



The Commonwealth of Massachusetts
Massachusetts Gaming Commission

NOTICE OF MEETING and AGENDA

May 22, 2012 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Tuesday, May 22, 2012

1:00 p.m.

Division of Insurance
1000 Washington Street
1st Floor, Meeting Room E
Boston, Massachusetts

PUBLIC MEETING

1. Call to order
2. Approval of minutes
 - a. May 15, 2012 Meeting
3. Administration
 - a. Executive Search Firm – procurement process vote
 - b. Additional Hires
 - c. Contract with Polaris Communications - vote
4. Racing commission
 - a. Transition plan – Update
5. Gaming consultant /Legal Consultant
 - a. Discuss and approve gaming consultant contract and statement of work – vote may be required
 - b. Discussion of gaming consultant RFQ/RFP proposal and draft Work Plan
 - c. Integration of Work Plans; development of project management chart
6. Finance / Budget Update
7. Public Education and Information
 - a. Economic Development Forum
 - b. Community Mitigation/Compulsive Gambling Forum
 - c. Community outreach/responses to requests for information
8. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as "Gaming Commission Meeting" at www.mass.gov/gaming/meetings, and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us and copies were mailed, postage prepaid, to:

Secretary of State, Regulations Division
One Ashburton Place, Room 2A
Boston, MA 02108

5/18/12
(date)

Executive Office of Administration and Finance
The State House, Room 373
Boston, MA 02133


Stephen P. Crosby, Chairman

Date Posted to Website: May 18, 2012 at 1:00 p.m.

May 16, 2012

MEMORANDUM

Date: May 16, 2012

To: Commissioners, Procurement File

From: Enrique Zuniga

Re: Recommendation to cancel current solicitation and re-bid for the services of an Executive Search Firm

The MGC issued RFR MGC 2012-002 on April 20, 2012 to solicit the services of an Executive Search firm for the search of a permanent Executive Director. The MGC received two bids by the deadline stipulated in the RFR (May 11, 2012). This memorandum outlines background information and the rationale for **my recommendation to cancel the current solicitation and re-bid (re-issue) a solicitation** for the purpose of increasing competition and deriving the most advantageous position to the Commission. Also included in this memo are recommended additional procedures designed to entice additional responses.

Background – Details of the Initial Solicitation

The initial document (RFR MGC 2012-002) complied with all the customary and necessary procedures of a sound solicitation (advertising time, posting requirements, detailed instructions and mandatory forms, etc.). The document included specific language relative to the right and ability of the Commission to terminate this procurement in whole or in part if the Commission determines it is in the best interest of the Commission (terms and conditions section 5.G).

Worthy of note during the solicitation process, the Commission received a question on May 10, 2012 (one day prior to the deadline) but clearly outside of the question period. In accordance with the procurement procedures and the language within the RFR, I wrote to the person asking the question that we would not be able to answer such question (because it had come after the period of questions had passed).

Procurement (RFR) Cancellation Procedures

The following language is contained in the Commonwealth's procurement regulations adopted by this Commission. Specifically section 801 CMR 21.06(7) reads:

May 16, 2012

Procurement Cancellation: A procuring department may at any time prior to the execution of a contract, for any reason and without penalty, notify Bidders of a cancellation of a procurement and the rejection of all responses.

Although the reason for the cancellation does not have to be stated, I recommend that the Commission state that simply the number of bids received (two) is not found to be advantageous for the Commission's main objective of trying to obtain the most experienced services at a reasonable price, by fostering a competitive environment.

Recommendation to Re-Bid and Additional Procedures

Notwithstanding the need to procure the services solicited, I recommend the Commission cancel the current solicitation, and notify the two bidders accordingly. Shortly thereafter the Commission should issue an RFR for the services in question with additional procedures and clarifications in order to elicit a better response. The additional procedures include:

1. Advertise in an industry periodical of wide and/or relevant circulation. Although this is not a required procedure by the procurement regulations, additional advertising may increase the likelihood of additional responses.
2. Advise relevant firms of the issuance of the next solicitation. Although this is not a required procedure by the procurement regulations, a direct e-mail to a large constituency may also increase the likelihood of additional responses. This large constituency may include the top 25 firms with experience in executive recruiting, and additional firms (law firms, consultants) with experience and/or familiarity with the Commission (or other Commissions) that may serve as a conduit for additional communication. Since its inception, this Commission has collected a number of e-mail addresses from constituents and interested parties, where many of these parties could receive notification of the re-issue.
3. Clarification of the fee structure. The initial solicitation stipulated a maximum fee. Elsewhere in the solicitation the RFR included language that the Commission would compensate for expenses incurred in the process of providing the services. I believe that additional clarification in regards to whether expenses are included in the maximum fee or not is a relevant clarification (my intention in the original draft of the solicitation was that expenses would be considered separate from the fee).

It should be noted that both procedures outlined above (#1 and #2), should be in the form of advising readers of the sites (URL) where the solicitation will reside (Comm-PASS and MGC website).

Conclusion

As stipulated above, I believe that cancelling the current solicitation, and re-issuing a solicitation with the enhanced procedures described above, which are designed to entice additional response, will be advantageous to the Commission. The procedures described above, could be implemented in a short period of time to minimize the time impact of this search.

May 16, 2012

MEMORANDUM

Date: May 16, 2012
To: Commissioners, Procurement File
From: Enrique Zuniga
Re: Contract with Karen Schwartzman (d.b.a. Polaris Public Relations)

The Massachusetts Gaming Commission and Karen Schwartzman (d.b.a. Polaris Public Relations) need to execute a contract for work that has been on-going since December 17, 2011. This memorandum provides the rationale and justification for entering into an emergency services contract with Karen Schwartzman.

Emergency Contract and Scope

After being advised that Governor Patrick would within days announce his decision to designate him chair of the to-be-created Massachusetts Gaming Commission, Steve Crosby recognized that he personally would likely receive a large number of inquiries and interview requests from the media. Mr. Crosby made a determination that he would need a person or firm specializing in public relations to facilitate such requests and to assist him with gaming commission – related communications. Mr. Crosby also made a determination that such firm or person would be needed prior to the Governor’s public announcement (thus the nature of the emergency).

Mr. Crosby asked staff at the Governor’s Office (deputy chief of staff) whether he could hire someone to help on an emergency basis, and was advised that that was both permissible and appropriate.

Summary of Procurement Process

Mr. Crosby determined that the ideal firm or individual would be a public relations professional, have a history of dealing with the Massachusetts media and have knowledge of state government. Mr. Crosby ascertained that a large public relations firm was neither necessary nor cost effective. Mr. Crosby consulted with the Office of the Governor relative to these assumptions and his knowledge of Karen Schwartzman (d.b.a. Polaris Public Relations), and considered a potential conflict of interest that was brought to his attention by Ms. Schwartzman. Ms. Schwartzman terminated that prior relationship and confirmed with Mr. Crosby her interest to accept him and the MGC as a client. Ms. Schwartzman also pointed out that her experience (unique in the Public Relations

May 16, 2012

world) of having served as an investigator for the State Ethics Commission for five years would be particularly helpful.

The deputy chief of staff and deputy general counsel for the Governor communicated and coordinated with Ms. Schwartzman for a background check and an estimate of the budget. Ms. Schwartzman was told that this being an emergency contract (and not being put out to bid), the billing rates would have to reflect a discount.

Mr. Crosby and Ms. Schwartzman conducted negotiations of the billing rates on that basis. Ms. Schwartzman offered an hourly billing rate of 50% of her regular hourly rate.

Mr. Crosby also communicated to Ms. Schwartzman that this was an emergency contract and that the contracting relationship would be on an interim basis until such time as the Commission was established (remaining four commissioners appointed, and commission in place). Mr. Crosby made clear that the Commission might at a future time make a determination that additional staffing would be necessary or might conduct a separate request for response (RFR) for the services that Ms. Schwartzman was to render.

Ms. Schwartzman accepted those terms and the billing rate was agreed upon at \$150 per hour. The parties also agreed to compensate Ms. Schwartzman for reasonable expenses in addition to the hourly rate.

Budget

The Commission and Ms. Schwartzman now recognize that the nature of the emergency procurement is approaching its conclusion, as the Commission is scheduled to begin employment of a full time communications director. As such, the parties anticipate that the total number of hours for the period from December 17, 2011 to June 30, 2012 spent by Ms. Schwartzman will not exceed 500 hours. The hours are summarized as follows:

Total number of hours incurred as of May 16, 2012:	416 hours *
Additional hours during May 2012 (after May 16)	20 hours
Estimated hours during June 2012	50 hours
Contingency	14 hours **
Total	500 hours

* includes 53 hours for additional individual during search and interviews of communications director candidates

** Contingency hours are for the purposes of entering into a not-to-exceed contracting arrangement

At the previously negotiated rate of \$150/hour, the total contracting amount is for \$75,000 plus reasonable expenses.

MEMORANDUM

TO: Massachusetts Gaming Commission

FROM: Michael & Carroll and Spectrum Gaming

SUBJECT: The Timing and Impact of the Proposed RFQ Process

DATE: May 20, 2012

At the Commission meeting of May 8, questions were raised concerning the impact of fast tracking the implementation of the proposed RFQ process. This memorandum is intended to respond to those questions.

