Project Agreement

(Palau-FSM Connectivity Project)
(which shall be referred to as the Pacific Regional Connectivity Program 2: FSM Connectivity Project, from the Effective Date of the Agreement Providing for the Additional Financing and the Amendment and Restatement of the Financing Agreement, dated September 19, 2017, between Federated States of Micronesia and International Development Association, as defined therein)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

FSM TELECOMMUNICATIONS CABLE CORPORATION

Dated May 22, 2018
PROJECT AGREEMENT

AGREEMENT, dated May 22, 2018, entered into between INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association") and FSM TELECOMMUNICATIONS CABLE CORPORATION ("Project Implementing Entity") ("Project Agreement") in connection with the financing agreement between the Federated States of Micronesia ("Recipient") and the Association, dated March 6, 2015, as such financing agreement may be amended and restated from time to time.

WHEREAS: (A) the FSM Telecommunications Cable Corporation was established pursuant to laws of the Recipient, to serve as the Open Access Entity under the Telecommunications Act, in order to own and operate submarine and terrestrial cable assets within or serving the Recipient;

(B) under the Financing Agreement between the Recipient and the Association, dated March 6, 2015, as amended on March 18, 2016 ("Financing Agreement"), the Association has agreed to provide the Recipient a grant in an amount equivalent to thirty-two million one hundred thousand Special Drawing Rights (SDR 32,100,000) ("Original Grant") to assist in the financing of the Palau-FSM Connectivity Project described in Schedule 1 thereto (the "Project");

(C) under the Agreement Providing for the Additional Financing and the Amendment and Restatement of the Financing Agreement between the Recipient and the Association, dated September 19, 2017 ("Amended and Restated Financing Agreement"): (i) the Recipient and the Association have agreed to amend and restate the Financing Agreement as provided therein, including the description of the Project; and (ii) the Association has agreed to provide to the Recipient an additional grant in an amount equivalent to twelve million Special Drawing Rights (SDR 12,000,000) ("Additional Grant") for the financing of the Project (as amended therein); and

(D) the execution of this Agreement (which is referred to as the "FSM Open Access Entity Project Agreement", both in the Financing Agreement prior to the effectiveness of the Amended and Restated Financing Agreement and in the Amended and Restated Financing Agreement) is: (i) one of the conditions of disbursement of the funds of the Original Grant allocated to Categories 1(a) and 1(b) of the disbursement table under Sections IV.B.1(b)(ii)(A) and IV.B.1(c) of the Financing Agreement prior to its amendment in accordance with the provisions of the Amended and Restated Financing Agreement; and also, (ii) one of the conditions of effectiveness of the Amended and Restated Financing Agreement, as stated in Section 2.01(c)(i) of such agreement.

NOW, THEREFORE, the Association and the Project Implementing Entity hereby agree as follows:
ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

1.01. The General Conditions (as defined in the Appendix to the Financing Agreement) constitute an integral part of this Agreement.

1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the Financing Agreement or the General Conditions.

ARTICLE II — PROJECT

2.01. The Project Implementing Entity declares its commitment to the objective of the Project. To this end, the Project Implementing Entity shall carry out its Respective Part of the Project in accordance with the provisions of Article IV of the General Conditions, and shall provide promptly as needed, the funds, facilities, services and other resources required for its Respective Part of the Project.

2.02. Without limitation upon the provisions of Section 2.01 of this Agreement, and except as the Association and the Project Implementing Entity shall otherwise agree, the Project Implementing Entity shall carry out its Respective Part of the Project in accordance with the provisions of the Schedule to this Agreement.

ARTICLE III — TERMINATION

3.01. For purposes of Section 8.05 (c) of the General Conditions, the date on which the provisions of this Agreement shall terminate is twenty (20) years after the date of the Financing Agreement.

ARTICLE IV — REPRESENTATIVE; ADDRESSES

4.01. The Project Implementing Entity's Representative is its Chief Executive Officer.

4.02. The Association's Address is:

International Development Association
1818 H Street, NW
Washington, DC 20433
United States of America

Telex: 248423(MCI)  Facsimile: 1-202-477-6391
4.03. The Project Implementing Entity’s Address is:

FSM Telecommunications Cable Corporation
PO BOX 2202
Pohnpei
Federated States of Micronesia, 96941

AGREED at Pohnpei, Federated States of Micronesia, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

[Signature]
Authorized Representative

Name: MICHEL KEEF
Title: COUNTRY DIRECTOR

FSM TELECOMMUNICATIONS CABLE CORPORATION

By

[Signature]
Authorized Representative

Name: PAUL MACPHERSON
Title: 5/22/18 CHIEF EXECUTIVE OFFICER
SCHEDULE

Execution of the Project Implementing Entity's Respective Part of the Project

Section I. Institutional and Implementation Arrangements

A. Institutional Arrangements

1. The Project Implementing Entity shall nominate, by no later than thirty (30) days following the date of this Agreement, and thereafter maintain, throughout the Project implementation period, its representative to participate in the Telecommunications Broadband Task Force, as may be required by such task force.

2. The Project Implementing Entity shall maintain, throughout the Project implementation period, a mandate, staff (including contractors and consultants) composition and resources, satisfactory to the Association, for the implementation of its Respective Part of the Project.

3. Without limitation to the generality of the foregoing, the Project Implementing Entity shall maintain, throughout the Project implementation period, the following arrangements, all in a manner acceptable to the Association:

   (a) a board of directors, chief executive officer, company secretary/legal officer, managerial and technical personnel necessary for operational requirements;

   (b) by-laws, governance arrangements, a business and marketing plan, and organizational plan;

   (c) financing arrangements that ensure adequate capitalization and operational financing including to address contingencies; and

   (d) the following minimum key staff (including contractors and consultants): (i) a financial management specialist; (ii) a safeguards compliance specialist; (iii) a telecommunications specialist; and (iv) a procurement / contract management specialist, each with terms of reference, qualifications and experience satisfactory to the Association.

B. Implementation Arrangements

1. To ensure proper and efficient implementation of its Respective Part of the Project, the Project Implementing Entity shall:
(a) comply with the Telecommunications Act, including all regulatory obligations, and its Establishment Documents;

(b) enter into the FSM Open Access Entity Subsidiary Agreement, in form and substance satisfactory to the Association, and thereafter comply with its obligations under the FSM Open Access Entity Subsidiary Agreement; and

(c) cooperate fully with the Recipient and the Association to assure that the purposes of the Financing and the objective of the Project will be accomplished. To that end, the Project Implementing Entity shall: (i) from time to time, at the request of either the Recipient or the Association, exchange views on the Project and the performance of its obligations under this Agreement, and furnish to the Recipient and the Association, as may be relevant, all such information related to such matters as it shall reasonably request; and (ii) promptly inform the Recipient and the Association of any condition which interferes with, or threatens to interfere with, such matters.

2. The Project Implementing Entity shall, all in form and substance satisfactory to the Association:

(a) accept the transfer from DOFA and DTCI, of all responsibilities, rights and obligations associated with the implementation of its Respective Part of the Project, including the rights and titles to or related to the assets under its Respective Part of the Project financed or to be financed under the Financing Agreement;

(b) maintain one or more Landing Party Agreements with any other necessary party thereto and setting forth the arrangements for landing rights for the landing of the submarine fiber optic cables to be constructed under Part 1 of the Project;

(c) maintain all licenses, rights, permits, and approvals required for its operation and supply of international and domestic wholesale communication services in the Project areas;

(d) maintain adequate capacity for the cables serving Yap and Chuuk to connect to the global telecommunications network;

(e) ensure that satellite and submarine fiber optic cable(s) infrastructure used in the supply of ICT services and under its direct or indirect ownership or control is used in an economically efficient manner, and that it shall not compete against FSMTC in the supply of connectivity services utilizing satellite or submarine fiber optic cable(s);
promptly inform the Recipient and the Association of any condition which interferes or threatens to interfere with the implementation of its Respective Part of the Project and the achievement of the objectives thereof; and

upon the effectiveness of the Amended and Restated Financing Agreement:

(i) maintain adequate capacity for the cable serving the EMC, including Kosrae, to connect to the global telecommunications network;

(ii) establish and maintain operator facing facilities required for interconnection and prepare a reference interconnection offer or other arrangements satisfactory to the Association, including facilities access, to ensure capacity and other facilities are made available to operators on a transparent, cost-based and non-discriminatory basis; and

(iii) take all measures required on its part to enter into the Construction and Maintenance Agreement, and thereafter, ensure that Part 1(c)(i) of the Project is implemented in accordance with the provisions of the Construction and Maintenance Agreement. To this end, the Project Implementing Entity shall: (A) comply with all its obligations and exercise its rights under the Construction and Maintenance Agreement so as to best protect the interest of the ICT service users in the Recipient’s territory, comply with its obligations under this Agreement and achieve the objectives of the Project; and (B) obtain written agreement from the Association prior to assigning, amending, abrogating or waiving the Construction and Maintenance Agreement, or any provision thereof, or permitting any entity participating in the implementation of the Project to do so.

3. (a) Except as the Association shall otherwise agree, the Project Implementing Entity shall:

(i) by no later than thirty (30) days following the date of this Agreement, obtain, and thereafter maintain, throughout the Project implementation period, an aggregate of at least one million Dollars (USD 1,000,000) of Equity and Shareholder’s Loan, under terms and conditions acceptable to the Association;

(ii) by no later than thirty (30) days following the date of this Agreement, obtain, and thereafter maintain, throughout the
Project implementation period, unrestricted access to one or more lines of credit facilities in an aggregate amount of at least two million Dollars (USD2,000,000) from the FSM Development Bank, or other similar financial institution as may be agreed with the Association, under terms and conditions acceptable to the Association;

(iii) at all times throughout the Project implementation period, not permit, create or grant any encumbrance(s) over its asset(s), or assume any new Debt or debt-like obligations, which includes without limitation, vendor financing, export credit agency financing, indemnities, leasing, lease-back or other long-term financial commitments, where the several or cumulative outstanding value of such obligation(s) from time to time exceeds two hundred fifty thousand Dollars (USD250,000); and

(iv) at all times throughout the Project implementation period, not be subject to a change in its objectives, organizational structure, governance or ownership, including but not limited to, a change to its majority shareholding, without prior written consent of the Association, if such action or change has or is reasonably likely to have a material adverse effect on the ability of the Project Implementing Entity to carry out its obligations under its Respective Part of the Project, or any interests of the Association or the Recipient.

(b) For purposes of this Section I.B.3:

(i) the term “Debt” means any indebtedness of the Project Implementing Entity, whether secured or unsecured, maturing by its term more than one (1) year after the date on which it is originally incurred, excluding the Shareholder’s Loan and the lines of credit facilities referred to in Section I.B.3(a)(ii) above;

(ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument, whether written or non-written, providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into;

(iii) the term “Equity” means the sum of the total unimpaired paid-up capital, retained earnings and reserves of the Project Implementing Entity not allocated to cover specific liabilities, excluding the Shareholder’s Loan;
(iv) the term "FSM Development Bank" means the Federated States of Micronesia Development Bank, a component unit of the Recipient's national government, established and operating pursuant to the Recipient's Public Law 1-37 dated July 5, 1979, as amended by Public Law 8-47 dated January 3, 1994;

(v) the term "Shareholder's Loan" means a loan from the Recipient's national government to the Project Implementing Entity, of a minimum principal amount of five hundred thousand Dollars (USD500,000), with no interest or other charges, fees and costs, to be repaid in annual installments: (A) whose amount shall not exceed the amount of net profit generated during the one (1) year preceding the year when payment is made, as reflected in the Project Implementing Entity's annual audited financial statements; and (B) due and payable only (aa) from the first year when the Equity, as reflected in the Project Implementing Entity's annual audited financial statements for the previous year, will have reached one million Dollars (USD 1,000,000); and (bb) only on such years when the annual audited financial statements for the previous year reflects a level of Equity of one million Dollars (USD 1,000,000) or above (with no carry forward for such years when no repayment is due and payable); and

(vi) whenever for the purposes of this Section I.B.3 it shall be necessary to value, in terms of the currency of the Recipient, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Association.

C. Anti-Corruption

1. Subject to the provisions of paragraph 2 immediately below, the Project Implementing Entity shall ensure that its Respective Part of the Project is carried out in accordance with the provisions of: (a) the "Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants", dated October 15, 2006 and revised in January 2011 ("2011 Anti-Corruption Guidelines") in connection with the use of the proceeds of the Original Grant; and (b) the "Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants", dated October 15, 2006 and revised in January 2011 and as of July 1, 2016
(“2016 Anti-Corruption Guidelines”) in connection with the use of the proceeds of the Additional Grant.

