

# INVESTMENT AGREEMENT

BY AND BETWEEN

THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT  
OF **YAP**,  
FEDERATED STATES OF MICRONESIA

(THE “**STATE**”)

AND

CHENGDU CENTURY CITY NEW INTERNATIONAL  
CONVENTION

AND

EXHIBITION CENTER COMPANY, LTD

(COLLECTIVELY AS “**ETG**”)

FEBRUARY 2012

## **Table of Contents**

SECTION 1: DEFINITIONS .....	3
SECTION 2: OBJECTIVES OF THE PROJECT .....	6
SECTION 3: CONTENT OF THE PROJECT .....	7
SECTION 4: ENVIRONMENTAL PROTECTION .....	11
SECTION 5: COMMUNITY RESOURCES.....	13
SECTION 6: EMPLOYMENT .....	13
SECTION 7: USE OF LOCAL GOODS & SERVICES .....	14
SECTION 8: INFRASTRUCTURE .....	14
SECTION 9: EDUCATION .....	15
SECTION 10: MEDICAL CARE.....	16
SECTION 11: ADDITIONAL UNDERTAKINGS BY ETG .....	17
SECTION 12: ADDITIONAL UNDERTAKINGS BY THE STATE .....	18
SECTION 13: REPRESENTATIONS AND WARRANTIES OF ETG .....	20
SECTION 14: FORCE MAJEURE .....	21
SECTION 15: LIABILITIES AND INDEMNITIES .....	23
SECTION 16: GOVERNING LAW AND DISPUTE RESOLUTION.....	23
SECTION 17: MISCELLANEOUS .....	25
SECTION 18: EFFECTIVE DATE.....	28

## SECTION 1: DEFINITIONS

**“Affiliate”** of any Person means any other Person that directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

**“Agreement”** means this Investment Agreement and any amendments to it made pursuant to its terms as well as all schedules and exhibits annexed to it.

**“Business Day”** means any day other than Saturday or Sunday or a holiday declared by the Government of the State of Yap, the National Government, and the Government of the People’s Republic of China.

**“Control”** (including the terms “controlled by,” “under common Control with,” and “Controls”) means the possession, directly or indirectly, of the ability to direct the management and policies of a Person. Without limiting the generality of the preceding sentence, such ability is presumed to exist as to a Person in another Person or Group holds or can direct the exercise of at least 25% of the Management Rights with respect to such first Person and no other Person or Group holds or can direct the exercise of a greater percentage of the Management Rights of such first Person.

**“Dispute”** means any disagreement between the Parties to this Agreement which may be subject to review by a court of competent jurisdiction.

**“Dollar”** and **“US\$”** mean the lawful currency of the United States of America.

**“Effective Date”** has the meaning given to it in Section 18.

**“ETG”** means the business enterprises known as Chengdu Century New International Convention, Exhibition Center Company, Ltd. and any parent companies associated with those entities. ETG shall also be read, where necessary, to encompass all Subsidiaries, affiliates, contractors, sub-contractors, and Other Project Participants (as defined below), especially

where such entities may gain third party beneficiary rights pursuant to this Investment Agreement.

**“Force Majeure”** has the meaning given in Section 14.

**“FSM”** means Federated States of Micronesia.

**“Infrastructure,”** in general, means the public services (such as roadways, schools, bridges, sewers, and water systems) necessary to support and sustain commerce as well as economic and residential development within the State of Yap. Specifically, “Infrastructure” has the meaning given to it in Section 8.

**“International Standards”** means any of the standards of professional care, skill, diligence, practices and methods generally followed by prudent internationally recognized professionals regarding the conduct of similar activities or the provision of similar services.

**“Land”** means any land in the State of Yap including any riparian rights that may be attached to a distinct and identifiable parcel of real property, and as applied to a single landowner and/or leaseholder of such identifiable property.

**“Law”** means any constitution, treaty, obligation, law, statute, decree, rule, regulation, judicial act or decision, judgment, order, proclamation, directive, executive order or other sovereign act of the government of the State of Yap and/or the National Government other than this Agreement.

**“Master Investment Plan”** means a comprehensive plan, developed by ETG, which shall document and display ETG’s physical and economic development plans within the State of Yap. This definition shall also encompass any amendments, modifications, adjustments, and/or changes made by ETG, the State, and/or any other party which shall substantially affect the size, scope, cost, long-term and short-term impact, and/or methodology of any original plan developed by ETG. The terms “Master Investment Plan” and “Master Plan” shall have the same meaning within this agreement.

**“Mortgage”** means a lien against property that is granted to secure an obligation (such as a debt) and that is extinguished upon payment or performance according to the stipulated terms.

**“MIGA”** means Multilateral Investment Guarantee Agency.

**“National Government”** means the national government of the FSM, including all of the branches, subdivisions, political subdivisions, instrumentalities, authorities, and agencies of its government.

**“Other Project Participant”** means, for the purpose of the objective of this Project, Persons, other than ETG and its subsidiaries or Affiliates, who develop tourism, exhibition, commercial trade, vacation, and real estate project on the Land which have been preliminary tract developed by ETG, Persons who participate in the development of the infrastructure, and other Persons who provide financing, goods, or services for the Project.

**“Party”** means either the State or ETG, in the plural form, the State and ETG. “Party” may, where the context so indicates, also refer to non-signatory Persons who gain third party benefits pursuant to this Agreement.

**“Person”** means any natural person and any partnership, joint ventures, corporation, limited liability company, trust, estate or other entity that is recognized by the laws of any jurisdiction as a distinct body possessing the right to enter into contracts or to own, lease or possess real or personal property, as well as a government or state, and any branch, division, political subdivision, instrumentality, authority or agency of any government or state.

**“Project”** means the actual planning, construction, ancillary acts taken by ETG, its Subsidiaries, and Other Project Participants, in order to construct a tourism facility, described more fully in Section 3, within the State of Yap. This Agreement and all other duly executed agreements before it shall not constitute a part of the “Project.”

**“State”** means the State of Yap as represented by the Governor of the State of Yap, the Executive Branch and its divisions, political subdivisions, instrumentalities, authorities,

agencies, and, where relevant, specifically limited to the scope of authority which the Governor may execute pursuant to the laws of the Constitution and the State of Yap.

**“Sinasure”** means China Export & Credit Insurance Corporation.

**“Subsidiary”** means, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a Group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person and/or one or more of its Subsidiaries.

**“Years”** means, for any period of years not otherwise tied to a specific date, a period of years measured from the first day of the month in which the Effective Date falls.

This agreement shall be read with such changes in gender or number as the context shall require. Headings to the clauses and sections of this Agreement are inserted for convenience only and shall not affect its construction. All references to Law or to any specific laws or regulations shall mean such laws and/or regulations as are at the time in effect. References to “Sections,” “Appendices,” “Schedules” and “Exhibits” without other attribution are references to Sections, Appendices, Schedules and Exhibits forming parts of this Agreement.

Unless otherwise stated, a reference to “hereof,” “hereunder,” “herein,” or words of similar meaning, is a direct reference to this Agreement. The words “and” and “or” will include the conjunctive and disjunctive, as the context may require. The word “include” (and any variation of that word) means “including, but not limited to.”

## **SECTION 2: OBJECTIVES OF THE PROJECT**

The objective of this Project is to develop designated portions of the State of Yap into a world-renowned tourist destination, to realize the commercial interests of ETG, to further the financial stability and economy of the State of Yap, and to increase local employment as well as the welfare of the local community in the State of Yap in general, provided that ETG shall take

all actions necessary to preserve the local culture and natural environment during the whole term of this Project.

### **SECTION 3: CONTENT OF THE PROJECT**

ETG may acquire the right to land use in the form of tract land lease in accordance with such zoning and a general development plan (hereinafter referred to as “the Master Investment Plan”), subject to final approval of the Master Plan by the Governor of the State of Yap. ETG will undertake Preliminary Tract Development on such tract land thereafter, after which ETG is entitled to further development and to sublease land to Other Project Participants. Other Project Participants shall be entitled to develop commercial and tourism projects in accordance with the zoning aforementioned, subject to the prior approval of the Governor of the State of Yap and in accordance with the laws of the State of Yap.

For the purpose of this Project, ETG will establish Subsidiaries in the State which will be the entities who mainly implement this Project. ETG hereby agrees that at no time shall such Subsidiaries be known as and/or referred to as “independent contractors” and/or “subcontractors” of ETG, Other Project Participants, and/or Affiliates.

ETG hereby notifies the State that, for the purpose of this project, it is necessary to introduce Other Project Participants to join in the Project, subject to prior approval by the Governor of the State of Yap. Such approval shall only result after application by an individual Other Project Participant and upon considered recommendation and comment to the Governor by his advisors. The Governor shall establish a procedure for application and review of Other Project Participants as soon as possible following approval the Master Plan by the Governor of the State of Yap in order to facilitate ETG’s efforts in developing the project.

#### **3.1 Zoning**

The State shall conduct the zoning of the Land in good faith compliance with the stated goals of this Agreement, however, the State shall have final approval and authority over all decisions regarding the zoning or re-zoning of real property in conformance with the laws of the State of Yap.

The Parties agree to carry out the zoning as soon as is possible.

The Parties agree that the State shall make all reasonable efforts to zone and/or rezone any Land held by ETG, its Subsidiaries, or Other Project Participants by way of a lease agreement, as zoned exclusively for commercial, tourism, vacation, and real estate development. The State agrees that allowing gas, mineral, and/or oil mining on both land and in Yap's territorial waters may harm ETG's business interests. The State shall take into consideration ETG's concerns regarding the future of land and territorial waters.

### **3.2 Acquisition of Right to Land Use**

ETG or its subsidiaries may acquire the right to land use in the form of tract land leases, during which, non-financial assistance may be provided by the State insofar as the State may conduct such affairs in accordance with the laws of the State of Yap.

The State shall use its best efforts to conduct the surveying and registration of the Land.

### **3.3 Preliminary Tract Development**

After acquisition of the right to use of the Land, and upon approval by the Governor of ETG's Master Development Plan, ETG undertakes and shall be entitled to carry on **Preliminary Tract Development** in accordance with zoning and ETG's **Master Investment Plan**. This section and its authorities shall only apply to tracts of land which are contemplated and described in portions of the Master Development Plan to which the Governor has specifically approved.

The term "**Preliminary Tract Development**" in this Agreement means that after acquisition of the right to the use of tracts of land, ETG and/or its Subsidiaries shall carry out, as planned in zoning and ETG's Master Investment Plan, comprehensive development and construction on the Land, including relocation of the local residents, leveling the ground and constructing such public works as water supply and drainage systems, power and heat supply systems, roads and communications networks, and communications facilities, so that conditions shall be created for the land to be used for commercial or other construction purposes.

### **3.4 Development by ETG**

After **Preliminary Tract Development**, ETG shall be entitled to develop tourism, trade and real-estate projects by itself and in strict conformance with those section(s) of the Master Investment Plan which have been specifically approved by the Governor, including but not limited to:

#### **3.4.1. Tourism Facilities**

- (a) Five-star international brand hotels and resorts totaling not more than four thousand (4,000) rooms pursuant to this initial Investment without amendment,
- (b) an exhibition and convention center with related facilities of international standards,
- (c) an entertainment center,
- (d) two (2) eighteen-hole golf courses of International Standards with a single course to be in development in the initial stages of the overall project's construction and with the understanding that the Parties shall discuss and negotiate the possibility and environmental feasibility of amending this agreement to allow for future golf course development
- (e) a sports center including tennis courts, basketball fields, and other sport facilities,
- (f) an ocean park created in compliance with applicable environmental laws and with respect to Yapese customs and traditions regarding use of the coastal waters surrounding Yap,
- (g) marinas and yacht clubs
- (h) a passenger's wharf,

(i) cultural facilities including theaters, cinemas, performance stages, cable tv system(s), and

(j) commercial blocks including shopping areas and duty free shop areas.

#### **3.4.2. Tourism real estate**

(a) Apartments, and

(b) Garden villas.

### **3.5 Transfer of Right to Land Use**

**3.5.1.** After preliminary Tract Development, ETG shall be entitled to transfer the right to use land to Other Project Participants subject to the prior approval of each Other Project Participant by the Governor of the State of Yap as set forth in Section 3, above. Other Project participants shall be entitled to carry on tourism, trade, exhibition and real estate business activities in compliance with zoning and subject to Section 17.4, below.

**3.5.2** The State undertakes to offer reasonable assistance to the abovementioned transfer, including but not limited to taking steps to enact or modifying relevant land laws, improving the registry system for land sublease, so that Other Project Participants will be able to peacefully enjoy the right to use land without any disturbance. However, this section shall not:

(a) be interpreted as a promise by the Governor that certain laws and/or regulations shall be enacted or proffered for legislative and/or administrative consideration upon request by ETG and/or any Other Project Participant, or

(b) require or restrict the State of Yap's sovereign right to independently create, modify, and/or enforce its criminal statutes and relevant criminal penalties.

### **3.6 Project Management**

ETG's right to "develop" or "development" of the Project includes the right to plan, construct, manage and/or operate the Projects subject to those sections of the Master Investment Plan which have been approved by the Governor and in accordance with the terms, conditions, and assurances contained within this Agreement.

### **3.7 Master Investment Plan**

The Projects provided in this Section shall be developed in accordance with and subject to the Master Investment Plan produced by ETG, which is subject to the prior approval by the State. For avoidance of doubt, the Master Investment Plan may consist of several parts according to the phases of the development of the Project and shall be submitted to the State for approval separately, provided that all parts of the Master Investment Plan must be approved by the Governor prior to the commencement of construction described in each part.

### **3.8 Approval of the Master Investment Plan**

Subject to the law, the State agrees that the approval of the Master Investment Plan shall not be unreasonably withheld without expressly stating the reason for non-approval of the Master Investment Plan. The Parties agree to cooperate in good faith in amending the Master Investment Plan to meet the requirement of the State and to bring the Master Investment Plan into conformance with the laws of the State of Yap and the Federated States of Micronesia, respectively.

### **3.9 Subsidiaries**

ETG will incorporate Subsidiaries in the State of Yap to carry out the development of the Project. Such Subsidiaries shall be entitled to the rights and subject to the obligations as the same as ETG under this Agreement, whether specifically mentioned or not, as the case may require. In the interests of clarity, such Subsidiaries shall operate, in part, as duly authorized agents representing ETG within the State of Yap.

## **SECTION 4: ENVIRONMENTAL PROTECTION**

### **4.1 ETG's Duty**

ETG, its Subsidiaries, and Other Project Participants must carry out their development of the Project in accordance with applicable environmental Law, International Standards and

this Agreement. ETG, its Subsidiaries, affiliates, and Other Project Participants must in any event take appropriate preventive measures to protect all streams and water bodies within or bordering FSM, all dry Land surfaces, and the atmosphere from pollution, contamination or damage resulting from Development. If Development by ETG violates any requirement referred to in the two previous sentences or otherwise results in damage to the environment, ETG must proceed diligently to restore the environment as much as possible to its original and natural state (or remediate the damage where restoration is impractical) and must take appropriate preventive measures to avoid further damage to the environment. Nothing in this Section shall prevent interested third parties from bringing claim for damages against ETG, its Subsidiaries, and Other Project Participants.

#### **4.2 Environment Impact Assessment**

An internationally recognized environmental management consulting firm shall be engaged by ETG or its Subsidiaries to produce an Environmental Impact Assessment Study Report concerning the development of the Project, which shall be updated as the development proceeds. In the interests of obtaining a completely impartial, accurate, and reliable Assessment, such firm shall not have its corporate or business headquarters located within the political state known as the People's Republic of China.

#### **4.3 Environmental Inspections**

The State may conduct inspections of the Project in order to monitor ETG, its Subsidiaries, and Other Project Participants' compliance with environmental regulations.

#### **4.4 Government's Duty**

When considering future projects that may pose a negative effect on the environment and natural resources of Yap, the State may take meaningful steps to prevent and/or minimize the risk posed to the environment.

#### **4.5 General Acknowledgement**

The Parties acknowledge that the environment protection is of the priority at all times and of the common interest of the Parties. The Parties agree to fully cooperate in the environment protection.

## **SECTION 5: COMMUNITY RESOURCES**

It is the policy of the State and the obligation of ETG that the development of the Project shall be carried out by ETG in a manner that is consistent with the continuing economic and social viability of centers of population that have formed and which may form as a result of Development during the term of this Agreement. Upon request of the State at any time, ETG shall consult with the State and the local communities affected by ETG's development of the Project to mutually establish plans and programs for the implementation of this objective, and thereafter ETG shall in good faith cooperate with the State with regard to its efforts concerning the realization of such plans and programs.

## **SECTION 6: EMPLOYMENT**

### **6.1 ETG Employment Practices**

Employment practices of ETG must conform to applicable labor practices, Law, and other applicable Law. ETG shall employ and give preference to the employment of qualified citizens of the State of Yap to the fullest commercially reasonable extent. ETG recognizes that English is an official language of the State of Yap and that it is unrealistic to expect Yapese citizens to be fluent or proficient in Cantonese, Mandarin, or any other language which is indigenous to the P.R. of China. Therefore, the requirement to speak Chinese, Mandarin, and/or any other dialect which is indigenous to the P.R. of China shall not be used as a factor to disqualify applicants for employment positions with ETG and/or its Subsidiaries. ETG shall include in its Master Investment Plan a listing of the percentage of the total proposed workforce of the Project to utilize Yapese citizen employees.

### **6.2 Choice of Employees**

Subject to Section 6.1, ETG may at all times choose its employees and shall be free to employ such Persons who are not citizens of the State of Yap where as required for the Development and where applicable law stipulates minimum technical qualifications and/or minimum levels of competence for any post. The State shall not object to use of Persons who can provide documentary proof of certifications of competency issued by organizations who evaluate such competency as based on internationally predefined standards.

### **6.3 Employment Training**

ETG, hereby promises to provide local employees of this Project from the State of Yap with continuous access to necessary trainings so that they can be qualified for their jobs, including training which shall offer local employees the opportunities to obtain the skills necessary to qualify for management and upper-management positions. ETG shall also provide opportunities for learning new skills to local employees, so that they are suitable for more sophisticated jobs. The purpose of training is to develop local employees' initiatives and their potentials and to increase local citizens' access to higher pay grades within ETG's employment system on Yap. ETG's commitment to training local employees shall continue so long as ETG, and/or its Subsidiaries, has a viable business interest located within the State of Yap.

## **SECTION 7: USE OF LOCAL GOODS & SERVICES**

### **7.1 Preference in Food and Services**

When purchasing goods and services related to ETG's developments of the Project, ETG shall give preference to the maximum extent possible to materials and goods produced in the FSM, services provided by FSM citizens of the FSM or entities incorporated or formed in the FSM, where such citizens of the FSM are entitled to receive 75% or more of all profits from such entities, provided that such goods and services are comparable in quality, terms, delivery, and quantity to goods and services obtainable from other sources. ETG agrees to require its major contractors to follow the policy of the State to encourage the purchase of FSM goods and services as set forth in this section.

### **7.2 Right to Contract**

Subject to Section 7.1, ETG and its major contractors may contract with any person, however, this right shall be subject to any contractors' and/or sub-contractors adherence to those hiring preferences and practices as set forth in Section 7.1.

## **SECTION 8: INFRASTRUCTURE**

### **8.1 Improvement of Infrastructure**

For the purpose of the Project, the Parties shall cooperate in good faith to improve the overall infrastructure in the State of Yap, including without limitation the following,

- (a) the road system,

- (b) the electricity and power grid, including building a new power plant,
- (c) the port facility,
- (d) the water supply maintenance system and rain collecting system,
- (e) the sewage system and the water recycling/filtration system,
- (f) a new gas station,
- (g) the waste treatment system,
- (h) a new airport terminal, an extension of the existing airport runway, and continued modifications and maintenance to the airport runway, and
- (i) a new State Capitol

(the above shall herein be collectively referred to as: the “Infrastructure”)

## **8.2 Good Faith Negotiations**

The Parties shall negotiate in good faith to develop a plan for further improvements of the Infrastructure. However, ETG shall have no authority to modify costs, deny or extend service to any Person, operate any of the utilities contemplated in this Section as a for-profit generating enterprise, conduct or encourage a strike of employees, form or attempt to form a union and/or organized group of employees, maintain records in any language other than English and/or any other official language of the State of Yap, hire and/or terminate managers, and/or deny access to records, documents, or things which are accessible by the public by way of any valid Law.

## **8.3 Infrastructure Improvement Framework**

The Parties shall execute separate agreements with respect to the development of the Infrastructure, in which the patterns of cooperation between the Parties shall be provided, including without limitation financing to the Government by ETG, BOT, Joint Venture and introduction of other third parties.

# **SECTION 9: EDUCATION**

## **9.1 Continuous Contribution**

ETG shall continuously contribute to the development of the education in the State of Yap to a commercially reasonable extent, including but not limited to, the establishment of a

trust fund to provide financial support for Yapese citizens to attend institutions of higher learning to an extent determined by good faith negotiation by the Parties.

## **9.2 New School**

A new school shall be built by ETG with the level and scale of the school to be determined by good faith negotiation by the Parties

## **9.3 Citizen Training**

ETG shall also provide on a continuing basis for the training of citizens of the State of Yap in order to qualify them for skilled positions within ETG's employment scheme and as required by ETG's development of the Project.

## **9.4 Legacy Employment Opportunities**

ETG shall, in conformance with Section 18.6, assure that all Persons identified in Section 18.6, who do business and/or anticipate doing business with the State of Yap, comply with the hiring, training, and continuing education requirements of this section. Furthermore, ETG's obligations under Section 9 to the people of the State of Yap, shall not lessen or terminate so long as ETG retains a financial interest in real and/or personal property located within the boundaries of the State of Yap.

# **SECTION 10: MEDICAL CARE**

## **10.1 Continuous Contributions to Medical Care**

ETG shall continuously contribute to the development of the medical care in the State of Yap.

## **10.2 New Hospital**

A new hospital shall be built by ETG with the level and scale of the hospital to be determined by good faith negotiations by the Parties. However, in the interests of public health, this hospital must be of sufficient size and sophistication to meet the reasonably anticipated treatment needs of the maximum number of tourists anticipates its collective tourist industry shall attract when operating at peak capacity combined with the pre-Development indigenous population of Yap. Expansion of this contemplated hospital and its available

facilities must correspond with any expansion of the Project which will lead to an expansion of the number of possible tourists ETG's project may attract when operating at peak capacity.

This section and its provisions are specifically designed to assure that the State and its medical care facilities do not become overwhelmed at any time due to the influx of tourists. Neither ETG (including its Subsidiaries, Affiliates, and/or Other Project Participants) nor the State may create and prepare a health care facility which denies access and/or treatment to any person located within the borders of the State of Yap. This section shall not deny a private entity from creating a health care facility which operates on a for-profit basis. Nor shall it, in any way, restrict or impair the authority of the Governor of the State of Yap to act, pursuant to the laws of the State of Yap, during a State of Emergency.

## **SECTION 11: ADDITIONAL UNDERTAKINGS BY ETG**

### **11.1 Indemnification of the State by ETG**

ETG shall at all times indemnify and hold harmless the State and its officers and agents from all claims and liabilities for any breach arising out of a failure of any undertakings or obligations of ETG, its Subsidiaries, contractors, sub-contractors, and/or Other Project Participants as set forth in this Agreement, or as a result of its failure to comply with any Law to which it is subject.

### **11.2 Maintenance of Existence**

ETG shall, prior to the commencement of any act of construction, including preparation of any parcel of land for construction, which is located within the borders of Yap, cause and maintain at least one of its Subsidiaries as a body corporate organized under the Law of the State of Yap and such body corporate shall be authorized to accept service of process and notice of official documents on behalf of ETG as a whole as if such corporate body were acting as a licensed agent of ETG.

### **11.3 Chinese Government Approval**

ETG shall use its best efforts to obtain Chinese government approval of the development of the Project after signing of this agreement. Failure by ETG to gain Chinese Government approval shall result in the immediate termination of this Agreement and all other

ancillary Agreements/Contracts between ETG, its Subsidiaries, and Other Project Participants which have been granted rights and benefits pursuant to the signing of this Agreement.

#### **11.4 Feasibility Study**

A feasibility study regarding the geological, hydrological, biological and tourism resource conditions shall be prepared by ETG within six (6) months after the execution of this Agreement, the goal of which shall be to determine the likelihood that the State shall be able to absorb the inevitable strain that the implementation of the Master Plan will place on Yap's environmental resources. The Government shall provide assistance thereof including without limitation the provision of related materials and data. The Government shall be entitled to a copy of the full and complete study, in English, upon its completion.

### **SECTION 12: ADDITIONAL UNDERTAKINGS BY THE STATE**

#### **12.1 Governmental Takings**

The State agrees that it shall not expropriate and/or take any land or property subject to a financial interest held by ETG, its Subsidiaries and/or Other Project Participants unless such expropriation is carried out in compliance with the Laws of the State of Yap and the FSM.