BACKGROUND

Section 8 of the Act requires the Commission to issue a Request for Applications (“RFA”). As Section 8 also empowers the Commission to determine “... the form of the application and the method for submission”, (Section 8(a)(ii), It has been proposed that the Commission engage in a two-step RFA procedure, the first step of which would be the issuance of a Request for Qualifications (“RFQ”). The RFQ would be a sub-part of the overall RFA. The RFQ would inquire solely into the background of the applicants. It would not address the developmental aspects of an applicant’s casino proposal, which, as set forth in Section 12(c), would only commence after a determination has been made that the applicant is suitable to hold a gaming license. Thus the “entire” application would be evaluated as part of the remainder of the RFA. The purpose of this bifurcation would be to improve the speed and efficiency of licensing by eliminating the possibility that the Commonwealth and any relevant local governmental entities would have to undergo the extensive preparatory activities required by the law regarding the approval of an applicant’s total project, only to find out at the end of the day that the applicant’s background does not qualify it to proceed. This would severely prejudice a designated gaming region, and bring everyone back to square one through unnecessary and substantial delay.

The Commission has also decided that the most practical way to move forward efficiently at this early stage would be to establish a Strategic Plan. The Plan is intended to identify those elements that will require attention, and establish a time line for those activities. The preparation of the Strategic Plan is expected to take 16 weeks. However, a discussion was held at the May 8 Commission meeting questioning whether it might be feasible to move forward even faster if the RFQ process were to begin before the end of that 16 week Strategic Planning period. More specifically, while the Commission is desirous of moving as quickly as possible, it is also cognizant that speed should not overwhelm accuracy. As Commissioner McHugh noted, the Commission should proceed “with a combination of deliberation and speed.”

What follows below is a chart describing the steps that would be required to implement the RFQ process and the issues that each of those steps creates.ⁱ The chart does not address the actual investigation. We have previously stated that the length of these investigations cannot be ascertained with precision. Our experience allows for an estimate of approximately six (6) months, but depends greatly on the complications that might arise in the course of any such investigation. Clearly, then, as explained below, while we believe that the RFQ might be able to be issued within the Strategic Planning period, it is clear that the resulting investigations will not to any reasonable certainty be completed within that 16 week continuum.

NECESSARY STEPS	ISSUES
Retention of the Necessary Staff	<p>The RFQ investigations will require trained and experienced personnel. The Investigation and Enforcement Bureau (“IEB”) is not yet staffed. Therefore, any early implementation of the RFQ process will require both the use of experienced State Police investigators and the retention of third party contractors. The State Police certainly will have staff that can be used and third party contractors with a demonstrated history of conducting detailed regulatory background investigations in tight time frames have already been identified and are available for Commission consideration. These third party teams have been used in other jurisdictions and would not be used to the exclusion of IEB staff. Rather, as the IEB grows, the third party contractor can continuously train and assist IEB. Included in such training is the co- working of investigations, the introduction of MSP troopers and Commission staff to key gaming regulatory contacts in other jurisdictions and the establishment of proven systems and procedures to efficiently and comprehensively investigate applicants, application materials and access key databases. Stated another way, as the IEB “ramps up”, the contractors “ramp down” until IEB is fully capable of taking over its role in the investigative function. It will also be necessary to develop a Memorandum of Understanding with the State Police that will establish guidelines for their involvement. Finally, the gaming consultant team can also participate and assist in the development of the RFQ investigative process by helping to guide the coordination of these efforts and the substantive creation of industry standard forms, reports as well as Commonwealth specific supplemental materials.</p>
Scope of Licensing Determinations	<p>A business entity is found qualified for a license based on the people who give that entity its direction and control. Before any application process can begin, the persons whose qualifications will be required as a pre-condition to the qualification of an entity must be determined. These persons are typically called “qualifiers”. The</p>

	<p>Act provides some guidance on this issue at Section 13. Based on that guidance, along with the experience in other jurisdictions, the necessary qualifiers can be determined. Once this determination is made, regulations will need to be promulgated that will contain those standards. Accordingly, the timing of the completion of this step will hinge, in large part, on whether the regulations can be authorized on an emergency basis and, if so, how long that will take.</p>
Forms	<p>Appropriate application forms will be required. We have previously provided the Commission with the standard multi-jurisdictional forms used elsewhere. In addition, Sections 9 and 18 of the Act provide mandatory elements that must be contained in any licensing form. These elements can be incorporated, as necessary, in the Massachusetts Supplement to the multi-jurisdictional form. The RFQ form would only extend to those elements required for background investigation, not those that go to the developmental aspects. For example, sub-sections (1) through (6) of Section 9 would apply to the RFQ. Sub-sections (7) through (19) would not. They would be a part of the subsequent remainder of the RFP. Consultation with Anderson and Krieger will be necessary to determine if the application forms themselves would need to be promulgated as regulations, with any necessary timing implications that same would involve. If not necessary as regulations, the forms could be produced within approximately three (3) weeks.</p>
Fees	<p>Section 15 (11) of the Act states that the applicant shall <i>"...pay to the Commission a non-refundable fee of \$400.000. to defray costs associated with the processing of the application and investigation of the applicant"</i>. That same section further provides <i>"...That if costs of the investigation exceed the initial application fee, the applicant shall pay the additional amount to the Commission within 30 days after notification of the insufficient fees or the application will be rejected"</i>. Section 15 indicates that this payment is an integral part of the application process and obviously needs to be rendered at the time of the application filing. Equally relevant, the Act at Section 5(a)and 5(a)(6) specifically empowers the Commission to create regulations regarding this</p>