2. (a) Notwithstanding the provisions of paragraph 1 immediately above, the 2011 Anti-Corruption Guidelines shall apply to the procurement of all goods, works, non-consulting services and consultants’ services required for the Project and to be financed out of the proceeds of the Financing, which are carried out in accordance with the requirements set forth or referred to in the Procurement Guidelines and/or the Consultant Guidelines.

(b) Notwithstanding the provisions of paragraph 1 immediately above, the 2016 Anti-Corruption Guidelines shall apply to the procurement of all goods, works, non-consulting services and consultants’ services required for the Project and to be financed out of the proceeds of the Financing, which are carried out in accordance with the requirements set forth or referred to in the Procurement Regulations and the provisions of the Procurement Plan.

D. Safeguards

1. The Project Implementing Entity shall carry out its Respective Part of the Project in accordance with the Safeguards Instruments.

2. The Project Implementing Entity shall not amend, suspend, or waive any of the Safeguards Instruments, or any provision thereof, unless the Association has provided its prior approval thereof in writing and the Project Implementing Entity has complied with the same consultation and disclosure requirements as applicable to the original adoption of the said Safeguards Instruments.

3. Without limitation on its other reporting obligations under this Agreement, the Project Implementing Entity shall collect, compile, and submit to the Association, as part of the Project Reports (or promptly whenever the circumstances warrant), information on the status of compliance with the Safeguards Instruments, giving details of: (a) measures taken in furtherance of the said Safeguards Instruments; (b) conditions, if any, which interfere or threaten to interfere with the smooth implementation of the said Safeguards Instruments; and (c) remedial measures taken or required to be taken to address such conditions.

4. The Project Implementing Entity shall afford the Association a reasonable opportunity to review the reports prepared under paragraph 3 of this Part D, and thereafter shall carry out with due diligence all remedial measures agreed with
the Association so as to ensure the proper implementation of the Respective Part of the Project in accordance with the Safeguards Instruments.

5. In the event of any conflict between the provisions of any of the Safeguards Instruments and those of the Financing Agreement or this Agreement, the provisions of the Financing Agreement and this Agreement shall prevail, in that order of priority.

6. The Project Implementing Entity shall ensure that:

(a) all terms of reference for any technical assistance or studies carried out under its Respective Part of the Project are consistent with the Association's environmental and social safeguard policies, the Recipient's laws relating to the environment and social aspects and the Safeguards Instruments; and

(b) in drafting any regulations, guidelines or corporate procedures and carrying out capacity building activities under its Respective Part of the Project, due attention is given to said policies, laws and instruments.

E. Project Operations Manual

1. The Project Implementing Entity shall, upon the effectiveness of the Amended and Restated Financing Agreement or by no later than May 31, 2018 (or such other date which the Association has confirmed in writing to the Recipient is acceptable to the Association, as determined in its sole discretion, under the circumstances), whichever is the later, adopt the Project Operations Manual, which shall be in form and substance acceptable to the Association, and ensure that its Respective Part of the Project is implemented in accordance with the provisions of the Project Operation Manual.

2. The Project Implementing Entity shall obtain from the Association written agreement prior to assigning, amending, abrogating, or waiving the Project Operations Manual, or any provision thereof, or permitting any entity participating in the implementation of its Respective Part of the Project to do so.

3. In the event of any conflict between the provisions of the Project Operations Manual and those of the Financing Agreement or this Agreement, the provisions of the Financing Agreement or this Agreement shall prevail, in that order of priority.
F. Annual Work Plans and Budgets

1. The Project Implementing Entity shall prepare a draft annual work plan and budget (with a financial plan specifying all sources of financing, cash flow and disbursement projections) for its Respective Part of the Project (an "Annual Work Plan and Budget") for each subsequent year of implementation of its Respective Part of the Project, of such scope and detail as requested by the Association. Without limitation to the generality of the foregoing and unless the Association shall otherwise agree, the budget proposed in an Annual Work Plan and Budget shall not permit the addition of any new costs or increase of any existing costs by more than three (3) percent per annum.

