

**Micronesia  
Conservation Trust  
P.O. Box 2177,  
Kolonia, Pohnpei  
FSM 96941**

**FSM Department of Resources  
& Development  
P.O. Box PS12  
Palikir, Pohnpei  
FSM 96941**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
MICRONESIA CONSERVATION TRUST AND THE  
GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA**

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) is dated for reference purposes only as of August 3, 2009, by and between the **GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA** (“FSMG”) represented by the **SECRETARY** of the **DEPARTMENT OF RESOURCES & DEVELOPMENT** (“R&D”) and the **MICRONESIA CONSERVATION TRUST** (“MCT”), on the basis of the following facts and circumstances:

**The Micronesia Challenge** (“MC”) is a commitment by the Chief Executives of the Federated States of Micronesia (“FSM”), the Republic of the Marshall Islands (“RMI”), the Republic of Palau (“Palau”), the U.S. Territory of Guam (“Guam”) and the U.S. Commonwealth of the Northern Mariana Islands (“CNMI”) to *effectively conserve at least 30% of the near-shore marine resources and 20% of the terrestrial resources across Micronesia by 2020.*

**Micronesia Conservation Trust** (“MCT”) is a recognized Non-Profit Corporation registered in the FSM whose mission is to support biodiversity conservation and related sustainable development for the benefit of the people of Micronesia (FSM, Palau, RMI, US Guam and CNMI) by providing long term sustained funding for conservation and the sustainable use of natural resources.

**The Micronesia Challenge Focal Point** is the official representative of the Federated States of Micronesia who is tasked to oversee all activities pertaining to the successful implementation of the MC in the FSM and the Micronesia region through the MC Steering Committee comprised of all MC Focal Points and representatives of MCT and the MC support group (one each).

To ensure that both Parties carry out their respective tasks in the Micronesia Challenge harmoniously and to clarify their individual mandates this MOU provides for the following clarifications:

**ARTICLE I: MUTUALITY OF INTEREST**

Pursuant to <sup>their</sup> mandates, missions and guiding documents, FSMG and MCT share an interest in ensuring effective and successful implementation of MC goals, objectives and activities. To this end, FSMG has selected the MCT to act as the receiving and disbursement mechanism for any FSM portion of FSM MC Endowment Fund and subsequent revenue flow.



# DEPARTMENT OF JUSTICE

FEDERATED STATES OF MICRONESIA

P.O. Box PS – 105

Palikir, Pohnpei FM 96941

Phone: (691) 320-2608 / 2644 Fax: (691) 320-2234

September 17, 2009

## MEMORANDUM

TO: Mr. Marion Henry  
Assistant Secretary,  
FSM Department of Resources and Development

FROM: Assistant Attorney General

THROUGH: Secretary, Department of Justice

SUBJECT: Memorandum of Understanding (MOU's) for Micronesia Conservation Trust and the Government of the Federated States of Micronesia



This Department has received the above subject Memorandum of Understanding for legal review. The subject Memorandum of Understanding between the parties listed above has no apparent legal defect and is returned herewith with the approval of this Department.

Do let us know if you have any comments or questions.

Best regards,

A handwritten signature in black ink, appearing to be "S. George".

S. George

Attachments

## **ARTICLE II: STATEMENT OF PURPOSE**

This MOU is intended to provide a framework for ongoing cooperation between MCT and FSMG, building on the Parties' mutual commitment for close collaboration and cooperation. It sets out, in specific terms, areas of cooperation and agreed mechanisms to facilitate this.

It is not intended to limit the activities or flexibility of either Party, but is meant to ensure that existing areas of collaboration and cooperation continue and new initiatives are developed in a way that benefits both Parties and maximizes the effectiveness of both. It does not restrict either Party from entering into collaborations, partnerships or working relationships with others. The MOU is not intended to nor does it create any legal partnership, joint venture or agency relationship between the Parties other than what is specified herein.