fee collection: *“The Commission shall promulgate regulations for the implementation administration, and enforcement of this chapter, including, without limitation, regulations that.....”* prescribe the manner and method of collection and payment of assessments and fees and the issuance of licenses”. Although not needed for this analysis, additional provisions of the Act also reiterate the Commissions authority to collect such fees (see also Section 4 (25) and (26). Thus the Act fully enables the Commission to decide what the fees are and when such fees shall be paid. It is also important to distinguish these initial “application fees” from the actual “gaming license fees set forth in Section 10 of the Act, and which only are triggered after an applicant is selected.

Reading the pertinent Act provisions together clearly enables the Commission to also establish, **by specific regulation**, the initial application fee that that must accompany the filing of an RFQ application as the first required step in the plenary RFA process. The logistical utilization of the fee will have to be decided by the Commission and alternatives can be considered. However, the simplest and most efficient process would be to require by regulation that the applicant post the \$400,000. application fee (or, in the Commission’s discretion, a lesser amount) in an Commission controlled escrow account at the time of the filing of the RFQ response. The initial costs of the investigation would then draw down on the application fee in a proportion to the complexity of the applicant’s background requirements. A full accounting of all fee utilization would of course be required and any remaining amounts applied towards the completion of the RFA process if the applicant is certified as suitable to hold a license. If an applicant is ultimately denied (after exhausting any appeals) the amounts expended would be forfeited. Any amounts remaining could be refunded. The same would be apply if the applicant withdraws,

As is commonplace in the gaming industry, and set forth in Section 15 the Act, any additional investigative costs that exceed any remaining initial fee amounts will be billable to the Applicant.

	<p>The form of this additional cost can be in an hourly billable format, or perhaps in an additional replenished set fee sum again to be drawn down upon as investigational needs dictate for this initial portion of the RFA process.</p>
<p>Issuance of the RFQ</p>	<p>As stated above, Section 8 of the Act requires the Commission to issue RFA's. As also stated above, we propose that the RFQ would be a part of the RFA. The RFQ would include only those elements that would be relevant to the areas to be scrutinized as part of the RFQ, leaving the remainder of the elements to be reviewed as part of the later issuance of another application that would complete the RFA process. The RFQ Issuance Notice would include those housekeeping mandates provided at Sections 8(a), (b), and (c), including deadlines for their filing. It should also include a description of the bifurcated procedure. It is also important to note that Section 8 requires the Category 2 RFA to be issued prior to the Category 1 RFA. There is no reference to any required time differential between the two. Therefore, a very short time differential (even a day or two) would comply with the Act. Finally, if the full \$400,000 initial license fee is not expended during the RFQ process, the second stage of the RFA application would have to be accompanied by any amount necessary to meet the full \$400,000.</p>
<p>Timing</p>	<p>The only statutory deadline that we can see in the Act that would have any relevance to this process is the Tribal Compacting deadline in Section 91(e). This would affect only Region C. That Section mandates that a Compact must be agreed to by the Governor and the Tribe, or approved by the General Court, by July 31, 2012. If this is not accomplished, the Commission "shall issue a request for applications for a category 1 license in Region C" no later than October 31, 2012. In addition, if by August 1, 2012, the Commission determines that the Tribe will not have land in trust, then, in that case, the Commission shall "consider bids" for a category 1 license for Region C. Although the terms used to describe what the Commission must do after July 31 is slightly different ("shall issue" an RFA, as opposed to "consider bids" for a license) we do not see a distinction between those two articulations. In either case, the Commission is free, in the absence</p>

	of the conditions stated, to issue the RFA, and, therefore, the RFQ, any time after July 31. Therefore, if either of the two conditions are met, then the timing of an RFQ for Region C could be issued in August (subject to it being after a Category 2 RFQ), prior to the anticipated completion of the 16 week Strategic Planning period. This could be done either with the RFA's for the other Regions or, if the RFQ's are ready earlier, then Region C could be issued separately.
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ⁱ Rather than create a separate section describing each step that requires a regulation, whenever regulations are required, that fact will be emphasized in **bold**.

