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Legal Department

CONFIDENTIAL DRAFT

(Subject to Change)

L. Atkins / H. Woodcroft / N. Soubbotin

December 24, 2019

GRANT NUMBER [_____-__]

Project Agreement

(Digital Federated States of Micronesia Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

FSM TELECOMMUNICATIONS CABLE CORPORATION

¹ Grant Number to be provided by WFA and inserted during negotiations

EXHIBIT "C"

PROJECT AGREEMENT

AGREEMENT between INTERNATIONAL DEVELOPMENT ASSOCIATION ("Association") and [FSM TELECOMMUNICATIONS CABLE CORPORATION] ("Project Implementing Entity") ("Project Agreement") in connection with the Financing Agreement ("Financing Agreement") of the Signature Date between the FEDERATED STATES OF MICRONESIA ("Recipient) and the Association, concerning Grant No. [____]. 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) apply to and form 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 objectives of the Project. To this end, the Project Implementing Entity shall carry out Part 1 of the Project in accordance with the provisions of Article V of the General Conditions and the Schedule to this Agreement, and shall provide promptly as needed, the funds, facilities, services and other resources required for its Respective Part of the Project.

ARTICLE III — TERMINATION

- 3.01. For purposes of Section 10.05 (c) of the General Conditions, the date on which the provisions of this Agreement shall terminate is twenty (20) years after the Signature Date.

ARTICLE IV — REPRESENTATIVE; ADDRESSES

- 4.01. The Project Implementing Entity's Representative is [its Chief Executive Officer].
- 4.02. For purposes of Section 11.01 of the General Conditions: (a) the Association's address is:

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

(b) the Association's Electronic Address is:

Telex:

248423(MCI) or

Facsimile:

1-202-477-6391

E-mail:

cdpnpacific@worldbank.org

4.03. For purposes of Section 11.01 of the General Conditions: (a) the Project Implementing Entity's address is:

_____]; and

(b) the Project Implementing Entity's Electronic Address is:

Facsimile: _____ [E-mail:] _____

AGREED as of the later of the two dates written below.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By

Authorized Representative

Name: _____

Title: _____

Date: _____

[FSM TELECOMMUNICATIONS CABLE CORPORATION]

By

Authorized Representative

Name: _____

Title: _____

Date: _____

SCHEDULE

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

Section I. Implementation Arrangements

A. Institutional Arrangements

The Project Implementing Entity shall maintain, throughout the Project implementation period, its organizational structure, staff (including contractors and consultants) in adequate numbers and with the experience, competence and terms of reference, as well as other resources, all satisfactory to the Association and necessary for the implementation of its Respective Part of the Project.

B. Implementation Arrangements

To ensure proper and efficient implementation of its Respective Part of the Project, the Project Implementing Entity shall:

- (a) enter into the OAE Subsidiary Agreement with the Recipient, in form and substance satisfactory to the Association, and thereafter comply with its obligations under the OAE Subsidiary Agreement;
- (b) 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 relating to its Respective Part of the Project as they 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;
- (c) at all times throughout the Project implementation period, not be subject to a change in its objectives, organizational structure, budget or governance, 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

C. Environmental and Social Standards

1. The Project Implementing Entity shall ensure that the Project is carried out in accordance with the Environmental and Social Standards, in a manner acceptable to the Association.
2. Without limitation upon paragraph 1 above, the Project Implementing Entity shall ensure that the Project is implemented in accordance with the Environmental and Social

Commitment Plan ("ESCP"), in a manner acceptable to the Association. To this end, the Project Implementing Entity shall ensure that:

- (a) the measures and actions specified in the ESCP are implemented with due diligence and efficiency, and as further specified in the ESCP;
- (b) sufficient funds are available to cover the costs of implementing the ESCP;
- (c) policies, procedures and qualified staff are maintained to enable it to implement the ESCP, as further specified in the ESCP; and
- (d) the ESCP or any provision thereof, is not amended, revised or waived, except as the Association shall otherwise agree in writing, and the Project Implementing Entity has, thereafter, disclosed the revised ESCP.

In case of any inconsistencies between the ESCP and the provisions of this Agreement, the provisions of this Agreement shall prevail.

3. The Project Implementing Entity shall:

- (a) take all measures necessary on its part to collect, compile, and furnish to the Association through regular reports, with the frequency specified in the ESCP, and promptly in a separate report or reports, if so requested by the Association, information on the status of compliance with the ESCP and the management tools and instruments referred to therein, all such reports in form and substance acceptable to the Association, setting out, inter alia: (i) the status of implementation of the ESCP; (ii) conditions, if any, which interfere or threaten to interfere with the implementation of the ESCP; and (iii) corrective and preventive measures taken or required to be taken to address such conditions; and
 - (b) promptly notify the Association of any incident or accident related to or having an impact on the Project which has, or is likely to have, a significant adverse effect on the environment, the affected communities, the public or workers, in accordance with the ESCP, the instruments referenced therein and the Environmental and Social Standards.
4. The Project Implementing Entity shall maintain and publicize the availability of a grievance mechanism, in form and substance satisfactory to the Association, to hear and determine fairly and in good faith all complaints raised in relation to the Project, and take all measures necessary to implement the determinations made by such mechanism in a manner satisfactory to the Association.

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 5.08 (b) of the General Conditions and on the basis of the indicators acceptable to the Association. Each such Project Report shall cover the period of [one calendar semester], and shall be furnished to the Recipient not later than [two weeks] 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. The Project Implementing Entity shall provide to the Recipient not later than ____, for incorporation in the report referred to in Section 5.08 (c) of the General Conditions all such information as the Recipient or the Association shall reasonably request for the purposes of such Section.]

Section III. Other Undertakings

1. Except as the Association shall otherwise agree, the Project Implementing Entity shall:
 - (i) 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) 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.
2. For purposes of this Section III:
 - (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.