## **ARTICLE III: OBJECTIVES/GOALS**

MCT and THE FSM GOVERNMENT desire to work together to:

- ❖ Raise the profile of the Micronesia Challenge within and outside the FSM to maximize access to funding and technical opportunities and support for the MC initiative.
- ❖ Raise an FSM MC Endowment Fund, which shall be administered by MCT in accordance with the terms and conditions of this MOU and any other agreement executed by the Parties, to support the activities of the Micronesia Challenge, specifically activities by FSM government agencies, non-government organizations, and communities involved in effectively managing 30% of FSM near-shore marine and 20% of its terrestrial resources.
- ❖ Develop guidelines and procedures for the disbursement of revenues from the FSM MC Endowment Fund revenues as well as for the MCT-FSM program of work in general.
- ❖ Collaborate to secure additional annual budget allocation to support the implementation of activities under the Micronesia Challenge, including the implementation of the FSM National Biodiversity Strategic Action Plan ("NBSAP") and the effective management of FSM Protected Areas Network ("PAN").
- ❖ Develop an MCT-FSM Grants Program as a successful working model of a sustainable conservation finance mechanism for the Pacific.

NOW, THEREFORE, MCT and FSMG agree as follows:

## **ARTICLE IV: RESPONSIBILITIES OF THE PARTIES**

### **1. FSMG's Responsibilities**

FSMG shall appoint a FSM Micronesia Challenge Focal Point who shall:

- Work in close collaboration with the Micronesia Conservation Trust to develop an MCT-FSM Grants Program and guidelines to support the goals, objective and activities of the MC.
- Assist in raising the profile of the MC locally and internationally to gain financial contributions and technical support.
- Promote the goals and objectives of the MC within each of the FSM states and collaborate on respective responsibility, support and cooperation from the national and state governments, donors and other NGO partners.
- Harmonize the Micronesia Challenge with the NBSAP goals and objectives and work to obtain additional funding necessary to implement the NBSAP goals and objectives.
- Other specific matters as mutually agreed from time to time, in writing.

Assist with fundraising matters, as follows:

- Collaborate in the development of MCT's fundraising plan for the FSM MC Endowment Fund to support implementation of the FSM MC Grants Program and NBSAP.
- Identify and open doors for potential funding and technical sources within and outside the FSM and the region.
- Other specific matters as mutually agreed from time to time, in writing.

## **2. MCT's Responsibilities**

MCT shall:

- ❖ Assist the FSM in completing its sustainable financing plan for implementation of the Micronesia Challenge, NBSAP and the FSM PAN.
- ❖ In collaboration with the FSM MC Focal Point, MC Regional Coordinator, relevant partners and stakeholders, develop and implement a specific fundraising plan and budget for raising FSM's initial fund for the FSM MC Endowment Fund.
- ❖ Undertake all other necessary fundraising steps to capitalize the FSM MC Endowment Fund as needed to achieve the effective management of MC targets and activities.
- ❖ In collaboration with the MC Focal Points and relevant partners, develop an FSM-specific grants program ("FSM MC Grants Program") within the MCT umbrella program.
- ❖ Strictly manage funds received as grants and donations for implementation of the FSM MC Grants Program according to donors' conditions and FSM MC Grants Program guidelines as well as any applicable FSM laws and regulations and MCT's Bylaws and Operational Manual.
- ❖ Award grants consistent with its mission and conservation purposes and according to the procedures set forth in MCT's Bylaws and Operations Manual and the FSM MC Grants Program as determined by MCT and FSMG under this MOU and subsequent agreement(s) executed between the Parties.
- ❖ Coordinate closely with the FSM Government to harmonize the relationship between national and state conservation priorities in the development of the FSM MC Grants Program.
- ❖ Provide relevant capacity building and training support to its grantees.
- ❖ Take all steps necessary to obtain tax exempt 501 (c) (3) status under the U. S. Internal Revenue Code, to facilitate MCT's ability to raise funds in the U.S. for the FSM MC Endowment Fund.
- ❖ Expend all funds provided for the MC and NBSAP solely for the purposes stated and in strict accordance with the FSM MC Grants Program, inclusive of both MC and NBSAP programs, this MOU and subsequent written agreement(s) between the Parties.
- ❖ Provide to FSMG quarterly reports of FSM MC Grants Program activities and financial transactions of the immediately preceding quarter period within the first 30 days of each quarter.

## **ARTICLE V: JOINT RESPONSIBILITIES**

- ❖ Ongoing communication and coordination procedures, including, but not limited to:
  - Regular meetings and briefings between MCT's Board of Directors, staff and the FSM MC Focal Point on activities related to, and affecting, the Micronesia Challenge and this MOU, including the FSM MC Grants Program.
  - Review and assess the performance of the Money Manager for the FSM MC Endowment Fund.
  - Exchanging copies of reports and other documents of relevance to this MOU.
- ❖ Document the conservation and management activities and lessons learnt of the FSM MC Grant Program for the benefit of both Parties and any future conservation trust funds in the region.
- ❖ Develop a marketing package that is suitable for FSMG and MCT for joint FSM MC Grants Program fundraising endeavors.