CONCLUSION

Based on the information provided above, we believe that an RFQ, as described above, can be issued within the 16 week Strategic Planning Period subject to a number of factors. These factors include:

1. The time that might be required to complete the formal regulatory promulgation process for those new regulations that will be required;
2. The engagement of a third party investigative contractor;
3. Development of the necessary MOU with the State Police;
4. The establishment of a satisfactory fee policy.

We hope this information serves to respond to your inquiries. Of course, if you have questions, please do not hesitate to contact us. Thank you.

**STATEMENT OF WORK
BETWEEN
THE MASSACHUSETTS GAMING COMMISSION
AND
MICHAEL & CARROLL ("M&C") and SPECTRUM
GAMING GROUP ("Spectrum")
FOR THE PROVISION OF GAMING
CONSULTANT SERVICES TO THE
COMMISSION**

1. INTRODUCTION

This Statement of Work ("SOW") between the Massachusetts Gaming Commission (hereinafter "the Commission") and Michael & Carroll (hereinafter "M&C") and Spectrum Gaming Group (hereinafter "Spectrum") documents the gaming consulting services M&C and Spectrum will provide to the Commission relative to the Commission's implementation of An Act Establishing Expanded Gaming in the Commonwealth (the "Act"), codified at Chapter 194 of the Acts of 2011. The entire agreement ("Agreement" or "Contract") between the Parties consists of the following documents in the following hierarchical order of precedence except as otherwise expressly stated or modified herein: (1) the Commonwealth Terms and Conditions; (2) the Commonwealth's Standard Contract Form; (3) the Request for Response # GOV-2011-001 for Consultants to Advise on Implementation of Expanded Gaming Law ("RFR"); (4) this SOW; and (5) specifically, M&C's response and Spectrum's response to the RFR as now modified by the parties for the bifurcated consultant selection process.

2. DEFINITIONS

The terms used in this SOW, unless defined in this SOW or in an amendment made hereto, shall have the meaning ascribed to them in the other documents that constitute the Agreement between the Parties.

"Deliverable" means any work product that M&C and Spectrum deliver for the purposes of fulfilling their obligations under the terms of the Agreement.

"Task" means a material activity engaged in by M&C and Spectrum for the purpose of fulfilling their obligations under the terms of the Agreement, which may or may not result in the creation of a Deliverable.

"Work Plan" means the schedule of Tasks and Deliverables to be developed pursuant to the SOW.

3. OVERVIEW, EFFECTIVE DATE AND TERM

This Agreement governs the provision of gaming expertise; legal advice; strategic planning; staff development; regulatory, licensing and law enforcement best practices; and other consulting services related to various components of "standing up" the Commission and of the initial phases of preparing for the implementation of the Act. M&C and Spectrum will work closely with the Commission, the Commissioners of the Commission, Commission employees whom the Commissioners designate, other designated state officials and designated employees of other consultants whom the Commission engages. The services provided by M&C and Spectrum are preparatory and advisory in nature and are not intended to substitute for any activities or decision-making responsibilities that rest solely with the Commission.

This Agreement's term ("Term") begins on May 22, 2012, ("Effective Date") and, unless mutually extended by written agreement of the parties, shall terminate on September 11, 2012, or on acceptance by the Commission of the last Deliverable in the Work Plan, whichever last occurs ("Termination Date"). This Agreement shall cover all work performed by M&C and Spectrum as described in the Work Plan from the effective date of this Agreement until the Termination Date.

4. POINTS OF CONTACT

The Commission's contact person is Chairman Stephen P. Crosby or his designee, either of whom may be reached by mail at 84 State Street, Suite 720, Boston, MA 02109, or by phone at (617) 979-8400; Chairman Crosby may be reached by email at steve.crosby@state.ma.us.

M&C's contact person is Guy S. Michael, who can be reached at 1125 Atlantic Avenue, Suite 619, Atlantic City, New Jersey 08401, or by phone at 609-441-9292 and by email at guysmichael@aol.com.

Spectrum's contact person is Fredric E. Gushin, who can be reached at 1201 New Road, Suite 308, Linwood, New Jersey, 08221, or by phone at 609-926-5100 and by email at FGSpectrum@aol.com.

5. PROJECT MANAGEMENT - Project Managers

The Commission and the Principals of each consultant entity must notify the other Party's Project Manager of any change in the name, address, phone number or email address of their respective Project Managers.

5.1 Commission Project Managers

Chairman Stephen P. Crosby or his designee (the "Commission's Project Manager") shall perform project management on behalf of the Commission for this engagement. The Commission's Project Manager will:

- 5.1.1 Work closely with Consultants' Project Manager to ensure successful completion of the project.
- 5.1.2 Consult with Consultants' Project Manager to develop the Work Plan.
- 5.1.3 Review regular status reports and schedule regular meetings with M&C and Spectrum as necessary.
- 5.1.4 Retain other project team members as needed.
- 5.1.5 Coordinate the review and approval of the Deliverables.

