terms and conditions.

2. The Government of the United States shall close out each award at the end of each annual Grant year once it determines that all applicable administrative actions and required work has been completed or if all Grant monies for that year have been expended.

(a) Within 90 days of the expiration of the Grant year, the Government of the Republic of the Marshall Islands must submit all final financial, performance, and other reports required as a condition of the Grant. The Government of the United States may Grant an extension of the due date upon the request of the Government of the Republic of the Marshall Islands.

(b) Within 90 days after receipt of reports in paragraph (2) of this section, the Government of the United States shall make upward or downward adjustments to the allowable reimbursable costs.

(c) The Government of the Republic of the Marshall Islands shall immediately refund any balance of cash not authorized to be retained. The refunded balance shall be available for use to supplement subsequent Grants.

3. The Government of the United States shall retain the right to disallow costs and recover funds on the basis of a later audit or other review. The Closeout of a Grant does not affect the obligation of the Government of the Republic of the Marshall Islands to return any funds paid in excess of the amount to which it is finally determined to be entitled under the terms of the award. Such an amount shall be deemed to constitute a debt to the Government of the United States. If the amount owed is not repaid within a reasonable period, the Government of the United States may reduce the debt by:

(a) Making an administrative offset against other requests for reimbursement;

(b) Withholding advance payments otherwise due to the Government of the Republic of the Marshall Islands; or

(c) Taking other action described in this Agreement or as otherwise permitted by law.

Article X
Effective Date, Amendment, and Duration

1. This Agreement shall enter into force the same date as the Compact, as amended.

2. This Agreement may be amended at any time in writing by mutual consent of the Government of the United States and the Government of the Republic of the Marshall Islands.

3. Disputes:

(a) Disputes involving sections 4, and 5(c)(1) of Article IV, and Articles III, V, VII and VIII shall be resolved in accordance with the Appeal process defined in Article I of this Agreement.

(b) All other disputes may be resolved in accordance with the Appeal process defined in Article I of this Agreement or through the conference and dispute resolution process set forth in Article II of Title Four of the Compact, as amended. Withholdings or Suspensions of payment shall stand unless otherwise determined through the conference and dispute resolution process of Article II of Title Four of the Compact, as amended.

4. This Agreement shall remain in full force and effect until either (i) the expiration or Termination of all assistance provided under section 211 of the Compact, as amended, all grants provided for the purposes authorized under section 105(f)(1)(B) of the Compact of Free Association Amendments Act of 2003, all Grants administered under section 221 of the Compact, as amended, and any financial assistance under section 222 of the Compact, as amended; or, (ii) termination by mutual written consent, whichever occurs first. The Government of the United States shall provide any unobligated Grant balances from the last Fiscal Year of the effectiveness of section 211(a) of the Compact, as amended, except those unobligated Grant balances associated with sections 211(b)(1), and 211(b)(3) of the Compact, as amended, to the Government of the Republic of the Marshall Islands in accordance with the procedures set forth in this Agreement and without regard to whether the Compact, as amended, its related agreements, or this Agreement are still in force. In this case, the funds shall be budgeted and expended pursuant to the purposes set forth in Article II of this Agreement.

5. Interpretation. In this Agreement, all references herein to Articles and sections shall be deemed references to this Agreement unless the context shall otherwise require. References to statutes or regulations or regulations are to be construed as including all statutory or regulatory provisions, as applicable, consolidating, amending or replacing the statute or regulation referred to. All references to agreements and other documents as amended, modified, supplemented or restated from time to time in a manner consistent with the terms and conditions of this Agreement. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with Generally Accepted Accounting Principles, as in effect from time to time in the United States of America.

DONE at Majuro, RMI, in duplicate, this 23rd day of March, 2004, each text being equally authentic.

Greta N. Morris
Ambassador

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Gerald Zackios
Minister of Foreign Affairs

FOR THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS: