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THE CITY OF SPRINGFIELD, MASSACHUSETTS

September 11, 2012

Stephen Crosby, Chair
Massachusetts Gaming Commission
84 State Street, Suite 720
Boston, MA 02109

Dear Commissioner Crosby:

Re: *Springfield Casino Host Community Agreement Process*

The Massachusetts Gaming Act, (Mass. Gen. Law ch. 23K, (“the Act”)) provides the Gaming Commission with the authority to award a very valuable right: a regional monopoly to run the only casino in Western Massachusetts.

Under the Act, the City government’s participation in this process is negotiating host community agreements. (See Mass. Gen. Law, ch. 23K, §15). The Commission will be choosing the licensee, but not until: the executive branch of government, under the City’s Plan A charter (“strong Mayor”), has negotiated one or more agreements with developers; the City Council has approved the host community agreement; and an election of voters has approved the agreement.

The gaming industry is highly specialized, where the casino operators all have high powered consultants. In order to negotiate the best host agreement (or agreements) possible with these companies, the City needs to retain the same high powered consultants that the casino operators utilize.

While we are rightfully concerned about the appearance of any conflict of interest, state law provides for the filing of a disclosure under Mass. Gen. Laws ch. 268A, §23(b)(3) to dispel any such appearance, and such a filing has been made in this situation by the consultants. I am including a copy of the disclosure form filed with the City Clerk’s office for your records.

The City issued an RFP and followed a process similar to the Commonwealth when the Gaming Commission sought qualified experts to obtain casino advisory services. The City drew on the same pool of experts as did the Commission. A review of the pool of

qualified consultants shows that they have all represented many casino operators throughout the country.

During the City's RFP process to retain a consultant, Shefsky & Froelich disclosed that it was representing MGM in the state of Illinois at the time it submitted. At the interview, as the potential for Penn National competing for a Gaming License came to our attention, it was disclosed that the Consultant also represents that operator. In addition, the consultant has represented Hard Rock in the past. However, the consultant is not representing any gaming operator interests in Massachusetts and has agreed to forego any such representation until the representation of the City has been completed.

Our consultants have advised us that they reviewed the applicable legal/ethical regulations concerning this matter in the State of Illinois and in the Commonwealth and concluded no conflict of interest exists which would prevent their engagement by the City.

To confirm that all conflict of interest provisions are complied with, our consultants are able to seek an opinion from the State Ethics Commission which includes all of the pertinent background information so that a formal opinion can be issued outlining the limitations in more detail. The City is not the party which would request the opinion; our consultants have done that on their own. Such opinions are confidential and would not be subject to public disclosure unless agreed to by the consultant.

The lawyers working on behalf of operators in Illinois are excluded from working under the scope of the City of Springfield contract. In addition, the lawyers working for the City of Springfield are "walled off" from working on the matters in Illinois. Indeed, our consulting team of Messrs. Froelich and Schaller and Ms. Copp have informed the City that they have not performed any services for the casino companies who have announced an interest in locating in the City in at least several years.

City consultants of this nature are considered "Special Municipal Employees" under the State Conflict of Interest Law, Chapter 268A. As Special Municipal Employees, under the state statute the prohibitions of accepting other employment are less restricted.

In the City's contract with the consultant, "the Consultant and the City specifically agreed that attorneys from the Consultant's law firm and Team providing services" are permitted to render legal services to, and to be employed by, other governmental bodies, private persons and firms, "so long as such employment does not interfere with or conflict in any way with its work for the City and that such attorneys shall be considered 'Special Municipal Employees' as defined in Section One of Massachusetts General Laws, Chapter 268A."

In this situation, the Commission should be aware that the City will be seeking payment of the consultants' costs from the developers pursuant to provisions of the gaming Act. The City's consultants have recommended a process that has been utilized successfully in Michigan, and this process is designed, as indicated, to develop a proper competitive process, and to cover the City's expenses pursuant to the above-referenced statutory provisions. Specifically, pursuant to the provisions of Mass. Gen. Law ch. 23K, § 4, clause (7), and §9 clause (13), a municipality is authorized by the Act to seek funding for professional services to examine or evaluate a cost, benefit or other impact and casino operators may be required to provide and pay for advisory services and technical assistance as may be necessary for reasonable costs related to legal, financial and other professional services required for the negotiation and execution of host and surrounding community agreements as provided in section 15, and to require that such costs be paid by the applicant for a gaming license.

The City has asked the consultant to appear before you today to discuss the RFP process which was outlined to this Commission and the public and the RFP which the City delayed issuing at the Commission's request.

Thank you for your assistance and cooperation.

Sincerely,

Edward M. Pikula, City Solicitor