5.2 M&C and Spectrum Project Manager

Kathleen O'Toole (the "Consultants' Project Manager") shall perform project management on behalf of Michael & Carroll and Spectrum for this engagement. The Consultants' Project Manager will:

- 5.2.1 Be responsible for administering this Agreement and managing the day-to-day operations under this Agreement.
- 5.2.2 Serve as an interface between the Commission's Project Manager and M&C and Spectrum in this engagement.
- 5.2.3 Develop and implement the mutually agreed upon Work Plan, in consultation with the Commission's Project Manager.
- 5.2.4 Facilitate regular communication with the Commission's Project Manager, including regular status reports, and review the project performance against the Work Plan.
- 5.2.5 Update the Work Plan on a regular basis and distribute updated versions at regular meetings for the duration of the engagement.
- 5.2.6 Be responsible for the coordination of M&C and Spectrum assets and personnel.

Guy S. Michael, as Partner of M&C, and Fredric E. Gushin, as Managing Director of

Spectrum, are authorized and will sign this SOW and all amendments thereto on behalf of M&C and Spectrum.

6. WORK PLAN

This Agreement is designed to secure advice, planning and implementation support on early start-up, regulatory and enforcement issues related to the implementation of the Act, especially related to the formation and start-up activities of the Commission and the development of its longer term strategic plan. While this SOW is intended to capture the anticipated activities and services of M&C and Spectrum under this Agreement, the Parties acknowledge that the Work Plan (as defined below) may be modified if and as the parties mutually agree on the modification.

During the first week of work under this Agreement, the Consultants' Project Manager shall use reasonable best efforts to develop, and propose for review and approval by the Commission Project Manager, a work plan (the "Work Plan") that reflects specific work to be done by M&C and Spectrum under this Agreement, and when work product by M&C and Spectrum that results in Deliverables will be made available to the Commission's Project Manager under this Work Plan. While the Work Plan is being developed, M&C and Spectrum will also perform substantive work in a manner agreed upon by the Project Managers.

The Parties understand and acknowledge that part of the value presented by M&C and Spectrum is the capacity to adapt and respond to quickly-changing events that typically accompany "standing up," and developing strategic plans for new public commissions. M&C and Spectrum are committing the personnel and resources necessary to provide the high-quality strategic advice, recommendations and other services necessary to stand up the Commission and plan its full-scale operations as contemplated by the Work Plan in a timely and effective manner.

Illustrative examples of the types of services being procured include, but are not limited to the following:

1. Assisting with thorough review and assessment of the Act.
2. Assisting with a wide range of activities related to the implementation of the Act and the formation of the Commission.
3. Preparation of an initial strategic plan that includes:
 - a. Proposed timelines and identification of priorities for the implementation of the Act and the formation of the Commission;

- b. Preliminary staffing plans for the Commission, including administrative staff positions and positions in the areas of finance, legal and human resources;
 - c. Preparation of a preliminary budget for the operation of the Commission;
 - d. Assistance with the drafting and promulgation of emergency regulations for the implementation, administration and enforcement of the Act; and
 - e. Advice on critical, time-sensitive steps with respect to standing up the newly-established Commission.
- 4. Assisting with any further procurements needed for the timely implementation of the Act and the establishment of the Commission.
 - 5. Assisting, as requested, with other consultants on identifying preliminary recommendations to the Commission for time-sensitive guidance and regulations.
 - 6. Assisting with responding to relevant questions from Commonwealth officials and representatives and other interested parties.

7. AMENDMENTS TO THE STATEMENT OF WORK

This Agreement may be amended prior to the end of the Term. The Project Manager who seeks a change in scope for this engagement or any other terms contained within the Agreement will provide a suggested amendment in writing to the other Project Manager. The Project Managers will jointly determine whether the change impacts any terms contained within the Agreement. The Parties may mutually agree to the change through a written amendment to this SOW.

8. PERSONNEL

8.1 Key Personnel from M&C and Spectrum

M&C and Spectrum agree to provide, on a non-exclusive basis, the personnel listed on Appendix A for the duration of this project. M&C and Spectrum shall assign all of the foregoing personnel to this engagement in the manner set forth to accomplish the goals and objectives in the Work Plan to be developed pursuant to the SOW. In the event that changes are necessary, Consultants' Project Manager will provide prompt written notice of the proposed change to the Commission's Project Manager. If the personnel change is a result of a non-emergency, the Consultants' Project Manager shall provide the Commission's Project Manager with one week's written notice. For personnel changes that result from an emergency, the Consultants' Project Manager shall provide prompt written notice

to the Commission's Project Manager.