#### **12.1 Use of Existing Public Utilities and Facilities**

ETG shall be entitled to purchase services from public utilities and other facilities operated or provided by the State, or by any Person under license or authority of the State. The State shall ensure that all charges for, and other terms and conditions of, the use by ETG of such public utilities and facilities are fair and reasonable in consideration of ETG's substantial use of such utilities and facilities when combined with the overall capacity of those facilities to meet their obligations to the public and ETG's construction efforts.

#### **12.3 Indemnification of ETG and its Subsidiaries by the State**

The State shall at all times indemnify and hold harmless each of ETG and its Subsidiaries from all claims and liabilities arising out of a breach of any undertakings or obligations of the State as set forth in this Agreement, except where such a breach was due in substantial part to the negligence or intentional act of ETG or its Subsidiaries. The privilege of

indemnification shall not extend to Other Project Participants who are not signatory parties to this Agreement.

#### **12.4 Approval and Consent by the State**

The State may submit this Agreement to the Legislature of the State for approval within such time as the Legislature agrees to take up this matter and accordance with that body's lawfully executed rules and procedures.

#### **12.5 Approval and Consent by the National Government**

The State shall use its best efforts to assist ETG with communications with the National Government on issues recharging approvals and consents which are required for ETG's development of the Project.

#### **12.6 Coordinating Committee**

The State undertakes that a multi-industry committee (hereinafter referred to as the "Coordinating Committee") shall be established for the purpose of:

- (a) Monitoring the performance of this Agreement and other agreements within the framework established by this Agreement.
- (b) Monitoring and making regular reports to the State regarding the development of the Infrastructure, and
- (c) Serving as a communication platform between ETG and the State.

The Coordinating Committee shall be funded equally by both ETG and the Government of the State of Yap. However, this body shall have no regulatory authority: it shall not be considered a division or agency of the State Government of Yap, nor shall it have standing or authorization to file any legal claim pursuant to this Agreement or file any briefs with a Court in advocacy of any position.

The Coordinating Committee shall also be responsible for coordinating relationships with the State and other responsibilities as ETG and the Government may agree from time to time. An internal policy shall be adopted by the Coordinating Committee as soon as practical to secure the better development of the Project.

### **12.7 Acquisition of Land Leases**

The State shall use its best efforts to assist ETG or its Subsidiaries in the procedures surrounding the lease of the Land required for the development of the Project. However, at no time shall the State be considered an agent or representative of ETG, its Subsidiaries, and/or Other Project Participants. The requirement that the State use its “best efforts” to assist ETG does not create a business or fiduciary obligation by the State to ETG, nor shall the State engage in practices which are against the best interests of its citizens, violate the laws of the State of Yap, and/or violate the State’s obligation to serve as a government of limited authority and power.

### **12.8 Insurance and Subrogation**

The Parties acknowledge that ETG may acquire insurance from agencies such as MIGA or Sinasure against commercial and/or commercial risks. Should the consent of the State be required for the acquisition of such insurance, the State shall extend such consent accordingly and acknowledge the transfer of all rights and receivables of the indemnified Party to the said agencies.

## **SECTION 13: REPRESENTATIONS AND WARRANTIES OF ETG**

ETG represents and warrants to the State as follows:

**13.1** ETG is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and has the corporate power and authority to execute, deliver and perform its obligations under this Agreement.

**13.2** This Agreement has been duly authorized by all necessary corporate action on the part of ETG, and this Agreement constitutes a legal, valid and binding obligation of ETG enforceable against ETG in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar

laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**13.3** The execution, delivery and performance by ETG of this Agreement will not (i) contravene, result in any breach of, or constitute a default under any agreement or instrument to which ETG is a party or by which or any of its properties are bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or governmental authority applicable to ETG or (iii) subject to the Chinese governmental approval, violate any provision of any statute or other rule or regulation of any governmental authority applicable to ETG.

## **SECTION 14: FORCE MAJEURE**

### **14.1 Definition**

The term "Force Majeure" as used in this Agreement shall mean acts of God, accidents, wars, acts of war, invasions, acts of public enemies, hostilities (whether war is declared or not), restrictions on trade or other activities imposed by any sovereign nation or state, embargoes, blockades, revolutions, riots, civil commotions, acts of terrorism, sabotage, strikes and/or other industrial, labor or employer-employee disputes (if not cured for a period of more than two months), fires, explosions, earthquakes or any other natural disasters, expropriation of facilities or goods, epidemics, public health emergencies and any similar cause, provided any such cause was not within the reasonable control of the Party claiming the benefit of Force Majeure and could not have been avoided or overcome by such Party through the exercise of due diligence.

### **14.2 Application**

In the event of a Party rendered unable, in whole or in part, by Force Majeure to carry out any obligation under this Agreement, the Party shall give notice and the particulars of such Force Majeure in writing to the other Party as soon as practicable after the occurrence of the cause relied on. Thereafter, any obligation of the Party giving such notice that such Party is unable to carry out because of such Force Majeure shall be suspended during the continuance of any such inability so caused, but for no longer period, and such inability shall, as far as practicable, be remedied with all reasonable dispatch. All time periods specified in this Agreement for the performance of obligations or the enjoyment of rights that are affected by

Force Majeure shall be extended until the effect of such Force Majeure is remedied as above provided or otherwise ceases.