## **ARTICLE VI: SUBSEQUENT AGREEMENTS AND BUDGETS**

- ❖ The Parties anticipate a close working relationship during the Term of this MOU and will endeavor to develop, as needed, separate agreements and budgets. The Parties acknowledge and agree that this MOU does not create any financial or funding obligation(s) on either Party, and that such obligations shall arise only upon joint execution of subsequent agreement(s) (which shall include a budget) that specifically delineate the terms and nature of such obligations and that reference this MOU. Such subsequent agreements and budgets will be subject to funding being specifically available for the purposes outlined therein.
- ❖ The terms and conditions of this MOU will apply to any and all such subsequent agreements and budgets that specifically reference this MOU and are by their terms annexed hereto.

## **ARTICLE VII: EFFECTIVE DATES, TERMS AND AMENDMENTS**

This MOU shall take effect upon signing by both Parties and shall remain in effect for a period of five (5) years from that date unless earlier terminated. Neither Party may assign or transfer all or any portion of this MOU without the prior written consent of the other Party.

The MOU may be renewed at the end of this period by mutual written agreement by both Parties.

The provisions of this MOU may only be amended or waived by mutual written agreement by both Parties.

Any Party may terminate this MOU and any related agreement for any reason by giving thirty (30) days prior written notice to the other Party. Any work plan and related budget may be amended by mutual consent of both Parties in writing.

The individuals signing this MOU on behalf of their respective entities represent and warrant (without personal liability therefore) that upon the signature of each, this MOU shall have been duly executed by the Party each represents.

## **ARTICLE VIII; INTELLECTUAL PROPERTY**

The Parties agree that any intellectual property, which is jointly developed through activities covered under this MOU, can be used by either Party without obtaining consent from the other.

All other intellectual property used in the implementation of the MOU will remain the property of the Party that provided it. This property can be used by either Party for purposes covered by the MOU but consent shall first be obtained from the owner of the property before using it for purposes not covered by the MOU.

## **ARTICLE IX: DISPUTE RESOLUTION**

If any disputes arise between the Parties relating to this MOU, the Parties shall attempt to resolve the dispute through good faith discussions and collaborations between the Parties.

## **ARTICLE X: RISK AND RESPONSIBILITY**

Each Party agrees that it shall be responsible for its own acts and the results thereof, and shall not be responsible for the acts of the other Party or the results thereof. Each Party, therefore, agrees that to the extent it may legally do so, it shall assume all risk and liability to itself, its officers, employees or agents, under this MOU, for any claims, damages, losses, judgments, expenses or other costs including litigation costs and attorney's fees, arising out of, in connection with, or resulting at any time from any and all causes

due to any act or acts, negligence, or failure to exercise proper precautions, of or by itself, or its own officers, employees or agent, in the performance of this MOU.

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**ARTICLE XI: WAIVER OF LIABILITY AND INDEMNITY**

Notwithstanding the foregoing, MCT shall not hold FSM liable for any assistance provided by FSMG under this MOU and any other acts or omissions of FSMG, and MCT fully releases and discharges FSMG from any liabilities, claims, actions, damages, costs and expenses arising from or in connection with any assistance provided by FSMG under this MOU and any other acts or omissions of FSMG.

In the same spirit of cooperation and notwithstanding the foregoing, FSMG shall not hold MCT liable for any assistance provided by MCT under this MOU and any other acts or omissions of MCT, and FSMG fully releases and discharges MCT from any liabilities, claims, actions, damages, costs and expenses arising from or in connection with any assistance provided by MCT under this MOU and any other acts or omissions of MCT.

IN WITNESS WHEREOF, the undersigned, being duly authorized to sign on behalf of their respective offices, have signed this MOU.

Done, in duplicate, at \_\_\_\_\_.

By: \_\_\_\_\_

Aren Palik

Title: Chairman, MCT

Date: \_\_\_\_\_

By:  \_\_\_\_\_

Peter M. Christian

Title: Secretary, R&D

Date: 9-22-09

**Witnessed by:**

By: \_\_\_\_\_

Willy Kostka

Title: Executive Director, MCT

Date: \_\_\_\_\_

By:  \_\_\_\_\_

Marion Henry

Title: FSM MC Focal Point

Date: Sept. 22/09

Reviewed for Legal Sufficiency:

  
Department of Justice, FSM

9/17/09  
Date