9. ADDITIONAL TERMS

9.1 Warranty of M&C and Spectrum

M&C and Spectrum represent and warrant that:

- 9.1.1 M&C and Spectrum are sufficiently staffed and equipped to fulfill their obligations under this Agreement;
- 9.1.2 M&C and Spectrum services will be performed:
 - 9.1.2.1 By appropriately qualified and trained personnel;
 - 9.1.2.2 With due care and diligence and to a high standard of quality as is customary in the industry;
 - 9.1.2.3 In compliance with the Work Plan and the terms and conditions of this Agreement; and
 - 9.1.2.4 In accordance with applicable Massachusetts or Gaming Industry professional standards for the field of expertise.
- 9.1.3 Deliverables delivered under this Agreement will substantially conform to the Tasks and Deliverable descriptions set forth in this Agreement and the Work Plan.

9.2 Commonwealth Property

Deliverables provided under this Agreement shall be the property of the Commonwealth in conformance with the Commonwealth's Terms and Conditions. In addition, the Commonwealth retains all right, title and interest in, and to, all derivative works of Commonwealth property.

10. M&C and Spectrum TASKS AND DELIVERABLES

Tasks and Deliverables that M&C and Spectrum will provide and the completion dates for those Tasks and Deliverables are governed by the agreed upon Work Plan to be developed pursuant to the SOW. Tasks or Deliverables will be considered "complete" upon acceptance by the Commission.

All written documents shall be delivered in machine-readable format, capable of being

completely and accurately reproduced by computer software on a laser printer. All itemized and/or annotated lists shall be delivered in computer spreadsheets, capable of being imported to Microsoft Excel2010 or in a similarly convenient format. The Commission shall provide technical support to the consultants as needed to enable the Commission's use of any provided materials in meetings or public sessions. Meetings, as required herein, shall be held at the Office of the Gaming Commission, 84 State Street, Suite 720, Boston, MA, unless agreed to otherwise by the Project Managers.

All meeting results and next steps will be described in a follow-up report generated by the Consultants' Project Manager and approved by the Commission's Project Manager.

10.1 Fees, Disbursements and Deliverables:

The Commission Project Manager shall review compliance with the SOW and shall be authorized by the Commission to direct distribution of the compensation (and where appropriate expenses pursuant to section 11.4 below) pursuant to the payment terms below in section 10.2.

10.2 Payment Terms

Due to the Commission bifurcating the Consultant selection process, M&C and Spectrum agree to accept the total sum of \$500,000.00 (to be divided equally between M&C and Spectrum) to provide the assigned services according to the SOW, to be payable upon approval of the Commission Project Manager of M&C and Spectrum's efforts towards completion of the deliverables. All payments under this Agreement shall be made in accordance with the Commonwealth's bill paying policy and upon review of the Commission's project manager, including, but not limited to, payment once per month of at least one quarter of the total compensation sum. Final payment will be subject to the approved receipt of final deliverables by the Commission.

11. SPECIAL PROVISIONS

The following provisions shall supersede all other provisions of the Agreement:

11.1 Clarification of Language in Section 11, Indemnification of the Commonwealth

Terms and Conditions.

Pursuant to Section 11. Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a contract.

"Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as deemed in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under the Contract.

11.2 Independent Contractor

The parties intend to create an independent contractor relationship and nothing contained in this Agreement shall be construed to make M&C and Spectrum and the Commission partners, joint ventures, principals, agents, or employees of the other. No partner, associate, counsel, employee, agent, or affiliate of M&C and Spectrum performing services under this Agreement shall be an employee of the Commission or personally liable under the Contract.

11.3 Special State Employees

For purposes of General Laws Chapter 268A, this Agreement expressly permits M&C and Spectrum's partners, associates, counsel, employees, agents, and affiliates, and each and every one of them, to engage in personal or private employment during normal working hours, including without limitation to provide legal services to other clients of M&C, Spectrum and their principals at any time and throughout the Term of this Agreement, including any extended term. Disclosure of this permission will be filed in writing with the state ethics commission. It is the intention of this provision that any of M&C and Spectrum's partners, associates, counsel, employees, agents, and/or affiliates who may otherwise be considered a "state employee" for purposes of General Laws Chapter 268A pursuant to State Ethics Commission Advisory 06-01 (<http://www.mass.gov/ethics/education-and-training-resources/info-section-7/advisories/advisory-06-01-consultants.html>) shall be classified as and considered to be special state employees for purposes of this Agreement.