2. The Project Implementing Entity shall furnish to the Association the Annual Work Plan and Budget for the Association’s review and comments on September 30 of each year or on such other date as may be agreed with the Association.

3. The Project Implementing Entity shall ensure that its Respective Part of the Project is carried out in accordance with the Annual Work Plan and Budget approved by the Association; provided, however, that in the event of any conflict between the Annual Work Plan and Budget and the provisions of the Financing Agreement or this Agreement, the provisions of the Financing Agreement and this Agreement shall prevail, in that order of priority. Only those activities of the Project Implementing Entity included in the relevant Annual Work Plan and Budget approved by the Association shall be eligible for financing from the proceeds of the Financing.

4. Annual Work Plans and Budgets may be revised as needed during the implementation of the Project Implementing Entity’s Respective Part of the Project subject to the Association’s prior approval.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

1. The Project Implementing Entity shall monitor and evaluate the progress of its Respective Part of the Project and prepare Project Reports for its Respective Part of the Project in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of the indicators acceptable to the Association. Each Project Report shall cover the period of one (1) calendar semester, and shall be furnished to the Recipient not later than twenty (20) days after the end of the period covered by such report for incorporation and forwarding by the Recipient to the Association of the overall Project Report.
2. No later than February 1, 2019, or such other period as may be agreed with the Association, the Project Implementing Entity shall carry out jointly with the Association and the Recipient, a mid-term review of the Project to assess the status of Project implementation, as measured against the indicators referred to in Section II.A.1 immediately above, and compliance with the legal covenants included or referred to in this Agreement. Such review shall include an assessment of the following: (a) overall progress in implementation; (b) results of monitoring and evaluation activities; (c) progress on procurement and disbursement; (d) progress on implementation of safeguards measures; (e) implementation arrangements and Project staff turnover; and (f) the need to make any adjustments to the Project to improve performance. To this end, the Project Implementing Entity shall:

(i) prepare and furnish to the Association, at least one (1) month before the date of such mid-term review, a report, in scope and detail satisfactory to the Association and integrating the results of the monitoring and evaluation activities performed pursuant to Section II.A.1 of this Schedule, on the progress achieved in the carrying out of its Respective Part of the Project during the period preceding the date of such report and setting out the measures recommended to ensure the efficient carrying out of its Respective Part of the Project and the achievement of the objective thereof during the period following such date; and

(ii) review jointly with the Association and the Recipient the report referred to in the preceding paragraph and thereafter take all measures required to ensure the efficient completion of its Respective Part of the Project and the achievement of the objective thereof, based on the conclusions and recommendations of such report and the Association's views on the matter.

3. The Project Implementing Entity shall provide to the Recipient not later than five (5) months after the Closing Date, for incorporation in the report referred to in Section 4.08(c) of the General Conditions all such information as the Recipient or the Association shall reasonably request for the purposes of such Section.

B. Financial Management, Financial Reports and Audits

1. The Project Implementing Entity shall maintain throughout the period of implementation of its Respective Part of the Project, a financial management system and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, both in a manner adequate to reflect the operations and financial condition of the Project Implementing Entity,
including the operations, resources and expenditures related to its Respective Part of the Project.

2. The Project Implementing Entity shall prepare and furnish to the Association not later than forty-five (45) days after the end of each calendar quarter, interim unaudited financial reports to adequately reflect the operations and financial condition of the Project Implementing Entity, including for its Respective Part of the Project, covering the quarter, in form and substance satisfactory to the Association.

3. The Project Implementing Entity shall have its financial statements referred to above audited by independent auditors acceptable to the Association, in accordance with consistently applied auditing standards acceptable to the Association. Each audit of these financial statements shall cover the period of one (1) fiscal year of the Project Implementing Entity. The Project Implementing Entity shall ensure that the audited financial statements for each period shall be: (a) furnished to the Recipient and the Association not later than nine (9) months after the end of the period; and (b) made publicly available in a timely fashion and in a manner acceptable to the Association.

Section III. **Procurement**

All goods, works and services required for the Project Implementing Entity’s Respective Part of the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the provisions of Section III of Schedule 2 to the Financing Agreement.