### **14.3 Notice**

The notice required by section 15.2 shall include a detailed description of the event of Force Majeure, an estimate of the duration of such event, the reasons for which such party is unable to perform its obligations hereunder due to such event and a plan to mitigate and remedy such event, if possible. The Party giving such notice shall provide the other Party with regular updates of the foregoing information.

### **14.4 Satisfactory Solution**

If an event of Force Majeure continues for longer than three (3) months, ETG and the State shall enter into good faith discussions to determine whether a mutually satisfactory solution exists. If the Parties fail to reach a mutually satisfactory solution, then the provisions of Section 16.4 shall apply.

### **14.5 Termination**

If a Party is unable to perform its obligations under this Agreement as a result of Force Majeure for a period exceeding six (6) Months, then either Party may terminate this Agreement by the issuance of a written notice.

The State shall have the option of terminating this Agreement and any/all obligations contained herein, should ETG commence construction on the project prior to making the Master Plan available for review and approval by the Governor of the State of Yap.

### **14.6 Termination and Forfeiture of Assets and Holdings within Yap**

The Parties understand that the government of the P.R. China shall play an important and continued roll in the initiation, realization, and viability of the Project. The Parties also understand that the State of Yap, by way of the government of the Federated States of Micronesia, is in the business of engaging in commerce, trade, and good faith political/diplomatic relationships with allies around the globe, specifically the United States of America. Should the government of the P.R. China engage in open, military hostilities with any sovereign nation allied with the FSM by way of a Treaty and/or Compact agreement, then this

Agreement shall be immediately terminated and ETG, its Subsidiaries, and any Other Project Participant with its principal place of business located within the P.R. China shall forfeit all assets, holdings, real property, improvements to real property, and any past or future interest in real and/or personal property to be received by the Government of the State of Yap as if the State had originally obtained such interests and/or rights instead of ETG, its Subsidiaries, and/or Other Project Participants.

## **SECTION 15: LIABILITIES AND INDEMNITIES**

### **15.1 ETG Indemnity**

ETG shall indemnify, defend, and hold harmless the State, from and against all liabilities, losses, expenses, and claims for personal injury or property damage or any penalties or fines that arise from or out of the ETG's negligent acts or omissions in the performance of its obligations hereunder. Without limitation to the foregoing, ETG shall indemnify and keep indemnified the State for any breach by ETG of any of the terms, representations and warranties contained herein.

### **15.2 Joint Responsibility**

In the event that any damage is caused in part only to the negligence or default or omission on the part of the State and in part only due to the negligence or default or omission on the part of ETG, each Party shall be liable to the other Party only in proportion to its respective degree of negligence or default or omission as the case may be. Neither Party shall have any liability to the other Party under this Agreement for any indirect, consequential, or incidental damages, whether arising in contract, warranty, strict liability, or otherwise.

## **SECTION 16: GOVERNING LAW AND DISPUTE RESOLUTION**

### **16.1 Governing Law**

This Agreement shall be governed and interpreted in accordance with and shall be given effect under the laws of the State of Yap and the FSM.

### **16.2 Construction and Interpretation**

This Agreement and the rights, obligations, and duties of the Parties under this Agreement shall be construed and interpreted in accordance with applicable law.

### **16.3 State Warranty**

The State warrants to ETG, that for the duration of this Agreement, that it shall use best efforts to maintain and sustain the legal, economic, financial, social, tax, and customs conditions as they exist upon the effective date of this Agreement. ETG, its Subsidiaries, and Other Project Participants may, at any time, request the benefit of any new legal, economic, financial, tax, social or customs provision which is more favorable to it than the provisions of Applicable Legislation or of this Agreement, whether such new provisions result from (i) a legislative or regulatory development or (ii) from a regime which has been granted to another investor in the Yap State. However, this section shall not be interpreted as an obligation on behalf of the State to maintain certain laws, nor shall it be a guarantee that the State shall enact legislation for the sole purpose of maintaining conditions favorable to ETG, *et al.*

### **16.4 Disputes**

Any dispute, controversy or claim arising out of this Agreement and the activities carried out hereunder, shall be exclusively and finally settled by the State Courts of Yap. Where an issue arises or controversy arises wherein an exclusive federal question is a substantial element of the controversy, that controversy shall be subject to the jurisdiction of the FSM Courts. Regardless of the nature of the claim or controversy, all Parties agree that the exclusive venue for such claims or controversies shall be the courts located at Colonia, Yap.

### **16.5 Mutual Consultation**

If either Party believes that a Dispute exists, it may deliver a notice to the other Party requesting that the Dispute be referred to the senior management of the Parties. Any such notice shall include the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the twenty one (21) Day period following the date of notice. Within seven (7) Days after receipt of a notice pursuant to the preceding sentence, the other Party shall provide a notice to the requesting Party indicating the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the twenty one (21) Day period following the date of the notice. During the remainder of such period following delivery of the notice, the nominated members of the senior management of the Parties shall meet as frequently as possible, and shall attempt in good faith to use their best efforts to resolve the Dispute.

In regards to the State of Yap, the term “Senior Management” shall refer to the Office of the Attorney General.

## **SECTION 17: MISCELLANEOUS**

### **17.1 Amendments**

No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification shall be in writing and duly executed by the Parties hereto.