11.4 Meetings with Commission

The Commission and Consultants agree that while much of the work required in the SOW may and will be performed regardless of location, it is still necessary to have recurring face-to-face meetings with the Commissioners, key Commission personnel and representatives of other governmental agencies and stakeholders. In this regard, M& C and Spectrum will coordinate telephone conferences, video conferencing (where such technology is available) and in person meetings when the aforementioned parties agree that they are necessary.

MASSACHUSETTS GAMING COMMISSION

Stephen P. Crosby
Chairman

Guy S. Michael
Partner MICHAEL AND CARROLL

Enrique Zuniga
*Commissioner,
Treasurer*

Fredric E. Gushin
Managing Director SPECTRUM GAMING
GROUP

APPENDIX A: Personnel

Personnel: Michael & Carroll

Guy Michael
Robert Carroll
Bernard Murphy

Personnel: Spectrum Gaming Group

Fredric Gushin
Michael Pollock
John Bowman
Julian Grauer
Joseph Weinert
Wayne Marlin
Richard Carretta
Michael Epps
Steve Ingis

Kathleen O'Toole and Kristin Gooch will serve as project managers for both Michael & Carroll and Spectrum Gaming Group.

Strategic Plan and Short Term Deliverables
Gaming Commission 16 Week Plan (Including Anderson Kreiger)

Activity	Milestone/ Deliverable	Owner	Others Involved	Status	May		June				July					August				September
					WB 5/21	WB 5/28	WB 6/4	WB 6/11	WB 6/18	WB 6/25	WB 7/2	WB 7/9	WB 7/16	WB 7/23	WB 7/30	WB 8/6	WB 8/13	WB 8/20	WB 8/27	WB 9/3
Short Term Activities																				
Consultant Comments on Statute		Michael & Carroll																		
	Conduct legal review and assessment of Act	Anderson & Kreiger		Complete																
	Review statute and add comments	Michael & Carroll		In Process	■															
	Team contributes additional comments	Spectrum				■														
	Submit document to Chairman	Michael & Carroll					■													
Coordination with Anderson & Kreiger		Both Consultants																		
	Schedule initial meeting with Anderson & Kreiger	TBD	Anderson & Kreiger			■														
	Conduct initial meeting to answer initial questions	Both Consultants					■													
	Coordinate as necessary for each deliverable	Both Consultants						■	■	■	■	■	■	■	■	■	■	■	■	
Legal Support for Operations		Anderson & Kreiger																		
	Develop "Policy on Policies"	Anderson & Kreiger		In Process																
	Board of governance	Anderson & Kreiger		In Process																
	Public records	Anderson & Kreiger		In Process																
	Open meeting law	Anderson & Kreiger		In Process																
	Press/Media	Anderson & Kreiger																		
	Advisory opinions/ web responses	Anderson & Kreiger																		
	Employment policies	Anderson & Kreiger		In Process																
	Fiscal policies and controls	Anderson & Kreiger																		
	Code of Ethics	Anderson & Kreiger																		
	Procurement procedures	Anderson & Kreiger																		
Legal Support for Racing Commission		Anderson & Kreiger																		
	State racing commission transition	Anderson & Kreiger		In Process																
RFQ Planning		Both Consultants																		
	Present RFQ approach to Commission	Michael & Carroll																		
	Finalize decision to begin process with an RFQ					■														
	Review generic multi-jurisdiction RFP/application and RFPs from other jurisdictions	Both Consultants				■														
	Prepare business entity disclosure form and finalize MA supplement for qualifiers	Michael & Carroll					■													
	Identify unique aspects of MA statute and objectives	Both Consultants						■												
	Meet to discuss adaptations to form for MA	Both Consultants							■											
	Update the form and distribute to team for final review	Spectrum								■										
	Send to Anderson & Kreiger for review (including for confidentiality and internet security issues)	Spectrum	Anderson & Kreiger								■									

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Strategic Plan and Short Term Deliverables
 Gaming Commission 16 Week Plan (Including Anderson Kreiger)

Activity	Milestone/ Deliverable	Owner	Others Involved	Status	May		June				July					August				September
					WB 5/21	WB 5/28	WB 6/4	WB 6/11	WB 6/18	WB 6/25	WB 7/2	WB 7/9	WB 7/16	WB 7/23	WB 7/30	WB 8/6	WB 8/13	WB 8/20	WB 8/27	WB 9/3
Develop recommendation for sequencing/timing for hires		Spectrum																		
Team provides feedback on recommendations		Michael & Carroll																		
Review recommendation with Commission	X	Spectrum	Commission																	
Provide assistance in writing job descriptions		Both Consultants																		
Provide assistance in identifying and interviewing candidates		Both Consultants																		
Make hiring recommendations as requested		Spectrum																		
Assistance with Indian Gaming Related Issues		Both Consultants																		
Meet with Governor's office to advise on appropriate jurisdictional divisions		Both Consultants																		
Provide other support as requested		Both Consultants																		

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