### **17.2 Assignment**

This Agreement may be assigned to other parties only upon delivery to the assignor of an agreement, in writing, of the assignee to assume all liabilities of the assignor under the Agreement. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit and responsibility of the assignee. Any assignment not in accordance with the provisions of this Section shall be void and without force or effect.

The provisions of this Section shall be subject to Section 17.4 and ETG shall operate under an affirmative duty to deliver this Agreement to all third parties who are subject to this Section. ETG’s affirmative duty shall be considered for the benefit of the State and the people of Yap. Failure by ETG, its Subsidiaries, and/or Affiliates to comply with this section shall constitute a breach of this affirmative duty by ETG, regardless of which party was specifically required to deliver and cause to be signed the written agreement, referenced in the immediate paragraph above.

ETG hereby covenants to deliver to the Governor of the State of Yap, copies of all agreements with third parties pursuant to this Section to which this Section applies.

### **17.3 Notices**

Any notice, request, document, or other communication required or permitted under this Agreement may be given in any manner provided herein to the address or number provided below and shall be deemed effective as indicated: (a) if in writing and delivered in person or by courier, on the date it is delivered; (b) if sent by electronic or facsimile transmission, on the date that the sender receives written confirmation of such receipt by the

recipient, provided that a copy is sent in accordance with Section (a) above; or (c) if sent by certified or registered mail (air mail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered; unless the date of such delivery or receipt, as applicable, is not a Business Day in the place of such delivery or receipt, or such communication is delivered or received, as applicable, after the close of business on a Business Day in the place of such delivery or receipt, in which case such communication shall be deemed given and effective on the next Business Day in the place of such delivery or receipt following such day.

#### **17.4 Legacy Assurances**

The Parties to this Agreement recognize that the promises made by ETG within this Agreement regarding employment, investment in the infrastructure of Yap, job training, education, respect for culture and traditions, preservation of the environment, and conformance with the laws of the State of Yap and the FSM must be sustained past ETG's initial involvement in this project. Indeed, these assurances by ETG would ring hollow in the future if those Other Project Participants, licensees, contractors, sub-contractors, employees of ETG, etc., were to avoid their responsibilities to the development and prosperity of the State of Yap because they did not sign this Agreement. Therefore ETG covenants that it shall execute Contracts with all future Subsidiaries, investors, licensees, sub-lessors, contractors, sub-contractors, and/or any non-signatory party intending to pursue a business interest utilizing property for which ETG holds a lease and/or license that shall bind such Persons to the promises and assurances made within this Agreement as if such Person were a signatory Party to this original Agreement.

#### **17.5 Waiver**

Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the term of this Agreement shall in no way affect the validity of this Agreement, or any part thereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

#### **17.6 Severability**

The invalidity of one or more phrases, sentences, clauses, sections, or articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

### **17.7 Further Assurances**

The Parties agree to provide such information, execute and deliver any such instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

### **17.8 Regular Communication Plan**

For the purpose of better development of the Projects, a regular communication plan shall be adopted by the Parties so that the Parties will meet regularly at the end of each quarter in the State of Yap to discuss the following and any other necessary issues:

- (a) Review of the performance of this Agreement, and
- (b) Amicable negotiation of the disputes arising out of the development of the Projects.

### **17.9 Language**

This Agreement may be executed in both English and Chinese. The English language version shall control in any dispute arising between any primary or ancillary party to this Agreement.

### **17.10 State of Emergency**

Nothing in this Agreement and/or subsequent agreements, amendments, or modifications hereto, shall restrict or impair the authority of the Governor of the State of Yap pursuant to a Declaration of a State of Emergency and in accordance with the laws of the State of Yap and the FSM. No Party or Person contemplated within this agreement shall be entitled to bring and/or maintain a claim, under **any dispute resolution plan**, for any perceived injury or damage resulting from an act by the Governor pursuant to the aforementioned Declaration. This immunity shall extend to the Governor in his capacity as a government official and employee and to the Governor as an individual person and citizen of Yap.

**17.11 Multiple Copies**

This Agreement is executed in eight (8) duplicates with each of the equal legal effect. Each Party shall have four (4) duplicates.

**SECTION 18: EFFECTIVE DATE**

**18.1 Definition**

The “Effective Date” means the date upon which this Agreement becomes binding upon the signatory parties.

**18.2 Requirements**

The Effective Date of this contract shall be determined to have occurred upon the date upon which the last of the following requirements shall have occurred:

- (a) This Agreement is signed by the State’s duly authorized representative;
- (b) This Agreement is signed by ETG’s duly authorized agent or representative;
- (c) The Legislature of the State of Yap signifies its approval of this Agreement and notice of each such approval is received by ETG in writing by way of the Governor of the State of Yap, and
- (d) The Government of China grants approval to ETG and the project and notice of such approval is received by the Governor in writing by way of ETG’s duly authorized agent or representative.

**SIGNATURES**

**Governor of the State of Yap:**

**Date:**

\_\_\_\_\_  
**The Honorable Sebastian Anefal**

\_\_\_\_\_

**Duly Authorized Agent/Representative of ETG, et al.:**

**Date:**

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